

ACTS
OF THE
FIFTY-SIXTH
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1963
First Extraordinary Session, 1963
Regular Session, 1964
First Extraordinary Session, 1964

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FOREWORD

Included in this volume are the Acts of the Regular Session, 1963; First Extraordinary Session, 1963; Regular Session, 1964; and First Extraordinary Session, 1964.

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 continue 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 Resolutions 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 Concurrent and 29 House Resolutions were adopted. The Senate had 20 Senate Concurrent, one Senate Joint and 10 Senate Resolutions, of which ten Senate Concurrent and all Senate Resolutions 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.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, Charleston, West Virginia 25305.

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."

TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Regular Session, 1963

GENERAL LAWS

ACTS VOID AS TO CREDITORS AND PURCHASERS

Chapter	Page
1. Effect of Recorded Contract as to Creditors and Purchasers and Permitting Recordation of Memorandum of Lease.....	1
2. Contracts, Deeds and Mortgages Invalid as to Creditors and Purchasers until Recorded, Recordation in More Than One County, and Inapplicability of Certain Statutes to Transfer or Assignment of Interest Created by Trust Deed or Mortgage	2

ADMINISTRATION OF ESTATES AND TRUSTS

3. Commissioner of Accounts to Publish Notice of Time for Receiving Claims against Decedent's Estate	4
4. Accounting by Fiduciaries of Small Estates	5
5. Designation of Testamentary Trustee as Beneficiary of Insurance	6
6. Settlement of Accounts of a Guardian or Committee under the Uniform Veterans' Guardianship Act	7

AGRICULTURE

7. Definition of Words and Terms Applicable to Law Governing Inspection of Meats and Meat Products	9
8. Feeding of Garbage to Swine	10
9. Repealing Act Creating West Virginia State Apple Commission	12
10. State Soil Conservation Committee	13

ALCOHOLIC LIQUORS

11. Limitation on Amount of Alcoholic Liquor That May Be Sold to a Person at One Time, and on Amount That May Be Transported into State	16
---	----

APPROPRIATIONS

12. General Appropriations (Budget Bill)	17
13. Preparation of a Digest of the Budget Bill	78
14. Itemization of Tentative Budget	79

ARCHIVES AND HISTORY

15. Powers and Duties of State Historian and Archivist	80
--	----

CORPORATIONS

Chapter	Page
16. Foreign Corporations, Including Massachusetts Trusts, Acquiring Secured Loans on Real or Personal Property, Not Required to Qualify to Do Business within State.....	82
17. Bank Service Corporations and Bank Services	84
18. Conditions on Which Building and Loan Association May Take Mortgage or Deed of Trust	86
19. Incorporation, Organization and Operation of Credit Unions	88
20. Definition of Terms Used in West Virginia Industrial Development Authority Act	99
21. Loans to Industrial Development Agencies by West Virginia Industrial Development Authority	102
22. West Virginia Forest Industries Industrial Foundation	105

COUNTY COURTS AND COUNTY OFFICERS

23. Authority of County Courts to Cooperate with Other Governmental Units in the Exercise of Its Powers and Duties	113
24. Issuance of Revenue Bonds by County Courts for Construction or Renovation of County Jail	114
25. Offering of Rewards by Prosecuting Attorney for Apprehension of Persons Charged with Crime and for the Detection of Crime; and Appointment of Investigator of Crime in Certain Counties	115
26. Employment of Counsel by County Court	117
27. Auditing and Payment of Claims of Justices and Constables by the County Court	118
28. Authority of Sheriff to Make Deduction from Sentence of Prisoner for Good Conduct and Donation of Blood	119
29. Creation of County Development Authorities by County Courts	120

COURTS AND THEIR OFFICERS

30. Salaries of Judges of Circuit Courts	127
31. Allowance to Circuit Judges for Stationery, Postage and Stenographic Help; and Additional Compensation for Stenographic Help by Counties	128
32. Terms of Court in Fourth and Twenty-eighth Judicial Circuits	129

CRIMES AND THEIR PUNISHMENT

33. Penalties for Crime of Rape	130
34. Penalty for Removal out of County of Property Securing a Claim	131
35. Crime of Giving Worthless Check and Penalties Therefor	132
36. Pecuniary Interest of County and District Officers, Teachers and School Officials in Contracts	134
37. Unlawful to Engage in Certain Work, Labor or Business on Sunday	136
38. Establishing Commission on Post-mortem Examinations, Chief Medical Examiner and County Medical Examiners; and Prescribing Rules and Regulations and the Method of Performing Autopsies	142

CRIMINAL PROCEDURE

39. Cash Deposits as Recognizance without Surety in Criminal Cases	150
--	-----

DAYLIGHT SAVING TIME

40. Designation of Official Time as Daylight Saving Time by Governor	152
--	-----

DOMESTIC RELATIONS

Chapter	Page
41. Recording and Releasing of Lien on Real Estate Created by Decree in a Divorce Action	153
42. Maturity, Hearing, Testimony and Notice of Plaintiff of Demand for Trial in Actions for Divorce	154

EDUCATION AND EDUCATIONAL INSTITUTIONS

43. Powers and Duties of State Board of Education and Fixing Public School Entrance Age	156
44. Training of Teachers, Classification and Standardization of Schools, and Standards for Degrees and Diplomas	157
45. Selection and Adoption of Public School Textbooks, and Contracts and Bonds of Textbook Publishers	159
46. Appointment, Qualifications, Traveling Expenses and Residence of the State Superintendent of Schools	161
47. General Control of Schools by County Boards of Education, Including Control and Management of Quasi-Public Funds	162
48. Establishment of Summer School Programs by County Board of Education	164
49. Appointment of Teachers, and Execution and Termination of Contracts Therewith	166
50. Salaries of Public School Teachers	168
51. Enumeration of Children of School Age	172
52. Certification of Public School Teachers and Certification of Aliens to Teach a Foreign Language	173
53. Contributions by Members of Teachers' Retirement System, Statement and Computation of Service, Withdrawal and Death Benefits, and Allowance upon Retirement	174
54. Supplemental Retirement Benefits for Teachers	181
55. Duties of County School Attendance Director	182
56. Compulsory Education of Deaf and Blind, the Enumeration Thereof and Reports to the State Superintendent of Schools	184
57. Allocation of State Aid for Schools	186
58. Computation of Local Share of State Aid for Schools and the Appraisal and Assessment of Property	190
59. Cooperative Extension Service of West Virginia University and County Extension Service Committee	198
60. Parking Facilities at West Virginia University, Marshall University and Other Institutions of Higher Learning	203
61. Issuance of Revenue Bonds for Capital Improvements at Marshall University	207
62. West Virginia Educational Broadcasting Authority	213
63. Imposition, Collection and Disposition of Registration Fees at State Institutions of Higher Education	216

ELECTIONS

64. West Virginia Election Code	221
---------------------------------------	-----

EMINENT DOMAIN

65. Procedure in Exercise of Right of Eminent Domain	380
--	-----

EMPLOYMENT SECURITY

66. Appointment, Qualifications, Powers and Duties, and Salary of the Commissioner of Employment Security	392
67. Definitions Applicable to Employment Security Law; Unemployment Compensation Coverage and Responsibility of Employer, and Employee Eligibility and Benefits	402

TABLE OF CONTENTS

ESTATES IN PROPERTY

Chapter	Page
68. Cancellation of Oil and Gas Leases for Nonpayment of Delay Rental after Demand Therefor	428
69. Including Building and Loan Associations and Federal Savings and Loan Associations in Definition of Bank for Purposes of Gift to Minors Act	430

FIRE MARSHAL

70. Funds for Maintenance of Office of State Fire Marshal	433
---	-----

HEALTH

71. Supervision of Dental Health Services in Institutions and Hospitals under the Direction of the Commissioner of Public Institutions and the Department of Mental Health by the State Department of Health	434
72. Autopsies on Bodies of Deceased Persons in the Interest of Medical Science	436
73. Licensing of Hospitals, Sanitoriums, Rest Homes, Nursing Homes and Similar Institutions	437
74. Offenses and Penalties under the Uniform Narcotics Law	440
75. Removal of Members of Public Service District Board and Sale, Lease or Rental of a Water System by a Public Service District	442
76. Air Pollution Control	444
77. Creating the West Virginia Water Development Commission	450

INDUSTRIAL DEVELOPMENT

78. Industrial Development Bond Act, Authorizing Counties and Municipalities to Issue Revenue Bonds and to Acquire Industrial Plants	466
--	-----

INSURANCE

79. Additional Insurance Premium Tax	479
80. Credits against Insurance Premium Tax by Investment in West Virginia Securities	480
81. Standard Valuation Law for Life Insurance Policies	481
82. Investments by Insurers in Real Property Mortgages	488
83. Policies of Insurance to Which Law Governing Accident and Sickness Insurance Not Applicable	490

JUSTICES AND CONSTABLES

84. Fees of Justices in Civil Cases	491
85. Fees of Constables in Civil and Criminal Cases	492
86. Fees of Justices in Criminal Cases	494

JUVENILES

87. Interstate Compact on Juveniles	496
---	-----

LABOR

88. Qualifications, Appointment, Term of Office and Salary of the Commissioner of Labor	510
89. Repealing Statute Establishing Bedding Division Fund in Department of Labor and Transferring Balance in Fund to General Revenue Fund	511

TABLE OF CONTENTS

xi

LIENS

Chapter	Page
90. Deeds of Trust Conveying Personal Property Subject to Provisions of the Uniform Commercial Code	512

MENTALLY ILL PERSONS

91. Defining the Phrase "Mentally Ill"	513
92. Establishing Division and Program on Alcoholism within the Department of Mental Health	514

MINES AND MINERALS

93. Rescue Crews and Safety Requirements for Operation of Coal Mines	516
94. Leasing of Lands Owned by the State for Surface Mining of Coal	532
95. Regulation of Drilling for Oil and Gas	532

MOTOR VEHICLES

96. Definitions of Words and Phrases under Motor Vehicle Law, and Display of Vehicle Registration Plates	566
97. Defining Special Mobile Equipment	572
98. Public Inspection of Motor Vehicle Records and When Certain Records May Be Destroyed	573
99. Seizure of Motor Vehicle Documents and Plates	574
100. Application for Certificate of Title to Motor Vehicles and Tax upon Effecting Certification of Such Titles	575
101. Registration Plates to Be Furnished by Department of Motor Vehicles and Prescribing Colors for Such Plates	577
102. Colors and Design for Registration Plates for Motor Vehicles Owned by the State, Counties and Municipalities	580
103. Transfer of Title to an Abandoned Motor Vehicle	582
104. Exemption of Nonresident Owners of Motor Vehicles from Registration and Issuance of Permits in Lieu of Registration	583
105. Unlawfully Obtaining and Retaining Motor Vehicles	586
106. Classification of Motor Vehicles for Purpose of Registration	588
107. Registration Fees for Motor Vehicles	590
108. Payment of Public Service Commission Assessment Required for Registration of Vehicle Operated for Compensation, Suspension of Registration and Exchange of Registration Cards and Plates for Vehicle of a Different Class	593
109. Definitions of Certain Words and Phrases Applicable to Motor Vehicle Operators' and Chauffeurs' Licenses	594
110. Persons Exempt from Licensing as Motor Vehicle Operators and Chauffeurs	596
111. Persons Exempt from Licensing as Motor Vehicle Operators and Chauffeurs	598
112. Authority of Department of Motor Vehicles to Cancel Operators' and Chauffeurs' Licenses	600
113. Penalty for Driving Motor Vehicle on Highway When License Has Been Suspended or Revoked	601
114. Regulation of Operation, Stopping and Parking Motor Vehicles	602
115. Required Space between Motor Vehicles Being Driven on Public Roadways	617
116. Overtaking and Passing School Bus on Street or Highway and Authority of Commissioner of Motor Vehicles to Adopt Standards Applicable to Lighting Equipment and Warning Devices on Such Buses	618
117. Definition of Words and Phrases Applicable to Motor Vehicle Safety Responsibility Law	620

MOTOR VEHICLES—(Cont'd.)

Chapter	Page
118. Authority of Commissioner of Motor Vehicles to Reduce or Increase Amount of Security Deposited to Satisfy Damages under Motor Vehicle Safety Responsibility Law	622

MUNICIPALITIES

119. Membership in Association or League of Municipalities	623
120. Change of Boundaries of City, Town or Village	624
121. Publication of Notice of Proposed Ordinance Adopting Comprehensive Code, and Ordinance Procedure under Home Rule Charters	626
122. Authorizing Municipalities to Impose a Tax upon the Sale of Intoxicating Liquors	628
123. Issuance of Revenue Bonds for Construction or Renovation of a Municipal Jail Facility	629
124. Amendment of Comprehensive Plan of Planning Commission and Zoning Ordinance	630
125. Defining terms "Policemen," "Officer," "Police Officers" and "Members of a Paid Police Department"	631
126. Purpose of Civil Service Law for Paid Municipal Police Departments	632
127. Levy to Maintain Firemen's and Policemen's Pension or Relief Funds	633
128. Signing of Orders for Payment of Money out of Municipal Treasury by Mechanical or Electrical Devices	636

NATURAL RESOURCES

129. Definitions of Terms in Natural Resources Law	637
130. Cooperation with the Federal Government in Wildlife Restoration and Management	641
131. Unlawful Methods of Hunting and Fishing	642
132. Importation and Liberation of Wildlife	647
133. Tagging, Removing, Transporting and Reporting Deer, Bear and Wild Turkey Killed	648
134. Designation of Agents to Issue Hunting and Fishing Licenses ..	650
135. Refusal or Revocation of Hunting and Fishing Licenses and Permits	651
136. Class J National Forest Fishing License	653
137. License for Privately-owned Commercial Shooting Preserves ...	654
138. Permit to Hold or Conduct a Field Trial, Water Race, or Wild Hunt	656
139. Administration and Control of Surface Mining and the Reclamation of Lands Affected Thereby	657
140. Seizure of Property by Law Enforcement Officers in Connection with Arrests for Game Law Violations and Disposition Thereof	683

OCCUPATIONS AND PROFESSIONS

141. Qualification and Registration of Professional Foresters	684
142. Registration of Physical Therapists	689

PARKING AROUND STATE CAPITOL

143. Authority of Commissioner of Finance and Administration to Regulate Motor Vehicle Parking around State Capitol	697
---	-----

POLITICAL SUBDIVISIONS

Chapter	Page
144. Relocation of Meeting Places of Governing Bodies of Political Subdivisions in the Event of an Enemy Attack or Threatened Enemy Attack	699

PUBLIC ASSISTANCE AND RELIEF

145. Office Space and Equipment for County Public Assistance Councils	700
146. Assistants and Employees of County Public Assistance Councils	701
147. Eliminating Requirement that Recipient of Public Assistance to Aged Grant a Lien to the State upon Real or Personal Property as a Condition to Receiving Such Assistance	702
148. Reports by Hospitals to Public Assistance Council on Indigent Persons Admitted in Cases of Emergency	704

PUBLIC SAFETY

149. Salaries of Members of the Department of Public Safety	705
150. Immunity of Civil Defense Agencies and Duly Qualified Civil Defense Workers from Liability for Death or Injury to Persons and Damage to Property Resulting from Authorized Activity with Certain Exemptions	707

PUBLIC SERVICE COMMISSION

151. Appointment, Qualification and Disqualification, Removal from Office, Terms of Office and Salary of Members of the Public Service Commission	709
152. Special License Fees to Be Paid by Public Utilities for Payment of Public Service Commission Salaries and Expenses....	711

REAL PROPERTY

153. Condominiums and Unit Property	712
154. Removal, Transfer and Disposition of Remains in Graves Located upon Privately-owned Lands	727

RECORDS AND PAPERS

155. Acknowledgment of Persons in the Military Service of the United States	730
156. Recordation of Writings and Plats and Papers Annexed; Filing under the Uniform Commercial Code; and Fees to Be Charged by Secretary of State and County Clerks	732

RECREATIONAL FACILITIES

157. Authority of Department of Commerce with Respect to Development of Recreational Facilities	741
---	-----

REDISTRICTING

158. Apportionment of Representation in the State Senate, House of Delegates and Congressional Districts	743
--	-----

RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES

159. Amendments to Public Employees Retirement Act	746
--	-----

ROADS AND HIGHWAYS

160. Improvement, Administration and Supervision of the State System of Roads and Highways	760
--	-----

ROADS AND HIGHWAYS—(Cont'd.)

Chapter	Page
161. Relocation of Public Utility Lines to Accommodate Federal-aid Highway Projects	778
162. Control and Regulation of Access to State Highways from Commercial, Industrial and Mercantile Property and from Real Property Subdivided into Lots	779
163. Licensing and Regulation of Salvage Yards	788
164. Powers and Duties of the West Virginia Historic Commission as to Highway Markers	791
165. Issuance and Sale of Road Bonds under the Good Roads Amendment of 1920	792

RULES ADOPTED BY STATE AGENCIES

166. Filing Rules Adopted by State Agencies in Office of Secretary of State	799
---	-----

SECURITIES

167. Regulation and Supervision of the Sale of Securities	801
---	-----

SMALL LOANS

168. Licensing and Regulation of Small Loan Companies	811
---	-----

STATE INSTITUTIONS

169. Institutional Fees and Creating Special Berkeley Springs Sanitarium Fund	820
170. Repealing Statute Fixing Salary of Warden of the West Virginia Penitentiary	821

STATE OFFICE BUILDING COMMISSION

171. Issuance of State Office Revenue Bonds	821
---	-----

STATE OFFICERS

172. Salaries of Elective State Officers, Including Judges of the Supreme Court of Appeals	824
173. Vacancies in State Offices Filled by Appointment	825

TAXATION

174. Increased Levies by Local Levying Bodies and the Issuance of Bonds Thereunder	827
175. Procedures in Special Levy Elections Conducted by Local Levying Bodies	828
176. Casual Deficit of Local Fiscal Body and Levy Estimate Therefor; Levy of Additional Tax by Municipality and Revision of Levy Estimate by Levying Body	830
177. Exemptions from Inheritance and Transfer Taxes	832
178. Appeals from Assessment of Inheritance and Transfer Taxes	833
179. License Fee on Coin-operated Vending Machines	834
180. Repealing Section 80-a, Article 12, Chapter 11 of the Code, Imposing an Additional License Tax upon Corporations and Business Organizations Licensed by the Commissioner of Insurance	840
181. Appeal from Assessment of Privilege Tax on Carrier Corporations and Waiver of Penalty for Delinquency in Payment of Such Tax	841
182. Appeal from Assessment of Business and Occupation Tax	843

TABLE OF CONTENTS

XV

TAXATION—(Cont'd.)

Chapter	Page
183. Penalty for Violations of Store Licensing Law, and Jurisdiction of Justices of the Peace in Trial of Misdemeanor Cases Thereunder	844
184. Refunds of Gasoline Tax to Motor Carriers Subject to Motor Carrier Road Tax	845
185. Extending Additional One-cent Consumers Sales Tax through June 30, 1964	847
186. Exempting Sales of Newspapers Delivered by Route Carriers from Consumers Sales Tax	849
187. Extending Additional One Percent Excise or Use Tax on Purchasers through June 30, 1964	851
188. Excise Tax on the Sale of Cigarettes	852
189. Additional Excise Tax on Cigarettes for Support of Schools	868
190. Personal Income Tax Rate	869
191. Sale and Redemption of Land Delinquent for Taxes	875
192. Taxation and Regulation of Horse Racing	883

UNIFORM COMMERCIAL CODE

193. Uniform Commercial Code	889
------------------------------------	-----

WILLS

194. Operation of Devise or Bequest as Exercise of Power of Appointment	1116
---	------

WORKMEN'S COMPENSATION

195. Appointment, Qualifications and Salary of the Director of Workmen's Compensation	1117
---	------

LOCAL OR SPECIAL LAWS

196. Braxton County Four-H Club Development Authority	1119
197. Jurisdiction of the Common Pleas Court of Cabell County and the Salary of the Judge Thereof	1128
198. Jurisdiction of the Domestic Relations Court of Cabell County and the Salary of the Judge Thereof	1131
199. Cabell County Special Courthouse Building and Improvement Fund	1134
200. Cabell County Youth Center	1136
201. County Court of Greenbrier County Authorized to Create Special Fund for Improvements to Courthouse and Construction and Maintenance of a Health Center	1146
202. Expenditure of Surplus Funds by the County Court of Jackson County for Recreational Facilities	1147
203. Terms of Court, Maturity of Causes, Procedure and Probation Staff of the Juvenile Court of Kanawha County	1148
204. Transfer of Balances in Dog Tax Fund to the General Fund of Logan County	1149
205. County Court of Marion County Authorized to Compensate Ruth Wilderman for Personal Injuries Suffered in a Fall Caused by Defective County Property and to Reimburse Her for Certain Medical and Hospital Expenses	1150
206. Election and Term of the Judge of the Criminal Court of Marion County	1151
207. County Court of Marion County Authorized to Lease or Rent County-owned Real Property	1152
208. Terms of Criminal Court of McDowell County	1153

LOCAL OR SPECIAL LAWS—(Cont'd.)

Chapter	Page
209. Board of Education of Ohio County Authorized to Refund Certain Taxes Collected under an Act of the Legislature Held Unconstitutional by the Supreme Court of Appeals	1153
210. Preston County Court Authorized to Create Special Building and Improvement Fund	1154
211. County Court of Raleigh County Authorized to Create and Establish the "Lake Stephens Tourist Development Authority"	1156
212. Raleigh County Airport Authority	1166
213. County Court of Ritchie County Authorized to Use Surplus Funds to Promote Agricultural and Four-H Participation in the Ritchie County Fair	1175
214. Special Summers County Fund for Construction and Maintenance of County Buildings or Property	1175
215. Creation of Special Fund by the County Court of Upshur County for Improvement of Courthouse and Other County Buildings and Property	1176
216. County Court of Wood County to Provide Supplies, Equipment, Court Rooms, Offices and Secretarial Services for the Judge of the Intermediate Court of Wood County	1177
217. Repealing Act Establishing Capitol Salvage Committee and Transferring Any Balance in Special Revenue Account to General Revenue Fund	1178
218. Middle Island Creek Development Authority	1179
219. West Virginia Centennial Fund	1185

RESOLUTIONS

HOUSE CONCURRENT

Number	Page
10. Book Repair Industry at West Virginia Penitentiary	1187
19. Adopting Official State Songs	1188
20. Creating a Special Committee to Make Comprehensive Study of All Executive and Administrative Offices for the Purpose of Allocating Their Respective Functions, Powers and Duties	1189
22. Requesting the State Board of Education to Prepare and Submit to the Legislature a Plan for a System of Community Post-high School Vocational Training Facilities	1191
24. Making Sir Winston Churchill an Honorary Citizen of the State of West Virginia	1193
37. Creating a Commission to Study Salaries of State Officials and Employees and Make Recommendations with Respect Thereto	1194

HOUSE JOINT

10. Proposing an Amendment to the Constitution of the State Authorizing the Issuing and Selling of State Road Bonds in an Amount Not to Exceed \$200,000,000	1196
--	------

HOUSE

26. Amending House Rules to Require That Bills Introduced Affecting Fiscal Liability of the State Shall Have Attached Thereto a Note Showing Such Liability	1197
29. Preparation and Introduction of Legislation Prepared by or on Behalf of Departments of State Government	1198

TABLE OF CONTENTS

xvii

SENATE CONCURRENT

Number	Page
10. Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to Conduct a Study of a State Building Code	1199
15. Creating a Special Committee to Make Study and Recommendation on Arranging of Judicial Circuits, the Need for a State-wide System of Courts of Limited Jurisdiction and Salary of Judges	1200
20. Designating Old Gold and Blue as Official State Colors	1202
29. Study of Elementary School Program by the Joint Committee on Government and Finance	1203
33. Directing Joint Committee on Government and Finance to Study the Finance, Credit and Banking Laws of the State and Make Recommendations for the Improvement Thereof	1204
36. Study of Statutes Requiring the Publication and Posting of Legal Notices by the Joint Committee on Government and Finance	1205
41. Directing the Joint Committee on Government and Finance to Make a Study of State Retirement Systems	1207
48. Study of Medical and Hospital Services by the Joint Committee on Government and Finance	1208
49. Creating a Special Legislative Interim Committee to Study Stream Pollution	1210

SENATE JOINT

1. Ratifying an Amendment to the Constitution of the United States, Forbidding the Denial or Abridgement of the Right to Vote by Reason of Failure to Pay Any Poll Tax or Other Tax	1211
---	------

First Extraordinary Session, 1963

GENERAL LAW

Chapter	Page
1. Supplementary Appropriation for the Department of Welfare	1213

Regular Session, 1964

Chapter	GENERAL LAWS	Page
	ADMINISTRATIVE PROCEDURES	
1. State Administrative Procedures Act.....		1215
	APPROPRIATIONS	
2. General Appropriations (Budget Bill)		1231
	BOARDS AND COMMISSIONS	
3. Entry of West Virginia into the Southern Interstate Nuclear Compact		1298
4. Establishing a Commission on the Aging		1308
5. Creating Commission on Mental Retardation		1314
	CIRCUIT COURTS	
6. Allowance for Payment for Stenographic Help for Judges of the Circuit Courts		1317
7. Terms of Court in the Twenty-second Judicial Circuit		1318
	CLAIMS AGAINST THE STATE	
8. Payment of Claims against the State and Its Agencies		1319
	CONSTABLES	
9. Mileage Allowance for Constables		1322
	COUNTY COURTS AND COUNTY OFFICERS	
10. Salaries and Duties of County Commissioners; and Salaries of Sheriffs, Prosecuting Attorneys, Assessors, and Assistants, Stenographers and Clerks for Prosecuting Attorneys		1323
11. Salaries of Circuit and County Clerks in Harrison, Mingo and Wyoming Counties; and the Salary of the County Clerk in Hancock County		1350
	CRIMES AND THEIR PUNISHMENT	
12. Sunday Closing Law, Governing Work, Labor or Business on Sunday		1351
	EDUCATION	
13. Creating a Commission on Higher Education		1357
	ELECTIONS	
14. Filings of Candidacies for the House of Delegates and State Senate for the Year 1964		1360
	HEALTH CARE ORGANIZATIONS	
15. Organization and Operation of Voluntary Nonprofit, Consumer Sponsored Health Care Organizations		1363

TABLE OF CONTENTS

xix

Chapter	LABOR	Page
16.	Creating West Virginia Commission on Manpower, Technology and Training	1374
	MINES AND MINERALS	
17.	Defining Surface Mining and Exempting Operation of Limestone, Sand and Sandstone Quarries; and Removal of Earth, Stone, etc., for Borrow and Fill Material on Highway Projects from Certain Reclamation Requirements.....	1379
	MOTOR VEHICLES	
18.	Requiring Safety Belts on All Automobiles Manufactured after January 1, 1965	1383
	MUNICIPAL CORPORATIONS	
19.	Ordinance Procedure of Municipalities	1384
	NATURAL RESOURCES	
20.	Water Resources and Water Pollution	1385
	PUBLIC SAFETY	
21.	Fees Allowed Members of the Department of Public Safety for Services in Criminal Cases for Benefit of Department's Death, Disability and Retirement Fund	1435
	ROAD BONDS	
22.	Submitting an Amendment to the State Constitution to the Voters, Designated the "Better Roads Amendment," Authorizing Issuance and Sale of Road Bonds Not Exceeding in the Aggregate \$200,000,000	1439
	SALARIES	
23.	Salaries of Elective State Officers	1444
	TAXATION	
24.	Rate of Business and Occupation Tax on Business of Contracting	1445
25.	Extending Additional One-cent Consumers Sales Tax Through June 30, 1965	1446
26.	Extending Additional One Percent Use Tax Through June 30, 1965	1447
	UNEMPLOYMENT COMPENSATION	
27.	Group Insurance Plans for Employees of Department of Employment Security	1448
	UNIFORM COMMERCIAL CODE	
28.	Requiring the Secretary of State to Issue Certificates of Financing and Assignment Statements Filed in His Office upon Payment of Fee	1451
	LOCAL OR SPECIAL LAWS	
29.	Transfer of Land by Town of Burnsville to Board of Education of Braxton County	1452

Chapter	Page
30. Transfer of Land by Town of Gassaway to the United States of America	1453
31. Salary of Judge of the Criminal Court of Harrison County....	1454
32. Providing for Two Judges of the Court of Common Pleas of Kanawha County	1455
33. Salary of Judge of Domestic Relations Court of Kanawha County	1469
34. Transfer of Land by the County Court of Logan County to the United States of America	1470
35. Salary of the Judge of the Criminal Court of Marion County	1471
36. Creating a Common Pleas Court of Marshall County.....	1472
37. Expenditure of Funds by County Court of Mason County for Medical and Nursing Care of Indigent Persons.....	1479
38. Changing Name of the Criminal Court of Mercer County to Intermediate Court of Mercer County and Enlarging the Jurisdiction of the Court	1479
39. Wirt County Special Building and Improvement Fund	1489

RESOLUTIONS

HOUSE CONCURRENT

Number	Page
6. Placing Slogan on Private Automobile License Plates.....	1491
22. Directing the Joint Committee on Government and Finance to Make Study of Feasibility of Revising and Simplifying the General Consumers Sales and Service Tax Rate Structure	1491
27. Designating February as "American History Month".....	1493
30. Facilities for Making Public Buildings Accessible to and Useable by the Physically Handicapped	1493
40. Study of Effect of Electronic Data Processing Equipment on Employment by the State	1494
49. Creating a Special Committee to Make a Continuing Audit of the World's Fair Pavilion Fund	1495

SENATE CONCURRENT

9. Continuing State Salaries Study Commission	1497
10. Study of Need for a Legislative Reference Council by the Joint Committee on Government and Finance	1498
18. Review of Outstanding Contracts of the Public Lands Corporation and the Department of Natural Resources by the Joint Committee on Government and Finance	1500
19. Review, Examination and Study of Plans, Specifications and Locations of State Office Building Commission Projects by the Joint Committee on Government and Finance.....	1501
20. Directing Joint Committee on Government and Finance to Make Study on Advisability of Authorizing the State Board of Education to Issue Revenue Bonds for Improving the FFA and FHA Camp	1503

TABLE OF CONTENTS

xxi

Chapter

Page

First Extraordinary Session, 1964

GENERAL LAWS

1. Apportionment of Representation in the House of Delegates
and State Senate 1505
2. Political Party Executive Committees for Delegate Districts.... 1510

Disposition of Bills Enacted.....	1523
Topical Index	1527

LEGISLATURE OF WEST VIRGINIA

MEMBERS AND OFFICERS

FIFTY-SIXTH LEGISLATURE

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

District	Name	Address
First	Chester R. Hubbard (R) *William Tompos (D)	Wheeling Weirton
Second	*Theodore M. Bowers (R) John E. Carrigan (R)	New Martinsville Moundsville
Third	Jack L. Miller (R) *J. C. Powell (R)	Parkersburg St. Marys
Fourth	*Jack Johnson (R) V. K. Knapp (R)	Pt. Pleasant Hurricane
Fifth	*C. H. McKown (D) Lyle A. Smith (D)	Wayne Huntington
Sixth	Noah E. Floyd (D) *Glenn D. Hatcher (D)	Williamson War
Seventh	*Daniel D. Dahill (D) Lloyd G. Jackson (D)	Logan Hamlin
Eighth	James Hornor Davis, III (D) *Paul J. Kaufman (D)	Charleston Charleston
Ninth	George C. Porter (D) *Ward Wylie (D)	Beckley Mullens
Tenth	*R. E. Barnett (D) O. Roy Parker (D)	Bluefield Union
Eleventh	*Howard W. Carson (D) W. N. Jasper, Jr. (D)	Fayetteville Lewisburg
Twelfth	Carl E. Gainer (D) *E. Hans McCourt (D)	Richwood Webster Springs
Thirteenth	Walter A. Holden (D) *Wm. R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	*O. G. Hedrick (D) William A. Moreland (D)	Fairmont Morgantown
Fifteenth	J. Kenton Lambert (R) *Dallas Wolfe (R)	Parsons Rowlesburg
Sixteenth	Clarence E. Martin, Jr. (D) *Charles A. Millar (D)	Martinsburg Keyser

(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

County	Name	Address
Barbour	Kenneth Auvil (D)	Belington
Berkeley	Robert M. Steptoe (D)	Martinsburg
Boone	Dennie Lee Hill (D)	Madison
Braxton	Paul S. Moyers (D)	Burnsville
Brooke	Mino R. D'Aurora (D)	Follansbee
Cabell	¹ Mrs. Betty C. Baker (D)	Huntington
	Tennyson J. Bias (D)	Huntington
	Mike Casey (D)	Huntington
	T. E. Holderby (R)	Huntington
	J. Bernard Polindexter (D)	Huntington
Calhoun	James Roydice Jones (R)	Bigbend
Clay	J. Monroe Arbogast (R)	Procious
Doddridge	Donald G. Michels (R)	West Union
Fayette	Ethel Crandall (D)	Gauley Bridge
	Robert K. Holliday (D)	Oak Hill
	T. E. Myles (D)	Fayetteville
	Earl M. Vickers (D)	Montgomery
Gilmer	Paul H. Kidd (D)	Glenville
Grant	Larkin B. Ours (R)	Dorcas
Greenbrier	R. H. Bowman (D)	Rainelle
	Richard E. Ford (D)	Lewisburg
Hampshire	William B. Slonaker (D)	Capon Bridge
Hancock	Callie Tsapis (D)	Weirton
Hardy	Thomas J. Hawse (D)	Moorefield
Harrison	Carmine J. Cann (D)	Clarksburg
	² Ralph J. Keister (D)	Clarksburg
	C. P. Marsteller (D)	Bridgeport
	H. Laban White (D)	Clarksburg
	B. Noel Poling (R)	Ripley
Jefferson	Thornton W. Wilt (D)	Harpers Ferry
Kanawha	Gene W. Bailey (D)	Marmet
	Jesse S. Barker (D)	Charleston
	J. F. Bedell, Jr. (D)	Charleston
	Thomas L. Black (D)	East Bank
	Pat Board, Jr. (D)	Charleston
	Ivor F. Bojarsky (D)	Charleston
	W. T. Brotherton, Jr. (D)	Charleston
	Walter W. Carey (R)	Charleston
	Kelly W. Castleberry (D)	South Charleston
	Edward D. Knight, Jr. (D)	Charleston
	Paul Workman (R)	Clendenin
Lewis	Louis G. Craig (D)	Weston
Lincoln	A. J. Belcher (D)	Hamlin
Logan	W. N. Anderson (D)	Logan
	Luther H. Ghiz (D)	Logan
	Earl B. Hager (D)	Logan
	³ Bernard L. Miller (D)	Logan

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.

HOUSE OF DELEGATES

XXV

County	Name	Address
Marion	Robert H. Tennant (D)	Fairmont
	J. E. Watson (D)	Fairmont
	W. R. Wilson (D)	Fairmont
Marshall	John T. Madden (D)	Moundsville
	Gordon W. Sammons (R)	Moundsville
Mason	Carroll W. Casto (R)	Pt. Pleasant
McDowell	Mrs. Elizabeth Drewry (D)	Northfork
	Edward W. Dye (D)	Keystone
	W. D. Mentz (D)	Welch
	Harry R. Pauley (D)	Jaeger
Mercer	Fred G. Wooten (D)	Coalwood
	Clarence C. Christian, Jr. (D)	Princeton
	Charles E. Lohr (D)	Princeton
Mineral	Walter Vergil Ross (D)	Bluefield
	Paul F. Giffin (R)	Keyser
Mingo	Bill Blankenship (D)	Williamson
	Anthony R. Gentile (D)	Williamson
Monongalia	Charles H. Haden, II (R)	Morgantown
	John W. Pyles (D)	Morgantown
	Julius W. Singleton, Jr. (D)	Morgantown
Monroe	T. G. Matney (D)	Peterstown, RFD
Morgan	Ralph Ben Hovermale (D)	Berkeley Springs
Nicholas	D. R. Frazer (D)	Richwood
Ohio	Harry L. Buch (R)	Wheeling
	George H. Seibert, Jr. (R)	Wheeling
	George S. Weaver, Jr. (R)	Triadelphia
Pendleton	William McCoy, Jr. (D)	Franklin
Pleasants	A. M. Kiester (R)	St. Marys
Pocahontas	Thomas C. Edgar (D)	Hillsboro
Preston	Chester Liller (R)	Kingwood
Putnam	Earl K. Kelley (D)	Red House, RFD 1
Raleigh	A. David Abrams (D)	Beckley
	H. Dale Covey (D)	Glen Daniel
	C. Berkley Lilly (D)	Beckley
	Mrs. W. W. Withrow (D)	Sophia
Randolph	Jack R. Nuzum (D)	Elkins
Ritchie	J. F. Deem (R)	Harrisville
Roane	Gene M. Ashley (R)	Amma
Summers	Ray E. Sawyers (D)	Hinton
Taylor	Lloyd L. Shriver (D)	Grafton, Rt. 2
Tucker	James M. Michael (R)	Parsons
Tyler	Forrest M. Buck (R)	Sistersville
Upshur	W. W. Corder (D)	Buckhannon
Wayne	Clayton C. Davidson (D)	Huntington
	Lewis Glenn Mills (D)	Wayne
Webster	D. P. Given (D)	Webster Springs
Wetzel	Herbert Schupbach (D)	New Martinsville
Wirt	Daniel Roy Mace (D)	Elizabeth
Wood	Calvin A. Calendine (R)	Parkersburg
	Spencer K. Creel (R)	Parkersburg
	James W. Simonton (R)	Parkersburg
Wyoming	Mrs. Mae S. Belcher (D)	Pineville
	J. Paul England (D)	Pineville

⁴Appointed 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.

COUNTIES 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.

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, Marsteller, 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, Marsteller, 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, 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,

Dye, England, Frazer, Gentile, Keister, Kidd, Madden, Pauley, Tennant, Vickers, Arbogast, Buch, Carey, Holderby, Michels and Seibert.

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, Marsteller, 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, Marsteller, 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,

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.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1963

REGULAR SESSION

CHAPTER 1

(House Bill No. 71—By Mr. White)

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

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

6 sale of real estate, or an interest or term therein of more
7 than five years, or any other interest or term therein, of
8 any duration, under which the whole or any part of the
9 corpus of the estate may be taken, destroyed, or con-
10 sumed, except for domestic use, shall, from the time it is
11 duly admitted to record, be, as against creditors and pur-
12 chasers, as valid as if the contract were a deed conveying
13 the estate or interest embraced in the contract. In lieu of
14 the recording of a lease pursuant to this section, there may
15 be recorded with like effect a memorandum of such lease,
16 executed by all persons who are parties to the lease
17 and acknowledged in the manner to entitle a conveyance
18 to be recorded. A memorandum of lease thus entitled to
19 be recorded shall contain at least the following informa-
20 tion with respect to the lease: The name of the lessor
21 and the name of the lessee and the addresses of such par-
22 ties as set forth in the lease; a reference to the lease, with
23 its date of execution; a description of the leased premises
24 in the form contained in the lease; the rentals or royalties
25 to be charged and terms of payment thereof; the term of
26 the lease, with the date of commencement and the date of
27 termination of such term, and if there is a right of exten-
28 sion or renewal, the maximum period for which, or date
29 to which, the lease may be extended, or the number of
30 times or date to which it may be renewed and the date or
31 dates on which such rights of extension or renewal are
32 exercisable. Such memorandum shall constitute notice of
33 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:

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

Section

9. Contracts and deeds invalid as to creditors and purchasers until recorded.
10. When recordation in more than one county necessary.
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

2 for Receiving Claims against Decedent's Estate.—Within
3 one month next succeeding the reference of the estate
4 to a commissioner of accounts, he shall appoint a con-
5 venient time and place when and where claims against
6 the estate may be presented, examined and allowed. The
7 time so fixed by the commissioner shall be not less than
8 four months nor more than six months from the date
9 of the first publication of the notice hereinafter set
10 forth. The commissioner shall give notice of such
11 time and place by publishing once a week for three
12 successive weeks, in some newspaper published in
13 the county, a notice to the following effect:

14 To the Creditors and Beneficiaries of the Estate of
15 A_____ B_____:

16 All persons having claims against the estate of the said

17 A_____ B_____, deceased, whether due or not,

18 are notified to exhibit same, with the voucher thereof,
19 legally verified, to the undersigned, at (designating the
20 place) on or before the day of; otherwise
21 they may by law be excluded from all benefit of said
22 estate. All beneficiaries of said estate may appear on or
23 before said day to examine said claims and otherwise
24 protect their interests.

25 Given under my hand this day of, 19....
26 C..... D.....,
27 Commissioner of Accounts, County of

28 But if there be no newspaper published in the county,
29 then the commissioner shall publish such notice in like
30 manner in some newspaper of general circulation in the
31 county. The publication of such notice shall be equiv-
32 alent to personal service on the creditors, distributees
33 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.

Section 11. Designation of Testamentary Trustee as

2 **Beneficiary of Insurance.**—A policy of life insurance may
3 designate as beneficiary a trustee or trustees named or to
4 be named by will, if the designation is made in accord-
5 ance with the provisions of the policy and the require-
6 ments of the insurer. The proceeds of such insurance shall
7 be paid to the trustee or trustees to be held and disposed
8 of under the terms of the will as they exist at the death
9 of the testator; but if no trustee or trustees make claim
10 to the proceeds from the insurance company within one
11 year after the death of the insured, or if satisfactory evi-
12 dence is furnished the insurance company within such
13 one year period showing that no trustee can qualify to
14 receive the proceeds, payment shall be made by the in-
15 surance company to the executors, administrators or as-
16 signs of the insured, unless otherwise provided by agree-
17 ment with the insurance company during the lifetime of
18 the insured. The proceeds of the insurance as collected
19 by the trustee or trustees shall not be subject to debts of
20 the insured or to inheritance tax to any greater extent
21 than if such proceeds were payable to any other named
22 beneficiary other than the estate of the insured, and shall
23 not be considered as payable to the estate of the insured
24 for any purpose. Such insurance proceeds so held in trust
25 may be commingled with any other assets which may
26 properly come into such trust as provided in the will.
27 Enactment of this section shall not invalidate previous
28 life insurance policy designations naming trustees of trusts
29 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.]

AN ACT to amend and reenact section eight, article fifteen, chapter forty-four of the code of West Virginia, one thou-

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.

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.

CHAPTER 7

(Senate Bill No. 168—By Mr. Parker)

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

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.

Section 1. Definitions.—For the purpose of this article

2 the following definitions shall prevail:

3 (a) The term “slaughterhouse” means an establish-
4 ment, including all buildings, structures and facilities
5 used in connection therewith, where livestock of any
6 species are slaughtered or dressed for food intended for
7 human consumption; excepting, however, livestock slaugh-
8 tered by an owner for his own use or for sale in isolated
9 transactions where such sale is not made in the ordinary
10 course of repeated and successive transactions of like char-
11 acter by such owner.

12 (b) The term “packing plant” means an establishment,
13 including all chill rooms, aging rooms, processing rooms,
14 and sanitary facilities, together with all buildings, struc-
15 tures and facilities or utensils used in connection there-
16 with, with or without slaughtering facilities, where live-
17 stock carcasses or edible products derived therefrom are
18 cured, salted, processed, packaged, or otherwise prepared
19 as food intended for human consumption; excepting how-
20 ever livestock carcasses or edible products derived there-
21 from which are cured, salted, processed, packaged, or oth-
22 erwise prepared by an owner for his own use or sale as

23 an isolated transaction when such sale is not being made
24 in the ordinary course of repeated and successive
25 transactions of like character by the owner.

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

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

34 (e) "Commissioner" shall mean the state commissioner
35 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
2 the meanings ascribed to them in this section, unless the

3 context otherwise requires or a different meaning is
4 specifically prescribed:

5 (a) "Garbage" means putrescible animal and vegetable
6 wastes resulting from the handling, preparation, cooking
7 and consumption of foods including animal carcasses or
8 parts thereof;

9 (b) "Persons" means the state, any municipality, po-
10 litical subdivision, institution, public or private corpor-
11 ation, individual, partnership, or other entity;

12 (c) "Commissioner" means the state commissioner of
13 agriculture or his authorized agents.

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

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

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

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

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

**Sec. 6. Inspection and Investigation; Maintenance of
2 Records.**—(a) Any authorized representative of the com-

3 missioner shall have the power to enter at reasonable
4 times upon any private or public property for the purpose
5 of inspecting and investigating conditions relating to the
6 treating of garbage to be fed to swine.

7 (b) The commissioner may require maintenance of
8 records relating to the operating of equipment for and
9 procedure of treating garbage to be fed to swine and
10 any authorized representative of the commissioner
11 may examine any such records or memoranda per-
12 taining to the feeding of garbage to swine. Copies of
13 such records shall be submitted to the commissioner
14 upon request.

Sec. 7. Enforcement of Article; Rules and Regulations.

2 —The commissioner is hereby charged with administra-
3 tion and enforcement of the provisions of this article,
4 and is authorized to make and enforce all rules and regu-
5 lations which the commissioner may deem necessary to
6 carry out the purposes of the article.

Sec. 8. Penalties.—Any person who shall violate any
2 of the provisions of, or who fails to perform any duty
3 imposed by, this article, or who violates any rule or regu-
4 lation promulgated thereunder shall be guilty of a mis-
5 demeanor, and, upon conviction thereof, may be punished
6 by a fine of not less than twenty-five dollars nor more
7 than three hundred dollars, or by imprisonment for a
8 term of not more than one year, or by both such fine and
9 imprisonment. In addition thereto, such person may be
10 enjoined from continuing such violation. Each day upon
11 which such violation occurs shall constitute a separate
12 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-

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

Be it enacted by the Legislature of West Virginia:

Article 12-a. West Virginia State Apple Commission.

Section

1. Repeal of article creating West Virginia state apple commission.

- 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)
 - 2 There is hereby established, to serve as an agency of the
 - 3 state and to perform the functions conferred upon it in
 - 4 this article, the state soil conservation committee. The
 - 5 committee shall consist of seven members. The following
 - 6 shall serve, ex officio, as members of the committee: The
 - 7 director of the state agricultural extension service; the
 - 8 director of the state agricultural experiment station; the
 - 9 director of the department of natural resources; and the

10 state commissioner of agriculture, who shall be chair-
11 man of the committee.

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

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

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

27 (b) The state soil conservation committee may employ
28 an administrative officer and such technical experts and
29 such other agents and employees, permanent and tem-
30 porary, as it may require, and shall determine their quali-
31 fications, duties, and compensation. The committee may
32 call upon the attorney general of the state for such legal
33 services as it may require. It shall have authority to
34 delegate to its chairman, to one or more of its members,
35 or to one or more agents or employees, such powers and
36 duties as it may deem proper. The committee is empow-
37 ered to secure necessary and suitable office accommoda-
38 tions, and the necessary supplies and equipment. Upon
39 request of the committee, for the purpose of carrying out
40 any of its functions, the supervising officer of any state
41 agency, or of any state institution of learning shall, inso-
42 far as may be possible, under available appropriations,
43 and having due regard to the needs of the agency to
44 which the request is directed, assign or detail to the
45 committee, members of the staff or personnel of such
46 agency or institution of learning, and make such special
47 reports, surveys, or studies as the committee may request.

48 (c) A member of the committee shall hold office so
49 long as he shall retain the office by virtue of which he

50 shall be serving on the committee. A majority of the
51 committee shall constitute a quorum, and the concurrence
52 of a majority in any matter within their duties shall be
53 required for its determination. The chairman and mem-
54 bers of the committee shall receive no compensation for
55 their services on the committee, but shall be entitled to
56 expenses, including traveling expenses, necessarily in-
57 curred in the discharge of their duties on the commit-
58 tee. The committee shall provide for the execution of
59 surety bonds for all employees and officers who shall be
60 entrusted with funds or property; shall provide for the
61 keeping of a full and accurate public record of all pro-
62 ceedings and of all resolutions, regulations, and orders
63 issued or adopted; and shall provide for an annual audit
64 of the accounts of receipts and disbursements.

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

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

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

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

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

84 (5) To disseminate information throughout the state
85 concerning the activities and programs of the soil con-
86 servation districts organized hereunder, and to encourage
87 the formation of such districts in areas where their or-
88 ganization is desirable;

89 (6) To accept and receive donations, gifts, contribu-

90 tions, grants, and appropriations in money, services, ma-
91 terials or otherwise, from the United States or any of its
92 agencies, from the state of West Virginia, or from other
93 sources, and to use or expend such money, services,
94 materials, or other contributions in carrying out the
95 policy and provisions of this article, including the right to
96 allocate such money, services, or materials in part to the
97 various soil conservation districts created by this article
98 in order to assist them in carrying on their operations;

99 (7) To obtain options upon and to acquire by pur-
100 chase, exchange, lease, gift, grant, bequest, devise, or
101 otherwise, any property, real or personal, or rights or
102 interests therein; to maintain, administer, operate and
103 improve any properties acquired, to receive and retain
104 income from such property and to expend such income
105 as required for operation, maintenance, administration or
106 improvement of such properties or in otherwise carrying
107 out the purposes and provisions of this article; and to sell,
108 lease, or otherwise dispose of any of its property or inter-
109 ests therein in furtherance of the purposes and the provi-
110 sions of this article. Money received from the sale of
111 land acquired in the small watershed program shall be
112 deposited in the special account of the state soil con-
113 servation 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

3. Sales by Commission.

6. Miscellaneous Provisions.

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.

Article 6. Miscellaneous Provisions.

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

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

Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.

Section 1. General Policy.—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred sixty-four.

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

- 2 "Board" shall mean the board of public works;
- 3 "Spending unit" shall mean the department, agency or
4 institution to which an appropriation is made;
- 5 The "fiscal year" one thousand nine hundred sixty-four
6 shall mean the period from July first, one thousand nine
7 hundred sixty-three through June thirtieth, one thousand
8 nine hundred sixty-four;
- 9 "From collections" shall mean that part of the total ap-
10 propriation which must be collected by the spending unit to
11 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 amount
14 of the deficiency in the collection. If the amount collected
15 exceeds the amount designated "from collections", the ex-
16 cess shall be set aside in a special surplus fund and may be
17 expended for the purpose of the spending unit as provided
18 by chapter one hundred thirty-two, acts of the Legislature,
19 regular session, one thousand nine hundred 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 per-
 13 sonal 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 ar-
 4 ticle three, chapter twelve of the code of West Virginia, one
 5 thousand nine hundred thirty-one, or according to any law
 6 detailing a procedure specifically limiting that article.

Title 2. Appropriations.

Section

1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 510.....	47.69
Department of agriculture (agricultural awards)—Acct. No. 515.....	48
Department of agriculture (marketing and research)— Acct. No. 513.....	48
Department of agriculture (soil conservation committee)— Acct. No. 512.....	47

BUSINESS AND INDUSTRIAL RELATIONS

Bureau of labor and department of weights and measures— Acct. No. 450.....	44
Commission on interstate cooperation—Acct. No. 472.....	45

Department of banking—Acct. No. 480.....	46
Department of commerce—Acct. No. 465.....	45
Department of mines—Acct. No. 460.....	44
Interstate commission on Potomac river basin—Acct. No. 473.....	45
Ohio river valley water sanitation commission—Acct. No. 474.....	45
Southern regional education board—Acct. No. 475.....	45
West Virginia air pollution commission—Acct. No. 476.....	46
West Virginia historic commission—Acct. No. 477.....	46
West Virginia nonintoxicating beer commissioner— Acct. No. 490.....	46
West Virginia racing commission—Acct. No. 495.....	47, 69
West Virginia state aeronautics commission—Acct. No. 485.....	46
CHARITIES AND CORRECTION	
Andrew S. Rowan memorial home—Acct. No. 384.....	39
Forestry camp for boys—Acct. No. 371.....	38
Medium security prison—Acct. No. 376.....	39
West Virginia children's home—Acct. No. 380.....	39
West Virginia industrial home for girls—Acct. No. 372.....	38
West Virginia industrial school for boys—Acct. No. 370.....	38
West Virginia penitentiary—Acct. No. 375.....	39
West Virginia state prison for women—Acct. No. 374.....	39
CONSERVATION AND DEVELOPMENT	
Department of veterans affairs—Acct. No. 564.....	49
Geological and economic survey commission—Acct. No. 520.....	48
Natural resources commission—Acct. No. 565.....	49
Natural resources commission (forest tree nursery facilities)— Acct. No. 521.....	49
EDUCATIONAL	
Archives and history—Acct. No. 340.....	37
Bluefield state college—Acct. No. 329.....	36
Concord college—Acct. No. 325.....	36
Department of education (aid for exceptional children)— Acct. No. 296.....	33
Department of education (textbook aid)—Acct. No. 297.....	33
Fairmont state college—Acct. No. 321.....	35
FFA-FHA camp and conference center—Acct. No. 336.....	37
Glenville state college—Acct. No. 322.....	35
Marshall university—Acct. No. 320.....	34
Shepherd college—Acct. No. 324.....	35
State board of education (vocational division)—Acct. No. 294.....	32
State board of school finance (state aid to schools)—Acct. No. 295.....	32
Teachers retirement board—Acct. No. 298.....	33
West Liberty state college—Acct. No. 323.....	35
West Virginia institute of technology—Acct. No. 327.....	36
West Virginia library commission—Acct. No. 350.....	38
West Virginia schools for the deaf and blind—Acct. No. 333.....	37
West Virginia state college—Acct. No. 328.....	36
West Virginia state college (4-H camp)—Acct. No. 330.....	37
West Virginia university—Acct. No. 300.....	34
West Virginia university (Potomac state college)—Acct. No. 315.....	34
EXECUTIVE	
Board of probation and parole—Acct. No. 123.....	28
Governor's office—Acct. No. 120.....	28, 66
FISCAL	
Auditor's office (general administration)—Acct. No. 150.....	29
Board of public works—Acct. No. 220.....	31
Department of finance and administration—Acct. No. 210.....	30, 68
Sinking fund commission—Acct. No. 170.....	29
State board of insurance—Acct. No. 225.....	31

State commissioner of public institutions—Acct. No. 190	30
State tax commissioner—Acct. No. 180	29
State tax commissioner (property appraisal)—Acct. No. 185	29
Treasurer's office—Acct. No. 160	29

INCORPORATING AND RECORDING

Secretary of state—Acct. No. 250	32
LEGAL	
Attorney general—Acct. No. 240	31
Commission on uniform state laws—Acct. No. 245	32

HEALTH AND WELFARE

Barboursville state hospital—Acct. No. 424	42
Berkeley Springs sanitarium—Acct. No. 436	44
Denmar state hospital—Acct. No. 432	43
Department of mental health—Acct. No. 410	41, 69
Department of veterans affairs—Acct. No. 404	40
Department of welfare—Acct. No. 405	40, 69
Fairmont emergency hospital—Acct. No. 425	42
Hopemont sanitarium—Acct. No. 430	43
Huntington state hospital—Acct. No. 422	42
Lakin state hospital—Acct. No. 423	42
Pinecrest sanitarium—Acct. No. 431	43
Spencer state hospital—Acct. No. 421	42
State board of education (rehabilitation division)—Acct. No. 440	44
State health department—Acct. No. 400	40
Welch emergency hospital—Acct. No. 426	43
Weston state hospital—Acct. No. 420	41
West Virginia training school—Acct. No. 419	41

JUDICIAL

Auditor's office—Acct. No. 111	27
Judicial council—Acct. No. 118	28
State law library—Acct. No. 114	27
Supreme court of appeals—Acct. No. 110	27

LEGISLATIVE

House of Delegates—Acct. No. 102	24
Joint expenses—Acct. No. 103	26
Senate—Acct. No. 101	23

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of accountancy—Acct. No. 586	52
Board of architects—Acct. No. 595	53
Board of dental examiners—Acct. No. 589	52
Board of embalmers and funeral directors—Acct. No. 593	53
Board of examiners for practical nurses—Acct. No. 587	52
Board of examiners for registered nurses—Acct. No. 588	52
Board of law examiners—Acct. No. 597	54
Board of optometry—Acct. No. 592	53
Board of osteopathy—Acct. No. 591	53
Board of pharmacy—Acct. No. 590	52
Board of registration for professional engineers—Acct. No. 594	53
Board of sanitarians—Acct. No. 599	54
Board of veterinarians—Acct. No. 596	53
Human rights commission—Acct. No. 598	54
State road commission—Acct. No. 641	55
West Virginia public employees' retirement board—Acct. No. 614	54

PROTECTION

Adjutant general (state militia)—Acct. No. 580	50
Auditor's office (social security)—Acct. No. 582	51
Department of civil and defense mobilization—Acct. No. 581	51
Department of public safety—Acct. No. 570	50
State board of education (insurance)—Acct. No. 584	52

2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 812 ..	60
Department of agriculture—Acct. No. 818 ..	61
Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814 ..	60
Department of public safety (inspection fees)—Acct. No. 835 ..	65
Insurance commissioner—Acct. No. 826 ..	62
Insurance commissioner (fire marshal)—Acct. No. 827 ..	62
Natural resources commission—Acct. No. 830 ..	64
Public service commission—Acct. No. 828 ..	63
Public service commission (motor carrier division)—Acct. No. 829 ..	64
Real estate commission—Acct. No. 801 ..	59
State board of education (special capital improvement fund)— Acct. No. 854 ..	67
State committee of barbers and beauticians—Acct. No. 822 ..	62
West Virginia civil service system—Acct. No. 840 ..	66
West Virginia liquor control commissioner—Acct. No. 837 ..	65
West Virginia racing commission—Acct. No. 808 ..	60
West Virginia university (special capital improvement fund)— Acct. No. 853 ..	67

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671 ..	56, 69
State road commission (general administration and engineering)— Acct. No. 670 ..	55
State tax commissioner (gasoline tax division)—Acct. No. 672 ..	56

PAYABLE FROM GENERAL SCHOOL FUND

Department of education—Acct. No. 703 ..	57
Department of education (salaries of county superintendents)— Acct. No. 706 ..	58
Department of education (scholarships for teacher training)— Acct. No. 715 ..	59
Department of education (school lunch program)— Acct. No. 705 ..	58
Department of education (state aid to children's homes)— Acct. No. 707 ..	58
Department of education (veterans education)—Acct. No. 702 ..	57
State board of education—Acct. No. 700 ..	56
State board of education (vocational division)—Acct. No. 701 ..	57
State board of school finance—Acct. No. 704 ..	58
State tax commissioner (cigarette sales tax)—Acct. No. 713 ..	59
State tax commissioner (store and general licenses division)— Acct. No. 712 ..	59

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900 ..	68
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3. Supplemental and deficiency appropriations.
4. Appropriations from surplus revenues.
5. Special revenue appropriations.
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.
13. 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-four.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1962-63
1 Current Expenses and Contingent Fund.....\$	30,000.00
	<i>Fiscal Year</i> 1963-64
2 Salaries of Members	48,000.00
3 Compensation and per diem of officers and	
4 attaches	60,000.00
5 Mileage of Members.....	2,800.00
6 Current Expenses and Contingent Fund.....	135,000.00
7 The Clerk of the Senate is hereby authorized	
8 to expend from the Senate Current Ex-	
9 penses and Contingent Fund for the fiscal	
10 year 1963-64 an amount, not to exceed the	
11 sum of twenty-five thousand (\$25,000.00)	
12 dollars, for the purpose of altering and	
13 furnishing the Senate Finance and Judi-	
14 ciary Committee rooms in the main unit of	
15 the Capitol Building.	
16 To pay Clerk of the Senate for compiling and	
17 publishing the West Virginia Blue Book,	
18 the distribution of which shall be made by	
19 the office of the Clerk of the Senate and	
20 shall include seventy-five copies for each	
21 member of the Legislature and two copies	
22 to each classified and approved High and	

23	Junior High School and one to each Ele-	
24	mentary School within the state.....	10,000.00
25	To pay cost of printing the 1963 edition of	
26	Blue Book	46,000.00
27	Drafting service	10,000.00
28	The appropriations for the Senate for the	
29	fiscal year 1962-63 are to remain in full	
30	force and effect, and are hereby reappro-	
31	priated to June 30, 1964.	
32	Any balances so reappropriated may be	
33	transferred and credited to the 1963-64 ac-	
34	counts.	
35	Upon the written request of the Clerk of the	
36	Senate the State Auditor shall transfer	
37	amounts between items of the total appro-	
38	priation in order to protect or increase the	
39	efficiency of the service.	
40	The Clerk of the Senate is authorized to draw	
41	his requisitions upon the Auditor, payable	
42	out of the contingent fund of the Senate,	
43	for any bills for supplies and services that	
44	may have been incurred by the Senate and	
45	not included in the appropriation bill, and	
46	for bills for supplies and services incurred	
47	after adjournment, and for the necessary	
48	operation of the Senate offices, the requi-	
49	sition for same to be accompanied by the	
50	bills to be filed with the Auditor.	

2—House of Delegates

Acct. No. 102

		<i>Fiscal Year</i>
		1962-63
1	Compensation and per diem of officers and	
2	attaches	\$ 30,000.00
		<i>Fiscal Year</i>
		1963-64
3	Salaries of Members	\$ 150,000.00

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

9 The House Committee on Rules, with the
10 approval of the Speaker, is hereby au-
11 thorized to expend from the House Con-
12 tingent Fund for the fiscal year 1963-64 an
13 amount, not to exceed the sum of fifteen
14 thousand (\$15,000.00) dollars, for the pur-
15 pose of carpeting the House Chamber, al-
16 tering the electrical wiring for the roll call
17 and public address systems, and addition-
18 al desks for members, if needed, in said
19 Chamber in the main unit of the Capitol
20 Building.

21 The appropriations for the House of Dele-
22 gates for the fiscal year 1962-63 are to re-
23 main in full force and effect, and are here-
24 by reappropriated to June 30, 1964.

25 Any balances so reappropriated may be
26 transferred and credited to the 1963-64 ac-
27 counts.

28 Upon the written request of the Clerk of the
29 House of Delegates the State Auditor shall
30 transfer amounts between items of the
31 total appropriation in order to protect or
32 increase the efficiency of the service.

33 The Clerk of the House of Delegates, with
34 approval of the Speaker, is authorized to
35 draw his requisitions upon the Auditor,
36 payable out of the contingent fund of the
37 House of Delegates, for any bills for sup-
38 plies and services that may have been in-
39 curred by the House of Delegates, and not
40 included in the appropriation bill, for bills
41 for services and supplies incurred in prep-
42 aration for the opening of the session and

43 after adjournment, and for the necessary
 44 operation of the House of Delegates offices,
 45 the requisition for same to be accompa-
 46 nied by bills to be filed with the Auditor.
 47 For duties imposed by law and by the House
 48 of Delegates, including the salary allowed
 49 by law as keeper of the rolls, the Clerk of
 50 the House of Delegates shall be paid a
 51 salary of \$925.00 per month, payable from
 52 the contingent fund of the House of Dele-
 53 gates, and the Clerk may employ a secre-
 54 tary and a clerk at a salary to be deter-
 55 mined by the Speaker of the House of
 56 Delegates.

3—Joint Expenses

Acct. No. 103

1 To pay the cost of legislative printing and	
2 stationery	\$ 75,000.00
3 Commission on Interstate Cooperation	15,000.00
4 Joint Committee on Government and Fi-	
5 nance	260,000.00
6 Other Authorized Legislative Committees ...	30,000.00
7 The appropriations for Joint Expenses for	
8 the fiscal year 1962-63 are to remain in	
9 full force and effect, and are hereby re-	
10 appropriated to June 30, 1964.	
11 Any balances so reappropriated may be	
12 transferred and credited to the 1963-64	
13 accounts.	
14 Upon the written request of the Clerk of the	
15 Senate and the Clerk of the House of Dele-	
16 gates the State Auditor shall transfer	
17 amounts between items of the total appro-	
18 priation in order to protect or increase the	
19 the efficiency of the service.	

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	95,000.00
2	Other Personal Services		116,150.00
3	Current Expenses		22,000.00
4	Equipment		2,500.00
5	Total	\$	235,650.00

5—*Judicial—Auditor's Office*

Acct. No. 111

1	Salaries of Judges	\$	381,000.00
2	Other Personal Services		81,000.00
3	Current Expenses		26,000.00
4	Judges' Retirement System		43,000.00
5	Criminal Charges		282,000.00
6	Total	\$	813,000.00
7	This appropriation shall be administered by		
8	the State Auditor who shall draw his re-		
9	quisition for warrants in payment of sal-		
10	aries in the form of payrolls, making de-		
11	ductions therefrom as required by law, for		
12	taxes and other items. The appropriation		
13	for Judges' Retirement System is to be		
14	transferred to the Judges' Retirement		
15	Fund, in accordance with the law relating		
16	thereto, upon requisition of the State		
17	Auditor.		

6—*State Law Library*

Acct. No. 114

1	Personal Services	\$	22,180.00
2	Current Expenses		2,000.00
3	Equipment		16,500.00
4	Total	\$	40,680.00

7—*Judicial Council*

Acct. No. 118

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

8—*Governor's Office*

Acct. No. 120

1	Salary of Governor.....	\$ 17,500.00
2	Other Personal Services	80,540.00
3	Current Expenses.....	25,000.00
4	Equipment	5,000.00
5	Civil Contingent Fund.....	195,000.00
6	Of this appropriation there may be expend-	
7	ed, at the discretion of the Governor, an	
8	amount not to exceed \$1,000.00 as West	
9	Virginia's contribution to the Interstate	
10	Oil Compact Commission.	
11	Custodial Fund	60,000.00
12	To be used for current general expenses,	
13	including compensation of servants and	
14	employees, household maintenance, cost of	
15	official functions, and any additional	
16	household expenses occasioned by such of-	
17	ficial functions.	
18	West Virginia's share of expenses for hold-	
19	ing Southern Governors Conference in	
20	West Virginia during 1963.....	35,000.00
21	Total.....	\$ 418,040.00

9—*Board of Probation and Parole*

Acct. No. 123

1	Personal Services	\$ 194,760.00
2	Current Expenses	86,310.00
3	Equipment	2,000.00
4	Total.....	\$ 283,070.00

FISCAL

10—Auditor's Office—General Administration

Acct. No. 150

1	Salary of State Auditor.....	\$	11,000.00
2	Other Personal Services		356,100.00
3	Current Expenses		98,655.00
4	Equipment		15,000.00
5	Total.....	\$	480,755.00

11—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer.....	\$	11,000.00
2	Other Personal Services		119,230.00
3	Current Expenses		19,050.00
4	Equipment		10,000.00
5	Microfilm Program		7,000.00
6	Total.....	\$	166,280.00

12—Sinking Fund Commission

Acct. No. 170

1	Personal Services	\$	21,900.00
2	Current Expenses		1,000.00
3	Total.....	\$	22,900.00

13—State Tax Commissioner

Acct. No. 180

1	Personal Services	\$	1,426,930.00
2	Current Expenses		500,760.00
3	Equipment		23,000.00
4	Total.....	\$	1,950,690.00

14—State Tax Commissioner

Acct. No. 185

1	Property Appraisal	\$	1,892,892.00
2	Any balance remaining in the appropriation		

- 3 "Property Appraisal" at the close of the
 4 fiscal year 1962-63 is hereby reappropri-
 5 ated for expenditure during the fiscal year
 6 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
5	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
8	Total	\$	918,335.00
9	The Workmen's Compensation Commission,		
10	Department of Welfare, Public Service		
11	Commission, Natural Resources Commis-		
12	sion, Department of Motor Vehicles, State		
13	Road Commission, State Health Depart-		
14	ment and State Tax Commission—Income		
15	Tax Division, shall reimburse the Postage		
16	appropriation of the Department of Fi-		
17	nance and Administration monthly for all		
18	meter service. Any spending unit operat-		
19	ing from Special Revenue or receiving re-		
20	imbursement for postage costs from the		
21	Federal Government shall refund to the		
22	"Postage Account" of the Department of		

- 23 Finance and Administration such amounts.
 24 Should this appropriation for postage be
 25 insufficient to meet the mailing require-
 26 ments of the state spending units as set
 27 out above, any excess postage meter serv-
 28 ice requirements shall be a proper charge
 29 against the units, and each spending unit
 30 shall refund to the postage appropriation
 31 of the Department of Finance and Admin-
 32 istration any amounts required for that
 33 department for postage in excess of this
 34 appropriation.
 35 Any unexpended balance remaining in the
 36 "Postage Account" at the close of the fiscal
 37 year 1962-63 is hereby reappropriated for
 38 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
 6 the State in controversies or legal proceed-
 7 ings affecting same 3,250.00

8 Total\$ 249,220.00

9 When legal counsel is appointed by the At-
 10 torney General upon the request of the
 11 proper authority in any state spending
 12 unit, this account shall be reimbursed
 13 from such unit's appropriated account in
 14 an amount agreed upon by the Attorney
 15 General and the proper authority of said
 16 spending 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.....	\$ 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	
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	account (294) at the close of the fiscal year	
8	1962-63 is hereby reappropriated for ex-	
9	penditure 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	
2	Fund	\$ 61,819,463.00

- 3 To be transferred to the General School
 4 Fund upon the requisition of the Gover-
 5 nor.
 6 Under the provisions of section eleven, ar-
 7 ticle nine-a, chapter eighteen, Code of
 8 West Virginia, the Board of School Fi-
 9 nance in determining the total foundation
 10 program for each county for the next
 11 fiscal year shall comply with the require-
 12 ments set forth in House Bill No. 74 and
 13 House Bill No. 76, 1963 Legislature, in
 14 computing and certifying state aid to the
 15 several counties.

24—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

1	Personal Services	\$	14,540.00
2	Current Expenses		4,200.00
3	Out-of-State Instruction		30,000.00
4	Aid to Counties		308,500.00
5	Total	\$	357,240.00
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 ses-		
4	sion, 1939.		

26—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired		
2	Teachers	\$	3,005,974.00
3	Employers' Accumulation Fund—To match		

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
 12 Services, the sum of \$8,500.00 shall be used
 13 only for the employment of a Spray Spe-
 14 cialist who shall be stationed only at West
 15 Virginia University Farm at Kearneys-
 16 ville, and \$7,200.00 for the employment of
 17 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

3	Repairs and Alterations	83,903.00
4	Equipment	118,515.00
5	Flood Wall Assessment	3,200.00
6	Mason County Project	18,000.00
<hr/>		
7	Total	\$ 2,966,524.00

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
<hr/>		
5	Total	\$ 1,029,978.00

31—Glennville 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
<hr/>		
6	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
<hr/>		
5	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

4	Equipment	30,000.00
5	Rural Education Development Program	15,000.00
6	Total	\$ 679,260.00

34—Concord College

Acct. No. 325

1	Personal Services	\$ 947,915.00
2	Current Expenses	114,962.00
3	Repairs and Alterations	26,407.00
4	Equipment	65,688.00
5	Total	\$ 1,154,972.00

35—West Virginia Institute of Technology

Acct. No. 327

1	Personal Services	\$ 731,499.00
2	Current Expenses	89,839.00
3	Repairs and Alterations	54,883.00
4	Equipment	98,956.00
5	Total	\$ 975,177.00
6	Any unexpended balance remaining in the	
7	appropriation for "Purchase of Land" at	
8	the close of the fiscal year 1962-63 is here-	
9	by reappropriated for expenditure during	
10	the fiscal year 1963-64.	

36—West Virginia State College

Acct. No. 328

1	Personal Services	\$ 1,149,300.00
2	Current Expenses	166,600.00
3	Repairs and Alterations	89,484.00
4	Equipment	61,000.00
5	Total	\$ 1,466,384.00

37—Bluefield State College

Acct. No. 329

1	Personal Services	\$ 409,968.00
2	Current Expenses	63,073.00

3	Repairs and Alterations	38,488.00
4	Equipment	57,668.00
5	Training Development Center	15,000.00
<hr/>		
6	Total	\$ 584,197.00

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

Acct. No. 330

1	Personal Services	\$ 13,320.00
2	Current Expenses	4,860.00
3	Repairs and Alterations	6,160.00
4	Equipment	1,950.00
<hr/>		
5	Total	\$ 26,290.00

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

Acct. No. 333

1	Personal Services	\$ 539,305.00
2	Current Expenses	160,330.00
3	Repairs and Alterations	40,700.00
4	Equipment	20,850.00
<hr/>		
5	Total	\$ 761,185.00

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

Acct. No. 336

1	Personal Services	\$ 31,800.00
2	Current Expenses	6,800.00
3	Repairs and Alterations	5,550.00
4	Equipment	8,500.00
<hr/>		
5	Total	\$ 52,650.00

41—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$ 35,300.00
2	Current Expenses	7,205.00
3	Equipment	8,000.00
<hr/>		
4	Total	\$ 50,505.00

42—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$	81,000.00
2	Current Expenses		5,000.00
3	Equipment		1,000.00
4	Books and Periodicals		30,000.00
5	Library Services for the Blind		5,000.00
6	Total	\$	122,000.00

CHARITIES AND CORRECTION

43—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	230,000.00
2	Current Expenses		121,450.00
3	Repairs and Alterations		39,200.00
4	Equipment		17,250.00
5	Total	\$	407,900.00

44—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$	74,790.00
2	Current Expenses		83,700.00
3	Repairs and Alterations		10,900.00
4	Equipment		13,650.00
5	Total	\$	183,040.00

45—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	124,971.00
2	Current Expenses		75,545.00
3	Repairs and Alterations		12,600.00
4	Equipment		7,450.00
5	Vocational Training		5,000.00
6	Total	\$	225,566.00

46—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$	37,420.00
2	Current Expenses		31,390.00
3	Repairs and Alterations		11,050.00
4	Equipment		1,400.00
5	Total	\$	81,260.00

47—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$	606,280.00
2	Current Expenses		483,200.00
3	Repairs and Alterations		38,600.00
4	Equipment		33,200.00
5	Total	\$	1,161,280.00

48—*Medium Security Prison*

Acct. No. 376

1	Personal Services	\$	284,017.00
2	Current Expenses		160,804.00
3	Repairs and Alterations		15,000.00
4	Equipment		11,300.00
5	Total	\$	471,121.00

49—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	45,065.00
2	Current Expenses		39,280.00
3	Repairs and Alterations		4,400.00
4	Equipment		4,250.00
5	Total	\$	92,995.00

50—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$	180,360.00
2	Current Expenses		154,186.00
3	Repairs and Alterations		34,400.00

4	Equipment	8,275.00
5	Total	\$ 377,221.00

HEALTH AND WELFARE

51—State Health Department

Acct. No. 400

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

52—Department of Veterans Affairs

Acct. No. 404

1	Personal Services	\$ 164,300.00
2	Current Expenses	45,000.00
3	Equipment	1,730.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	chapter thirty-nine, acts of the Legislature,	
7	1943	15,000.00
8	Total	\$ 226,030.00
9	Any unexpended balance remaining in the	
10	appropriation "To Provide Educational	
11	Opportunities for Children of War Vet-	
12	erans" at the close of the fiscal year 1962-	
13	63 is hereby reappropriated for expendi-	
14	ture during the fiscal year 1963-64.	

53—Department of Welfare

Acct. No. 405

1	Personal Services	\$ 2,534,509.00
2	Current Expenses	860,000.00

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	
8	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

3	Repairs and Alterations.....	8,300.00
4	Equipment	6,300.00
5	Total.....	\$ 198,230.00

*62—Welch Emergency Hospital**Acct. No. 426*

1	Personal Services	\$ 151,510.00
2	Current Expenses	130,000.00
3	Repairs and Alterations.....	40,000.00
4	Equipment	17,000.00
5	Total.....	\$ 338,510.00

*63—Hopemont Sanitarium**Acct. No. 430*

1	Personal Services	\$ 393,020.00
2	Current Expenses	313,540.00
3	Repairs and Alterations.....	15,000.00
4	Equipment	9,250.00
5	Total.....	\$ 730,810.00

*64—Pinecrest Sanitarium**Acct. No. 431*

1	Personal Services	\$ 575,130.00
2	Current Expenses	462,940.00
3	Repairs and Alterations.....	26,600.00
4	Equipment	11,300.00
5	Total.....	\$ 1,075,970.00

*65—Denmar State Hospital**Acct. No. 432*

1	Personal Services	\$ 368,675.00
2	Current Expenses	149,470.00
3	Repairs and Alterations.....	38,730.00
4	Equipment	8,850.00
5	Total.....	\$ 565,725.00

66—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$	30,300.00
2	Current Expenses		6,800.00
3	Repairs and Alterations		7,700.00
4	Equipment		1,600.00
5	Total	\$	46,400.00

67—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$	192,530.00
2	Current Expenses		39,432.00
3	Rehabilitation Center		113,929.00
4	Case Services		335,000.00
5	Supervisory Services for Vending Stand		
6	Program for the Blind		16,658.00
7	Training and Special Projects		20,000.00
8	Social Security Matching Fund		16,000.00
9	Total	\$	733,549.00

BUSINESS AND INDUSTRIAL RELATIONS

68—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

1	Personal Services	\$	281,960.00
2	Current Expenses		80,490.00
3	Equipment		6,500.00
4	Total	\$	368,950.00

69—*Department of Mines*

Acct. No. 460

1	Personal Services	\$	700,610.00
2	Current Expenses		147,500.00
3	Equipment		31,000.00
4	Total	\$	879,110.00

70—Department of Commerce**Acct. No. 465**

1	Personal Services	\$	430,305.00
2	Current Expenses		311,380.00
3	Equipment		26,983.00
4	Mt. State Forest Festival		20,000.00
5	Governor's Conference on Wood Utilization		3,000.00
6	Total	\$	791,668.00
7	Any balance remaining in the appropriation		
8	"Urban Planning Revolving Fund", and		
9	"1964 New York World's Fair", at the close		
10	of the fiscal year 1962-63, is hereby reap-		
11	propriated for expenditure during the fis-		
12	cal year 1963-64.		

71—Commission on Interstate Cooperation**Acct. No. 472**

1	Total	\$	10,000.00
2	Out of the above appropriation the sum of		
3	\$7,500.00 may be made available for West		
4	Virginia's membership in The Council of		
5	State Governments.		

72—Interstate Commission on Potomac River Basin**Acct. No. 473**

1	West Virginia's contribution to Potomac		
2	River Basin Interstate Commission	\$	3,600.00

73—Ohio River Valley Water Sanitation Commission**Acct. No. 474**

1	West Virginia's contribution to the Ohio		
2	River Valley Water Sanitation Commis-		
3	sion	\$	15,860.00

74—Southern Regional Education Board**Acct. No. 475**

1	West Virginia's contribution to Southern		
2	Regional Education Board	\$	52,000.00

- 3 To be expended upon requisition of the Gov-
4 ernor.

75—West Virginia Air Pollution Commission

Acct. No. 476

1	Personal Services	\$	24,080.00
2	Current Expenses		7,250.00
3	Equipment		2,050.00
4	Total	\$	33,380.00

76—West Virginia Historic Commission

Acct. No. 477

1	Personal Services	\$	800.00
2	Current Expenses		26,700.00
3	Total	\$	27,500.00

77—Department of Banking

Acct. No. 480

1	Personal Services	\$	84,900.00
2	Current Expenses		33,260.00
3	Equipment		500.00
4	Total	\$	118,660.00

78—West Virginia State Aeronautics Commission

Acct. No. 485

1	Personal Services	\$	13,220.00
2	Current Expenses		5,710.00
3	Aerial Markers		1,000.00
4	Civil Air Patrol Expenses		7,500.00
5	Total	\$	27,430.00

79—West Virginia Non-Intoxicating Beer Commissioner

Acct. No. 490

1	Personal Services	\$	91,320.00
2	Current Expenses		43,700.00

3	Equipment	800.00
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4	Total.....\$	135,820.00
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80—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 74,575.00
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2	Current Expenses	24,800.00
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3	Total.....\$	99,375.00
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AGRICULTURE

81—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner.....\$	11,000.00
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2	Other Personal Services	179,787.00
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3	Current Expenses	73,185.00
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4	Equipment	10,000.00
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5	Eradication and Control of White Pine	
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6	Blister	16,995.00
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7	Eradication and Prevention of Livestock	
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8	Diseases	175,260.00
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9	Eradication and Control of Japanese beetle	
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10	and other plant pests	16,945.00
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11	Aid To Dairy Development Program.....	78,155.00
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12	Eradication and Control of Oak Wilt.....	88,820.00
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13	Plant Pest Control	21,680.00
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14	Total.....\$	671,827.00
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15	The appropriation "Eradication and Control	
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16	of Oak Wilt" may be transferred to Special	
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17	Revenue Funds for the purpose of match-	
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18	ing Federal Funds.	
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82—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$ 62,695.00
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2	Current Expenses	32,995.00
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3	Total.....\$	95,690.00
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- 4 Any unexpended balance remaining in the
 5 appropriation "Watershed Development"
 6 at the close of the fiscal year 1962-63 is
 7 hereby reappropriated for expenditure
 8 during the fiscal year 1963-64.

83—*Department of Agriculture—Marketing and Research*

Acct. No. 513

- 1 For cooperation with the Federal Govern-
 2 ment in a program of marketing and re-
 3 search\$ 115,000.00
 4 Any part or all of this appropriation may be
 5 transferred to Special Revenue Fund for
 6 the purpose of matching Federal Funds for
 7 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 Ex-
 7 penses, the sum of \$15,000.00 may be used
 8 to cooperate with the United States Geo-
 9 logical Survey in Ground Waters Re-
 10 sources Study.

- 11 Of the above appropriation for Cooperative
 12 Mapping Program the sum of \$10,000.00
 13 may be used for preparation of accurate
 14 geographic and political maps of West
 15 Virginia.

86—*Natural Resources Commission*

Acct. No. 521

- 1 Any balance remaining in the 1960-61 appropriation "For
 2 construction of forest tree nursery facilities" and reap-
 3 propriated for the fiscal year 1961-62, and reappropriated
 4 for expenditure during the fiscal year 1962-63, for "Plan-
 5 ing, improvements and construction on Natural Resources
 6 property and facilities; land requisition and impound-
 7 ments", is hereby reappropriated for expenditure during
 8 the fiscal year 1963-64.

87—*Department of Veterans Affairs*

Acct. No. 564

- 1 In aid of Veterans Day Patriotic Exercises.\$ 2,000.00
 2 To be expended subject to the approval of
 3 the Department of Veterans Affairs upon
 4 presentation of satisfactory plans by the
 5 Grafton G.A.R. Post, American Legion,
 6 Veterans of Foreign Wars and Sons of
 7 Veterans.

88—*Natural Resources Commission*

Acct. No. 565

- | | |
|---|-----------------|
| 1 Personal Services | \$ 909,240.00 |
| 2 Current Expenses | 254,225.00 |
| 3 Repairs and Alterations | 114,400.00 |
| 4 Equipment | 86,201.00 |
| 5 Clarke-McNary—Fire Prevention | 85,000.00 |
| 6 Subsistence for Conservation Officers | 69,350.00 |
| 7 Total | \$ 1,518,416.00 |
- 8 The above appropriation "Subsistence for
 9 Conservation Officers" shall be paid at the
 10 rate of two dollars and fifty cents per cal-

11 endar day to the chief conservation officer
 12 and to each full-time uniformed conserva-
 13 tion officer, under his direct supervision,
 14 whose primary duties and responsibilities
 15 are law enforcement.

16 Any unexpended balance remaining in the
 17 appropriation "Clarke-McNary—Fire Pre-
 18 vention" at the close of the fiscal year
 19 1962-63 is hereby reappropriated for ex-
 20 penditure during the fiscal year 1963-64.

21 Any unexpended balance remaining in the
 22 appropriation "For planning, improve-
 23 ments and construction on Natural Re-
 24 sources properties and facilities; land re-
 25 quisition and impoundments," at the close of
 26 the fiscal year 1962-63 is hereby reappro-
 27 priated for expenditure during the fiscal
 28 year 1963-64 and out of this amount reap-
 29 propriated there is hereby appropriated
 30 \$100,000.00 for acquisition of land and de-
 31 velopment of recreational area near Sugar
 32 Grove and/or acquisition of land and de-
 33 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

4	Equipment	6,300.00
5	Compensation of Commanding Officers,	
6	Clerical Allowances and Uniform Allow-	
7	ances	66,900.00
8	Property Maintenance	34,245.00
9	State Armory Board	695,102.00
10	Total	\$ 961,180.00

91—Department of Civil and Defense Mobilization

Acct. No. 581

1	Personal Services	\$ 35,340.00
2	Current Expenses	11,045.00
3	Equipment	4,300.00
4	Total	\$ 50,685.00

92—Auditor's Office—Social Security

Acct. No. 582

1	To match contributions of state employees	
2	for social security	\$ 1,139,675.00
3	The above appropriation is intended to	
4	cover the state's share of social security	
5	costs for those spending units operating	
6	from General Revenue Fund and General	
7	School Fund appropriations. The State	
8	Road Commission, Department of Motor	
9	Vehicles, Workmen's Compensation Com-	
10	mission, Public Service Commission, and	
11	other departments operating from special	
12	Revenue Funds and/or Federal Funds	
13	shall pay their proportionate share of the	
14	social security cost for their respective di-	
15	visions.	
16	Any unexpended balance remaining in this	
17	appropriation at the close of the fiscal year	
18	1962-63 is hereby reappropriated for ex-	
19	penditure during the fiscal year 1963-64.	

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-		
3 ing buildings. Second annual installment		
4 due on a policy covering a five-year period		
5 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2	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		
2	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
 5 the state's share of the West Virginia Pub-
 6 lic Employees' Retirement cost in accord-
 7 ance with Senate Bill No. 22, (1961 Legis-
 8 lature) for those departments operating
 9 from General Revenue Fund and General
 10 School Fund appropriations. The State
 11 Road Commission, Department of Motor
 12 Vehicles, State Tax Commissioner—Gasoline
 13 Tax Division, Workmen's Compensation
 14 Commission, Public Service Commis-
 15 sion, and other departments operating
 16 from Special Revenue Funds and/or Fed-

17 eral Funds shall pay their proportionate
 18 share of the retirement costs for their re-
 19 spective divisions. When specific appro-
 20 priations are not made such payments
 21 may be made from the balances in the
 22 various Special Revenue Funds in excess
 23 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
 3 aid in payment of interest and principal on
 4 outstanding road bonds and may be trans-
 5 ferred to the state road fund upon the
 6 requisition of the Governor.

Sec. 2. *Appropriations from Other Funds.*—From the
 2 funds designated there is hereby appropriated conditional-
 3 ly upon the fulfillment of the provisions set forth in chap-
 4 ter one hundred thirty-two, acts of the Legislature, regular
 5 session, one thousand nine hundred sixty-one, the follow-
 6 ing amounts, as itemized, for expenditure during the fiscal
 7 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
 6 and claims as authorized by this act or by
 7 law to be paid from the state road fund,
 8 the balance or residue of the annual re-
 9 cepts of the state road fund is hereby ap-
 10 propriated first for the payment of interest

- 11 on and principal of outstanding road
 12 bonds, and thereafter for maintenance,
 13 construction and reconstruction of state
 14 roads, in accordance with the provisions
 15 of chapter seventeen, code of West Vir-
 16 ginia, 1931, as amended.

111—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 777,700.00
2	Current Expenses	300,000.00
3	Equipment	42,040.00
4	Purchase of License Plates	217,800.00
5	Social Security Matching Fund	31,100.00
6	Employees Retirement Matching Fund	31,770.00
7	Total	\$ 1,400,410.00

112—*State Tax Commissioner—Gasoline Tax
 Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 176,520.00
2	Current Expenses	73,400.00
3	Equipment	8,000.00
4	Social Security Matching Fund	6,400.00
5	Total	\$ 264,320.00

113—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 36,932.00
2	Current Expenses	12,680.00
3	Equipment	800.00
4	Total	\$ 50,412.00

114—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	38,517.00
2	Current Expenses		7,350.00
3	Equipment		3,200.00
4	Vocational Aid		410,000.00
5	Total	\$	459,067.00

115—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	20,940.00
2	Current Expenses		5,264.00
3	Total	\$	26,204.00
4	Expenditures from this appropriation shall		
5	not exceed the amount to be reimbursed		
6	by the Federal Government.		
7	Federal funds in excess of the amounts here-		
8	by appropriated may be made available by		
9	budget amendment upon request of the		
10	State Superintendent of Schools and ap-		
11	proval of the Board of Public Works for		
12	any emergency which might arise in the		
13	operation of this division during the fiscal		
14	year.		

116—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$	12,000.00
2	Other Personal Services		290,000.00
3	Current Expenses		81,505.00
4	Equipment		5,943.00
5	National Defense Education Act		140,000.00

6	Statewide Testing Program	200,075.00
7	Experimental Projects	15,000.00
		<hr/>
8	Total	\$ 744,523.00
9	Any part or all of the appropriation for "Na-	
10	tional Defense Education Act" may be	
11	transferred to a Special Revenue Fund for	
12	the purpose of matching Federal Funds for	
13	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
		<hr/>
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	
4	canning for hot lunches	300,000.00
		<hr/>
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
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120—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home	\$ 25,000.00
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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
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123—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

1	Scholarships for Teacher Training	\$	200,000.00
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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		
5	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	
6	Fund	3,955.00
7	Total	\$ 108,130.00

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund as
 10 provided by chapter one hundred thirty-
 11 two, acts of the Legislature, regular ses-
 12 sion, one thousand nine hundred sixty-
 13 one.

14 The above appropriation includes salaries
 15 and operating expenses.

16 There is hereby appropriated from this fund,
 17 in addition to the above appropriation,
 18 the necessary amount for the purchase of
 19 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	
6	Fund	7,000.00
7	Total	\$ 222,190.00

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out of
 10 collections made by the Department of
 11 Agriculture as provided by law. It is the
 12 intention that special funds in excess of
 13 the amounts hereby appropriated shall be
 14 made available by budget amendments
 15 upon request of the Commissioner of Ag-
 16 riculture.

129—*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		17,050.00
3	Social Security Matching Fund		960.00
4	Public Employees Retirement Matching		
5	Fund		1,535.00
6	Total	\$	51,545.00
7	The total amount of this appropriation shall		
8	be paid from Special Revenue Fund out		
9	of collections made by the State Commit-		
10	tee of Barbers and Beauticians as provided		
11	by law.		

130—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	104,285.00
2	Current Expenses		14,430.00
3	Equipment		3,000.00
4	Social Security Matching Fund		3,260.00
5	Public Employees Retirement Matching		
6	Fund		5,215.00
7	Total	\$	130,190.00
8	The total amount of this appropriation shall		
9	be paid from Special Revenue Fund out		
10	of collections for license and report fees		
11	as provided by law.		

131—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	120,350.00
2	Current Expenses		30,345.00

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	
7	Fund	5,620.00
8	Total.....	\$ 164,445.00

9 The total amount of this appropriation shall
 10 be paid from Special Revenue Fund out
 11 of collections of the special tax of one-
 12 half of one per cent of premium receipts
 13 of fire insurance companies as provided by
 14 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	
7	Fund	19,716.00
8	Total.....	\$ 525,000.00

9 The total amount of this appropriation shall
 10 be paid from Special Revenue Fund out of
 11 collections for special license fees from
 12 public service corporations as provided by
 13 law. Out of the above appropriation \$5,-
 14 000.00 may be transferred to the State Wa-
 15 ter Resources Commission of the Natural
 16 Resources Commission for use in coopera-
 17 tion with the U. S. Geological Survey in
 18 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		
6	Fund		9,500.00
7	Total	\$	262,340.00

8 The total amount of this appropriation shall
9 be paid from Special Revenue Fund out of
10 receipts collected for or by the Public
11 Service Commission pursuant to and in
12 the exercise of regulatory authority over
13 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
8 be paid from Special Revenue Fund out of
9 fees collected by the Natural Resources
10 Commission. Expenditures shall be lim-
11 ited to the amounts appropriated except
12 for Federal Funds received and Special
13 Funds collected at state parks. Special
14 Funds in excess of the amounts hereby ap-

15 appropriated may be made available by
 16 budget amendment upon request of the
 17 Natural Resources Commission and ap-
 18 proval of The Board of Public Works for
 19 any emergency which might arise in the
 20 operation of this division during the fiscal
 21 year.

135—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	104,352.00
2 Current Expenses		70,304.00
3 Repairs and Alterations		7,100.00
4 Equipment		18,000.00
5 Social Security Matching Fund.....		633.00

6 Total.....	\$	200,389.00
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7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 fees collected for inspection stickers as
 10 provided by law.

11 Special Funds in excess of the amounts
 12 hereby appropriated may be made avail-
 13 able by budget amendment upon request
 14 of the Department of Public Safety and
 15 approval of the Board of Public Works
 16 for the purpose of repairs to, or construc-
 17 tion of police barracks, not to exceed one
 18 hundred thousand dollars in any one fiscal
 19 year.

136—*West Virginia Liquor Control Commissioner*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner.....	\$	10,000.00
2 Other Personal Services		2,873,270.00
3 Current Expenses		835,000.00

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
10 be paid from Special Revenue Fund out
11 of liquor revenues.

12 The above appropriation includes the sal-
13 aries of store personnel, store inspectors,
14 store operating expenses and equipment;
15 and salaries, expenses and equipment of
16 administration offices.

17 There is hereby appropriated from liquor
18 revenues, in addition to the above appro-
19 priation, the necessary amount for the
20 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
7 be paid from Special Revenue Fund sup-
8 ported by participating agencies as pro-
9 vided 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
15 become available as a result of acts of
16 the Legislature—1961 Session.

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

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Forestry Building	\$ 340,000.00
2 Creative Arts Building	402,226.00
<hr/>	
3 Total	\$ 742,226.00

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

8 Any unexpended balance remaining in this
9 appropriation at the close of the fiscal year
10 1962-63 is hereby reappropriated for ex-
11 penditure during the fiscal year 1963-64.

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

Acct. No. 854

1 West Liberty State College—Dormitory	
2 Equipment	\$ 150,000.00
3 Shepherd College—Library Building	650,000.00
4 Fairmont State College—Aid and Dormitory	
5 Construction and Equipment	150,000.00
<hr/>	
6 Total	\$ 950,000.00

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

11 Any unexpended balance remaining in this
12 appropriation at the close of the fiscal year
13 1962-63 is hereby reappropriated for ex-
14 penditure during the fiscal year 1963-64.

140—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$	728,960.00
2	Current Expenses		270,377.00
3	Equipment		10,860.00
4	Social Security Matching Fund		26,425.00
5	Public Employees Retirement Matching		
6	Fund		37,448.00
<hr/>			
7	Total	\$	1,074,070.00

8 There is hereby authorized to be paid out of
 9 the above appropriation for Current Ex-
 10 penses the amount necessary for the prem-
 11 iums on bonds given by the State Treas-
 12 urer and bond custodian for the protection
 13 of the Workmen's Compensation Fund.

Sec. 3. Supplemental and Deficiency Appropriations.—

2 From the State Fund, General Revenue, except as other-
 3 wise provided, there are hereby appropriated the following
 4 amounts, as itemized, for expenditure during the fiscal year
 5 one thousand nine hundred sixty-three to supplement the
 6 1962-63 appropriations, and to be available for expenditure
 7 upon date of passage.

141—*Governor's Office*

Acct. No. 120

1	Civil Contingent Fund	\$	50,000.00
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142—*Department of Finance and Administration*

Acct. No. 210

1	Postage		40,000.00
2	Current Expenses		54,000.00
<hr/>			
3	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
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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
 2 following items are appropriated from the General Reve-
 3 nue Fund, subject to the following terms and conditions:
 4 (a) The following items are hereby appropriated and
 5 are to be available for expenditure out of the surplus in

6 the Treasury, subject to the approval of the Board of Pub-
7 lic Works.

8 (b) The Board of Public Works shall review the reve-
9 nues of the State from the date that appropriations here-
10 under are expected to be made available for expenditure,
11 and determine whether, in its opinion, revenues then in
12 prospect or on hand will be sufficient to meet all appropria-
13 tions under the 1962 Budget Act, and this section, and make
14 a finding with respect thereof. In the event that such
15 finding shall show sufficient revenues on hand or in pros-
16 pect to meet all other appropriations and reappropria-
17 tions made by the 1962 Budget Act, and subject to the
18 foregoing conditions, any or all of the following items may
19 be released for expenditure by the Board of Public Works
20 from the date of passage of this act and such appropriation
21 shall remain in full force and effect until June 30, 1964.

22 Item I. <i>Medium Security Prison</i>	\$ 10,000.00
23 Construction of two dams across Tygart	
24 River.	
25 Item II. <i>Industrial School for Boys</i>	65,550.00
26 For water facilities and repairs to system.	
27 Item III. <i>West Liberty State College</i>	18,500.00
28 For purchase of Center School.	
29 Item IV. <i>West Virginia Penitentiary</i>	10,000.00
30 Smoke Control.	
31 Item V. <i>Marshall University</i>	20,000.00
32 Major repairs to Fairfield Stadium.	
33 Item VI. <i>State Board of Education—Reha-</i>	
34 <i>bilitation Division</i>	125,000.00
35 Sheltered Workshop.	
36 Item VII. <i>State Board of Education—Reha-</i>	
37 <i>bilitation Division</i>	400,000.00
38 Rehabilitation Service Building.	
39 Item VIII. <i>The Board of Public Works</i>	200,000.00
40 For major repairs to Capitol Buildings, in-	

41	cluding heating, plumbing and electrical	
42	equipment.	
43	Item IX. <i>Department of Agriculture</i>	50,000.00
44	Soil Conservation Committee for water-	
45	shed development.	
46	Item X. <i>Department of Commerce</i>	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. <i>General School Fund for Instruc-</i>	
53	<i>tional Aids and Library Books</i>	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 <i>allocated</i> 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. <i>Department of Mental Health</i>	150,000.00
62	For purchase of drugs for distribution to	
63	mental institutions under their control.	
64	Item XIII. <i>Centennial Commission</i>	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. <i>Department of Commerce</i>	600,000.00
74	Industrial Development Fund — to be	
75	transferred to Special Revenue Account,	
76	"Industrial Development Loans."	

77	Item XV. <i>Department of Civil and Defense</i>	
78	<i>Mobilization</i>	18,725.00
79	For communication and warning system.	
80	Item XVI. <i>West Virginia Geological Survey</i>	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. <i>West Virginia Institute of Tech-</i>	
87	<i>nology</i>	150,000.00
88	Land purchases and aid in dormitory con-	
89	struction and equipment.	
90	Item XVIII. <i>West Virginia Children's Home</i>	20,000.00
91	For repairs to electrical and mechanical	
92	systems.	
93	Item XIX. <i>Weston State Hospital</i>	80,000.00
94	Renovate Soldiers' Home	50,000.00
95	Repair to Bakery	30,000.00
96	Item XX. <i>Spencer State Hospital</i>	20,000.00
97	For roof repairs.	
98	Item XXI. <i>West Virginia Training School</i>	40,000.00
99	To purchase kitchen equipment.	
100	Item XXII. <i>Barboursville State Hospital</i>	40,000.00
101	To purchase equipment for building dam-	
102	aged by fire and for fire escape equipment	
103	improvements.	
104	Item XXIII. <i>Denmar State Hospital</i>	35,000.00
105	To construct inmate barracks.	
106	Item XXIV. <i>Andrew S. Rowan Memorial</i>	
107	<i>Home</i>	20,000.00
108	For repairs to spring and bath house	
109	building.	
110	Item XXV. <i>Hopemont Sanitarium</i>	31,500.00
111	For repairs and alterations to Security	

112	Building and storm windows and screens	
113	for main building.	
114	Item XXVI. <i>Pinecrest Sanitarium</i>	33,550.00
115	For elevator repairs and repairs to electrical	
116	and plumbing system.	
117	Item XXVII. <i>Department of Commerce</i>	35,000.00
118	For restoration and renovation of General	
119	Adam Stephan Memorial.	
120	Item XXVIII. <i>West Virginia State College</i>	123,000.00
121	Land purchase and relocation of athletic	
122	field.	
123	Item XXIX. <i>West Virginia University</i>	100,000.00
124	Land Acquisition.	
125	Item XXX. <i>Glenville State College</i>	18,000.00
126	Land Purchase.	
127	Item XXXI. <i>Department of Mines</i>	25,000.00
128	For reproducing assessment and equaliza-	
129	tion maps.	
130	Item XXXII. <i>Concord College</i>	30,000.00
131	Land Purchase.	
132	Item XXXIII. <i>Potomac State College</i>	25,000.00
133	To construct maintenance building.	
134	Item XXXIV. <i>Natural Resources Commis-</i>	
135	<i>sion—Parks</i>	900,000.00
136	The above appropriation shall be expend-	
137	ed for improvements and construction on	
138	Natural Resources properties and facilities,	
139	including land acquisition and im-	
140	poundments.	
141	Out of the above appropriation, \$20,000.00	
142	shall be used for mine sealing, back filling	
143	and reclamation of abandoned mine opera-	
144	tions in Preston County, vicinity of Crel-	
145	lin, Maryland.	

146	Item XXXV. <i>West Virginia Penitentiary</i>	140,000.00
147	This shall be used for South Wing Cell	
148	Block.	
149	Item XXXVI. <i>Department of Labor</i>	30,000.00
150	Construction of two calibration stations.	
151	Item XXXVII. <i>State Office Building Com-</i>	
152	<i>mission</i>	400,000.00
153	Land acquisition, paving of parking area,	
154	plans and specifications for new office	
155	building.	
156	Item XXXVIII. <i>State Armory Board</i>	53,600.00
157	Paving and grounds improvements at Na-	
158	than Goff Armory.	
159	Item XXXIX. <i>Forestry Camp for Boys</i>	20,000.00
160	Construct shop facilities.	
161	Item XL. <i>Marshall University</i>	50,000.00
162	Land Acquisition.	

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

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

19 (b) A detailed expenditure schedule showing for what
 20 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

8 and sinking fund requirements. The Board of Public Works
9 is authorized to transfer from time to time such amounts
10 to the State Sinking Fund Commission as may be necessary
11 for this purpose.

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

Sec. 9. Appropriations from Taxes and License Fees.—

2 There is hereby appropriated from the cigarette tax for ad-
3 ministration and enforcement of the law relating to said
4 tax a sum not to exceed *one and one-half per cent of the*
5 *tax* collected or stamps sold. There is hereby appropriated
6 from the soft drink tax revenues for administration and
7 enforcement of the law relating to said tax, a sum not to
8 exceed *two and one-half per cent* of the total revenues col-
9 lected. All such salaries and expenses, authorized by law
10 as aforesaid, shall be paid by the Tax Commissioner
11 through the state treasurer out of gross collections.

Sec. 10. Appropriations to Pay Costs of Publication of

2 **Delinquent Corporations.**—There is hereby appropriated
3 out of state fund, general revenue, out of funds not other-
4 wise appropriated to be paid upon requisition of the auditor
5 and/or the governor, as the case may be, a sum sufficient to
6 pay the cost of publication of delinquent corporations as
7 provided by sections seventy-five and seventy-seven of ar-
8 ticle twelve, chapter eleven, Code of West Virginia.

Sec. 11. Appropriations for Local Governments.—There

2 is hereby appropriated for payment to counties, districts,
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district, and municipal cor-
5 porations and which have been paid into the treasury.

- 6 (a) For the redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

Sec. 12. 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. 13. 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 appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article five, chapter five, of the Code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one.

Where former spending units have been absorbed by or combined with other spending units by acts of this legislature, it is the intent of this act that reappropriations shall be to the succeeding or later spending unit created unless otherwise indicated.

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

CHAPTER 13

(House Bill No. 577—Originating in the House Committee on Finance)

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

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.

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.

CHAPTER 14

(House Bill No. 578—Originating in the House Committee on Finance)

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

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

2 tentative budget submitted by the commissioner shall
3 itemize appropriations separately for:

4 (1) "Personal services" which shall mean salaries,
5 wages, fees and other compensation for skill, work or em-
6 ployment: *Provided, however,* That the total expenditure
7 shown for personal services shall reflect the actual ex-
8 penditure for each line item under this classification;

9 (2) "Current expenses" which shall mean operating
10 costs other than personal services, and shall not include
11 equipment, repairs and alterations, buildings, or lands;

12 (3) "Equipment" which shall mean equipment items
13 which have an appreciable and calculable period of use-
14 fulness in excess of one year;

15 (4) "Repairs and alterations" which shall mean repairs
16 to structures and improvements to property which do not
17 increase the capital asset;

18 (5) "Buildings" which shall include construction and
19 alteration of structures and the improvement of lands and
20 shall include shelter, support, storage, protection, or the
21 improvement of a natural condition; and

22 (6) "Lands" which shall mean the purchase of real
23 property or interests in real property.

24 A spending unit or other person requesting an appropri-
25 ation may submit a different itemization with the prior
26 approval of the commissioner, if the uniform itemization
27 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

12 and proper to effect the objects of the department, sub-
13 ject in all matters, however, to the approval of the gov-
14 ernor; and he shall cause to be enforced such library rules
15 and regulations as will aid students, readers, investiga-
16 tors and research workers in the use of the material of
17 the department and in the proper protection thereof. He
18 shall employ the necessary clerical assistants and make
19 rules and regulations for their government. He shall ar-
20 range for the publication of such matter as the Legisla-
21 ture may from time to time provide for printing, includ-
22 ing the editing and publishing of a quarterly historical
23 magazine devoted to the history, biography, bibliography
24 and genealogy of West Virginia. He shall cause the rooms
25 of the department to be kept open to the public daily, ex-
26 cept Sunday, from nine o'clock in the morning until five
27 o'clock in the afternoon, throughout the year; and upon
28 the request of the president of the senate or the speaker
29 of the house of delegates, from seven o'clock until nine
30 o'clock in the evening during the sessions of the Legisla-
31 ture. He shall make annually a report to the governor to
32 be transmitted by him to the Legislature, which report
33 shall contain a list of all the state's papers, public docu-
34 ments, books, pamphlets, and other property belonging
35 to the department, not theretofore published, also a state-
36 ment of its annual accumulations, and a statement of the
37 receipts and expenditures, accompanied by such recom-
38 mendations as he deems best for the state's interests in
39 said department.

40 It shall be the duty of each state official in the executive
41 department of the state, board, commission and agency
42 of the state, and the president or superintendent of each
43 state institution to furnish the department of archives
44 and history with a sufficient number of all state papers,
45 public records, reports, documents and pamphlets, printed
46 by the respective official, board, commission, agency and
47 institution at state expense, to supply the library of every
48 state institution of higher learning with two copies of each
49 such publication. The state historian and archivist shall
50 cause two copies of each such publication to be sent to
51 each state institution of higher learning to be deposited in
52 the library thereof.

53 The department of archives and history shall be au-
54 thorized and empowered, acting through the state his-
55 torian and archivist and with the consent of the governor,
56 to accept and receive gifts, donations, contributions, be-
57 quests or devises of money, security or property, both real
58 and personal, or any interest in such property, necessary
59 and proper to effectuate the objective of the department,
60 and said department may accept and receive same sub-
61 ject to any terms, limitations or restrictions placed there-
62 upon by the donor.

CHAPTER 16

(Com. Sub. for House Bill No. 105—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 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

- 2 **Loans on Real or Personal Property Not Doing Business.**
- 3 —The carrying on in this state of any one or more of the
- 4 following activities by a foreign corporation (including a
- 5 Massachusetts trust, and any other type of association
- 6 treated as a corporation by other provisions of this code),

7 shall not constitute doing business in this state within the
8 meaning of the preceding section or any other statute,
9 except the provisions of section seventy-one of this article
10 relating to service of process on foreign corporations
11 which do not qualify to do business in this state: (a) the
12 acquisition by purchase of loans secured by mortgages or
13 deeds of trust, drawn and executed in compliance with
14 chapter thirty-eight, article one-a, section two, of this code
15 on real or personal property situated in West Virginia
16 pursuant to commitment agreements or arrangements
17 made prior to or following the origination or creation of
18 said loans; (b) the ownership, modification, renewal, ex-
19 tension, transfer or foreclosure of such loans, or the ac-
20 ceptance of substitute or additional obligors thereon; (c)
21 the maintaining or defending of any actions or suits rela-
22 tive to such loans, mortgages or deeds of trust; (d) the
23 maintenance of bank accounts in West Virginia banks in
24 connection with the collection or servicing of such loans;
25 (e) the making, collection and servicing of such loans
26 through a resident person, firm or corporation, or a for-
27 eign corporation qualified to do business in West Virginia,
28 engaged in the business of servicing loans for investors;
29 (f) the taking of deeds to the mortgaged property either
30 in lieu of foreclosure or for the purpose of transferring
31 title either to the federal housing administration or to the
32 veterans administration as the insurer or guarantor; (g)
33 the acquisition of title to property under foreclosure sale
34 or from the owner in lieu of foreclosure; (h) the manage-
35 ment, rental, maintenance and sale, or the operating,
36 maintaining, renting or otherwise dealing with, selling or
37 disposing of property acquired under foreclosure sale or
38 by agreement in lieu thereof; (i) physical inspection and
39 appraisal of property in West Virginia as security for
40 deeds of trust or mortgages and negotiations for the pur-
41 chase of such loans; (j) any other transaction directly
42 related to the activities above described: *Provided, how-*
43 *ever,* That if property acquired in or by reason of any of
44 the activities defined in the provisions of (f), (g) and (h)
45 hereof shall be held longer than a period of five years, the
46 provisions of this section shall thereafter be inapplicable.

CHAPTER 17

(House Bill No. 163—By Mr. Ford)

[Passed February 23, 1963; in effect ninety days from passage. 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 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.
2. Investment in bank service corporations authorized.
3. Extension of bank services to other banking institutions and national banking associations.
4. Limitation on activities of bank service corporations.
5. Regulation and examination of parties performing 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

18 service corporation, whether by the purchase of stock,
19 the making of a loan, or otherwise, except the payment
20 for rent earned, goods sold and delivered, or services
21 rendered prior to the making of such payment.

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

**Sec. 3. Extension of Bank Services to Other Banking
2 Institutions and National Banking Associations.**—When-
3 ever a banking institution or a national banking associ-
4 ation applies for bank services for itself (hereinafter
5 referred to in this section as “an applying bank”) from
6 a bank service corporation which supplies the same type
7 of bank services to one or more other banking institutions
8 or national banking associations, or both, and the apply-
9 ing bank is competitive with any banking institution
10 or national banking association which holds stock in
11 such corporation (referred to in this section as a “stock-
12 holding bank”), the corporation must offer to supply
13 such services by either:

14 (a) Issuing stock to the applying bank and furnishing
15 banking services to it on the same basis as to the stock-
16 holding banks, or

17 (b) Furnishing bank services to the applying bank at
18 rates no higher than necessary to reflect fairly the cost
19 of such services, including the reasonable cost of the
20 capital provided to the corporation by the stockholding
21 banks, at the corporation’s option, unless comparable
22 services at competitive overall costs are available to the

23 applying bank from another source, or unless the furnish-
24 ing of the services sought by the applying bank would
25 be beyond the practical capacity of the bank service
26 corporation. In any action or proceeding to enforce the
27 duty imposed by this section or for damages for the
28 breach thereof, the burden shall be upon the bank service
29 corporation to show such availability.

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

Sec. 5. Regulation and Examination of Parties Per-
2 **forming Bank Services.**—No banking institution chartered
3 under this chapter and authorized to do business in this
4 state may cause to be performed, by contract or other-
5 wise, any bank services for itself, whether on or off its
6 premises, unless written assurances satisfactory to the
7 commissioner of banking are furnished to him by both
8 the banking institution and the party performing such
9 services that the performance thereof will be subject to
10 regulation and examination by the department of bank-
11 ing and any federal supervisory agency to the same
12 extent as if such services were being performed by the
13 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:

Article 6. Building and Loan Associations.

Section

21. Conditions on which association may take mortgage or deed of trust.

Section 21. Conditions on Which Association May

- 2 **Take Mortgage or Deed of Trust.**—No building and loan
3 association shall:

4 First: Take a mortgage or deed of trust upon real estate
5 unless a written application is first made for the loan de-
6 scribed in such mortgage or deed of trust, showing the
7 date, name of applicant, amount of loan desired, descrip-
8 tion of the real estate offered, and other information
9 necessary, and unless a written report thereon shall have
10 been made by at least two members of the appraisal
11 committee, signed by them, stating that they have exam-
13 that in their judgment it affords adequate security for
12 ined the real estate described in such application and
14 such loan. Such report shall show separately the value of
15 the land and the value of the improvements and of the
16 building or buildings erected thereon. The application
17 and the report shall be filed and preserved with all the
18 other papers relating to the loan.

19 Second: Take a mortgage or deed of trust upon im-
20 proved real estate if the amount secured by such mort-
21 gage or deed of trust, plus any prior liens, exceeds ninety
22 per centum of the appraised value thereof as shown by
23 such report, unless said excess be secured by a pledge of
24 free stock or notes of the association, or unless said
25 excess is insured or guaranteed by the United States or
26 any instrumentality thereof, or there is a commitment to
27 so insure or guarantee. No loan shall be made on the
28 security of vacant real estate if the amount so secured,
29 plus any prior liens, exceed fifty per centum of the ap-
30 praised value thereof as shown by such report.

31 Third: Take a mortgage or deed of trust upon real
32 estate unless the title to such real estate is approved by

- 33 the attorney of the association or some other competent
34 authority on titles.

CHAPTER 19

(House Bill No. 453—By Mr. White and Mr.
Keister, of Harrison)

[Passed March 8, 1963; in effect July 1, 1963. Approved by the Governor.]

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.
26. Share reduction.

- 27. Conversion.
- 28. Merger.
- 29. Penalty for violation of article.
- 30. Records.
- 31. Audits.
- 32. Spreading false reports.
- 33. Taxation.
- 34. Credit unions heretofore organized need not obtain new charter; actions validated.
- 35. Validity.

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.

33 (b) The applicants shall then prepare and adopt by-
34 laws for the general government of the credit union
35 consistent with the provisions of this article and execute
36 the same in duplicate. The by-laws shall specify:

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

40 (2) The number of directors, which shall be not less
41 than five, all of whom must be shareholders and mem-
42 bers of the credit union, their powers and duties; and
43 the compensation and duties of all officers;

44 (3) The conditions and qualifications for member-
45 ship;

46 (4) The number of members of the credit committee
47 and of the supervisory committee, with their respective
48 powers and duties;

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

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

53 (7) The conditions upon which deposits may be re-
54 ceived and withdrawn, and whether the credit union
55 shall have the power to borrow;

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

58 (9) The conditions upon which loans may be made
59 and repaid;

60 (10) The method of receipting for money paid in on
61 account of shares, deposits and loans;

62 (11) The manner in which the reserve fund shall be
63 accumulated;

64 (12) The manner in which dividends shall be de-
65 termined and paid out.

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

68 (d) The secretary of state, within thirty days after
69 the receipt of such agreement, shall determine whether
70 it conforms to the provisions of this article, and whether

71 or not the organization of the credit union in question
72 would benefit the organizers of it, and be consistent with
73 the purposes of this article.

74 (e) Thereupon the secretary of state shall notify the
75 applicants of his decision. If it is favorable, he shall issue
76 a charter, attach the charter to the duplicate of the agree-
77 ment and return the same, together with the duplicate
78 of the by-laws to the applicants: *Provided*, That the sec-
79 retary of state shall issue no charter to any credit union
80 to do business in this state until such incorporation
81 agreement and by-laws have been approved in writing
82 by the commissioner of banking.

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

88 (g) When any credit union authorized by this article
89 desires to begin business, it must notify the commissioner
90 of banking, who shall at his earliest convenience make
91 an examination of its affairs. Having satisfied himself
92 that all the conditions precedent have in good faith been
93 complied with, said commissioner shall then issue to such
94 credit union, under his hand, and official seal, a certifi-
95 cate of authority reciting that such examination has been
96 made and that the credit union is authorized to commence
97 business which certificate shall be displayed in the busi-
98 ness place of such credit union. But the commissioner
99 may withhold from any credit union his certificate au-
100 thorizing the commencement of business whenever he
101 has reason to suppose that the members have formed the
102 same for any other than the legitimate objects contem-
103 plated in this article.

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

Sec. 18. Investment of Capital, Undivided Profits and
2 **Reserve Funds.**—The capital deposits, undivided profits

3 and reserve funds of the corporation may be invested in
4 the following ways, and in such ways only:

5 (a) Loaned to members of the corporation in accord-
6 ance with the provisions of this article;

7 (b) Deposited to the credit of the corporation in a
8 banking institution incorporated under the laws of this
9 state, or in national banks operating in this state;

10 (c) In obligations of the United States of America,
11 or in securities fully guaranteed thereby as to both prin-
12 cipal and interest or in shares or accounts of federal
13 savings and loan associations; and

14 (d) In any investment legal for banking institutions
15 or trust funds in this jurisdiction.

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

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

14 If any member of the credit committee makes applica-
15 tion to borrow money from a credit union or becomes
16 surety for any other member whose application for a
17 loan is under consideration, the supervisory committee
18 shall appoint a substitute to act on the credit committee
19 in the place of such member, during the consideration of
20 such application. All officers and members of any com-
21 mittee in any way knowingly permitting or participating
22 in making a loan of funds of a credit union to a non-
23 member thereof shall be guilty of a misdemeanor. The
24 credit union shall have the right to recover the amount
25 of any such illegal loan from the borrower or from any
26 officer or member of a committee who knowingly com-

27 mitted or participated in the making thereof, or from all
28 of them jointly.

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

**Sec. 20. Reserve Fund, of What Constituted; Increase
2 or Decrease.**—All entrance fees, transfer fees and charges
3 shall, after the payment of organization expenses, be
4 known as reserve income and shall be added to the re-
5 serve fund of the corporation. At the close of each fiscal
6 year there shall be set apart to the reserve fund twenty
7 per cent of the net income of the corporation which has
8 accumulated during the year. But upon the recommen-
9 dation of the board of directors, the members at an annual
10 meeting may increase, and whenever such funds equal
11 twenty per cent of the capital, may decrease, the propor-
12 tion of profits which is required by this section to be set
13 apart to the reserve fund.

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

Sec. 24. Dissolution.—(a) *Voluntary*—At a meeting
2 especially called to consider the matter, a majority of
3 the entire membership may vote to dissolve the credit
4 union, provided a copy of the notice was mailed to the
5 commissioner of banking at least ten days prior thereto.
6 Any member not present at such meeting may, within
7 the next twenty days vote in favor of dissolution by
8 signing a statement in form approved by the commis-
9 sioner of banking and such vote shall have the same
10 force and effect as if cast at such meeting. The credit
11 union, with the prior approval of the commissioner of
12 banking, shall thereupon immediately cease to do business
13 except for the purposes of liquidation, and the president
14 and secretary shall, within five days following such
15 meeting, notify the commissioner of banking of inten-
16 tion to liquidate and shall include a list of the names of
17 the directors and officers of the credit union together
18 with their addresses.

19 (b) *Involuntary*—If it shall appear that any credit
20 union is bankrupt or insolvent, or that it has violated
21 any of the provisions of this article, the commissioner
22 of banking may, after holding a hearing or giving ade-
23 quate opportunity for a hearing, order such credit union to
24 correct such condition and shall grant it not less than
25 sixty days within which to comply, and failure to do so
26 shall afford the commissioner of banking grounds for
27 revocation of the certificate of approval and charter and
28 for appointment of a receiver or for applying to the appro-
29 priate court of the jurisdiction in which such credit union
30 is located for the appointment of a receiver to close the
31 affairs of such credit union.

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

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

50 As soon as the board or the receiver determines that
51 all assets from which there is a reasonable expectancy
52 of realization have been liquidated and distributed as
53 set forth in this section, a certificate of dissolution shall be
54 executed on a form prescribed by the commissioner
55 of banking and file same with the proper recording
56 agency within the jurisdiction wherein the credit union
57 had its principal place of business, which shall, after re-
58 cording and indexing same, forward it to the commis-

59 sioner of banking, whereupon such credit union shall
60 be dissolved.

Sec. 26. Share Reduction.—Whenever the losses of any
2 credit union, resulting from a depreciation in value of its
3 loans or investments or otherwise, exceed its undivided
4 earnings and reserve fund so that the estimated value of
5 its assets is less than the total amount due the share-
6 holders the credit union may, by a three-fourths vote
7 of the entire membership at a meeting called to consider
8 the matter, order a reduction in the liability of such credit
9 union to each of its shareholders so as to divide the loss
10 proportionately among the shareholders. If thereafter the
11 credit union shall realize from such assets a greater
12 amount than was fixed by the order of reduction, such
13 excess shall be divided among the shareholders whose
14 assets were reduced, but only to the extent of such re-
15 duction.

Sec. 27. Conversion.—A credit union chartered under
2 state law may be converted into a federal credit union
3 under the laws of this state by complying with the follow-
4 ing requirements:

5 (1) The proposition for such conversion shall first be
6 approved, and a date set for a vote thereon by the mem-
7 bers, (either at a meeting to be held on such date or by
8 written ballot to be filed on or before such date), by a
9 majority of the directors of the said credit union. Writ-
10 ten notice of the proposition and of the date set for the
11 vote shall then be delivered in person to each member,
12 or mailed to each member at the address for such member
13 appearing on the records of the credit union, not more
14 than thirty or less than seven days prior to such date. Ap-
15 proval of the proposition for conversion shall be by the
16 affirmative vote of two thirds of the members, in person
17 or in writing.

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

22 (3) Promptly after the vote is taken and in no event
23 later than ninety days thereafter, if the proposition for

24 conversion was approved by such vote, the credit union
25 shall take such action as may be necessary under the ap-
26 plicable federal law to make it a federal credit union, and
27 within ten days after receipt of the federal credit union
28 charter there shall be filed with the commissioner of
29 banking a copy of the charter thus issued. Upon such
30 filing the credit union shall cease to be a credit union
31 governed by state law.

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

Sec. 28. Merger.—Any credit union may, with the ap-
2 proval of the commissioner of banking, merge with an-
3 other credit union, provided the membership of the one
4 credit union is within the field of membership of the
5 other, under the existing charter of such other credit
6 union, pursuant to any plan agreed upon by the majority
7 of the board of directors of each credit union joining in
8 the merger, and approved by the affirmative vote of two
9 thirds of the members of each such credit union, either
10 at meetings of the membership duly called for such pur-
11 pose or in writing. After such agreement by the directors
12 and approval by the members of each credit union the
13 president and secretary of each credit union shall execute
14 in duplicate, a certificate of merger, which shall set forth
15 all of the following:

16 (a) The time and place of the meeting of the board
17 of directors at which the plan was agreed upon;

18 (b) The vote in favor of adoption of the plan;

19 (c) A copy of the resolution or other action by which
20 the plan was agreed upon;

21 (d) The time and place of the meeting of the members
22 at which the plan agreed upon was approved;

23 (e) The vote by which the plan was approved by the
24 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-

9 minister oaths, compel the giving of testimony, and re-
10 quire the submission of documents. A report of such
11 examination shall be submitted to the board of directors
12 of each credit union by the examiner agent within thirty
13 days after the completion of the examination. Said re-
14 port shall contain comments relative to the management
15 of the affairs of the credit union and also as to the general
16 condition of its assets. This report shall be read to the
17 members at the next annual meeting. Within thirty days
18 of the receipt of such report, a general meeting of the
19 directors and committeemen shall be called to consider
20 matters contained in the report and methods of correcting
21 exceptions.

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

Sec. 33. Taxation.—Any credit union organized under
2 this or any other credit union act shall be exempt from
3 all taxation now or hereafter imposed by this jurisdic-
4 tion or any municipality within this jurisdiction or any
5 local taxing authority and no law which taxes corpora-
6 tions in any form, or the shares thereof, or the accumu-
7 lations thereon, shall apply to any such credit union;
8 except that any real property and any tangible personal
9 property owned by any such credit union shall be subject
10 to taxation to the same extent as other similar property
11 is taxed. The shares of credit unions shall not be subject
12 to any stock transfer tax, either when issued or when
13 transferred from one member to another. The partici-
14 pation by the credit union in any unemployment insur-
15 ance fund, or social security fund, or old age fund, shall
16 not be deemed a waiver of the tax immunities hereby
17 granted.

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

4 under chapter thirty-six of the acts of the Legislature of
5 one thousand nine hundred twenty-five and which are in
6 existence on the effective date of this section; and all
7 credit unions which have been heretofore legally organ-
8 ized under article ten of chapter thirty-one of the code
9 of West Virginia, one thousand nine hundred thirty-one,
10 as amended, and which are in existence on the effective
11 date of this section, shall upon the effective date of this
12 section be considered to have been organized under the
13 provisions of this article, and shall not be required to
14 obtain a new charter or to reorganize hereunder. All acts
15 and things done by any such credit unions, insofar as
16 such acts and things shall not have constituted any viola-
17 tion of law as it shall heretofore have existed, shall be
18 deemed valid and effective.

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

CHAPTER 20

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

[Passed March 1, 1963; 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 thousand 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 project."

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.**

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

37 or instrumentality, corporate or otherwise, of either of
38 them.

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

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

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

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

57 (k) The term "responsible buyer" shall mean any per-
58 son, partnership, firm, company or corporation organized
59 for profit deemed by the authority, after proper investi-
60 gation, to be financially responsible to assume all obliga-
61 tions prescribed by the authority in the acquisition of an
62 industrial development project from an industrial devel-
63 opment agency, and in the operation of an industrial or
64 manufacturing enterprise therein or thereon.

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

73 (m) The words "cost of establishing an industrial de-
74 velopment project" shall embrace any or all of the follow-
75 ing: The cost of construction, the cost of all lands, prop-
76 erty rights, easements, and in cases of demonstrated need,

77 machinery and equipment, if said demonstrated need shall
78 have been shown to the satisfaction of the authority,
79 which are deemed necessary for such construction, fi-
80 nancing charges, interest prior to and during construc-
81 tion, cost of engineering and legal expense, plans, specifi-
82 cations, surveys, estimates of costs and other expenses
83 necessary or incident to determining the feasibility or
84 practicability of any industrial development project, to-
85 gether with such other expenses as may be necessary or
86 incidental to the financing and the construction of the
87 industrial development project and the placing of the
88 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 ap-
3 plication of an industrial development agency and upon
4 hearing thereon in the manner hereinafter provided that
5 the establishment of a particular industrial development
6 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-

47 quate to insure completion and operation of the indus-
48 trial development project: *Provided*, That the proceeds
49 of any loan made by the authority to the industrial de-
50 velopment agency pursuant to this subsection (B) shall
51 be used only for the establishment of additional indus-
52 trial development projects in furtherance of the public
53 purposes of this article.

54 Any such loan of the authority shall be for such period
55 of time and shall bear interest at such rate as shall be
56 determined by the authority and shall be secured by
57 bond of the industrial development agency and by deed
58 of trust on the industrial development project for which
59 such loan was made, such deed of trust to be second
60 and subordinate only to the deed of trust securing the
61 first lien obligation issued to secure the commitment of
62 funds from the aforesaid independent and responsible
63 sources and used in the financing of the industrial de-
64 velopment project.

65 Moneys so loaned by the authority to industrial develop-
66 ment agencies shall be withdrawn from the industrial de-
67 velopment fund and paid over to the industrial develop-
68 ment agency in such manner as shall be provided and pre-
69 scribed by the rules and regulations of the authority.

70 All payments of interest on said loans and the prin-
71 cipal thereof shall be deposited by the authority in the
72 industrial development fund.

73 Loans by the authority to an industrial development
74 agency for an industrial development project shall be
75 made only in the manner and to the extent as in this
76 section provided, except, however, in those instances
77 wherein an agency of the federal government participates
78 in the financing of an industrial development project by
79 loan, grant, or otherwise, or in those instances where any
80 bank, insurance company, lending agency, or combination
81 thereof, participates in any industrial development proj-
82 ect in an amount equal to sixty per cent of the cost of
83 the project. Where any bank, insurance company, lend-
84 ing agency, or combination thereof, participates in an
85 amount equal to sixty per cent of the cost of the indus-
86 trial development project, the authority may adjust the

87 required ratios of financial participation by the local in-
88 dustrial development agency to an amount not less than
89 ten per cent of the estimated cost of establishing the in-
90 dustrial development project. When any federal agency
91 participates, the authority may adjust the required ratios
92 of financial participation by the industrial development
93 agency, the source of independent funds and the authority
94 in such a manner as to insure the maximum benefit avail-
95 able to the industrial development agency, the authority,
96 or both, by the participation of the federal agency. When
97 ratios are adjusted in the manner set forth above, no such
98 adjustment shall be made which shall cause the authority
99 to grant a loan to the industrial development agency in
100 excess of thirty per cent of the cost, or estimated cost of
101 the industrial development project.

102 Where any federal agency participating in the financ-
103 ing of an industrial development project is not permitted
104 to take as security for such participation a deed of trust
105 the lien of which is junior to the deed of trust of the
106 authority, the authority shall, in such instances, be au-
107 thorized to take as security for its loan to the industrial
108 development agency a deed of trust junior in lien to that
109 of the federal agency.

CHAPTER 22

(House Bill No. 345—By Mr. 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:

Article 16. The West Virginia Forest Industries Industrial Foundation Act.

Section

1. Short title.
2. Purposes.
3. Definitions.
4. The West Virginia forest industries industrial foundation.
5. Powers of foundation.
6. Loans.
7. Loan application requirements.
8. Forest industries industrial development fund.
9. Governing body.
10. Moneys of the foundation.
11. Conflict of interest.
12. Limitation of powers.
13. Audit.
14. Severability and construction.

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

4 and, in conjunction with such banking corporations or
5 institutions, trust companies, savings banks, building and
6 loan associations, insurance companies, or related cor-
7 porations, partnerships, foundations, or other institutions,
8 to develop and advance the wood products industry of
9 the state of West Virginia; to authorize county courts
10 and municipalities to appropriate money from their gen-
11 eral fund for the operation and projects of the founda-
12 tion; to encourage and assist in the location of new wood
13 products business and industry; to stimulate and assist
14 in the expansion of the wood products industry which
15 will tend to promote the business development and main-
16 tain the economic stability of this state, provide maximum
17 opportunities for employment, encourage thrift and im-
18 prove the standard of living of the citizens of this state;
19 to cooperate and act in conjunction with other organiza-
20 tions, public or private, the objects of which are the
21 promotion and advancement of the wood products in-
22 dustry in this state; to furnish money and credit to ap-
23 proved new and existing wood industry enterprises in
24 this state, thereby establishing a source of credit not
25 otherwise available therefor. Such purposes are hereby
26 declared to be public purposes for which money of the
27 foundation may be spent and are purposes which will
28 promote the health, safety, morals, right to gainful em-
29 ployment, business opportunities and general welfare of
30 the inhabitants of the state.

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

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

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

8 (c) The term "federal agency" shall mean and include
9 the United States of America, the president of the United
10 States of America, and any department of, or corporation,
11 agency or instrumentality heretofore or hereafter cre-
12 ated, designated or established by the United States of
13 America.

14 (d) The term "government" shall mean the state and
15 federal governments, or any political subdivision, agency
16 or instrumentality, corporate or otherwise, of either of
17 them.

18 (e) The term "forest industries industrial develop-
19 ment fund" shall mean the account created by section
20 nine of this article.

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

26 (g) The term "responsible buyer" shall mean any per-
27 son, partnership, firm, company or corporation organized
28 for profit deemed by the foundation, after proper investi-
29 gation, to be financially responsible to assume all obli-
30 gations prescribed by the foundation in the operation of
31 a wood industrial or wood manufacturing enterprise.

32 (h) The term "responsible tenant" shall mean any per-
33 son, partnership, firm, company or corporation organized
34 for profit deemed by the foundation, after proper investi-
35 gation, to be financially responsible to assume all rental
36 and all other obligations prescribed by the foundation
37 in the leasing of a wood industry project and in the
38 operation of a wood industrial or wood manufacturing
39 enterprise therein or thereon.

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

Sec. 4. The West Virginia Forest Industries Industrial
2 **Foundation.**—There is hereby created a body corporate
3 and politic, constituting a nonprofit corporation and
4 government instrumentality by the name of "The West
5 Virginia Forest Industries Industrial Foundation," the
6 board of members of which shall be appointed by the gov-

7 ernor, with the advice and consent of the senate, who
8 shall represent the public, the public interest and the
9 wood products industry.

10 The members of the foundation initially appointed by
11 the governor shall continue in office for terms of one
12 to five years, respectively, from the date of their appoint-
13 ment and until their successors shall be duly appointed
14 and qualified, the term of each appointed member to
15 be designated by the governor at the time of his appoint-
16 ment; but their successors shall each be appointed for
17 a term of five years, except that any person appointed
18 to fill a vacancy shall serve only for the unexpired term,
19 and any appointed member of the foundation shall be
20 eligible for reappointment. Said members of the founda-
21 tion shall not be entitled to compensation for their serv-
22 ices as members, but shall be entitled to reimbursement
23 for all necessary expenses incurred in connection with
24 the performance of their duties as members.

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

6 (a) To cooperate with industrial development agencies
7 in their efforts to promote the expansion of wood indus-
8 trial and manufacturing activity in the state;

9 (b) To determine, whether the declared public pur-
10 pose of this article has been accomplished or will be ac-
11 complished by making a loan of money, sale or lease to a
12 responsible borrower, buyer or tenant;

13 (c) To make, upon proper application of a responsible
14 borrower, loans to such responsible borrower of moneys
15 held in the forest industries industrial development fund
16 for wood industry projects and to provide for the repay-
17 ment and redeposit of such allocations and loans and to
18 purchase shares of stock of the company of the responsi-
19 ble borrower or any notes receivable of said responsible
20 buyer;

21 (d) To have existence for a term of fifty years;

- 22 (e) To sue and be sued, implead and be impleaded,
23 complain and defend in all courts;
- 24 (f) To adopt, use and alter at will a corporate seal;
- 25 (g) To make by-laws for the management and regu-
26 lation of its affairs;
- 27 (h) To appoint officers, agents, employees and ser-
28 vants, including persons qualified to grade lumber in ac-
29 cordance with specifications of the United States govern-
30 ment;
- 31 (i) To make contracts of every name and nature and
32 to execute all instruments necessary or convenient for
33 carrying on its business;
- 34 (j) Without limitation of the foregoing, accept grants
35 from and enter into contracts or other transactions with
36 any federal or state agency, county court or municipality;
- 37 (k) To take title by foreclosure to any wood industry
38 project where such acquisition is necessary to protect
39 any loan previously made therefor by the foundation
40 and to sell, transfer and convey any such project to any
41 responsible buyer; in the event of sale, if transfer and
42 conveyance cannot be effected with reasonable prompt-
43 ness, the foundation may, in order to minimize financial
44 losses and sustain employment, lease such project to a
45 responsible tenant or tenants; the foundation shall not
46 lease such project except under the conditions and for
47 the purposes cited in this section: *Provided, however,*
48 *That the foundation shall have no power at any time*
49 *to borrow money or in any manner to pledge the credit*
50 *or taxing power of the state or any of its municipalities*
51 *or political subdivisions, nor shall any of its obligations*
52 *be deemed to be obligations of the state or any of its*
53 *political subdivisions.*

2 **Sec. 6. Loans.**—When it has been determined by the
3 foundation upon application of a responsible borrower
4 that the establishment of a particular wood industry
5 project has accomplished or will accomplish the public
6 purposes of this article, the foundation may contract to
7 loan all or part of the funds requested, provided that such
8 loans shall be made within the scope of the by-laws,
9 rules and regulations of the foundation.

Sec. 7. **Loan Application Requirements.**—Prior to the
2 loaning of any funds to a responsible borrower for a
3 wood products project, the foundation shall receive from
4 such borrower a loan application in form adopted by the
5 foundation the provisions of which shall be determined
6 by the board.

Sec. 8. **Forest Industries Industrial Development Fund.**
2 —The foundation shall set up an account in a bank au-
3 thorized to do business in the state of West Virginia to
4 be known as the forest industries industrial development
5 fund to which shall be accredited proceeds from all sub-
6 scriptions, donations, and other receipts from whatever
7 source derived.
8 The foundation shall requisition from the forest in-
9 dustries industrial development fund such amounts as
10 may be necessary to provide adequate funds for the pay-
11 ment of the administration of the purposes of this article.

Sec. 9. **Governing Body.**—The powers of the foundation
2 shall be exercised by a governing body consisting of the
3 members of the foundation acting as a board. Within
4 ninety days after this article shall become effective the
5 board shall meet and organize. The board shall elect a
6 chairman, secretary and treasurer from their number and
7 at the first meeting in each year thereafter they shall elect
8 from their number a chairman, secretary and treasurer.
9 A majority of the members shall constitute a quorum
10 of the board for the purpose of organizing the foundation
11 and conducting the business thereof. The first order of
12 business of the board shall be the drafting of the by-laws,
13 rules and regulations of the foundation and the approval
14 thereof by the office of the attorney general of the state
15 of West Virginia.

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

22 The board thereafter shall have full authority to man-

23 age the properties and business of the foundation, and
24 to prescribe, amend and repeal by-laws, rules and regu-
25 lations governing the manner in which the business of
26 the foundation may be conducted, and the powers granted
27 to it may be exercised and embodied.

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

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

Sec. 12. Limitation of Powers.—The state does hereby
2 pledge to and agree with the United States and any other
3 federal agency that in the event any federal agency shall
4 construct or loan or contribute any funds for the con-
5 struction, extension, improvement or enlargement of any
6 wood products project, or any portion thereof, the state
7 will not alter or limit the rights and powers of the foun-

8 dation in any manner which would be inconsistent with
9 the due performance of any agreements between the
10 foundation and any such federal agency, and the foun-
11 dation shall continue to have and may exercise all
12 powers herein granted, so long as the same shall be
13 necessary or desirable for the carrying out of the pur-
14 poses of this article.

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

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

Article 1. County Courts Generally.

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, 1963; 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.
2 —The prosecuting attorney of any county, with the ap-
3 proval of the county court, or of the governor, or of the
4 court of the county vested with authority to try criminal
5 offenses, or of the judge thereof in vacation, may, within
6 his discretion, offer rewards for the apprehension of per-
7 sons charged with crime, or may expend money for the

8 detection of crime. Any money expended under this
9 section shall, when approved by the prosecuting attorney,
10 be paid out of the county fund, in the same manner as
11 other county expenses are paid. The county court may
12 also offer reasonable bounties and rewards for the de-
13 struction of noxious animals, birds of prey, or weeds in
14 the county, payable out of the county treasury: *Provided,*
15 *however,* That nothing herein shall permit or give to the
16 prosecuting attorney of any county, having a population
17 according to the last official census of sixty thousand or
18 less, the right to appoint a full-time investigator or de-
19 tector of crime, or to expend any money for the investi-
20 gation of any crime committed in his county beyond the
21 actual expense of the investigation of said crime, except
22 in the county of Wyoming, the prosecuting attorney with
23 the consent of the circuit judge and the county court
24 therein, may appoint an investigator of crime to be paid
25 an annual salary of not less than one thousand two hun-
26 dred dollars nor more than twenty-four hundred dollars,
27 and actual expenses, the salary to be fixed within these
28 limits by the county court; except further in the county
29 of Wayne, the prosecuting attorney may appoint an in-
30 vestigator of crime to be paid an annual salary of not
31 less than thirty-six hundred dollars nor more than forty-
32 eight hundred dollars, and actual expenses, the salary
33 within these limits to be fixed by the county court; except
34 further in the county of Lincoln, the prosecuting attorney
35 may appoint an investigator of crime to be paid an annual
36 salary of not less than one thousand two hundred dollars
37 nor more than two thousand four hundred dollars and ac-
38 tual expenses, the salary within these limits to be fixed by
39 the prosecuting attorney; except further in the county of
40 Mason, the prosecuting attorney with the consent of the
41 county court or the circuit judge, may appoint an investi-
42 gator of crime to be paid a salary of not less than one
43 hundred dollars nor more than two thousand four hun-
44 dred dollars and actual expenses, the salary to be fixed
45 within these limits by the county court; except further
46 in the county of Marshall, the prosecuting attorney may
47 appoint an investigator of crime to be paid an annual
48 salary of not less than thirty-six hundred dollars nor

49 more than forty-eight hundred dollars, and actual ex-
50 penses, the salary within these limits to be fixed by the
51 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
2 of any county, having a population, according to the last
3 official census, of sixty-five thousand or more, together
4 with the judge of the circuit court of said county, shall
5 have authority to employ such legal counsel as they may
6 deem necessary for the purpose of advising such county
7 court touching all matters of a civil character and to con-
8 duct any litigation of a civil character to which the county
9 is a party. The county court shall also have authority to fix
10 the compensation of any counsel so employed, which shall
11 not exceed the sum of six thousand dollars annually, and
12 to pay the same out of the county treasury. Any such
13 counsel so employed may be removed at the pleasure of
14 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.

Section 15. Auditing and Payment of Claims of Justices

- 2 and Constables; Annual Statement of Sheriff of Fines and
- 3 Costs Received from Justices; Payment into State Treas-
- 4 ury.—All claims by justices and constables for fees due
- 5 them in misdemeanor proceedings in the county, insti-
- 6 tuted before them on and after the effective date of this
- 7 section, shall be audited and examined by the county
- 8 court, and if found correct and if submitted, as provided
- 9 in section fourteen, article seventeen, chapter fifty of
- 10 this code, the county court shall cause orders to be issued
- 11 therefor on the sheriff to be paid out of the general school
- 12 fund or out of the general county fund, as the court may
- 13 direct. The sheriff shall annually, during the month of
- 14 January, render under oath to the auditor a true state-
- 15 ment of the account of all fines and costs collected by
- 16 justices and transmitted to him and pay into the treasury
- 17 of the state, the net proceeds of such fines and costs as
- 18 exhibited by such account, to be appropriated as directed

19 by the fifth section of article twelve of the constitution;
20 failure so to do shall be deemed a breach of his official
21 duty. For the purposes of this section, the net proceeds
22 of such fines and costs shall be deemed to be the proceeds
23 remaining after deducting therefrom the lawful fees of
24 constables and justices of the peace; cost of auditing the
25 accounts of justices of the peace and constables by the
26 chief inspector's office; expenses for operation and main-
27 tenance of the county jail; and the costs of constructing,
28 reconstructing and renovating any jail facility used for
29 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.

8 In addition to the foregoing, every prisoner who desires
9 to and does donate blood to any person, agency, organiza-
10 tion, corporation or association as may be approved by
11 the sheriff, shall be entitled to a deduction of five days
12 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 thou-
sand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article twelve, to read
as follows:

Article 12. County Development Authorities.

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.
7. Powers generally.
8. Incurring indebtedness; rights of creditors.
9. Agreements in connection with obtaining funds.
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.
16. Provisions severable.

Section 1. Establishment Authorized; Name; Excep-

2 **tions.**—Except as hereinafter provided, the county court

3 of every county is hereby authorized to create and
4 establish a public agency to be known as a develop-
5 ment authority. The name of the authority shall con-
6 tain the words "development authority," together with
7 the designation of the county within which such authority
8 is intended to operate. Nothing in this article contained,
9 however, shall be construed as permitting the county
10 court of any county in which there exists, on the date
11 on which this article becomes effective, one or more pub-
12 lic development authorities, corporations or commissions,
13 organized and existing pursuant to an act or acts of the
14 Legislature, either local or general, and performing sub-
15 stantially the same or similar functions as the develop-
16 ment authorities herein authorized, to create and estab-
17 lish such a development authority until such time as all
18 such other public development authorities, corporations
19 and commissions cease operations in such county.

Sec. 2. Purposes.—The purposes for which the author-
2 ity is created are to promote, develop and advance the
3 business prosperity and economic welfare of the county
4 for which it is created, its citizens and its industrial com-
5 plex; to encourage and assist through loans, investments
6 or other business transactions in the locating of new
7 business and industry within the county and to rehabili-
8 tate and assist existing businesses and industries therein;
9 to stimulate and promote the expansion of all kinds of
10 business and industrial activity which will tend to ad-
11 vance business and industrial development and maintain
12 the economic stability of the county, provide maximum
13 opportunities for employment, encourage thrift, and im-
14 prove the standard of living of the citizens of the county;
15 to cooperate and act in conjunction with other organiza-
16 tions, federal, state or local, in the promotion and ad-
17 vancement of industrial, commercial, agricultural, and
18 recreational developments within the county; and to fur-
19 nish money and credit, land and industrial sites, technical
20 assistance and such other aid as may be deemed requisite
21 to approved and deserving applicants for the promotion,
22 development and conduct of all kinds of business activity
23 within the county.

Sec. 3. Management and Control Vested in Board; Ap-

2 pointment and Terms of Members; Vacancies; Removal
3 of Members.—The management and control of the au-
4 thority, its property, operations, business and affairs shall
5 be lodged in a board of not fewer than twelve or more
6 than twenty-one persons who shall be appointed by the
7 county court and be known as members of the authority.
8 One member shall be appointed by the county court to
9 represent it on the board. The city and town council of
10 each municipality located within the county shall submit
11 to the county court the name of one representative to
12 be appointed to the board. Other members shall be ap-
13 pointed by the county court and shall include representa-
14 tives of business, industry and labor. The members of
15 the commission first appointed shall serve respectively
16 for terms of one year, two years and three years, divided
17 equally or as nearly equal as possible between these
18 terms. Thereafter, members shall be appointed for terms
19 of three years each. A member may be reappointed for
20 such additional term or terms as the appointing agency
21 may deem proper. If a member resigns, is removed or
22 for any other reason his membership terminates during
23 his term of office, a successor shall be appointed by the
24 appointing agency to fill out the remainder of his term.
25 Members in office at the expiration of their respective
26 terms shall continue to serve until their successors have
27 been appointed and have qualified. The appointing agency
28 may at any time remove its appointed member of the
29 commission by an order duly entered of record or by
30 other action appropriate for such appointing agency and
31 may appoint a successor member for any member so
32 removed.

33 In addition to the appointing agencies hereinbefore
34 named, such other persons, firms, unincorporated asso-
35 ciations, and corporations, who reside, maintain offices,
36 or have economic interests, as the case may be, in the
37 county, shall be eligible to participate in and request the
38 county court to appoint members to the development
39 authority as the said authority shall by its by-laws
40 provide.

Sec. 4. Qualification of Members.—All members of the
2 board of the authority shall be citizens of the county in
3 which the authority is intended to operate, and bona fide
4 residents of the municipality by which they are appointed.

Sec. 5. Compensation of Members; Expenses.—No
2 member of the authority shall receive any compensa-
3 tion, whether in formal salary, per diem allowances or
4 otherwise, in connection with his services as such
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
8 general duties as such member.

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

Sec. 7. Powers Generally.—The development authority is
2 hereby given power and authority as follows: (1) To make
3 and adopt all necessary by-laws, rules and regulations for
4 its organization and operations not inconsistent with law;
5 (2) to elect its own officers, to appoint committees and
6 to employ and fix compensation for personnel necessary
7 for its operation; (3) to enter into contracts with any
8 person, agency, governmental department, firm or cor-
9 poration, including both public and private corporations,
10 and generally to do any and all things necessary or con-
11 venient for the purpose of promoting, developing and ad-
12 vancing the business prosperity and economic welfare
13 of the county in which it is intended to operate, its citi-
14 zens and industrial complex; (4) to delegate any author-
15 ity given to it by law to any of its officers, committees,
16 agents or employees; (5) to apply for, receive and use
17 grants-in-aid, donations and contributions from any
18 source or sources, and to accept and use bequests, de-
19 vises, gifts and donations from any person, firm or cor-
20 poration; (6) to acquire lands and hold title thereto in
21 its own name; (7) to purchase, own, hold, sell and dis-
22 pose of personal property and to sell, lease or otherwise

23 dispose of any real estate which it may own; (8) to bor-
24 row money and execute and deliver negotiable notes,
25 mortgage bonds, other bonds, debentures, and other
26 evidences of indebtedness therefor, and give such secur-
27 ity therefor as shall be requisite, including giving a
28 mortgage or deed of trust on its real or personal property
29 and facilities in connection with the issuance of mort-
30 gage bonds; (9) to raise funds by the issuance and sale
31 of revenue bonds in the manner provided by the appli-
32 cable provisions of article four-a, chapter eight of the
33 code of West Virginia, one thousand nine hundred thirty-
34 one, as amended, being chapter sixty-eight, acts of the
35 Legislature, regular session, one thousand nine hundred
36 thirty-five, as amended, it being hereby expressly pro-
37 vided that a development authority created under this
38 article is a "municipal authority" within the definition of
39 that term as used in said article four-a, chapter eight of
40 the code; and (10) to expend its funds in the execution
41 of the powers and authority herein given.

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

Sec. 9. Agreements in Connection with Obtaining Funds.—The authority may, in connection with obtain-
2 ing funds for its purposes, enter into any agreement with
3 any person, firm or corporation, including the federal
4

5 government; or any agency or subdivision thereof, con-
6 taining such provisions, covenants, terms and conditions
7 as the authority may deem advisable.

Sec. 10. Property, Bonds and Obligations of Authority

2 **Exempt From Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or any
4 subdivision thereof or to any officer or employee of the
5 state or other subdivision thereof. The property of the
6 authority shall be exempt from all local and municipal
7 taxes. Bonds, notes, debentures and other evidence of
8 indebtedness of the authority are declared to be issued
9 for a public purpose and to be public instrumentalities,
10 and shall be exempt from taxes.

Sec. 11. Participation and Appropriations Authorized.

2 —The county court is hereby authorized and empowered
3 to appoint members of the said authority and the county
4 court and any municipality therein, or any one or more
5 of them, jointly and severally, are hereby authorized and
6 empowered to contribute by appropriation from their
7 respective general funds not otherwise appropriated to
8 the cost of the operation and projects of the authority.

9 The county court of the county or municipal corpora-
10 tions therein are hereby authorized and empowered to
11 transfer and convey to the said authority property of any
12 kind heretofore acquired by said county court or munic-
13 ipal corporation for or adaptable to use in industrial and
14 economic development, such transfers or conveyances to
15 be without consideration or for such price and upon such
16 terms and conditions as the said county court or municip-
17 al corporations shall deem proper.

Sec. 12. Contributions by County Courts, Municipalities

2 **and Others; Funds and Accounts; Reports; Audits and**
3 **Examination of Books, Records and Accounts.**—Contribu-
4 tions may be made to the authority from time to time by
5 the county court of the county or any municipal corpora-
6 tion therein, and by any persons, firms or corporations
7 which shall desire to do so. All such funds and all other
8 funds received by the authority shall be deposited in such
9 bank or banks as the authority may direct and shall be
10 withdrawn therefrom in such manner as the authority

11 may direct. The authority shall keep strict account of all
12 its receipts and expenditures and shall each quarter make
13 a quarterly report to the county court and municipalities
14 containing an itemized statement of its receipts and
15 disbursements during the preceding quarter. Within sixty
16 days after the end of each fiscal year, the authority shall
17 make an annual report containing an itemized statement
18 of its receipts and disbursements for the preceding year,
19 and such annual report shall be published once a week for
20 two successive weeks in two newspapers of opposite poli-
21 tics of general circulation in the county. The books, records
22 and accounts of the authority shall be subject to audit and
23 examination by the office of the state tax commissioner of
24 West Virginia and by any other proper public official or
25 body in the manner provided by law.

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

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

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

Sec. 16. Provisions Severable.—The several sections
2 and provisions of this article are severable, and if any
3 section or provisions hereof shall be held unconstitutional,

- 4 all the remaining sections and provisions of this article
5 shall nevertheless remain valid.

C

CHAPTER 30

(Senate Bill No. 110—By Mr. Martin)

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

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.

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

18 census, as certified to the state auditor by the United
19 States director of the census last preceding the beginning
20 of the calendar year in which salary is payable.

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

25 The county court of Cabell county may pay the judge
26 of the sixth judicial circuit additional compensation, but
27 such additional compensation shall not exceed two thou-
28 sand 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.

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-

6 ment of stenographic help necessary in the discharge of
7 the duties of his office, and each judge shall be allowed
8 an amount not to exceed twenty-five dollars per month
9 for the procurement of necessary stationery, payment of
10 postage, and necessary supplies for his office. The judge
11 shall be reimbursed for the actual amounts expended by
12 him for stationery, supplies and postage. Payment for
13 stenographic help shall be made directly to the person
14 performing the stenographic work. Such amounts shall
15 be paid monthly out of the state treasury, but not until
16 the judge submits an itemized statement covering the
17 same.

18 Any county court or the board of commissioners of
19 Ohio county may pay such additional compensation for
20 stenographic help for the judge of any circuit which
21 may be necessary in the discharge of the duties of the
22 office of the judge of such circuit, or any combination
23 of counties in any circuit may contribute to such addi-
24 tional stenographic help. Such additional compensation
25 shall be paid from county funds directly to the person or
26 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, relating 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,
2 on the second Monday in January, April, July and
3 October.

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

Sec. 1-bb. Twenty-eighth Circuit.—For the county of
2 Nicholas, on the third Tuesday in February, May and
3 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
2 knows a female person, not his wife, against her will by
3 force, or if any male person over the age of sixteen years
4 carnally knows a female person of previous chaste char-

6 acter, not his wife, under that age, he shall be guilty of a
7 felony, and upon conviction, shall be punished with death
8 or with confinement in the penitentiary for life, in the
9 discretion of the court, or, if the jury add to its verdict a
10 recommendation for mercy, with confinement in the peni-
11 tentiary for not less than five nor more than twenty
12 years, or if any male person over the age of sixteen years
13 carnally knows a female person, not his wife, under the
14 age of ten years, he shall be guilty of a felony and,
15 upon conviction, shall be punished with death or with
16 confinement in the penitentiary for life, in the discretion
17 of the court, or, if the jury add to its verdict a recom-
18 mendation for mercy, with confinement in the peniten-
19 tiary for not less than five nor more than twenty years:
20 *Provided*, That this section shall not apply to any male
21 person under sixteen years of age who carnally knows a
22 female over twelve years of age with her free consent.
23 Any female person over the age of sixteen years who shall
24 carnally know any male person, not her husband, under
25 that age shall be guilty of misdemeanor, and, upon con-
26 viction, shall be confined in the county jail not less than
27 two nor more than six months.

C

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 thousand 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,

3 issue, utter or deliver to another any check, draft or
4 order for the payment of money upon any bank, or other
5 depository, and thereby obtain from such other any credit,
6 credit on account, money, goods or other property or
7 thing of value, knowing at the time of such making,
8 drawing, issuing, uttering or delivering that the maker
9 or drawer thereof has not sufficient funds in, or credit
10 with such bank or other depository for the payment of
11 such check, draft or order in full upon its presentment,
12 shall be guilty of a misdemeanor, if the amount of such
13 check, draft or order be under fifty dollars, and upon con-
14 viction thereof, shall be confined in the county jail not less
15 than five nor more than sixty days, or fined not less than
16 five dollars nor more than one hundred dollars, or both
17 fined and imprisoned; and if the amount of such check,
18 draft or order be fifty dollars or over, he shall be guilty of
19 a felony, and, upon conviction thereof, shall be confined in
20 the penitentiary not less than one nor more than five years
21 and be fined not more than one thousand dollars. The
22 making, drawing, issuing, uttering or delivering of a
23 check, draft or order upon such bank, or other depository
24 by any person knowing that there is not sufficient funds
25 or credit in such bank or depository from which the same
26 can be paid on presentment shall, as against the drawer,
27 be prima facie evidence of knowledge of insufficiency
28 of funds, or lack of credit, and of intent to defraud:
29 *Provided*, That if such check, draft or order and accrued
30 court costs be paid at any time previous to the trial or
31 examination of such person before a justice of the peace,
32 or before indictment of such person by a grand jury,
33 then no presumption of knowledge of insufficiency of
34 funds, or lack of credit, and of intent to defraud shall
35 arise.

36 The making, drawing, issuing, uttering or delivery of
37 any such check, draft or order, for or on behalf of any
38 corporation, or in its name, by any officer or agent of
39 such corporation, shall subject such officer or agent to
40 the penalties of this section to the same extent as though
41 such check, draft or order was his own personal act, when
42 such agent or officer knows that such corporation does
43 not have sufficient funds or credit with such bank or

44 other depository from which such check, draft or order
45 can legally be paid upon presentment.

46 Such person, officer or agent, shall be prosecuted in the
47 county in which he makes, draws, issues or delivers such
48 check. Justices of the peace shall have jurisdiction to
49 try any misdemeanor charge hereunder. The word
50 "credit" as used herein shall be construed to mean an
51 arrangement or understanding with the bank or deposi-
52 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 thousand 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 compensation; penalties.

Section 15. Pecuniary Interest of County and District

- 2 **Officers, Teachers and School Officials in Contracts; Ex-**
3 **ception; Offering or Giving Compensation; Penalties.—**
4 It shall be unlawful for any member of a county court,
5 overseer of the poor, district school officer, secretary of a
6 board of education, supervisor or superintendent, prin-
7 cipal or teacher of public schools, or any member of any

8 other county or district board, or for any county or
9 district officer to be or become pecuniarily interested,
10 directly or indirectly, in the proceeds of any contract or
11 service, or in furnishing any supplies in the contract
12 for, or the awarding or letting of, which as such mem-
13 ber, officer, secretary, supervisor, superintendent, princi-
14 pal, or teacher, he may have any voice, influence or con-
15 trol: *Provided, however,* That nothing herein shall be
16 construed to prevent or make unlawful the employment
17 of the spouse of any such member, officer, secretary,
18 supervisor, superintendent, principal or teacher as prin-
19 cipal or teacher in the public schools of any county,
20 nor to prevent or make unlawful the employment by any
21 joint county and circuit clerk of his or her spouse. Any
22 person or officer named who shall violate any of the
23 foregoing provisions of this section shall be guilty of a
24 misdemeanor, and, upon conviction thereof, be fined not
25 less than fifty nor more than five hundred dollars, and
26 may, in the discretion of the court, be imprisoned for a
27 period not to exceed one year. In addition to the fore-
28 going penalties, any such officer shall be removed from
29 his office and the certificate or certificates of any teacher,
30 principal, supervisor or superintendent who violates any
31 provision of this section shall, upon conviction thereof,
32 be revoked immediately. Any person, firm or corpora-
33 tion that offers or gives any compensation whatever to
34 any of the officers or persons hereinbefore named or to
35 any other person with the intent to secure the influence,
36 support or vote of such officer or person for any contract,
37 service, award or other matter as to which any county
38 or school district shall become the paymaster, shall be
39 guilty of a misdemeanor, and, upon conviction thereof,
40 be fined not less than five hundred, nor more than twenty-
41 five hundred dollars, and, at the discretion of the court,
42 such person or any member of such firm, or, if it be a cor-
43 poration, any agent or officer thereof, so offering or giving
44 such compensation, may, in addition to such fine, be im-
45 prisoned for a period not to exceed one year.

46 The provisions of this section shall not apply to publica-
47 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

3 preceding section of this article of any person for engag-
4 ing in the following activities on Sunday:

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

7 (2) Transportation of persons or property by any pres-
8 ent or future mode of public or private conveyance or
9 other activity in connection with any such mode of public
10 or private conveyance.

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

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

19 (5) Operation of grocery stores, restaurants, taverns
20 or other similar establishments engaged primarily in the
21 sale of beverages or food products for human consump-
22 tion.

23 (6) An isolated transaction in which any tangible per-
24 sonal property is sold by the owner thereof, such sale not
25 being made in the ordinary course of repeated and suc-
26 cessive transactions of like character by such owner.

27 (7) Professional and amateur sports, athletic contests
28 and events, and concessions incidentally connected there-
29 with.

30 (8) Operation of recreational, amusement, scenic, his-
31 toric and educational facilities and activities in connec-
32 tion therewith.

33 (9) Advertising the sale of property or services.

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

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

38 (12) The showing of real estate or mobile homes.

39 (13) The operation of a retail outlet for its products by
40 any industry located in West Virginia.

41 (14) The sale of farm produce.

42 (15) The sale of flowers or floral wreaths and arrange-
43 ments.

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

Sec. 27. Punishment for Violation.—Any person vio-
2 lating the provisions of section twenty-five of this article
3 shall, for the first offense, be guilty of a misdemeanor, and,
4 upon conviction thereof, shall be fined not less than one
5 hundred nor more than two hundred dollars. Any person
6 violating the provisions of section twenty-five of this
7 article shall, for the second offense occurring within one
8 year of the first offense, be guilty of a misdemeanor, and,
9 upon conviction thereof, shall be fined not less than two
10 hundred and fifty dollars nor more than five hundred
11 dollars and, in the discretion of the court, may be con-
12 fined in jail for a period not exceeding thirty days. Any
13 person violating the provisions of section twenty-five of
14 this article shall, for the third or any subsequent offense
15 occurring within two years of the previous offense, be
16 guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not less than five hundred nor more than
18 one thousand dollars, and, in the discretion of the court,
19 may be confined in jail for a period not exceeding six
20 months.

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

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

28 The penalties imposed by this section shall not be in-
29 curred by any person who conscientiously believes that
30 Saturday ought to be observed as a Sabbath, and actually
31 refrains from all secular business and labor on that day,
32 provided he does not compel an apprentice or servant or

33 employee, not of his belief, to do secular work or business
34 on a Sunday.

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

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

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

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

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

29	Name	Address	Date
30	-----	-----	-----
31	-----	-----	-----

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

34 Upon the filing of a petition for a local option election
35 in accordance with the provisions of this section, the
36 county court shall enter an order calling a local option
37 election and providing that the same shall be held at the

38 same time and as a part of the next primary or general
39 election to be held in said county. Said county court shall
40 give notice of such local option election by publication in
41 two newspapers of opposite politics and of general circu-
42 lation within said county. Said notice shall be given at
43 least once each week for two successive weeks prior to
44 the date of said election. If there is only one newspaper
45 published in said county publication of said notice therein
46 shall be sufficient.

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

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

64 "Shall the provisions of Section 25, Article 10, Chapter
65 61 of the Code of West Virginia, 1931, as amended, con-
66 tinue in effect in County of West
67 Virginia?"

68 ☐ Yes

☐ No

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

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

Sec. 29. Separability of Provisions of Article.—If any
2 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:

Article 12. Post-Mortem Examinations.

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 facilities.
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;

2 Establishment and Composition; Appointment and Terms
3 of Members; Organization and Meetings; Expenses of
4 Members.—The commission on post-mortem examinations
5 is hereby established. Such commission shall consist of
6 six members, one of whom shall be a member of the West
7 Virginia department of public safety, one of whom shall
8 be qualified to practice law before the West Virginia
9 supreme court of appeals, one of whom shall be a funeral
10 director licensed by the West Virginia board of embalm-
11 ers and funeral directors, one of whom shall be licensed
12 to practice medicine and surgery by the medical licensing
13 board of West Virginia, one of whom shall be licensed
14 to practice medicine and surgery by the West Virginia
15 board of osteopathy and one of whom shall represent the
16 public generally.

17 The governor shall make these appointments with the
18 advice and consent of the senate and in making the in-
19 itial appointments he shall appoint one member for a
20 term of one year, one for a term of two years, one for
21 a term of three years, one for a term of four years, one
22 for a term of five years and one for a term of six years.
23 Thereafter each member shall serve for a term of six
24 years or until his successor in office is duly appointed
25 and qualified.

26 Each year the commission shall elect one of its mem-
27 bers as chairman and one as vice chairman. Members
28 of the commission shall receive no compensation for their
29 services as such but they shall be repaid their actual
30 expenses incurred in their service on the commission.
31 The commission shall meet at least every six months
32 and oftener as its duties require.

Sec. 2. Rules and Regulations of Commission.—The
2 commission on post-mortem examinations may promul-
3 gate such rules and regulations not inconsistent with law
4 as it may deem necessary or appropriate to carry out effec-
5 tively the provisions of this article. Such rules and regu-
6 lations shall be for administrative purposes only and shall
7 not have the force and effect of law.

Sec. 3. Office of Medical Examinations Established;

2 **Appointment, Duties, etc., of Chief Medical Examiner;**
3 **Assistants and Employees.**—The office of medical examin-
4 ations is hereby established, to be operated under the
5 control and supervision of the commission on post-mortem
6 examinations. Such office shall be directed by a chief
7 medical examiner, who shall be appointed by the commis-
8 sion, to serve at the will and pleasure of the commission.
9 The chief medical examiner may employ such assistants,
10 pathologists, toxicologists, laboratory technicians, regional
11 medical examiners and other staff members as the com-
12 mission may specify.

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

20 The chief medical examiner shall be a physician
21 licensed to practice medicine in West Virginia, who is
22 a diplomate or eligible for certification by the American
23 board of pathology or the American osteopathic board
24 of pathology. The salary of the chief medical examiner
25 and the salaries of all assistants and employees of the
26 office of medical examinations shall be fixed by the
27 Legislature from funds appropriated for that purpose.
28 The chief medical examiner shall serve as ex officio secre-
29 tary for the commission, and he shall take such oath and
30 provide such bond as may be required by law. Within
31 the discretion of the commission, the chief medical exam-
32 iner and his assistants shall lecture or instruct in the field
33 of legal medicine and other related subjects to the West
34 Virginia University school of medicine, the department
35 of public safety, other law enforcement agencies, and
36 other interested groups.

Sec. 4. Central Office and Laboratory.—The office of
2 medical examinations shall establish and maintain a cen-
3 tral office and a laboratory having adequate professional
4 and technical personnel and medical and scientific facili-
5 ties for the performance of the duties imposed by this
6 article. The central laboratory and office shall be main-

7 tained in connection with the facilities of the West Vir-
8 ginia University school of medicine, and the commission
9 is hereby empowered to contract for the use of such
10 facilities.

Sec. 5. Certain Salaries and Expenses Paid by State.—

2 The salaries of the chief medical examiner, and the tech-
3 nical and clerical personnel in the central office and lab-
4 oratory, the expenses of maintaining the central office and
5 laboratory, the cost of pathological, bacteriological and
6 toxicological services rendered by others than the chief
7 medical examiner and his assistants, and the traveling
8 and other expenses of the members of the commission and
9 of the personnel of the central office and laboratory, shall
10 be paid by the state out of funds appropriated for that
11 purpose.

Sec. 6. Chief Medical Examiner May Obtain Addi-

2 **tional Services and Facilities.**—Subject to the approval
3 of the commission, the chief medical examiner may, in
4 order to provide facilities for investigating the cause of
5 death as authorized in this article, employ and pay quali-
6 fied pathologists and toxicologists to make autopsies and
7 such pathological and chemical studies and investigations
8 as he may deem necessary, and he may arrange for the
9 use of existing laboratory facilities for such purposes
10 whenever these are available. The commission may pre-
11 pare a list of approved pathologists available for this work
12 in the several counties or sections of the state, and in
13 such case the chief medical examiner may call upon such
14 pathologists where they are available for services in case
15 of need.

Sec. 7. Medical Examiners.—The commission shall

2 appoint for each county in the state a medical examiner
3 to serve for a term of three years and until his successor
4 is duly appointed and takes office. A medical examiner
5 shall turn over and deliver to his successor in office all of
6 the papers, reports and records of his said office. Medical
7 examiners shall be qualified physicians, licensed to prac-
8 tice medicine in West Virginia.

9 Any vacancy in the office of medical examiner shall be
10 filled by the commission, but in the event of any such

11 vacancy, temporary appointment may be made by the
12 chief medical examiner, to expire upon the appointment
13 by the commission of a medical examiner for that county.
14 One person may be appointed to serve as medical exam-
15 iner for more than one county, and the medical examiner
16 need not be a resident of the county which he serves.
17 When it becomes necessary, because of illness, absence,
18 need, or personal interest, the chief medical examiner
19 shall have the power to appoint any other qualified physi-
20 cian in the county in which a death is to be investigated,
21 to act as assistant medical examiner for such county.

Sec. 8. Certain Deaths to Be Reported to Medical Ex-
2 **aminers; Investigations and Reports; Authority of Medi-**
3 **cal Examiners to Administer Oaths, etc.; Fees; Failure to**
4 **Report Deaths.**—When any person shall die in this state
5 from violence, or by apparent suicide, or suddenly when
6 in apparent good health, or when unattended by a physi-
7 cian, or when an inmate of a public institution not hos-
8 pitalized therein for organic disease, or from some disease
9 which might constitute a threat to public health, or in any
10 suspicious, unusual or unnatural manner, the medical
11 examiner of the county in which such death occurs shall
12 be immediately notified by the physician in attendance,
13 by any law enforcement officer having knowledge of such
14 death, or by the funeral director, or by any other person
15 present. Any physician or law enforcement officer,
16 funeral director or embalmer who wilfully fails to comply
17 with this section shall be guilty of a misdemeanor, and,
18 upon conviction, shall be fined not less than fifty dollars
19 nor more than five hundred dollars. Upon receipt of such
20 notice, the medical examiner shall take charge of the dead
21 body, make inquiries regarding the cause and manner of
22 death, reduce his findings to writing, and promptly make
23 a full report thereof to the chief medical examiner on
24 forms prescribed for such purpose, retaining one copy of
25 such report for his own office records, and that of the
26 chief medical examiner and should deliver another copy
27 thereof to the prosecuting attorney of such county, and to
28 any attorney of record in any criminal proceedings or
29 civil action wherein the cause of death is an issue. The
30 medical examiner may administer oaths and affirmations,

31 and take affidavits and make examinations as to any
32 matter within the jurisdiction of his office. The medical
33 examiner shall take possession of any objects or articles
34 which, in his opinion, may be useful in establishing the
35 cause of death, and deliver them to the prosecuting at-
36 torney of such county. For each investigation under this
37 section, including the making of the required reports,
38 the medical examiner shall receive such fee as may be
39 determined by the commission on post-mortem examina-
40 tions, which fee shall be paid by the state.

Sec. 9. Permits Required for Cremation; Fee.—It shall
2 be the duty of any person cremating, or causing or request-
3 ing the cremation of, the body of any dead person who
4 died in this state, to secure a permit for such cremation
5 from the chief medical examiner, or from the medical ex-
6 aminer of the county wherein such death occurred, and
7 any such person or persons who shall wilfully fail to se-
8 cure such permit for cremation, upon conviction thereof,
9 shall be fined not less than twenty dollars and not more
10 than five hundred dollars; such permit for cremation shall
11 be acted upon by the chief medical examiner or the medi-
12 cal examiner as promptly as possible. A fee of five dollars
13 shall be paid to any medical examiner for his issuance of
14 a permit for cremation, such fee to be paid by the person
15 requesting such permit.

**Sec. 10. When Autopsies Made and by Whom Per-
formed; Reports; Record of Deaths Investigated; Copies of
Records and Information.**—If in the opinion of the chief
2 medical examiner, or of the medical examiner of the
3 county in which the death in question occurred, it is advis-
4 able and in the public interest that an autopsy be made,
5 or if an autopsy be requested by either the prosecuting
6 attorney or the judge of the circuit court or other court of
7 record having criminal jurisdiction in such county, such
8 autopsy shall be made by the chief medical examiner, by
9 a member of his staff, or by such competent pathologist
10 as the chief medical examiner shall designate and employ
11 pursuant to the provisions of this article. The chief medi-
12 cal examiner may employ any medical examiner who is a
13 qualified pathologist to make such autopsies, and the fees
14
15

16 to be paid hereunder for autopsies hereunder shall be in
17 addition to the fee provided for investigations and made
18 pursuant to section eight of this article. A full record and
19 report of the findings developed by the autopsy shall be
20 filed with the office of medical examinations by such
21 person making the autopsy.

22 Within the discretion of the chief medical examiner, or
23 of the person making such autopsy, or if requested by the
24 prosecuting attorney of such county, or of the county
25 where any injury contributing to or causing the death
26 was sustained, a copy of such report of the autopsy shall
27 be furnished such prosecuting attorney.

28 The office of medical examinations shall keep full,
29 complete, and properly indexed records of all deaths in-
30 vestigated, containing all relevant information concerning
31 the death, and the autopsy report if such be made. Any
32 prosecuting attorney or law enforcement officer may
33 secure copies of such records or information necessary
34 to him for the performance of his official duties. Copies
35 of such records or information shall be furnished, upon
36 request, to any party to whom the cause of death is a
37 material issue. Any person performing an autopsy pur-
38 suant to the authority of this section shall be empowered
39 to keep and retain, for and on behalf of the chief medical
40 examiner, any tissue from the body upon which the
41 autopsy was performed which may be necessary for fur-
42 ther study or consideration.

Sec. 11. Exhumation; When Ordered.—If, in any case
2 of sudden, violent or suspicious death, the body is buried
3 without any investigation by the chief medical examiner,
4 or by a medical examiner, it shall be the duty of the
5 medical examiner, upon being advised of such fact, to
6 notify the prosecuting attorney of such county, who shall
7 communicate the same to the judge of the circuit court or
8 other court of record having jurisdiction in such county,
9 and such judge may order that the body be exhumed and
10 an autopsy performed thereon, as provided in section ten
11 of this article, and the pertinent facts disclosed by the
12 autopsy shall be communicated to the prosecuting attor-
13 ney of such county.

Sec. 12. Facilities and Services Available to Medical

2 **Examiners.**—Pursuant to proper rules and regulations
3 as may hereafter be promulgated by the chief medical
4 examiner, the facilities of the office of medical examina-
5 tions and its laboratory, and the services of its profes-
6 sional staff, shall be made available to the medical ex-
7 aminers in their investigations under the provisions of
8 section eight of this article, and to the persons conducting
9 autopsies under the provisions of section ten of this
10 article.

Sec. 13. Reports and Records Received as Evidence;

2 **Copies.**—Reports of investigations and autopsies, and the
3 records thereof, on file in the office of medical examina-
4 tions or in the office of any medical examiner, shall be re-
5 ceived as evidence in any court or other proceeding, and
6 copies of records, photographs, laboratory findings and
7 records on file in the office of medical examinations or in
8 the office of any medical examiner, when duly attested by
9 the chief medical examiner or by the medical examiner in
10 whose office the same are filed, shall be received as evi-
11 dence in any court or other proceeding for any purpose for
12 which the original could be received without any proof
13 of the official character of the person whose name is
14 signed thereto unless objected to by counsel: *Provided,*
15 *however,* That statements of witnesses or other persons
16 and conclusions upon extraneous matters are not hereby
17 made admissible.

Sec. 14. County Coroners; Appointment, Oath, etc.;

2 **Duties; Fees.**—It shall be the duty of the county court of
3 every county, from time to time, to appoint a coroner for
4 such county, who shall hold his office during the pleasure
5 of such court, and shall take the oath of office prescribed
6 for other county officers. The county coroners shall here-
7 after perform such duties as may be assigned to them
8 under the rules and regulations promulgated by the com-
9 mission on post-mortem examinations, and shall be paid
10 such fees or amounts for such services as may be fixed by
11 the commission on post-mortem examinations.

Sec. 15. Invalidity of any Provision or Application.—

2 If any provision or application of this article is held in-

- 3 valid such invalidity shall not affect other provisions or
4 application of this article which can be given effect with-
5 out the invalid provisions or application, and to this end
6 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

- 2 Surety.**—Whenever a person arrested on a criminal
3 charge has been admitted to bail by a court or an officer
4 authorized by law so to do, for his appearance before
5 any court, judge or justice, he may, instead of entering
6 into a recognizance with surety as required by law, give
7 his personal recognizance and deposit, or cause to be
8 deposited for him, in cash, the amount of bail he is re-
9 quired to furnish, with the clerk of the circuit court of
10 the county, the justice of the peace, or with the clerk
11 of any other court in which he was admitted to bail, and
12 the clerk or the justice of the peace with whom such
13 deposit is made shall give him a certificate thereof, and
14 upon delivering said certificate to the court or officer
15 admitting him to bail, he shall be ordered to be released:
16 *Provided, however,* That in the event the court before

17 which he is to appear be the mayor's court, or the police
18 court of any municipality of this state, then in such
19 event, the deposit in cash of the amount of bail he is
20 required to furnish may be deposited with the mayor,
21 chief of police, desk sergeant, acting desk sergeant, town
22 sergeant, clerk or deputy clerk of the police court, or of
23 the mayor's court, town recorder, or such other person
24 as may be designated by the governing body of such
25 municipality by proper ordinance. A proper certificate
26 or receipt shall be furnished as evidence of such deposit,
27 and upon delivery of such certificate or receipt to the
28 court or officer admitting him to bail, he shall be ordered
29 to be released. Any such officer of any such municipality
30 authorized to receive any such deposit, in lieu of a recog-
31 nizance with surety, shall at the time of receiving such
32 deposit, advise the defendant of the place, day and hour
33 of his trial, and such certificate or receipt shall likewise
34 contain information of the place, day and hour of the
35 trial of such defendant.

36 If there be no default in the observance of the con-
37 ditions of the recognizance, then, upon the termination
38 of the proceedings, the money so deposited, shall, by
39 order of the trial court or justice, be refunded to the
40 defendant, or upon his order; but if there be any such
41 default, the same action shall be taken, and the same
42 proceedings had, with like rules governing, so far as
43 applicable, as if the recognizance had been with surety
44 instead of with cash deposit aforesaid, and the clerk or
45 other person having the money shall dispose of the same,
46 if there be a judgment of forfeiture, in the same manner
47 as other money received on account of forfeited recog-
48 nizances is required to be disposed of.

49 Each justice of the peace shall during the first week of
50 each month render under oath to the prosecuting attorney
51 of his county a true and complete statement of each cash
52 bond which he received during the preceding calendar
53 month and of each cash bond which is, on the date of the
54 report, in his possession, which statement shall also set
55 forth the name of the defendant, the amount of the bond
56 and the disposition of the same; and the failure so to do
57 shall be deemed a breach of his official duty.

58 The defendant may surrender himself at any time
59 before default in the same manner as sureties may sur-
60 render their principal, and the money so deposited shall
61 thereupon, by order of the court or officer to which or to
62 whom such surrender was made, be returned to the de-
63 fendant or on his order.

64 This section shall be deemed as authority authorizing
65 municipalities of this state and the courts thereof to
66 accept cash deposits in lieu of a recognizance with surety
67 and shall be construed to authorize and empower any
68 municipal officer, agent or official herein mentioned or
69 as may be designated by the governing body of any
70 municipality to receive cash deposit in lieu of a recog-
71 nizance with surety, and to authorize the proper official
72 of any municipality to receive the proceeds of any such
73 cash deposit after the same has been forfeited as herein
74 provided and apply the same to any proper municipal
75 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

2 **Official Time.**—The governor shall, by proclamation an-
3 nually, designate daylight saving time as the statewide
4 official time, beginning on the fourth Sunday of April and
5 terminating on the fourth Sunday in September; said time
6 shall apply to all public schools, institutions of higher
7 learning, agencies, departments and political subdivisions
8 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.
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 domestic 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 reenacted 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 Depositions as in Civil Actions; Reference to Commissioner.—
Actions for divorce, annulment and separate maintenance shall mature in the same manner as other actions provided 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 governing the taking and reading of depositions, as provided for in the rules of civil procedure, shall apply to depositions 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 commissioner, 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

9 the residence and postoffice address of the defendant, he
10 shall furnish it to the divorce commissioner at the time of
11 giving such notice; but if the residence and postoffice ad-
12 dress of the defendant are unknown to the plaintiff, at the
13 time of giving of notice, an affidavit of this fact, by the
14 plaintiff, delivered to the divorce commissioner with the
15 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

11 attendance, evening and continuation or part-time day
12 schools, school extension work, the classification of
13 schools, the issuing of certificates upon credentials, the
14 distribution and care of free textbooks by the county
15 boards of education, the general powers and duties of
16 county boards of education, and of teachers, principals,
17 supervisors and superintendents, and such other matters
18 pertaining to the public schools of the state as may seem
19 to the state board to be necessary and expedient.

20 Notwithstanding any other provision of law which may
21 be to the contrary, and notwithstanding the rule-making
22 powers given to the state board of education by this sec-
23 tion, a child shall not be permitted to enter the public
24 schools of this state in any school year, beginning with
25 the school year one thousand nine hundred sixty-three—
26 sixty-four, unless such child be six years of age prior to
27 November one of such school year. The term "public
28 schools" as used in the preceding sentence shall not be
29 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.

Section 6. Training of Teachers; Classification and Stan-

dardization 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

39 one thousand nine hundred sixty-two—sixty-three shall
40 continue to hold that distinction so long as they measure
41 up to the minimum standards for teacher preparation.
42 Nothing contained herein shall infringe upon the rights
43 granted to any institution by charter given according to
44 law previous to the adoption of this code.

45 No charter or other instrument containing the right to
46 confer degrees or to issue diplomas shall be granted by
47 the state of West Virginia to any institution, or other
48 associations or organizations, within the state until the
50 diplomas have first been approved in writing by the state
51 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.
5. Selection by county boards.

Section 4. Execution of Contracts; Bond.—When the
2 selection and approval of the multiple list have been
3 properly made, it shall be the duty of the state board to
4 execute contracts for the selected books with the pub-
5 lishers within twenty days of the approval and adoption
6 of the multiple list, prepare a list of the adopted books on
7 the multiple list and publish same, and send a copy to
8 each county superintendent not later than September first

9 of the year preceding the adoption. Such contracts for
10 adoption, except for the introductory period in making
11 the transition to a staggered adoption plan, shall run for
12 four years.

13 Each publisher awarded a textbook contract by the
14 state board shall enter into a bond payable to the state
15 of West Virginia in the penal sum of not less than two
16 thousand dollars and not more than five thousand dollars
17 to be approved by the state board of public works, such
18 bond to be executed as surety by some responsible surety
19 company authorized to carry on its business in West Vir-
20 ginia. Such contract shall be prepared by the attorney
21 general in accordance with the terms and provisions of
22 this article. Such contract shall be executed in duplicate,
23 one copy to be held by the publisher and one by the state
24 board of education.

25 Bonds required of successful publishers shall provide
26 that:

27 (a) The publisher will furnish any of the books on the
28 multiple list which he publishes for the period of the adop-
29 tion, from the date of the bond, to any county school unit,
30 or to a dealer appointed by the county, at the lowest
31 wholesale price contained in the bid, f. o. b. publisher's
32 nearest shipping point.

33 (b) The publisher will automatically reduce such
34 prices in West Virginia when prices are reduced anywhere
35 in the United States, so that no such book shall at any
36 time be sold in West Virginia at a higher wholesale price
37 than received for that book elsewhere in the United
38 States, like conditions prevailing.

39 (c) All books sold in West Virginia will be identical
40 with the official samples filed with the state board of edu-
41 cation as regards size, paper, binding, print, illustrations,
42 subject matter, and other particulars which may affect
43 the value of the books. The state board of education may,
44 however, during the period of the contract approve re-
45 vised editions of an adopted book or series, which will
46 authorize a publisher to furnish such revisions.

Sec. 5. Selection by County Boards.—Textbook pub-
2 lishers, 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
10 to the state board of education, all sample copies of books
11 may be returned to the publishers from whom obtained
12 by May first, shipping charges to be paid by the pub-
13 lisher. County boards may, if they elect to do so, retain
14 the sample books, but shall pay the publishers the low-
15 est wholesale prices for them.

16 The county board of education shall, upon recommen-
17 dation of the county superintendent with the aid of a
18 committee of teachers not to exceed five members and
19 not later than January first of any adoption year, select
20 from the state multiple list one book or series of books
21 for each subject and grade to be used as exclusive basal
22 in the county for a period of four years, except however
23 for the one thousand nine hundred fifty-seven adoptions
24 which shall be made as provided in this article.

25 After the county board of education has adopted the
26 the basal textbooks for use in the county, and not later
27 than January fifteenth, the county superintendent shall
28 send to the state board of education a complete list of
29 books adopted, properly certified by the president of the
30 county board of education, in such form as the state
31 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 Ex-

pense; and Residence of State Superintendent of Schools.

- 3 —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.

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.

Section 13. General Control of Schools; Consolidation;

2 **Transportation of Pupils.**—The boards, subject to the pro-
3 visions of this chapter and the rules and regulations of
4 the state board, shall have authority:

5 (1) To control and manage all of the schools and school
6 interests of the county, including the authority to require
7 that records be kept of all receipts and disbursements of
8 all funds collected or received by any principal, teacher,
9 student or other person in connection with any program,
10 activity or other endeavor of any nature operated or car-
11 ried on by or in the name of the school, or any organiza-
12 tion or body directly connected with the school, to audit
13 such records and to conserve such funds, which shall be
14 deemed quasi-public moneys, including securing surety
15 bonds by expenditure of board moneys;

16 (2) To establish needed high schools;

17 (3) To close any school which is unnecessary and to
18 assign the pupils thereof to other schools;

19 (4) To consolidate schools;

20 (5) To close any elementary school whose average
21 daily attendance falls below twenty pupils for two months
22 in succession, and send the pupils to other schools in the
23 district or to schools in adjoining districts. The compen-
24 sation of teachers in schools so closed shall cease;

25 (6) To provide at public expense adequate means of
26 transportation for all children of school age who live more
27 than two miles distant from school by the nearest avail-
28 able road or path; and to provide at public expense and
29 according to such regulations as the board may establish,
30 adequate means of transportation for school children par-
31 ticipating in athletic, literary or music activities: *Pro-*
32 *vided*, That in all cases the buses or other transportation

33 facilities owned by the board of education shall be driven
34 or operated only by drivers regularly employed by the
35 board of education: *Provided, however,* That buses shall
36 be used for extra curricular activities as herein provided
37 only when the insurance provided for by this section shall
38 have been elected;

39 (7) To provide at public expense for insurance against
40 the negligence of the drivers of school buses, trucks, or
41 other vehicles operated by the board; and if the transpor-
42 tation of pupils be let out to contract, then the contract
43 therefor shall provide that the contractor shall carry in-
44 surance against negligence in such an amount as the board
45 shall specify.

46 "Quasi-public funds" as used herein are defined as any
47 money received by school board employees for the benefit
48 of the school system as a result of curricular or non-
49 curricular activities.

50 The board of any district shall expend under such regu-
51 lations as it establishes for each child an amount not to
52 exceed the proportion of all school funds of the district
53 that each child would be entitled to receive if all the
54 funds were distributed equally among all the children of
55 school age in the district upon a per capita basis. No
56 changes in textbooks except those provided by general
57 law shall be made as a result of the passage of this act:
58 *Provided,* That at least one year of instruction in the his-
59 tory of the state of West Virginia shall be given prior to
60 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 section 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 tuition therefor.

Be it enacted by the Legislature of West Virginia:

That article five, 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 thirty-nine, to read as follows:

Article 5. District Board of Education.

Section

39. Establishment of summer school programs; tuition.

Section 39. Establishment of Summer School Programs;

2 **Tuition.**—Inasmuch as the present county school facilities
3 for the most part lie dormant and unused during the sum-
4 mer months, and inasmuch as there are many students
5 who are in need of remedial instruction and others who
6 desire accelerated instruction, it is the purpose of this
7 section to provide for the establishment of a summer
8 school program which program is to be separate and apart
9 from the full school term as established by each county.

10 The board of education of any county shall have author-
11 ity to establish a summer school program utilizing the
12 public school facilities and to charge tuition for students
13 who attend such summer school, such tuitions not to ex-
14 ceed in any case the actual cost of operation of such sum-
15 mer school program: *Provided*, That any deserving pupil
16 whose parents, in the judgment of the board, are unable
17 to pay such tuition, may attend without charge. The coun-
18 ty board of education shall have the authority to deter-
19 mine the term and curriculum of such summer schools
20 based upon the particular needs of the individual county.
21 The curriculum may include, but is not limited to, reme-
22 dial instruction, accelerated instruction, and the teaching
23 of manual arts. The term of such summer school program
24 may not be established in such a manner as to interfere
25 with the regular school term.

26 The county boards of education may employ as teach-
27 ers for this summer school program any certified teacher.

28 Certified teachers employed by the county board of edu-
29 cation to teach in the summer school program shall be
30 paid an amount to be determined by the board and shall
31 enter into a contract of employment in such form as is
32 prescribed by the county board of education.

33 Any funds accruing from such tuitions shall be credited
34 to a special fund of the county board of education which
35 is hereby established, which fund is to be used solely to
36 perpetuate and maintain the summer school program. The
37 funds shall be reported each year as of June thirtieth in
38 the manner required for other financial reports of the
39 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.

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.

7 Before entering upon their duties, all teachers shall
8 execute a contract with their boards of education, which
9 contract shall state the salary to be paid and shall be in
10 the form prescribed by the state superintendent of
11 schools. Every such contract shall be signed by the
12 teacher and by the president and secretary of the board
13 of education, and when so signed shall be filed, together
14 with the certificate of the teacher, by the secretary of
15 the office of the board.

16 A teacher's contract, under this section, shall be for a
17 term of not less than one nor more than three years; and
18 if, after three years of such employment, the teacher who
19 holds a professional certificate, based on at least a bache-
20 lor's degree, has met the qualifications for the same, and
21 the board of education enter into a new contract of em-
22 ployment, it shall be a continuing contract: *Provided,*
23 *however,* That any teacher holding a valid certificate with
24 less than a bachelor's degree who is employed in a county
25 beyond the said three-year probationary period shall upon
26 qualifying for said professional certificate based upon a
27 bachelor's degree, if reemployed, be granted continuing
28 contract status. The continuing contract of any teacher
29 shall remain in full force and effect except as modified by
30 mutual consent of the school board and the teacher, un-
31 less and until terminated with written notice, stating
32 cause or causes, to the teacher, by a majority vote of
33 the full membership of the board before April first of the
34 then current year, or by written resignation of the
35 teacher before that date. Such termination shall take
36 effect at the close of the school year in which the con-
37 tract is so terminated: *Provided, however,* That the con-
38 tract may be terminated at any time by mutual consent
39 of the school board and the teacher, and that this section
40 shall not affect the powers of the school board to suspend
41 or dismiss a principal or teacher pursuant to section six
42 of this article: *Provided further,* That a continuing con-
43 tract for any teacher holding a certificate valid for more
44 than one year and in full force and effect during the
45 school year one thousand nine hundred sixty-two and
46 one thousand nine hundred sixty-three shall remain in
47 full force and effect: *And provided further,* That a con-

tinuing 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;

30 (6) For teachers who have received a master's degree
31 in an institution qualified and approved to do graduate
32 work, or have completed the requirements therefor, hold-
33 ing the collegiate elementary, first-class high school, or
34 other certificate of equal rank, not less than three hundred
35 ninety dollars a month; and

36 (7) For teachers who have received a doctor's degree
37 from an institution of university rank qualified and
38 approved to confer the doctor's degree, holding the colle-
39 giate elementary, first-class high school, or other certifi-
40 cate of equal rank, at least three hundred ninety-five
41 dollars a month.

42 Basic salaries shall be uniform throughout the state
43 for teachers holding equivalent credentials.

44 A teacher teaching his first regular term of school shall
45 be paid the basic salary in accordance with his certifica-
46 tion classification.

47 Upon the change of the certification classification of a
48 teacher, the basic salary of that teacher shall be that of
49 the new certification classification.

50 (B) Advanced salaries shall mean any salaries greater
51 than basic salaries. Advanced salary increments shall be
52 the increments added to the basic salaries of teachers
53 for experience and for such other services as recognized
54 herein. Salary increments for teaching experience shall
55 be those set forth in the following schedule:

56 (1) For teachers who hold the short course or certifi-
57 cate of lower grade, the rate of salary shall be the basic
58 salary plus at least six dollars a month for the second
59 term, and the basic salary plus an additional annual
60 increase of at least six dollars a month for each year
61 taught thereafter to and including the seventh year;

62 (2) For teachers who hold the third-class elementary
63 (standard normal) certificate, the rate of salary shall be
64 the basic salary plus at least six dollars a month for the
65 second term; and the basic salary plus an additional an-
66 nual increase of at least six dollars a month for each year
67 taught thereafter to and including the ninth year;

68 (3) For teachers who hold the second-class collegiate
69 certificate, the rate of salary shall be the basic salary plus

70 at least six dollars a month for the second term; and
71 the basic salary plus an additional annual increase of at
72 least six dollars a month for each year taught thereafter
73 to and including the eleventh year;

74 (4) For teachers who hold the collegiate elementary,
75 first-class high school, or other certificates of equal rank,
76 based on a bachelor's degree earned in an approved in-
77 stitution, the rate of salary shall be the basic salary plus
78 at least six dollars a month for the second term; and
79 the basic salary plus an additional annual increase of at
80 least six dollars a month for each year taught thereafter
81 to and including the fourteenth year; and

82 (5) For teachers who have received a master's de-
83 gree in an institution qualified and approved to do gradu-
84 ate work, holding a collegiate elementary certificate,
85 first-class high school, or other certificate of equal rank,
86 the rate of salary shall be the basic salary plus at least
87 six dollars a month for the second term; and the basic
88 salary plus an additional annual increase of at least six
89 dollars a month for each year taught thereafter to and
90 including the seventeenth year.

91 Boards of education may fix higher salaries for high
92 school and elementary school principals, teachers of one-
93 teacher schools, and any teacher assigned to or employed
94 for duties other than or in addition to his regular in-
95 structional duties, by the addition of further increments
96 consistent with the duties performed. Such additional
97 salary increments shall conform to the regulations of the
98 state board of education.

99 Advanced salaries shall be uniform throughout the
100 district for teachers holding similar credentials and in the
101 same classification as to experience and duties.

102 Upon the change of the certification classification of the
103 teacher, his advanced salary increments as provided in
104 this section shall be added to his new basic salary created
105 by the change in the certification classification.

106 In determining the number of regular terms of school
107 a teacher has taught, boards of education shall credit as
108 regular teaching, service in armed forces of the United
109 States in the world wars, and active work in educational

110 positions other than teaching, but no teacher shall be
111 given credit for teaching more than one regular term in
112 any school year.

113 Any board of education failing to comply with the
114 provisions of this section may be compelled to do so by
115 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.

Section 10. Enumeration of Children of School Age.—

2 A school census of youths from birth through twenty years
3 of age as of September first of the year in which taken,
4 or of such ages as otherwise may locally be determined
5 and of mentally and physically handicapped persons of
6 all ages, may be made during the first month of any school
7 term as directed by a county board of education. The
8 school census may be taken by the teachers or as otherwise
9 directed by the county board of education. Teachers tak-
10 ing the school census shall be entitled to use school hours
11 not to exceed a total of one school day, and shall be com-
12 pensated for such time as for time taught.

13 The state superintendent of schools shall have authority
14 to require a state-wide enumeration by the counties at
15 such times as he may direct and may establish the pro-
16 cedures therefor.

17 In order that the census record may be as currently
18 accurate as possible, and a reliable source of reference
19 through the school year, it shall be the duty of each county
20 superintendent of schools to establish and administer
21 through the office of the county director of school attend-
22 ance a system of cumulative census records which may
23 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 quali-
fications 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; cer-
tification of aliens.

**Section 15. Teacher Certification; General Qualifica-
tions and Requirements; Certification of Aliens.**—No per-
son employed as a teacher in the free schools of this state
shall receive for such services any part of any free school

5 funds who does not hold a valid teaching certificate licens-
6 ing him to teach in the public schools for the period of
7 his employment and showing the grade levels and sub-
8 ject areas in which he is qualified to teach: *Provided, That*
9 if a teacher is employed in good faith on the anticipation
10 that he is eligible for a certificate and it is later deter-
11 mined that he was not eligible, the state superintendent
12 of schools may authorize payment by the county board
13 of education to the teacher for a time not exceeding one
14 school month. All certificates shall expire on June thir-
15 tieth of the last year of their validity irrespective of the
16 date of issuance. Under no circumstances shall a certifi-
17 cate to teach be granted to any person who is not a citizen
18 of the United States, is not of good moral character and
19 physically, mentally and emotionally qualified to perform
20 the duties of a teacher and who has not attained the age
21 of eighteen years on or before the first day of October of
22 the year in which his certificate is issued: *Provided, how-*
23 *ever, That* an exchange teacher from a foreign country
24 shall not be required to be a citizen of the United States,
25 and a person who is not a citizen of the United States may
26 be granted a certificate to teach a foreign language.

27 The term "teacher" as used in this section is intended
28 to include the classroom teacher, school librarian, school
29 principal, school superintendent, assistant superintendent,
30 supervisor of instruction and other persons employed in
31 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
2 each month every member of the retirement system shall
3 contribute four and one-half per cent of his monthly
4 earnable compensation to the retirement board: *Provided,*
5 That in no case shall the contribution of any member
6 exceed three hundred thirty-eight dollars in any fiscal
7 year: *Provided, however,* That in no case shall the con-
8 tribution of any member employed by the board of gov-
9 ernors of West Virginia University, or by the West Vir-
10 ginia board of education at an institution of higher educa-
11 tion under its control, exceed two hundred sixteen dollars
12 in any fiscal year.

13 Such contributions shall be deemed to include the an-
14 nual supplementary fee of the contributor, determined as
15 hereinafter provided, which fee shall be used to help
16 finance the additional retirement benefit provided for in
17 subsection (e), section twenty-six of this article. An-
18 nually, the contributions of each member, minus his sup-
19 plementary fee, shall be credited to his account in the
20 teachers' accumulation fund. The contributions shall be
21 deducted from the salaries of the members as herein pre-
22 scribed, and every member shall be deemed to have given
23 his consent to such deductions. No deductions, however,
24 shall be made from the earnable compensation of any
25 teacher who retired because of age or service, and then
26 resumed service as a teacher.

27 The retirement board shall each year determine to the
28 nearest dollar the amount of the supplementary fee to be
29 paid by each member, so that the sum of such fees paid

30 by all members shall be sufficient to defray one-half of
31 the cost of the retirement benefit provided for in subsec-
32 tion (e), section twenty-six of this article. The amount
33 so fixed shall not exceed twenty dollars, nor shall it in
34 any case exceed one-sixth of the annual contribution of
35 the member. All supplementary fees shall be deposited
36 in the benefit fund.

37 The aggregate of employer contributions, due and pay-
38 able under this article, shall equal annually the total de-
39 ductions from the earnable compensation of members
40 required by this section. All employer contributions shall
41 be credited to the employers' accumulation fund, from
42 which fund an amount equalling annually the supple-
43 mentary fees of members shall be transferred to the
44 benefit fund.

45 Payment by an employer to a member of the sum speci-
46 fied in the employment contract minus the amount of the
47 employee's deductions shall be deemed to be a full dis-
48 charge of the employer's contractual obligation as to
49 earnable compensation.

50 Each contributor shall file with the retirement board
51 or with the employer to be forwarded to the retirement
52 board an enrollment form showing his date of birth and
53 other data needed by the retirement board. Upon notice
54 from the retirement board to the employer that a con-
55 tributor has failed to file such forms as prescribed, the
56 employer shall withhold the salary of the contributor
57 until the needed form is filed with the retirement board.

Sec. 17. Statement and Computation of Teachers' Serv-
2 **ice.**—Under such rules and regulations as the retirement
3 board may adopt, each teacher shall file a detailed state-
4 ment of his length of service as a teacher for which he
5 claims credit. The retirement board shall determine what
6 part of a year is the equivalent of a year of service. In
7 computing such service, however, it shall credit no period
8 of more than a month's duration during which a member
9 was absent without pay, nor shall it credit for more than
10 one year service performed in any calendar year.

11 For the purpose of this article, the retirement board
12 shall grant prior service credit to new entrants and other

13 members of the retirement system for service in any of
14 the armed forces of the United States in any period of
15 national emergency within which a federal selective
16 service act was in effect. For purposes of this section,
17 "armed forces" shall include women's army corps,
18 women's appointed volunteers for emergency service,
19 army nurse corps, spars, women's reserve, and other similar
20 units officially parts of the military service of the
21 United States. Such military service shall be deemed
22 equivalent to public school teaching, and the salary equivalent
23 for each year of such service shall be the actual
24 salary of the member as a teacher for his first year of
25 teaching after discharge from military service. Prior
26 service credit for military service shall not exceed ten
27 years for any one member, nor shall it exceed twenty-
28 five per cent of total service at the time of retirement.

29 For service as a teacher in the employment of the federal
30 government, or a state or territory of the United
31 States, or a governmental subdivision of such state or
32 territory the retirement board shall grant credit to the
33 same extent and on the same conditions, if any, as a retirement
34 system established for teachers in such employment
35 would grant credit for service as a teacher in the
36 public schools of West Virginia.

37 No member shall be deemed absent from service as a
38 teacher while serving as a member of the Legislature of
39 the state of West Virginia during any duly constituted
40 session of that body.

41 If a member is not eligible for prior service credit or
42 pension as provided in this article, then his prior service
43 shall not be deemed a part of his total service.

44 A member who withdrew from membership shall be
45 permitted to regain his former membership rights as
46 specified in section thirteen of this article only in case he
47 has served two years since his last withdrawal.

48 Subject to the above provisions, the board shall verify
49 as soon as practicable, the statements of service submitted.
50 The retirement board shall issue prior service
51 certificates to all persons eligible therefor under the provisions
52 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.

5 Annuities approved by the board after the effective date
6 of this act shall be computed as provided herein.

7 Upon establishment of eligibility for a retirement
8 allowance, a member shall be granted an annuity which
9 shall be the sum of either Plan A or Plan B, whichever
10 provides the larger annuity.

11 Plan A shall be computed as follows:

12 (a) The actuarial equivalent of the contributions and
13 deposits of the member in his individual account up to
14 the time of his retirement, with regular interest.

15 (b) The actuarial equivalent of the contributions of
16 the employer up to the time of the member's retirement,
17 which shall equal the sum in subsection (a) of this sec-
18 tion minus deposits with regular interest on such de-
19 posits.

20 (c) Where prior service credit has been granted, an
21 allowance of one and one-half per cent of the member's
22 average final salary multiplied by the number of years of
23 prior service credited to him.

24 (d) The actuarial equivalent of the amounts that
25 would have accumulated under subsections (a) and (b)
26 of this section, if the member had contributed to his in-
27 dividual account until he was fifty years old, at the an-
28 nual rate of his past actual contributions, but this sub-
29 section shall apply only as additional income to members
30 who qualify for disability retirement before they are
31 fifty years old.

32 (e) Twelve dollars multiplied by his total service
33 credit as a teacher.

34 (f) The member shall receive in addition to the allow-
35 ances under subsections (c) and (d) an amount equal to
36 six dollars multiplied by his total service credit: *Pro-*
37 *vided*, That the maximum allowance under this subsec-
38 tion shall be one hundred and ninety-two dollars: *Pro-*
39 *vided, however*, That this subsection shall be effective on
40 and after July first, one thousand nine hundred fifty
41 seven.

42 (g) Twelve dollars multiplied by the member's total
43 service credit as a teacher.

44 For the purposes of subsection (c) in Plan A:

45 (1) An allowance for prior service shall in no case
46 exceed three-fifths of the member's average final salary.

47 (2) Average final salary for this purpose shall in no
48 case exceed two thousand five hundred dollars, nor shall
49 it be less than twelve hundred dollars.

50 Plan B shall be computed as follows:

51 (a) One per cent of the member's average salary multi-
52 plied by his total service credit as a teacher. In this
53 paragraph "average salary" shall mean the average of
54 the highest annual salaries received by the member dur-
55 ing any period of five consecutive years contained within
56 his last ten years of total service credit: *Provided further*,
57 That the highest annual salary used in this calculation
58 shall be seven thousand five hundred dollars: *And pro-*
59 *vided further*, That the highest annual salary used in this
60 calculation for members employed by the board of gov-
61 ernors of West Virginia University, or by the West Vir-
62 ginia board of education at institutions of higher educa-
63 tion under its control, shall be four thousand eight hun-
64 dred dollars.

65 (b) The actuarial equivalent of the deposits of the
66 member in his individual account up to the time of his
67 retirement, with regular interest.

68 The disability annuities of all teachers retired for dis-
69 ability shall be based upon a disability table prepared by
70 a competent actuary approved by the retirement board.

71 Upon the death of an annuitant who qualified for an
72 annuity as a surviving spouse or because of permanent
73 disability, the estate of the deceased or beneficiary desig-
74 nated for such purpose, shall be paid the difference, if
75 any, between the member's contributions with regular
76 interest thereon, and the sum of the annuity payments.

77 All annuities shall be paid in twelve monthly payments.
78 In computing such monthly payments, fractions of a
79 cent shall be deemed a cent. Such monthly payments
80 shall cease with the payment for the month within which
81 the beneficiary dies, and shall begin with the payment
82 for the month succeeding the month within which the
83 annuitant became eligible under this article for the an-

84 nuity granted; in no case, however, shall an annuitant
85 receive more than four monthly payments which are ret-
86 roactive after the board receives his application for an-
87 nuity.

88 In case the retirement board receives data affecting the
89 approved annuity of a retired teacher, the annuity shall
90 be changed in accordance with such data, the change
91 being effective with the payment for the month within
92 which the board received the new data.

93 An annuity application shall be cancelled immediately
94 if the applicant dies before the retirement board approves
95 such application.

96 Any person who has attained the age of sixty-five and
97 who has served at least twenty-five years as a teacher
98 prior to July one, one thousand nine hundred forty-one,
99 shall be eligible for prior service credit and for prior
100 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 Annuitants.—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

8 correct attitudes of parents and pupils which result in
9 absences from school even though not clearly in violation
10 of law.

11 If it is found that absence from school is in violation
12 of law, the attendance director or assistant, in the case
13 of first offense that school year, shall serve written notice
14 to the parent, guardian, or custodian of such child that
15 the attendance of such child at school is required; and
16 if the parent, guardian, or custodian does not comply
17 with the provisions of this article, then the attendance
18 director or assistant shall make complaint against such
19 parent, guardian or custodian before a justice of the peace
20 of the county: *Provided*, That for a subsequent offense
21 in any school year no such notice shall be required. The
22 summons to appear before the justice of the peace may
23 be served upon the parent, guardian, or custodian by the
24 county attendance director or assistant or by any officer
25 qualified to serve such summons.

26 When any doubt exists as to the age of a child absent
27 from school, the attendance director shall have authority
28 to require a properly attested birth certificate or an affi-
29 davit from the parent, guardian or custodian of such
30 child, stating age of such child. The county attendance
31 director or assistant, shall in the performance of his
32 duties, have authority to take without warrant any child
33 absent from school in violation of the provisions of this
34 article and to place such child in the school in which
35 such child is or should be enrolled.

36 The county attendance director shall devote full time
37 to his duties as a school official and shall be responsible
38 under direction of the county superintendent for the
39 efficient administration of school attendance in his
40 county. In addition to those duties directly relating to
41 the administration of attendance, the county attendance
42 director and assistant directors shall also perform the
43 following duties:

44 (a) Assist in directing the taking of the school census
45 to see that it is taken at the time and in the manner
46 provided by law;

47 (b) Advise with principals and teachers on the com-

48 parison of school census and enrollment for the detection
49 of possible non-enrollees;

50 (c) Cooperate with existing state and federal agencies
51 charged with enforcement of child labor laws;

52 (d) Prepare a report for submission by the county
53 superintendent to the state superintendent of schools on
54 school attendance, at such times and in such detail as
55 may be required; also, file with the county superintendent
56 and county board of education at the close of each month
57 a report showing activities of the school attendance office
58 and the status of attendance in the county at the time;

59 (e) Promote attendance in the county by the com-
60 pilation of data for schools and by furnishing suggestions
61 and recommendations for publication through school
62 bulletins and the press, or for such purposes as the county
63 superintendent may direct;

64 (f) Participate in school functions such as parent-
65 teacher associations, civic meetings, club meetings, and
66 teachers' conferences; and

67 (g) Assist in such other ways as the county super-
68 intendent 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:

Article 8. Compulsory School Attendance.**Section**

10. Compulsory education of deaf and blind; offenses; penalties; enumeration of deaf and blind.

Section 10. Compulsory Education of Deaf and Blind;**2 Offenses; Penalties; Enumeration of Deaf and Blind.—**

3 Every parent, guardian or other person having control
4 of any mentally normal minor over six years of age, who
5 is defective in sight or hearing to the extent that he
6 cannot be benefited by instruction in the public schools,
7 shall be required to send such minor to the West Vir-
8 ginia schools for the deaf and the blind at Romney. Such
9 minor shall continue to attend such schools for a term
10 of at least thirty-six weeks each year until he has com-
11 pleted the course of instruction prescribed for such schools
12 by the state board of education, or has been discharged
13 by the superintendent of said school.

14 Any such deaf or blind minor shall be exempt from
15 attendance at said schools for any of the following rea-
16 sons: (a) Instruction by a private tutor or in another
17 school approved by the state board of education for a
18 time equal to that required by the first paragraph of this
19 section; (b) physical incapacity for school work; (c)
20 any other reason deemed good and sufficient by the su-
21 perintendent of such schools, with the approval of the
22 state board of education.

23 Any parent, guardian or other persons in charge of such
24 minor or minors who fails or refuses to comply with the
25 requirements of this section shall be guilty of a misde-
26 meanor, and, upon conviction thereof, shall be fined not
27 less than ten nor more than thirty dollars for each offense.
28 Failure for the period of one week within the school year
29 to send such minor to school shall constitute an offense:
30 *Provided*, That the time necessary for such minor to travel
31 from his home to the school shall not be counted as time
32 absent from school.

33 Any person who induces or attempts to induce such
34 blind or deaf minor to absent himself from school, or who
35 employs or harbors such minor unlawfully, while said
36 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 Virginia, 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 hundred 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.

4 "County board" means a county board of education.

5 "Teacher" means any person, except the county super-
6 intendent and assistant superintendents, who is required
7 to hold an authorized teaching certificate for employment
8 in any county of the state, and who devotes the majority
9 of his school time to the instruction of school age children.

10 "Standard term" means nine months of school.

11 "Employment term" means nine and one-half months of
12 employment.

13 "Average annual foundation salary for teachers," based
14 on the standard term, means the sum of the basic founda-
15 tion salary, which for this purpose shall be determined
16 on the same certification classification as provided in
17 item (A), section two, article seven of this chapter, and
18 in accordance with the numerical subsections of said
19 section at the following rate of each class under said
20 numerical subsections: (1) \$165, (2) \$175, (3) \$200, (4)
21 \$210, (5) \$260, (6) \$285, (7) \$290; plus the advanced-
22 salary experience increment of six dollars per month
23 times the years of allowable experience under each
24 classification in section two of said article seven, for
25 all full time teachers employed in a county at the end of
26 the third month of the current year divided by the total
27 number of such teachers.

28 "Net enrollment" means the number of pupils enrolled
29 in grades one to twelve, inclusive, of the public schools
30 of the county at the close of the third month of the cur-
31 rent school year, but no pupil shall be counted more
32 than once by reason of transfer within the county or from
33 another county within the state, and no pupil shall be
34 counted who attends school in this state from another
35 state.

36 "High school" means a school consisting only of grades
37 above the sixth, organized for instruction by departments,
38 or the seventh and eighth grades of a school in which
39 these grades are organized for instruction by departments
40 and which has at least four teachers in these grades.

41 "Levies for general current expense purposes" means
42 on each hundred dollars of valuation, nineteen and six-
43 tenths cents on class one property, thirty-nine and two-

44 tenths cents on class two property, and seventy-eight and
 45 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:

5 From data for the third month of the current school
 6 year, the state board shall determine for each county
 7 the average number of pupils transported per mile of
 8 bus route one way in county-owned buses and in con-
 9 tract buses by dividing the total number of pupils sched-
 10 uled to ride such buses on regularly scheduled routes
 11 each day by the total length one way of all regularly
 12 scheduled bus routes traveled by such buses. The allow-
 13 ance of the county for such transportation shall be the
 14 average number of pupils transported per mile of bus
 15 route one way, so determined, multiplied by the annual
 16 allowance per pupil provided for in the following scale:

17 TRANSPORTATION ALLOWANCE SCALE

Number of Pupils Transported Per Mile of Bus Route One Way	Annual Allowance Per Pupil	Number of Pupils Transported Per Mile of Bus Route One Way	Annual Allowance Per Pupil
2.59—and less	\$44.05	4.60—4.69	\$28.25
2.60—2.69	42.58	4.70—4.79	27.85
2.70—2.79	41.30	4.80—4.89	27.40
2.80—2.89	40.10	4.90—4.99	27.10
2.90—2.99	39.00	5.00—5.09	26.85
3.00—3.09	38.05	5.10—5.19	26.45
3.10—3.19	37.10	5.20—5.29	26.10
3.20—3.29	36.20	5.30—5.39	25.80
3.30—3.39	35.35	5.40—5.49	25.50
3.40—3.49	34.50	5.50—5.59	25.15
3.50—3.59	33.85	5.60—5.69	24.85
3.60—3.69	33.20	5.70—5.79	24.50
3.70—3.79	32.55	5.80—5.89	24.20
3.80—3.89	31.90	5.90—5.99	23.85
3.90—3.99	31.40	6.00—6.09	23.55
4.00—4.09	30.85	6.10—6.19	23.20
4.10—4.19	30.40	6.20—6.29	22.90
4.20—4.29	30.00	6.30—6.39	22.55
4.30—4.39	29.55	6.40—6.49	22.25
4.40—4.49	29.15	6.50 and up	21.95
4.50—4.59	28.70		

18 Whenever it appears to the satisfaction of the board
19 that average transportation costs per pupil in the state
20 have increased or decreased five per cent or more as com-
21 pared with the scale of annual transportation allowance
22 per pupil used in computing the foundation program for
23 the previous year, the board may recompute the scale to
24 determine justifiable increases or decreases in such
25 allowances.

26 The board shall determine the state average annual
27 cost per pupil paid during the previous school year by all
28 county boards of education for public utility transporta-
29 tion and for aid in lieu of transportation. On the basis
30 of data for the third month of the current school year,
31 each county shall then be allowed the sum of the amounts
32 computed by multiplying the number of pupils reported
33 by the county in each such category by the state average
34 annual cost per pupil in that category.

35 The sum of the amounts allowed each county under the
36 provisions of this section shall be the total transportation
37 allowance for the county in its foundation school pro-
38 gram for the next fiscal year.

Sec. 12. Supplemental Instructional Support.—The pro-
2 visions of this section are designed to strengthen the
3 instructional program by attracting to and keeping quali-
4 fied teachers in the public school classrooms, by extend-
5 ing the employment term of teachers so as to provide
6 time for more class instruction, time for inservice im-
7 provement in teachers' competency, and time for teacher-
8 pupil-parent conferences.

9 Beginning with the fiscal year one thousand nine
10 hundred sixty-three, the allocation of state funds for
11 supplemental instructional support shall be an amount
12 required to pay the difference between the foundation
13 salary as defined in section two of this article and the
14 minimum basic and advanced salary as defined in section
15 two, article seven of this chapter for each teacher em-
16 ployed within the county for the applicable employment
17 term.

CHAPTER 58

(House Bill No. 499—By Mr. Speaker, Mr. Singleton)

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

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.

Section 4. Computation of Local Share; Appraisal and

- 2 **Assessment of Property.**—On the basis of the most recent
3 survey of property valuations in the state, completed as
4 to all classes of property in all counties determined by the
5 tax commissioner under present or former provisions of
6 this article, the state board shall for each county compute
7 by application of the levies for general current expense
8 purposes, as defined in section two of this article, the
9 amount of revenue which such levies would produce if
10 levied upon one hundred per cent of the appraised value
11 of each of the several classes of property contained in the
12 report or revised report of such value, made to it by the
13 tax commissioner as follows: (1) The state board shall
14 first take ninety-seven and one-half per cent of the amount
15 ascertained by applying these rates to the total assessed
16 public utility valuation in each classification of property
17 in the county. (2) The state board shall then apply these
18 rates to the appraised value of other property in each
19 classification in the county as determined by the tax com-
20 missioner and shall deduct therefrom five per cent as an
21 allowance for the usual losses in collections due to dis-

22 counts, exonerations, delinquencies and the like. Fifty
23 per cent of the amount so determined shall be added to
24 the ninety-seven and one-half per cent of public utility
25 taxes computed as provided above and this total shall be
26 the local share of the particular county.

27 The tax commissioner shall make or cause to be made
28 an appraisal in the several counties of the state of all non-
29 utility real property and of all nonutility personal prop-
30 erty which shall be based upon true and actual value as
31 set forth in article three, chapter eleven of this code. In
32 determining the value of personal property—other than
33 all machinery, equipment, furniture and fixtures of any
34 industrial plant, mine, quarry or installation and of any
35 commercial, industrial, or professional establishment—the
36 tax commissioner shall prescribe accepted methods of de-
37 termining such values. The tax commissioner shall in
38 accordance with such methods determine the value of
39 such property.

40 For the purpose of appraising commercial, industrial,
41 and professional properties the tax commissioner after
42 consultation with the county court shall employ a compe-
43 tent property appraisal firm or firms which appraisals
44 shall be under his supervision and direction.

45 In making or causing to be made such appraisal, the tax
46 commissioner shall employ such assistants as available
47 appropriations will permit and shall prescribe and use
48 such accepted methods and procedures for checking prop-
49 erty values and determining the amount of property in
50 the several classes of property provided by law as are
51 customarily employed for appraisal purposes.

52 Such appraisal of all said property in the several coun-
53 ties shall be completed prior to the first day of July, one
54 thousand nine hundred sixty-six. Each year after the
55 completion of the property appraisal in a county the tax
56 commissioner shall maintain the appraisal by making or
57 causing to be made such surveys, examinations, audits,
58 maps and investigations of the value of the several classes
59 of property in each county which should be listed and
60 taxed under the several classifications, and shall deter-
61 mine the appraised value thereof. On the basis of infor-

62 mation so ascertained, the tax commissioner shall an-
63 nually revise his reports to the Legislature and to the state
64 board concerning such appraisals, such reports to be made
65 not later than the first day of January of each year.

66 As information from such appraisal of property in a
67 county under the provisions of this section becomes avail-
68 able for a district, municipality and county, the tax com-
69 missioner shall notify the county court and the assessor
70 of said county that such information is available and shall
71 make available to said county court and assessor all data,
72 records, and reports or other information relating to said
73 work, along with a list of any properties in said district,
74 municipality, and county which are entered on the assess-
75 ment rolls but for which no appraisal has been made, a
76 list of any properties which were appraised but which can-
77 not be found on the assessment rolls and a list of all prop-
78 erties carried on the assessment rolls which have not been
79 identified on the maps. Said lists shall set forth the name
80 of the owner and a description of the property and the rea-
81 son, if known, for its failure to have been entered on the
82 assessment rolls or to have been appraised or to have been
83 identified on the map, as the case may be.

84 As such appraisal of property in a county, under this
85 section, is completed to the extent that a total valuation
86 for each class of property can be determined, such ap-
87 praisal shall be delivered to the assessor and the county
88 court, and in each assessment year commencing after such
89 appraisal is so delivered and received, the county assessor
90 and the county court, sitting as a board of equalization and
91 review, shall use such appraised valuations as a basis for
92 determining the true and actual value for assessment pur-
93 poses of the several classes of property. The total assessed
94 valuation in each of the four classes of property shall be
95 not less than fifty per cent nor more than one hundred
96 per cent of the appraised valuation of each said class of
97 property: *Provided*, That, (1) until the completion of
98 the appraisal herein provided for in all fifty-five counties
99 of the state; and (2) upon completion of the appraisal of
100 any county and delivery of the appraised valuations to
101 the county by the tax commissioner; and (3) when it shall
102 appear that the total assessed valuations of any class of

103 property in such county are less than fifty per cent of
104 the total appraised valuations of such class of property;
105 then in such events the tax commissioner may authorize
106 a total assessed valuation in each such class of less than
107 fifty per cent of the total appraised valuation of such
108 class of property; except that such authorized total
109 assessed valuation shall be increased each year thereafter,
110 as nearly as practicable in equal steps, so that in the third
111 assessment year after the delivery of the appraised valu-
112 ations in each class of property, as required above, the
113 total assessed valuation of each class of property shall
114 be not less than fifty per cent nor more than one hundred
115 per cent of the appraised valuation of each class of prop-
116 erty as delivered by the tax commissioner: *Provided fur-*
117 *ther*, That, upon the tax commissioner's delivery of the
118 appraised valuation to a county, such appraised valu-
119 ations shall serve as the basis for the spot check appraisal
120 in said county until all of the fifty-five counties of the
121 state have been reappraised.

122 The determination of appraised values in those counties
123 where the full appraisal has not been completed as de-
124 fined above and delivered to the assessor and the county
125 court prior to the first day of the assessment year shall be
126 continued by the tax commissioner on the annual spot
127 survey basis. Beginning with the fiscal year one thousand
128 nine hundred sixty and for each year thereafter until the
129 full survey is so completed and delivered in a county, the
130 assessed value in each of the four classes of property in
131 such county shall be not less than fifty per cent nor more
132 than one hundred per cent of the appraised valuation of
133 each said class of property as determined by the last pre-
134 vious statewide report of the tax commissioner: *Provided,*
135 *however*, That in those counties where the full appraisal
136 has not been completed and delivered, as aforesaid, to the
137 county assessor and the county court prior to the first day
138 of the assessment year, the requirements of this para-
139 graph shall be satisfied if:

140 (1) The total tax yield from the four classes of prop-
141 erty based upon the allowable school levy rates defined in
142 section two of this article equals or exceeds the amount

143 required to meet the local share as provided in this sec-
144 tion; or

145 (2) For the assessment year one thousand nine hun-
146 dred sixty-one, the assessor has increased the total valua-
147 tions of property in an amount not less than thirty-three
148 and one-third per cent of the difference between the total
149 assessed valuations for the assessment year one thousand
150 nine hundred sixty and the valuations required by this
151 section; or

152 (3) For the assessment year one thousand nine hundred
153 sixty-two, the assessor has increased the total valuations
154 of property in an amount not less than fifty per cent of
155 the difference between the total assessed valuations of
156 property for the assessment year one thousand nine hun-
157 dred sixty-one and the total valuations for such class re-
158 quired by this section; or

159 (4) For the assessment year one thousand nine hun-
160 dred sixty-three, the assessor has increased the total val-
161 uation of property so that the same meet the requirements
162 of this section.

163 Whenever in any year a county assessor and/or county
164 court shall fail or refuse to comply with the provisions of
165 this section in setting the valuations of property for as-
166 sessment purposes in any class or classes of property in
167 the county, the state tax commissioner shall review the
168 valuations for assessment purposes made by the county
169 assessor and the county court and shall direct the county
170 assessor and county court to make such corrections in the
171 valuations as may be necessary so that they shall comply
172 with the requirements of chapter eleven and of this sec-
173 tion and the tax commissioner shall enter the county and
174 fix the assessments at the required ratios. Refusal of the
175 assessor and/or the county court to make such corrections
176 shall constitute grounds for removal from office.

177 In any year in which the total assessed valuation of a
178 county shall fail to meet the minimum requirements
179 above set forth, the county court of such county shall allo-
180 cate for such year to the county board of education from
181 the tax levies allowed to the county court a sufficient por-
182 tion of its levies as will, when applied to the valuations

183 for assessment purposes of such property in the county,
184 provide a sum of money equal to the differences between
185 the amount of revenue which will be produced by appli-
186 cation of the allowable school levy rates defined in sec-
187 tion two of this article upon the valuations for assessment
188 purposes of such property and the amount of revenue
189 which would be yielded by the application of such levies
190 to fifty per cent of the total of appraised valuations of such
191 property. In the event the county court shall fail or re-
192 fuse to make the reallocation of levies as provided for
193 herein, the county board of education, the tax commis-
194 sioner, the state board of school finance, or any other in-
195 terested party, shall have the right to enforce the same
196 by writ of mandamus in any court of competent juris-
197 diction.

198 In conjunction with and as a result of the appraisal
199 herein set forth the tax commissioner shall have the pow-
200 er and it shall be his duty, to establish a permanent rec-
201 ords system for each county in the state, consisting of:

202 (1) Tax maps of the entire county drawn to scale or
203 aerial maps, which maps shall indicate all property and
204 lot lines, set forth dimensions or areas, indicate whether
205 the land is improved, and identify the respective parcels
206 or lots by a system of numbers, or symbols and numbers,
207 whereby the ownership of such parcels and lots can be
208 ascertained by reference to the property record cards and
209 property owner's index;

210 (2) Property record cards arranged geographically ac-
211 cording to the location of property on the tax maps, which
212 cards shall set forth the location and description thereof,
213 the acreage or dimensions, description of improvements,
214 if any, the owner's name, address and date of acquisition,
215 the purchase price, if any, set forth in the deed of acqui-
216 sition, the amount of tax stamps, if any, on the deed, the
217 assessed valuation, and the identifying number or symbol
218 and number, shown on the tax map;

219 (3) Property owner's index consisting of an alphabeti-
220 cal listing of all property owners, setting forth brief de-
221 scriptions of each parcel or lot owned, and cross-indexed
222 with the property record cards and the tax map.

223 The tax commissioner is hereby authorized and em-
224 powered to enter into such contracts as may be necessary,
225 and for which funds may be available, to establish the
226 permanent records system herein provided for, or may
227 through his staff and employees, prepare and complete
228 such system.

229 All microfilm, photography and original copies of tax
230 maps created under the provisions of this section are the
231 property of the state of West Virginia and the reproduc-
232 tion, copying, distribution or sale of such microfilm, pho-
233 tography or tax maps or any copies thereof without the
234 written permission of the state tax commissioner is pro-
235 hibited. Any person who shall violate the provisions of this
236 paragraph shall be guilty of a misdemeanor, and, upon
237 conviction thereof, shall be fined not less than fifty dollars
238 nor more than three hundred dollars or imprisoned for
239 not less than thirty days nor more than one year, or both,
240 in the discretion of the court. Justices of the peace shall
241 have concurrent jurisdiction with other courts having
242 jurisdiction for the trial of all misdemeanors arising under
243 this paragraph.

244 The tax commissioner shall by uniform regulations es-
245 tablish a procedure for the sale of reproduction of micro-
246 film, photography and maps and may pay for having such
247 reproductions made from the appropriation for "Property
248 Appraisal". Any funds received as a result of the sale of
249 such reproductions shall be deposited to the appropriated
250 account from which the payment for reproductions is
251 made.

252 The cost of conducting the appraisal herein provided
253 for shall be borne jointly by the state and the several
254 counties in the following manner and terms: There shall
255 be appropriated from the general revenue fund not less
256 than one million five hundred thousand dollars for each
257 fiscal year until sufficient funds have been appropriated
258 to complete the appraisal in all counties of the state. Each
259 county shall furnish, through its county court, not more
260 than ten per cent of the cost of such appraisal or reap-
261 praisal and permanent records system for such county.
262 Such county costs may be paid over a period of three
263 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

305 day of January of each year, it appears that any county
306 shall not have complied with the requirements regarding
307 the ratio of assessed valuations, the tax commissioner
308 shall notify the assessor and the county court of each such
309 county and, if they file a request for review of the ap-
310 praisals which they believe to be in error, he shall review
311 the appraisal of such properties and shall correct such
312 errors as he may discover in such individual appraisal
313 and/or in the preparation or recording of the report by
314 the tax commissioner. The corrected figures shall be re-
315 ported to the board of school finance prior to the first day
316 of June and shall be used in determining the allocations
317 of state aid to the county boards of education for the sub-
318 sequent fiscal year.

319 The county assessor and the county court shall comply
320 with the provisions of chapter eleven of this code in de-
321 termining the true and actual value of property for as-
322 sessment purposes and shall not arbitrarily use a direct
323 percentage application to the appraised valuations (wheth-
324 er complete appraisal or spot survey) of any class of prop-
325 erty or property within a class for such purpose.

326 The provisions of this section shall not be construed to
327 alter or repeal in any manner the provisions of chapter
328 eleven of this code, but shall be construed in pari materia
329 therewith, and compliance with this section by the as-
330 sessor and county court shall be considered, pro tanto, as
331 compliance with said chapter eleven.

CHAPTER 59

(House Bill No. 231—By Mr. Speaker, Mr. Singleton, and
Mr. Stonaker)

[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 responsibilities 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 article 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 extension service, etc., construed to refer to cooperative extension service, etc.

Section 8. Cooperative Extension Service; Code References to Agricultural Extension Service, etc., Construed to Refer to Cooperative Extension Service, etc.—In order to promote the advancement of agriculture, home economics and forestry within the state, and in order to promote general economic development and improvement of cultural and social life among the people of the several communities, 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 Service". 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 activities 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

24 and state groups in the attainment of the above objectives
25 under the direction of local and volunteer leadership.

26 Within the limits of funds available for the purpose from
27 federal, state or other sources, the board of governors shall
28 employ such county extension agents and other extension
29 personnel as may be needed to accomplish the purposes
30 outlined in this section. All extension workers employed
31 under the provisions of this section, or as provided in arti-
32 cle eight, chapter nineteen of this code, shall be supervised
33 and trained by the cooperative extension service to pro-
34 mote and advance the economic, cultural and social in-
35 terests of the people in the respective areas to which they
36 are assigned.

37 All provisions of this code in reference to the agricul-
38 tural extension division, to county agricultural agents,
39 to county home demonstration agents, and to other agri-
40 cultural extension workers shall hereafter be construed
41 to refer to the cooperative extension service and to the
42 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; Com-
2 position; Organization; Duties and Responsibilities Gener-
3 ally; Employment and Compensation of Extension Work-
4 ers.—The county extension service committee shall be
5 composed of (a) the president of the county farm bureau,
6 (b) the president of the county home demonstration coun-
7 cil, (c) the president of the county Four-H leaders' asso-
8 ciation, (d) a county commissioner designated by the pres-
9 ident of the county court, (e) a member of the county
10 board of education designated by the president of the
11 county board of education, (f) a county representative of
12 the grange, and (g) two members who are residents of the
13 county to be appointed by the board of governors of West

14 Virginia University for staggered terms of three years
15 each beginning on the first day of July, and in making
16 these appointments the board of governors shall appoint
17 one member designated by any other active farm organi-
18 zation in the county not already represented by virtue of
19 this section. If any of the above-named organizations do
20 not exist in the county, the board of governors of West
21 Virginia University may appoint an additional member
22 for each such vacancy. The committee shall annually elect
23 from its membership a chairman and a secretary.

24 It shall each year be the duty and responsibility of the
25 county extension service committee:

26 (1) To enter into a memorandum of agreement with the
27 cooperative extension service of West Virginia University
28 for the employment of county cooperative extension
29 workers.

30 (2) To prepare a memorandum of agreement with the
31 county court and with the county board of education for
32 their financial support of extension work.

33 (3) To give guidance and assistance in the development
34 of the county cooperative extension service program and in
35 the preparation of the annual plan of work for the county.

36 Such county cooperative extension service committee
37 may on or before the first day of July of each year file
38 with the county court a written memorandum of agree-
39 ment with the cooperative extension service of West Vir-
40 ginia University for the employment for the next fiscal
41 year of county extension agents, home demonstration
42 agents, associate or assistant agents, and clerical workers.

43 The county cooperative extension service committee
44 may also file on or before the first day of July of each
45 year with the county board of education a written memo-
46 randum of agreement with the cooperative extension serv-
47 ice of West Virginia University for the employment for
48 the next fiscal year of Four-H club or youth development
49 agents, associate or assistant agents, and clerical workers.

50 If such agreement or agreements are so filed, the county
51 court and the county board of education of such county, or
52 either of them, may annually enter into such agreement or
53 agreements for the employment for the next fiscal year of

54 such county extension agents, home demonstration agents,
55 Four-H club or youth development agents, associate or as-
56 sistant agents, and clerical workers, or any of them, as
57 may be nominated by the cooperative extension service of
58 West Virginia University, and approved in writing by at
59 least five members of the county extension service com-
60 mittee.

61 Salaries and expenses of all such county extension
62 workers shall be paid by the cooperative extension serv-
63 ice, the county court, and the board of education, or
64 jointly out of such appropriations as are made by the
65 Legislature, the county court, and the board of education,
66 separately or in conjunction with such federal acts as do
67 now, or may hereafter provide funds for such purpose.
68 That part of salaries, travel and general office expense to
69 be provided by the county court according to the approved
70 memorandum shall be paid from general county funds.

Sec. 2. Appropriations to Be Expended In Conform-
2 **ity to "Smith-Lever Act".**—All moneys levied or appro-
3 priated by the county court or the county board of edu-
4 cation under this article shall be expended upon orders
5 of the county court or board of education as other
6 such county funds are expended, and a duplicate of all
7 salary vouchers and expense accounts shall be filed with
8 the cooperative extension service of West Virginia Uni-
9 versity in such form as will comply with the provisions
10 of the act of Congress approved May eighth, one thou-
11 sand nine hundred fourteen, known as the "Smith-Lever
12 Act", or any act of Congress amendatory thereof or sup-
13 plementary thereto, but no part of any money so appro-
14 priated shall be used to compensate any representative
15 of West Virginia University or any other person, except
16 the persons employed under this article.

Sec. 3. Duties of County Extension Workers; Extension
2 **Service to Cooperate.**—Under the supervision of the
3 cooperative extension service of West Virginia University,
4 it shall be the duty of each county extension worker to
5 promote, through various educational programs, the im-
6 provement and advancement of agriculture, forestry and
7 home economics, and the general economic, cultural and

8 social life of the people in the respective areas to which
9 they are assigned. It shall also be the duty of the co-
10 operative extension service of West Virginia University
11 to cooperate with each county court and each county
12 board of education appropriating money under this
13 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
2 Regulation of Parking Facilities.—The state board of edu-
3 cation is hereby authorized to construct, maintain and
4 operate automobile parking facilities on the campus or

5 other areas of Marshall University and other state col-
6 leges under its jurisdiction for the use by students, fac-
7 ulty, staff and visitors. Such facilities shall be regulated
8 by said state board of education and shall be financed by
9 revenue bonds as authorized for similar facilities in sec-
10 tion twenty-five, article eleven, chapter eighteen of this
11 code. The state board of education is hereby specifically
12 authorized and empowered to do and perform any and all
13 things needful and necessary to accomplish the purpose
14 of this section subject only to the provisions of the said
15 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

2 **Regulation of Parking Facilities.**—The board of governors
3 is hereby authorized to construct, maintain and operate
4 automobile parking facilities on the campus or other areas
5 under its jurisdiction for use by students, faculty, staff and
6 visitors. Such facilities shall be open to use on such terms
7 and subject to such reasonable regulations as may be pre-
8 scribed by the board. A summary of the regulations shall
9 be posted conspicuously in each parking area.

10 Whenever a vehicle is parked in any university parking
11 facility in violation of the posted regulations, the board
12 shall have authority to remove the vehicle, by towing or
13 otherwise, to an established garage or parking lot for
14 storage until called for by the owner or his agent. The
15 owner shall be liable for the reasonable cost of such re-
16 moval and storage, and until payment of such cost the
17 garage or parking lot operator may retain possession of
18 the vehicle subject to a lien for the amount due. Notice
19 to this effect shall be posted conspicuously in each parking
20 area. The garage or parking lot operator may enforce his
21 lien for towing and storage in the manner provided in
22 section fourteen, article eleven, chapter thirty-eight of
23 this code for the enforcement of other liens.

24 The board shall have authority to charge fees for the
25 use of parking facilities under its control. All moneys
26 collected for such use shall be paid into a special fund

27 which is hereby created in the state treasury. The moneys
28 in such fund shall be used first to pay the cost of maintain-
29 ing and operating such facilities, but any excess not needed
30 for this purpose may be used to finance the construction
31 of additional parking facilities or the acquisition by lease
32 or purchase of additional parking areas. The board may
33 use the moneys in such special fund to finance the costs
34 of the above purposes on a cash basis, or may from time
35 to time issue revenue bonds of the state as provided in
36 this section to finance such costs and pledge all or any
37 part of the moneys in such special funds for the payment
38 of the principal of and interest on such revenue bonds,
39 and for reserves therefor. Whenever parking facilities are
40 provided in any university building financed in whole or
41 in part by the issue of revenue bonds otherwise authorized
42 by law, the net revenue derived from the parking facilities
43 included in such building may be used or pledged to meet
44 the sinking fund requirements of the bonds issued for
45 construction of the building. The pledge of moneys in
46 such special fund for any revenue bonds shall be a prior
47 and superior charge on such special fund over the use of
48 any of the moneys in such fund to pay for the cost of any
49 of such purposes on a cash basis.

50 Such revenue bonds may be authorized and issued from
51 time to time by the board of governors to finance in whole
52 or in part the purposes provided in this section in an
53 aggregate principal amount not exceeding the amount
54 which the board shall determine can be paid as to both
55 principal and interest and reasonable margins for a re-
56 serve therefor from the moneys in such special fund.

57 The issuance of such bonds shall be authorized by a
58 resolution adopted by the board, and such revenue bonds
59 shall bear such date or dates, mature at such times not
60 exceeding forty years from their respective dates; bear
61 interest at such rate or rates not exceeding five per centum
62 per annum; be in such form either coupon or registered,
63 with such exchangeability and interchangeability privi-
64 leges; be payable in such medium of payment and at such
65 place or places, within or without the state; be subject
66 to such terms of prior redemption at such prices not ex-
67 ceeding one hundred five per centum of the principal

68 amount thereof; and shall have such other terms and pro-
69 visions as the board shall determine. Such revenue bonds
70 shall be signed by the governor and by the president of
71 the board of governors, under the great seal of the state,
72 attested by the secretary of state, and the coupons at-
73 tached thereto shall bear the facsimile signature of the
74 president of the board. Such revenue bonds shall be sold
75 in such manner as the board may determine to be for the
76 best interests of the state, such sale to be made at a price
77 not lower than a price which will show a net return of
78 not more than six per centum per annum to the purchaser
79 upon the amount paid therefor computed to the stated
80 maturity dates of such revenue bonds without regard to
81 any right of prior redemption.

82 The board may enter into trust agreements with banks
83 or trust companies, within or without the state, and in
84 such trust agreements or the resolutions authorizing the
85 issuance of such bonds may enter into valid and legally
86 binding covenants with the holders of such revenue bonds
87 as to the custody, safeguarding and disposition of the pro-
88 ceeds of such revenue bonds, the moneys in such special
89 fund, sinking funds, reserve funds, or any other moneys
90 or funds; as to the rank and priority, if any, of different
91 issues of revenue bonds under the provisions of this sec-
92 tion; and as to any other matters or provisions which are
93 deemed necessary and advisable by the board in the best
94 interests of the state and to enhance the marketability of
95 such revenue bonds.

96 Such revenue bonds shall be and constitute negotiable
97 instruments under the law merchant and the negotiable
98 instruments law of the state; shall, together with the in-
99 terest thereon, be exempt from all taxation by the state
100 of West Virginia, or by any county, school district, mu-
101 nicipality or political subdivision thereof; and such reve-
102 nue bonds shall not be deemed to be obligations or debts
103 of the state, and the credit or taxing power of the state
104 shall not be pledged therefor, but such revenue bonds shall
105 be payable only from the revenue pledged therefor as
106 provided in this section.

CHAPTER 61

(Senate Bill No. 113—By Mr. Smith and Mr. McKown)

[Passed February 22, 1963; in effect July 1, 1963. Approved by the Governor.]

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:

Article 12-a. Revenue Bonds for Marshall University Capital Improvements.

Section

1. West Virginia board of education authorized to issue revenue bonds for certain capital improvements.
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.
3. Issuance of revenue bonds.
5. Sinking fund for payment of bonds.

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-

15 vided for such payment. The costs of any such building
16 or buildings or improvements shall include the cost of
17 acquisition of land, the construction and equipment of any
18 such building or buildings, and the provision of roads,
19 utilities and other services necessary, appurtenant or in-
20 cidental to such building or buildings; and shall also in-
21 clude all other charges or expenses necessary, appurtenant
22 or incidental to the construction, financing and placing in
23 operation of any such building or buildings.

Sec. 2. Special Marshall University Capital Improve-
2 **ments Fund Created in State Treasury; Collections to Be**
3 **Paid into Special Fund; Authority of West Virginia Board**
4 **of Education to Pledge Such Collections as Security for**
5 **Revenue Bonds.**—There is hereby created in the state
6 treasury a special nonrevolving Marshall University
7 capital improvements fund. On and after the first day of
8 July, one thousand nine hundred sixty-three, or on and
9 after the date of the final payment of all principal of and
10 interest on the one million nine hundred thousand dollars
11 bonds heretofore issued pursuant to this article, or the
12 making of adequate provision for the payment of all prin-
13 cipal of and interest on said one million nine hundred
14 thousand dollars bonds, whichever is later, there shall be
15 paid into such special fund all fees collected under the
16 provisions of section one, article one-a, chapter twenty-
17 five of this code, from students at Marshall University,
18 except such fees as are required by that section to be paid
19 into other special funds.

20 The board of education shall have authority to pledge
21 all or such part of the revenue paid into the special Mar-
22 shall University capital improvements fund as may be
23 needed to meet the requirements of the sinking fund es-
24 tablished in connection with any revenue bond issue au-
25 thorized by this article, including a reserve fund for the
26 payment of the principal of and interest on such revenue
27 bond issue when other moneys in the sinking fund are
28 insufficient therefor; and may provide in the resolution
29 authorizing any issue of such bonds, and in any trust
30 agreement made in connection therewith, for such priori-
31 ties on the revenues paid into the special fund as may be

32 necessary for the protection of the prior rights of the
33 holders of bonds issued at different times under the pro-
34 visions of this article. The board of education shall also
35 have authority to use all or any part of the revenue paid
36 into the special Marshall University capital improve-
37 ments fund for the payment of all or any part of the cost
38 of providing said classroom and office building, addition
39 to the library, renovation of administration building and
40 additional land for a new student center building for
41 Marshall University: *Provided, however,* That in the
42 event all or any part of such revenue is so used and ap-
43 plied, the amount of revenue bonds which the board of
44 education may issue pursuant to this article shall be cor-
45 respondingly reduced so that the total amount expended
46 pursuant to this article for the payment of the cost of pro-
47 viding said classroom and office building, addition to the
48 library, renovation of administration building and addi-
49 tional land for a new student center building for Marshall
50 University shall not exceed five million seven hundred
51 thousand dollars exclusive of any appropriations, grants,
52 gifts, or contributions therefor.

53 If any balance shall remain in the special Marshall Uni-
54 versity capital improvements fund after the board has
55 issued the maximum of five million seven hundred thou-
56 sand dollars worth of bonds authorized by this article,
57 and after the requirements of all sinking funds and re-
58 serve funds established in connection with the issue of
59 such bonds have been satisfied in each year as provided
60 in the resolution or trust agreement authorizing the issu-
61 ance of such bonds, such balance shall be used solely for
62 the redemption of any of the outstanding bonds issued
63 hereunder which by their terms are then redeemable, or
64 for the purchase of bonds at the market price, but at not
65 exceeding the price, if any, at which such bonds shall be
66 redeemable on the next ensuing date upon which such
67 bonds are redeemable prior to maturity, and all bonds re-
68 deemed or purchased shall forthwith be cancelled and
69 shall not again be issued. Whenever all outstanding bonds
70 issued under this article shall have been paid, the special
71 Marshall University capital improvements fund shall
72 cease to exist and any balance then remaining in such

73 fund shall be transferred to the general revenue fund of
74 the state. Thereafter all fees formerly paid into such
75 special fund shall be paid into the general revenue fund
76 of the state.

Sec. 3. Issuance of Revenue Bonds.—The issuance of
2 bonds under the provisions of this article shall be au-
3 thorized by a resolution of the board of education, which
4 shall recite an estimate by the board of the cost of the
5 proposed building or buildings, improvements and land;
6 and shall provide for the issuance of bonds in an amount
7 sufficient, when sold as hereinafter provided, to provide
8 moneys sufficient to pay such cost, less the amount of
9 revenue paid into the special Marshall University capital
10 improvements fund which is used to pay any part of the
11 cost of providing such classroom and office building, addi-
12 tion to the library, renovation of administration building
13 and additional land for a new student center building for
14 Marshall University as authorized by section two of this
15 article and less the amount of any other funds available
16 for the construction or acquisition of the building or
17 buildings, improvements and land from any appropriation,
18 grant, gift, or contribution therefor. Such resolution shall
19 prescribe the rights and duties of the bondholders and
20 the board, and for such purpose may prescribe the form
21 of the trust agreement hereinafter referred to. The bonds
22 shall be of such series, bear such date or dates, mature at
23 such time or times not exceeding thirty years from their
24 respective dates, bear interest at such rate or rates not
25 exceeding five per cent per annum, payable semi-annual-
26 ly; be in such denominations; be in such form, either
27 coupon or fully registered without coupons, carrying such
28 registration exchangeability and interchangeability privi-
29 leges; be payable in such medium of payment and at such
30 place or places; be subject to such terms of redemption at
31 such prices not exceeding one hundred five per cent of
32 the principal amount thereof, and be entitled to such
33 priorities on the revenues paid into the special Marshall
34 University capital improvements fund as may be provided
35 in the resolution authorizing the issuance of the bonds or
36 in any trust agreement made in connection therewith.

37 The bonds shall be signed by the governor, and by the
38 president of the board of education, under the great seal
39 of the state, attested by the secretary of state, and the
40 coupons attached thereto shall bear the facsimile signa-
41 ture of the president of the board. In case any of the of-
42 ficers whose signatures appear on the bonds or coupons
43 cease to be such officers before the delivery of such bonds,
44 such signatures shall nevertheless be valid and sufficient
45 for all purposes the same as if such officers had remained
46 in office until such delivery.

47 Such bonds shall be sold in such manner as the board
48 may determine to be for the best interests of the state,
49 taking into consideration the financial responsibility of
50 the purchaser, the terms and conditions of the purchase,
51 and especially the availability of the proceeds of the bonds
52 when required for payment of the cost of such building
53 or buildings, improvements and land, such sale to be made
54 at a price not lower than a price, which when computed
55 upon standard tables of bond values, will show a net re-
56 turn of not more than six per cent per annum to the pur-
57 chaser upon the amount paid therefor. The proceeds of
58 such bonds shall be used solely for the payment of the
59 cost of such building or buildings, improvements and
60 land, and shall be deposited in the state treasury in a spe-
61 cial fund and checked out as provided by law for the dis-
62 bursement of other state funds. If the proceeds of such
63 bonds, by error in calculation or otherwise, shall, together
64 with any other funds used therefor as hereinbefore in this
65 article authorized, be less than the cost of such building
66 or buildings, improvements and land, additional bonds
67 may in like manner be issued to provide the amount of
68 the deficiency, but in no case to exceed five million seven
69 hundred thousand dollars less the amount of any other
70 funds used therefor as hereinbefore in this article author-
71 ized; and unless otherwise provided for in the resolution
72 or trust agreement hereinafter mentioned, shall be
73 deemed to be of the same issue, and shall be entitled to
74 payment from the same fund, without preference or prior-
75 ity, as the bonds before issued for such building or build-
76 ings. If the proceeds of bonds issued for such building or
77 buildings, improvements and land shall, together with

78 the amount of any other funds used therefor as hereinbe-
79 fore in this article authorized, exceed the cost thereof, the
80 surplus shall be paid into the sinking fund or reserve fund
81 to be established for payment of the principal and interest
82 of such bonds as hereinafter provided. Prior to the prepa-
83 ration of definitive bonds, the board may, under like re-
84 strictions, issue temporary bonds with or without cou-
85 pons, exchangeable for definitive bonds upon their issu-
86 ance.

87 The bonds issued under the provisions of this article
88 shall be and have all the qualities of negotiable instru-
89 ments under the law merchant and under the negotiable
90 instruments law of this state.

Sec. 5. Sinking Fund for Payment of Bonds.—From the
2 special Marshall University capital improvements fund
3 the board shall make periodic payments to the state sink-
4 ing fund commission in an amount sufficient to meet the
5 requirements of any issue of bonds sold under the pro-
6 visions of this article, as specified in the resolution of the
7 board authorizing the issue and in any trust agreement
8 entered into in connection therewith. The payments so
9 made shall be placed by the commission in a special sink-
10 ing fund which is hereby pledged to and charged with the
11 payment of the principal of the bonds of such issue and
12 the interest thereon, and to the redemption or repurchase
13 of such bonds, such sinking fund to be a fund for all bonds
14 of such issue without distinction or priority of one over
15 another. The moneys in the special sinking fund, less
16 such reserve for payment of principal and interest as may
17 be required by the resolution of the board authorizing the
18 issue and any trust agreement made in connection there-
19 with, may be used for the redemption of any of the out-
20 standing bonds payable from such fund which by their
21 terms are then redeemable, or for the purchase of bonds
22 at the market price, but at not exceeding the price, if any,
23 at which such bonds shall be redeemable on the next en-
24 suing date upon which such bonds are redeemable prior
25 to maturity, and all bonds redeemed or purchased shall
26 forthwith be cancelled and shall not again be issued.

CHAPTER 62

(House Bill No. 132—By Mr. Speaker, Mr. Singleton, and
Mr. Christian, of McDowell)

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

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.
2. Membership of authority; appointment, terms and vacancies of appointive members.
3. Organization; executive secretary and personnel; offices.
4. Corporate body and powers.
5. Meetings; expense of members.
6. Funds.
7. Advisory council.

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,

14 state, county, city and/or private funds. It will cooperate
15 with and assist all local and state educational agencies
16 in planning and developing the use of these media. It
17 will promote and coordinate the use of these media for
18 noncommercial educational purposes.

19 The authority is authorized and empowered to estab-
20 lish broadcasting facilities including production centers,
21 broadcasting stations and a broadcasting network con-
22 necting such communities or stations as may be desig-
23 nated by the authority. It may lease from communica-
24 tions common carriers and use such transmission channels
25 as may be necessary: *Provided, however,* That should
26 the authority decide, upon investigation, that it could
27 more economically construct and maintain such transmis-
28 sion channels, it is authorized and empowered to design,
29 construct, operate and maintain the same, including a
30 television microwave network. The origination and trans-
31 mission of all programs over such network shall be as
32 directed and authorized by the authority under plans
33 approved by the authority.

34 The authority shall perform such other services in be-
35 half of the use of these media in education as it may
36 consider for the best interest of the state.

**Sec. 2. Membership of Authority; Appointment, Terms
2 and Vacancies of Appointive Members.**—The West Vir-
3 ginia educational broadcasting authority shall consist of
4 nine members, who shall be citizens and residents of the
5 state, of whom one shall be the state superintendent of
6 schools, one shall be a member of the West Virginia board
7 of education to be selected by it annually, and one shall be
8 a member of the West Virginia University board of gover-
9 nors to be selected by it annually. The other six members
10 shall be appointed by the governor by and with the advice
11 and consent of the senate for overlapping terms of six
12 years, except that the original appointments shall be for
13 terms of one, two, three, four, five and six years, re-
14 spectively.

15 The governor shall appoint such six members of the
16 authority as soon after the effective date hereof as is
17 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.
13

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.

36 On and after the first day of July, one thousand nine
37 hundred sixty-three, there shall be paid into such special
38 fund all proceeds of the additional registration fees
39 collected from students at West Virginia University and
40 at Potomac state college.

41 There is hereby created in the state treasury a special
42 capital improvements fund, to be expended by the West
43 Virginia board of education for the benefit of the state
44 institutions of higher education under its control, as
45 provided in this section. On and after the first day of
46 July, one thousand nine hundred sixty-three, there shall
47 be paid into such special fund all proceeds of the additional
48 registration fees collected from students at such
49 institutions.

50 The respective boards may make expenditures from
51 such special capital improvements funds at the various
52 state institutions of higher education under their control
53 to finance in whole or in part, together with any
54 federal, state or other grants or contributions, any one
55 or more of the following purposes: (1) The acquisition
56 of land or any rights or interest therein. (2) The construction
57 or acquisition of new buildings. (3) The renovation or construction
58 of additions to existing buildings. (4) The acquisition of furnishings
59 and equipment for any such buildings. (5) The construction or acquisition
60 of any other capital improvements or capital educational facilities
61 at such state institutions of higher education, including any roads,
62 utilities or other properties, real or personal, or for other purposes
63 necessary, appurtenant or incidental to the construction, acquisition,
64 financing and placing in operation of such buildings, capital improvements
65 or capital educational facilities.

66 The respective boards, at their discretion, may use the
67 moneys in such special capital improvements funds to finance the costs
68 of the above purposes on a cash basis, or may from time to time issue
69 revenue bonds of the state as provided in this section to finance all
70 or part of such purposes and pledge all or any part of the moneys
71 in such special funds for the payment of the principal of and interest
72 on such revenue bonds, and for reserves

76 therefor. Any pledge of such special funds for such
77 revenue bonds shall be a prior and superior charge on
78 such special funds over the use of any of the moneys in
79 such funds to pay for the cost of any of such purposes
80 on a cash basis: *Provided, however,* That any expendi-
81 tures from such special funds, other than for the retire-
82 ment of revenue bonds, may only be made by the board
83 of governors of West Virginia University and the West
84 Virginia board of education to meet the cost of a prede-
85 termined capital improvements program for one or more
86 of the state institutions of higher education under their
87 control, in such order of priority as shall have been agreed
88 upon by the respective boards and presented to the board
89 of public works for inclusion in the annual budget bill,
90 and only with the approval of the Legislature as indicated
91 by direct appropriation for the purpose.

92 Such revenue bonds may be authorized and issued
93 from time to time by the respective boards to finance in
94 whole or in part the purposes provided in this section in
95 an aggregate principal amount not exceeding the amount
96 which the respective boards shall determine can be paid
97 as to both principal and interest and reasonable margins
98 for a reserve therefor from the moneys in such special
99 funds.

100 The issuance of such revenue bonds shall be authorized
101 by a resolution adopted by the respective board, and such
102 revenue bonds shall bear such date or dates, mature at
103 such time or times not exceeding forty years from their
104 respective dates; bear interest at such rate or rates not
105 exceeding five per centum per annum; be in such form
106 either coupon or registered, with such exchangeability
107 and interchangeability privileges; be payable in such
108 medium of payment and at such place or places, within
109 or without the state; be subject to such terms of prior
110 redemption at such prices not exceeding one hundred
111 five per centum of the principal amount thereof; and
112 shall have such other terms and provisions as such re-
113 spective board shall determine. Such revenue bonds
114 shall be signed by the governor and by the president of
115 the respective board authorizing the issuance thereof,
116 under the great seal of the state, attested by the ~~secre-~~

117 tary of state, and the coupons attached thereto shall bear
118 the facsimile signature of the president of such respec-
119 tive board. Such revenue bonds shall be sold in such
120 manner as the respective board may determine to be for
121 the best interests of the state, such sale to be made at a
122 price not lower than a price which will show a net re-
123 turn of not more than six per centum per annum to the
124 purchaser upon the amount paid therefor computed to
125 the stated maturity dates of such revenue bonds without
126 regard to any right of prior redemption.

127 Such respective board may enter into trust agree-
128 ments with banks or trust companies, within or without
129 the state, and in such trust agreements or the resolutions
130 authorizing the issuance of such bonds may enter into
131 valid and legally binding covenants with the holders of
132 such revenue bonds as to the custody, safeguarding and
133 disposition of the proceeds of such revenue bonds, the
134 moneys in such special funds, sinking funds, reserve
135 funds, or any other moneys or funds; as to the rank and
136 priority, if any, of different issues of revenue bonds by
137 the same board under the provisions of this section; as
138 to the maintenance or revision of the amounts of such
139 additional registration fees, and the terms and conditions,
140 if any, under which such additional registration fees may
141 be reduced; and as to any other matters or provisions
142 which are deemed necessary and advisable by such re-
143 spective board in the best interests of the state and to
144 enhance the marketability of such revenue bonds.

145 After the issuance of any of such revenue bonds, the
146 additional registration fees at the state institutions of
147 higher education under the control of the board which
148 issued the bonds shall not be reduced as long as any of
149 such revenue bonds are outstanding and unpaid except
150 under such terms, provisions and conditions as shall be
151 contained in the resolution, trust agreement or other
152 proceedings under which such revenue bonds were issued.

153 Such revenue bonds shall be and constitute negotiable
154 instruments under the law merchant and the negotiable
155 instruments law of the state; shall, together with the
156 interest thereon, be exempt from all taxation by the
157 state of West Virginia, or by any county, school district,

158 municipality or political subdivision thereof; and such
159 revenue bonds shall not be deemed to be obligations
160 or debts of the state, and the credit or taxing power of
161 the state shall not be pledged therefor, but such revenue
162 bonds shall be payable only from the revenue pledged
163 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

1. General Provisions and Definitions.
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.

Article 1. General Provisions and Definitions.

Section

1. Short title; purpose.
2. Scope of chapter; definitions.
3. Persons entitled to vote.
4. Manner of voting.
5. Voting precincts and places established; number of voters in precincts.
6. Municipal voting precincts.
7. Precinct changes; procedure; precinct record.
8. Political party defined.
9. Political party committees; how composed; organization.
10. Party committees in office.

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.
16. Election of state officers.
17. Election of circuit and inferior court judges; county and district officers.
18. Election to fill other offices.
19. Ballot commissioners; selection; duties generally; vacancies.
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.
26. Election supplies in emergencies.
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
2 constitute and may be cited as the “West Virginia Elec-
3 tion Code” and contemplates and comprehends a code
4 of laws for the establishment, administration and regula-
5 tion of elections and election procedures in the State of
6 West Virginia.

Sec. 2. Scope of Chapter; Definitions.—Unless restricted
2 by the context, the provisions of this chapter shall apply
3 to every general, primary, and special election in which
4 candidates are nominated or elected or in which voters
5 pass upon any public question submitted to them, except
6 that the provisions hereof shall be construed to be oper-

7 ative in municipal elections only in those instances in
8 which they are made expressly so applicable.

9 Unless the context clearly requires a different meaning,
10 as herein used:

11 “Voter” shall mean any person who possesses the statu-
12 tory and constitutional qualifications for voting;

13 “Election” shall mean the procedure whereby the
14 voters of this state or any subdivision thereof elect per-
15 sons to fill public offices or vote on public questions;

16 “Any election” or “all elections” shall include every
17 general, primary, or special election held in this state, or
18 in any of its subdivisions, for the purpose of nominating
19 or electing federal or state officers, or county, city, town
20 or village officers of any subdivision now existing or here-
21 after created, or for voting upon any public question sub-
22 mitted to the people of the state or any of the aforesaid
23 subdivisions;

24 “Office” shall be construed to mean “public office”
25 which shall include any elective office provided for by
26 the constitution or laws of the United States or of this
27 state to which a salary or other compensation attaches;

28 “Candidate” shall mean any person to be voted for at
29 an election;

30 “Public question” shall mean any issue or proposition,
31 now or hereafter required by the governing body of this
32 state or any of its subdivisions to be submitted to the
33 voters of the state or subdivision for decision at elections.

Sec. 3. Persons Entitled to Vote.—Citizens of the state
2 shall be entitled to vote at all elections held within the
3 precincts of the counties and municipalities in which they
4 respectively reside. But no person who has not been
5 registered as a voter as required by law, or who is a
6 minor, or of unsound mind, or a pauper, or who is under
7 conviction of treason, felony or bribery in an election,
8 or who, in the case of state-county elections has not been
9 a bona fide resident of the state for one year and of the
10 county in which he offers to vote for sixty days next
11 preceding such election, or who in the case of municipal
12 elections has not been a bona fide resident of the state
13 for one year and of the municipality in which he offers

14 to vote for sixty days next preceding such election, shall
15 be permitted to vote at such election while such disability
16 continues. Subject to the qualifications otherwise pre-
17 scribed in this section, however, a minor shall be per-
18 mitted to vote in a primary election if he will have
19 reached the age of twenty-one years on the date of the
20 general election next to be held after such primary elec-
21 tion.

Sec. 4. Manner of Voting.—In all elections the mode
2 of voting shall be by ballot, but the voter shall be left
3 free to vote by either open, sealed, or secret ballot, as
4 he may elect. Voting by ballot may be accomplished as
5 provided in articles three, four, five and six of this
6 chapter.

**Sec. 5. Voting Precincts and Places Established; Num-
2 ber of Voters in Precincts.**—The precinct shall be the basic
3 territorial election unit. The county court shall divide
4 each magisterial district of the county into election pre-
5 cincts, shall number the precincts, shall determine and
6 establish the boundaries thereof, and shall designate one
7 voting place in each precinct, which place shall be estab-
8 lished as nearly as possible at the point most convenient
9 for the voters of the precinct. Each magisterial district
10 shall contain at least one voting precinct and each precinct
11 shall have but one voting place therein.

12 Each precinct within any urban center shall contain
13 not less than three hundred nor more than eight hundred
14 registered voters. Each precinct in a rural or less thickly
15 settled area shall contain not less than two hundred nor
16 more than seven hundred registered voters. If, at any
17 time the number of registered voters shall exceed the
18 maximum number in either case herein specified, it shall
19 be the duty of the county court to, and it shall, rearrange
20 the precincts within the political division so that the
21 new precincts formed therefrom, or from any part there-
22 of, shall each contain a number of registered voters
23 within the limits above provided. If such county court
24 fails to so act as herein directed, any qualified voter of
25 the county may apply for a writ of mandamus to compel
26 the performance of this duty.

27 In order to facilitate the conduct of local and special
28 elections and the use of election registration records
29 therein, precinct boundaries shall be established to co-
30 incide with the boundaries of any municipality of the
31 county and with the wards or other political subdivisions
32 of the municipality except in instances where found by
33 the county court to be wholly impracticable so to do.

34 The provisions of this section shall be subject to the
35 provisions of section twenty-eight of article four of this
36 chapter relating to the number of voters in precincts in
37 which voting machines are used.

Sec. 6. Municipal Voting Precincts.—The governing
2 bodies of all municipalities shall, for the purpose of
3 municipal elections, provide by ordinance for making
4 the voting precincts in the respective municipalities co-
5 incide, as nearly as possible, to the boundaries of the
6 voting precincts fixed by the county court for all state
7 and county elections.

Sec. 7. Precinct Changes; Procedure; Precinct Record.
2 —Subject to the provisions and limitations of section five
3 of this article, the county court of any county may change
4 the boundaries of any precinct within such county, or
5 divide any precinct into two or more precincts, or con-
6 solidate two or more precincts into one, or change any
7 place of holding elections, whenever the public con-
8 venience may require it. If by reason of the destruction
9 of the house or structure at which a voting place is estab-
10 lished, or if for any other reason the election cannot be
11 held thereat, and no provision has been made by the
12 county court for holding the election at another place,
13 the commissioners of election at such place may hold the
14 election at the place nearest thereto which they can
15 secure for the purpose; and in such case they shall make
16 known by proclamation, to the voters assembled at such
17 first named place of voting, the place at which the elec-
18 tion will be held. The county court shall, in such case,
19 establish another place of voting for said precinct as soon
20 thereafter as practicable. No order effecting such change,
21 division, or consolidation shall be made by the county
22 court within ninety days next preceding an election nor

23 without giving notice thereof at least one month before
24 such change, division or consolidation, by publication
25 once a week for two successive weeks in two newspapers
26 published in said county, if such there be, representing
27 the two political parties which cast the highest and next
28 highest number of votes in the state at the last preceding
29 general election, and by notices posted at four public
30 places in each precinct affected thereby.

31 Such court shall also, within fifteen days after the date
32 of such order, cause a copy thereof to be published once
33 a week for two successive weeks in two newspapers
34 published as aforesaid.

35 Such court shall also, before the next succeeding elec-
36 tion, cause the voters in the several precincts so affected
37 by such order to be duly registered in the proper precinct
38 or precincts.

39 The county court shall keep in a well-bound book,
40 marked "election precinct record," a complete record of
41 all their proceedings hereunder and of every order made
42 creating a precinct or precincts or establishing a place of
43 voting therein. Such "election precinct record" shall be
44 kept by the county court clerk in his office, and shall, at
45 all reasonable hours, when not actually in use by the
46 county court, be open to inspection by any citizen of the
47 county.

Sec. 8. Political Party Defined.—Any affiliation of
2 voters representing any principle or organization which,
3 at the last preceding general election, polled for its candi-
4 date for governor at least one per cent of the total number
5 of votes cast for all candidates for that office in the state,
6 shall be a political party, within the meaning and for
7 the purpose of this chapter.

**Sec. 9. Political Party Committees; How Composed; Or-
2 ganization.**—At the May primary election in the year one
3 thousand nine hundred sixty-four and in every fourth year
4 thereafter, the voters of each political party in each sena-
5 torial district shall elect two male and two female mem-
6 bers of the state executive committee of the party. In sena-
7 torial districts containing two or more counties, not more
8 than two such elected committee members shall be resi-

9 dents of the same county. The committee, when convened
10 and organized as herein provided, shall appoint three ad-
11 ditional members of the committee from the state at large.

12 At such primary election, the voters of each political
13 party in each county shall elect one male and one female
14 member of the party's executive committee of the con-
15 gressional district and of the senatorial district in which
16 such county is situated. At the same time such voters in
17 each magisterial district of the county shall elect one
18 male and one female member of the party's county ex-
19 ecutive committee and, in any county containing a city
20 of ten thousand or more in population, such voters of each
21 ward of such city within the county shall elect one male
22 and one female member of such county party executive
23 committee in addition to the members thereof chosen
24 from the magisterial district or districts in which such
25 city is situated.

26 All members of executive committees, selected for each
27 political division as herein provided, shall reside within
28 the county, district, or ward from which chosen.

29 The term of office of all members of executive com-
30 mittees so elected shall begin on the first day of June,
31 following said May primary, and shall continue for four
32 years thereafter and until their successors are elected
33 and qualified. Vacancies in the state executive com-
34 mittee shall be filled by the members of the committee
35 for the unexpired term. Vacancies in the congressional,
36 senatorial and county executive committees shall be
37 filled by the executive committee of the county in which
38 such vacancy exists, and shall be for the unexpired
39 term.

40 As soon as possible after the first day of June, following
41 the election of the new executive committees, as herein
42 provided, they shall convene within their respective
43 political divisions, on the call of the chairman of corre-
44 sponding outgoing executive committees, and proceed to
45 select a chairman, a treasurer, and a secretary, and such
46 other officers as they may desire, each of which officers
47 shall for their respective committees perform the duties
48 that usually appertain to such offices.

Sec. 10. Party Committees in Office.—The members of
2 all state, congressional, senatorial, and county executive
3 committees for political parties in office at the time this
4 article becomes effective, and the various officers of such
5 committees, shall hold their several offices and discharge
6 the duties thereof until their successors are chosen and
7 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
3 government of such party, not inconsistent with law, as
4 may be deemed expedient; and it may also revoke, alter,
5 or amend, in any manner not inconsistent with law, any
6 present or future rules of such party. All acts of such
7 state or other committees may be reviewable by the
8 courts.
9

10 Any party executive committee may create and ap-
11 point subcommittees, campaign, or central committees,
12 and delegate to them such powers and authority in the
13 executive and administrative work of the committee as
14 they shall deem advisable; but no power or authority
15 shall be delegated to such subcommittee, campaign com-
16 mittee, or central committee, in contravention of any
17 law of the state.

18 The state executive committee shall adopt a party
19 emblem or device for the party to distinguish and identify
20 the party ticket, and shall certify the same to the ballot
21 commissioners, and it shall be printed on the party ticket.
22 The device or emblem of no two parties shall be similar
23 or of such a nature as to mislead or confuse the voter.
24 If two or more parties seek the same device, or similar
25 devices, preference shall be given to the party polling
26 the largest number of votes for the candidate for gover-
27 nor at the last election for such office.

Sec. 12. Members of National Party Committee.—The
2 members of the national party executive committee of
3 any political party, to which the state is entitled under
4 the national organization and the rules and regulations
5 of the national committee of the party, shall be elected

6 by the state executive committee of such party, unless
7 the rules of the national party otherwise provide, in
8 which latter event they shall be selected in all respects
9 as provided for the selection thereof by the rules and
10 regulations of the national organization of the political
11 party and the resolutions of the delegated representatives
12 of the political party passed and adopted by any national
13 convention of such political party. A vacancy in the
14 membership of a national party executive committee
15 shall be filled by the state committee of the party unless
16 the rules of the national party otherwise provide.

Sec. 13. Other Party or Group Committees.—The mem-
2 bers of any political party which, at the last preceding
3 general election, polled, for its candidate for governor,
4 fewer than ten per cent of the total number of votes cast
5 for all candidates for that office in the state, and groups
6 of citizens, not constituting a political party, which nomi-
7 nate candidates for offices to be voted for at any election,
8 may select members of committees and officers thereof,
9 for such political parties and such groups of citizens, in
10 such manner as they may devise and adopt.

**Sec. 14. Presidential Electors; How Chosen; Duties;
2 Vacancies; Compensation.**—Electors of president and vice
3 president of the United States shall be nominated as pro-
4 vided in section twenty-one of article five of this chapter
5 but their names shall be omitted from the general elec-
6 tion ballot, as provided in section two of article six of
7 this chapter, to be voted on the Tuesday next after the
8 first Monday in November in the year nineteen hundred
9 and sixty-four and every fourth year thereafter.

10 The presidential electors shall meet in the office of the
11 governor at the capital of this state, on the day now
12 appointed, or which shall hereafter be appointed, by the
13 Congress of the United States and vote for the president
14 and for the vice president of the United States in the
15 manner prescribed by the constitution and the laws of
16 the United States. If any of the electors so chosen fail
17 to attend at the time appointed, the electors present shall
18 appoint an elector in place of each one so failing to at-
19 tend, and every elector so appointed shall be entitled to

20 vote in the same manner as if he had been originally
21 chosen by the people.

22 Each presidential elector shall receive as compensation
23 the sum of ten dollars a day for attending such meeting,
24 including the time spent in traveling to and from the
25 place of meeting and in addition thereto the sum of ten
26 cents for every mile necessarily traveled in going to and
27 returning from the place of meeting, by the most direct
28 route.

Sec. 15. Election of United States Senators and Congressmen.—At the general election in the year nineteen
2 hundred and sixty-four and at each general election in
3 every sixth year thereafter, and at the general election
4 in the year nineteen hundred and sixty-six, and in each
5 sixth year thereafter, there shall be elected a member
6 of the United States senate, and at the general election in
7 the year nineteen hundred and sixty-four, and in every
8 second year thereafter, there shall be elected a member
9 of the house of representatives in the Congress of the
10 United States for each congressional district of the state,
11 each for the next ensuing term.

Sec. 16. Election of State Officers.—At the general election to be held in the year nineteen hundred and sixty-
2 four, and in every fourth year thereafter, there shall be
3 elected a governor, secretary of state, treasurer, auditor,
4 attorney general, and commissioner of agriculture. At the
5 general election in the year nineteen hundred and sixty-
6 four, and in every second year thereafter, there shall be
7 elected a member of the state senate for each senatorial
8 district, and a delegate or delegates to the legislature
9 of the state from each county or each delegate district.
10 At the general election to be held in the year
11 nineteen hundred and sixty-eight, and in every twelfth
12 year thereafter, there shall be elected one judge of
13 the supreme court of appeals, and at the general election
14 to be held in the year nineteen hundred and seventy-
15 two, and in every twelfth year thereafter, two judges of
16 the supreme court of appeals, and at the general election
17 to be held in the year nineteen hundred and sixty-four,
18

19 and in every twelfth year thereafter, two judges of the
20 the supreme court of appeals.

Sec. 17. Election of Circuit and Inferior Court Judges; County and District Officers.—There shall be elected, at
2 the general election to be held in the year nineteen hun-
3 dred and sixty-eight, and in every eighth year thereafter,
4 one judge of the circuit court of every judicial circuit,
5 except the first circuit, and of the first circuit two judges
6 of said court; and at the general election to be held in the
7 year nineteen hundred and sixty-four, and in every fourth
8 year thereafter, a sheriff, prosecuting attorney, surveyor
9 of lands, and the number of assessors prescribed by law
10 for the county, and the number of justices of the peace
11 and constables in each magisterial district in the county
12 to which the district is entitled by law, the number of jus-
13 tices and constables to be prescribed from time to time
14 by the county court; and at such election, and in every
15 second year thereafter, a commissioner of the county court
16 for each county; and at the general election to be held
17 in the year one thousand nine hundred sixty-eight, and
18 in every sixth year thereafter, a clerk of the county court
19 and a clerk of the circuit court, for each county; and at
20 each general election next preceding the expiration of the
21 term of any judge of any common pleas, criminal or other
22 inferior court, a judge of such court, each for the term
23 next ensuing after the date of the election.

Sec. 18. Election to Fill Other Offices.—If the legisla-
2 ture shall hereafter create any elective office, or make any
3 office now filled by appointment an elective office, in the
4 state or in any subdivision thereof, the person to fill the
5 same shall be elected at the general election last preceding
6 the beginning of the term of such office.

Sec. 19. Ballot Commissioners; Selection; Duties Generally; Vacancies.—In each county in the state, the clerk
2 of the circuit court while holding such office, and two per-
3 sons by him appointed, one from each of the two political
4 parties which cast the largest and second largest number
5 of votes in the state at the last preceding general election,
6 shall constitute a board of ballot commissioners, of which
7 board the said clerk shall be chairman. It shall be the
8

9 duty of the clerk of said court to notify the chairman of
10 the respective county executive committees of such two
11 parties, at least five days before making such appoint-
12 ments, of the time and place of making the same, and if at
13 any time after such notice is given, and before or on the
14 day so fixed for making such appointments, the chairman
15 of either of such committees shall designate, in writing, a
16 member of such party as ballot commissioner having the
17 qualifications of a voter, he shall be appointed. Ballot
18 commissioners shall be appointed between the fifteenth
19 and thirtieth days of March in each year in which a gen-
20 eral election is to be held, for a term of two years begin-
21 ning on the first day of April next ensuing. They shall
22 perform the duties of such commissioners at all general,
23 special and primary elections held in the county or any
24 magisterial district thereof during their term of office.
25 A vacancy shall be filled in the same manner as an orig-
26 inal appointment, but immediate notice of a vacancy shall,
27 where necessary, be deemed compliance with the five day
28 notice provision.

Sec. 20. Cards of Instructions to Voters; Sample Ballots;

2 **Posting.**—The board of ballot commissioners of each coun-
3 ty shall cause to be printed in large, clear type, on cards,
4 instructions for the guidance of voters in preparing their
5 ballots. They shall furnish twelve of such cards to the
6 commissioner of election at the same time they deliver to
7 him the ballots for the precinct. The commissioners of
8 election shall cause to be posted one of such cards in each
9 place or compartment provided for the preparation of bal-
10 lots, and the others in and about the polling place, and one
11 or more of the cards outside of the sixty-foot limit pro-
12 vided for in this article, on the day of election. Such cards
13 shall contain full instructions to the voters as to what
14 shall be done:

- 15 (a) To obtain ballots for voting;
- 16 (b) To prepare the ballots for deposit in the ballot
17 boxes;
- 18 (c) To obtain a new ballot in place of one accidentally
19 spoiled.

20 Such cards shall contain a copy of the second paragraph

21 of section two and a copy of all of sections five, six, eight
22 and nine of article nine of this chapter.

23 The ballot commissioners shall also cause to be printed,
24 on colored paper, ten or more copies of the ballots pro-
25 vided for each voting place, at each election therein, which
26 shall be called sample ballots, and shall be furnished and
27 posted with the cards of instruction at each voting place.

Sec. 21. Printing of Ballots, Number and Requirements;
2 **Packaging and Sealing.**—It shall be the duty of the board
3 of ballot commissioners for each county to provide printed
4 ballots for every election for public officers in which the
5 voters or any of the voters within the county participate,
6 and cause to be printed, on the appropriate ballot, the
7 name of every candidate whose name has been certified to
8 or filed with the clerk of the circuit court of the county in
9 any manner provided for in this chapter. In any case
10 wherein the constitution or statutes limit or prescribe the
11 number of candidates or elected officers to be selected by
12 the voters in any district or other governmental subdivi-
13 sion, the ballot commissioners, in the preparation of such
14 ballots, shall cause to be printed thereon, in plainly
15 worded language, the number of candidates to be voted
16 for in each district or other governmental subdivision.
17 The printing of the ballots, and all other printing caused
18 to be done by the board of ballot commissioners, shall be
19 contracted for with the lowest responsible bidder. Ballots
20 other than those caused to be printed by the respective
21 boards of ballot commissioners, according to the provi-
22 sions of this chapter, shall not be cast, received, or counted
23 in any election.

24 For each such election to be held in their county and
25 at least thirty days before the date of such election, the
26 board of ballot commissioners shall cause to be printed
27 official ballots to not more than one and one-fifth times the
28 number of registered voters in the county. Provisions of
29 article five of this chapter shall govern the printing of
30 ballots for primary elections. The ballots so printed shall
31 be wrapped and tied in packages, one for each precinct
32 in their county, containing ballots to the number of one
33 and one-twentieth times the number of registered voters
34 in such precinct. Each package of ballots shall be sealed

35 with wax, and plainly marked with the number of ballots
36 therein, the name of the magisterial district, and the num-
37 ber of the voting place therein, to which it is intended to
38 be sent. The names of the ballot commissioners shall also
39 be indorsed thereon.

**Sec. 22. County Court Clerks to Provide Election Sup-
plies; Requirements for Poll Books and Ballot Boxes.—**
2 The clerk of the county court of each county shall provide
3 poll books, tally sheets, ballot boxes, voting booths, regis-
4 tration records and forms, strong and durable envelopes
5 upon which to make returns, blank forms for certifying
6 returns and whatever further supplies are needed for
7 holding the elections and making the returns thereof.
8 The poll books shall bear upon each page the following
9 heading: "Names of persons voting at precinct No.
10 in the District of in the county of
11 on this (the) day of in the year"
12 Such poll books shall have columns headed respectively:
13 "Number of Voters," "Signature of Voter," and "Challenge
14 of Voter," and shall have under the heading "Number of
15 Voters," numbers in consecutive order to the bottom of
16 each page. Forms for oaths of commissioners of election
17 and poll clerks shall be written or printed on the poll
18 books. Each ballot box shall be provided with two locks
19 with different keys so that the key for one lock will not
20 open the other, and shall be so constructed as to be safely
21 and securely closed and locked, with an opening in the lid
22 of the box sufficient only for the passage of a single ballot.
23

**Sec. 23. County Court to Arrange Polling Places and
Equipment; Requirements.—**The county court in each
2 county, before each election, shall secure, in each voting
3 precinct in the county, a suitable room or building in
4 which to hold the election, and shall cause the same to be
5 suitably provided with a sufficient number of booths or
6 compartments, each containing a table, counter or shelf,
7 and furnished with proper supplies for preparing ballots,
8 at or in which voters may conveniently prepare their
9 ballots, so that in the preparation thereof they may be
10 secure from the observation of others. The number of
11 such booths or compartments shall not be less than two
12 nor more than five.
13

Sec. 24. Obtaining and Delivering Election Supplies.—

2 It shall be the duty of the board of ballot commissioners
3 to appoint one or more of the commissioners of election
4 at each precinct of the county to attend at the offices of the
5 clerks of the circuit and county courts, as the case may be,
6 at least three days before each election to receive the
7 ballots, ballot boxes, poll books, registration records
8 and forms and all other supplies and materials for
9 conducting the election at the respective precincts. The
10 clerks shall take a receipt for the respective materials
11 delivered to the above commissioner or commissioners of
12 election, and shall file such receipt in their respective
13 offices. It shall be the duty of such commissioners to re-
14 ceive such supplies and materials from the respective
15 clerks and to deliver the same with the seal of all sealed
16 packages unbroken, at the election precinct in time to
17 open the election.

18 Such commissioner or commissioners, if they perform
19 such services, shall receive the per diem and mileage rate
20 prescribed by law for this service.

21 Ballots shall be delivered in sealed packages with seals
22 unbroken. For general and special elections the ballots
23 so delivered shall not be in excess of one and one-twentieth
24 times the number of registered voters in the precinct. For
25 primary elections the ballots for each party shall be in a
26 separately sealed package containing not more than one
27 and one-twentieth times the number of registered voters
28 of such party in the election precinct.

29 For primary elections one copy of the poll books, in-
30 cluding the forms for oaths of commissioners of election
31 and poll clerks written or printed thereon, shall be sup-
32 plied at each voting precinct for each political party ap-
33 pearing on the primary ballot.

34 There shall be two ballot boxes for each election precinct
35 for which a receiving and a counting board of election
36 commissioners have been appointed.

Sec. 25. Supplies by Special Messenger.—In case any

2 commissioner of election so appointed shall fail to appear
3 at the offices of the clerks of such county and circuit courts,
4 by the close of the second day prior to any election, as
5 required by the preceding section, the board of ballot

6 commissioners, or the chairman thereof, shall forthwith
7 dispatch a special messenger to the commissioners of elec-
8 tion of each respective precinct with the ballots, regis-
9 tration records, ballot boxes, poll books and other supplies
10 for such precinct. Such messenger shall be allowed two
11 dollars for his time, and seven cents a mile for the dis-
12 tance necessary to be traveled by him, and shall promptly
13 report to the clerks of the circuit and county court, re-
14 spectively, and file with such clerks the receipts of the
15 person to whom he delivered such ballots and other sup-
16 plies, and his affidavit, stating when and to whom he de-
17 livered them.

Sec. 26. Election Supplies in Emergencies.—If, by any
2 accident or casualty, the ballots or ballot box or boxes
3 delivered to a commissioner of election, or to any mes-
4 senger, shall be lost or destroyed, it shall be the duty of
5 such commissioner or messenger to report the loss forth-
6 with to the board of ballot commissioners and clerk of the
7 county court from whom the same were, or was, obtained,
8 and make affidavit of the circumstances of the loss; where-
9 upon such board and clerk shall at once send a new supply
10 by special messenger, as provided in other cases. If, for
11 any reason, there should be found no ballots, or ballot
12 box, or other necessary means or contrivances for voting,
13 at the opening of the polls, it shall be the duty of the com-
14 missioners of election to secure the same as speedily as
15 possible and, if necessary, the ballot commissioners may
16 have ballots printed or written, and the election commis-
17 sioners may have a ballot box or boxes made.

Sec. 27. Municipal Precinct Registration Records.—At
2 least three days prior to every municipal election, it shall
3 be the duty of the appropriate officer designated by the
4 municipality to procure from the municipal precinct file
5 in the office of the clerk of the county court the registra-
6 tion records necessary for the conduct of such election.

7 Such records shall, within ten days after the date of the
8 municipal election, be returned to the office of the clerk
9 of the county court by the appropriate officer or officers
10 designated by the municipality.

11 In case of a contested municipal election, the registra-

12 tion record of any challenged voter shall be made available
13 by the clerk of the county court to the officer or tribunal
14 empowered to determine the contest. Such records shall
15 be returned to the office of the clerk of the county court
16 within a reasonable time after the contest shall have been
17 finally decided.

18 The clerk of the county court shall acknowledge the
19 release and return of the registration records under this
20 section by the issuance of appropriate receipts.

21 In the event any municipal registration record is lost,
22 destroyed, defaced, or worn in any way as to warrant
23 replacement, it shall be the duty of the clerk of the county
24 court to prepare a duplicate of such record and it shall be
25 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
4 a regular or special session at the courthouse of the county
5 on the first Tuesday of the month next preceding the date
6 on which any election is to be held and appoint three com-
7 missioners and two clerks to hold the election in each
8 precinct in the county. In primary and general elections
9 and in any special election in which political party candi-
10 dates are to be nominated or elected, the election commis-
11 sioners and clerks shall be selected from the two political
12 parties which at the last preceding general election cast
13 the highest and the second highest number of votes in this
14 state. For every precinct in which there are three hun-
15 dred, but not more than four hundred, registered voters,
16 there may be two boards of elections officers, and for all
17 precincts in which there are more than four hundred
18 registered voters, there shall be two boards of election offi-
19 cers, and where two boards are used, each board shall
20 consist of three election commissioners and two poll
21 clerks, one of which boards shall be designated the “re-
22 ceiving board” and the other the “counting board” and not
23 more than two commissioners and one poll clerk of each
24 board shall be appointed from the same political party. If,
25 at any time before or during the session of the county
26 court, the county executive committee of either or both of
27 the political parties, from which commissioners and clerks

28 of election are to be selected, shall file with or present to
29 the county court a writing signed by them, or by the
30 chairman or secretary of such committee on their behalf,
31 requesting the appointment of a member and of one clerk
32 of each board of the political party for which such com-
33 mittee, chairman or secretary is acting, and designating
34 persons who are qualified under this article for such ap-
35 pointment for each election precinct in the county, the
36 county court shall appoint the persons so designated.

37 The county court shall by mail notify all commissioners
38 and poll clerks of their appointment, and include with
39 such notice an appropriate form for each person so ap-
40 pointed to return indicating whether or not he will serve
41 as such commissioner or poll clerk. It shall be the duty
42 of all persons so appointed to immediately return said
43 form to the county court. In the event any of the persons
44 so appointed refuse to serve as such commissioners or poll
45 clerks, the county court shall immediately notify the
46 chairman of the county executive committee of the politi-
47 cal party from which such commissioners and poll clerks
48 are to be selected. The chairman of the political com-
49 mittee so notified shall recommend the person or persons
50 to be appointed to replace those declining to serve and
51 it shall be the duty of the county court to appoint the
52 person or persons so recommended.

53 If any person appointed receiving commissioner or clerk
54 of election shall fail to appear at the voting place at the
55 hour for opening the polls, the remaining commissioner
56 or commissioners of election of the political party to
57 which the absentee belongs shall select another commis-
58 sioner or clerk, as the case may be, of such political party.
59 But if the qualified voters of his party present at the polls
60 shall nominate a voter of his party qualified to act under
61 the provisions of this section, such nominee shall be ap-
62 pointed. If none of the receiving commissioners of the
63 election or poll clerks shall appear at the voting place
64 at the hour appointed for opening the polls, the qualified
65 voters present, being at least ten in number, of the politi-
66 cal party which cast the highest number of votes in the
67 county at the last preceding election, shall select two
68 commissioners and one clerk and those of the political

69 party which cast the next highest number of votes in the
70 county at such election shall select one commissioner and
71 one clerk of the receiving board of such precinct, and the
72 persons so selected shall constitute the receiving board for
73 the precinct. A vacancy or vacancies on the counting
74 board shall be filled in the manner herein provided for
75 filling a vacancy or vacancies on the receiving board, ex-
76 cept that such vacancy or vacancies shall be determined
77 and filled as of the hour appointed in this chapter for the
78 counting board to attend at the polls. Any commissioner
79 of election acting at any election precinct is hereby em-
80 powered and authorized to administer oaths and to take
81 and certify affidavits in relation to any matter or thing
82 required or permitted to be done by any of the provisions
83 of this article in conducting and holding the election.

Sec. 29. Same; Qualifications; Nonpartisan or Public

2 **Question Elections.**—No person shall be eligible to be ap-
3 pointed as a commissioner of election or as a poll clerk
4 in any election precinct who is not a qualified voter in the
5 magisterial district in which such precinct is situated;
6 or who has anything of value bet or wagered on the result;
7 or who is a candidate to be voted for at the ensuing election
8 or who is addicted to drunkenness; or who is not of good
9 character and standing; or who has in his employment, or,
10 as agent or superintendent, has under his control or man-
11 agement ten or more employees who are voters entitled to
12 vote in the precinct; or who has served or acted in the
13 capacity of deputy sheriff within six months prior to the
14 date of holding any such primary or general election.

15 Whenever a nonpartisan or public question election is
16 to be conducted separate and apart from a primary or
17 general election, the provisions of this article relating to
18 the selection, appointment and qualifications of commis-
19 sioners of election and poll clerks shall govern and con-
20 trol, except that persons duly registered as "independent"
21 or as adherents to a political party or group other than
22 the two majority political parties then recognized, when
23 otherwise qualified to be election officials, may be ap-
24 pointed commissioners of election and poll clerks for the
25 conduct of such nonpartisan and public question elections.

Sec. 30. Same; Oaths; Authority to Administer.—Each
2 commissioner of election and poll clerk, appointed or
3 selected as aforesaid, shall, before entering upon the dis-
4 charge of his duties, take and subscribe an oath, respec-
5 tively, to the following effect:

6 (Commissioner's Oath)

7 State of West Virginia.)

8) ss.

9 County.)

10 I, A..... B....., do solemnly swear that I will sup-
11 port the Constitution of the United States and the Consti-
12 tution of this State; that I will faithfully and impartially
13 discharge the duties of commissioner of election assigned
14 by law; that I will not knowingly permit any person to
15 vote who is not qualified, and will not knowingly refuse
16 the vote of any qualified voter, or cause any delay to a
17 person offering to vote further than is necessary to pro-
18 cure satisfactory information of the qualifications of such
19 person as a voter; that I have been a resident of the
20 State of West Virginia for one year, and of the county
21 and magisterial district in which I am to act as com-
22 missioner of election, for sixty days next preceding this
23 date; that I will not disclose nor communicate to any
24 person how any voter has voted at such election, nor
25 how any ballot has been folded, marked, printed or
26 stamped; that I have nothing of value bet or wagered
27 upon the result of said election; that I have not received
28 any promise, agreement or understanding that I am to
29 receive appointment as deputy from any candidate to be
30 voted for at such election; that I do not have any agree-
31 ment, understanding or arrangement that I shall receive
32 any sum of money or any portion of the salary, fees or
33 emoluments of any office for which any candidate is to be
34 voted for at such election, should such candidate be
35 elected to such office at such election or any subsequent
36 election; that I am not a candidate at this election. So
37 help me God.

38

39 Subscribed and sworn to before me this .. day of ..., 19 ..

40

41

.....
Signature and official title of

42 person before whom sworn.

43 (Clerk's Oath)

44 State of West Virginia, _____ county, ss:

45 I, _____, do solemnly swear that I will faithfully
46 and honestly discharge my duties as clerk of the elec-
47 tion now about to be held in precinct No. _____, in the
48 district of _____, county of _____, State of
49 West Virginia; that I will not disclose nor communicate
50 to any person how any elector voted, or how any ballot
51 was folded, marked, printed or stamped; that I do not
52 have any promise, agreement or understanding that I am
53 to be appointed as deputy by any candidate to be voted
54 for at such election; that I do not have any agreement,
55 understanding or arrangement that I shall receive any
56 sum of money or any portion of the salary, fees or emolu-
57 ments from any office for which any candidate is to be
58 voted for at such election, should such candidate be
59 elected at such election or any subsequent election. So
60 help me God.

61

62 Subscribed and sworn to before me this ____ day of _____, 19____.

63

64 Signature and official title of person
65 before whom sworn.

66 Said oaths may be taken before any person authorized
67 to administer oaths, but if no other person be present
68 at any place of holding any election, they may be
69 taken before, and administered by, one of the commis-
70 sioners of such election so appointed, who in turn may
71 take the same before another of such commissioners. Eith-
72 er of the commissioners may administer the oaths to the
73 poll clerks. For the purposes of this chapter all commis-
74 sioners of election are authorized to administer oaths. Such
75 oaths shall appear completed and certified on one of the
76 poll books of every election precinct.

Sec. 31. Days and Hours of Elections.—General elec-
2 tions shall be held in the several election precincts of the
3 state on the Tuesday next after the first Monday in No-
4 vember of each even year. Primary and special elections
5 shall be held on the days provided by law therefor.

6 At every primary, general or special election the polls
7 shall be opened in each precinct on the day of such elec-
8 tion at six-thirty o'clock in the forenoon and be closed
9 at seven-thirty o'clock in the evening.

Sec. 32. Opening and Closing Polls; Procedure.—At the
2 time of opening the polls in all precincts wherein voting
3 machines are not to be used, the election commissioners
4 shall examine the ballot box and ascertain that there are
5 no ballots in the same, and they shall thereupon securely
6 lock the box and give one key to one of the commissioners
7 and one to a commissioner of the opposite political party,
8 who shall hold the same, and such boxes shall not be
9 again opened until the time to begin counting the votes
10 arrives and for that purpose. At or before opening the
11 polls, the commissioners of election shall open the pack-
12 age containing the ballots in such manner as to preserve
13 the seals intact and thereupon deliver all of the ballots
14 to the poll clerk. Before any voter is permitted to vote,
15 the commissioners of election shall proclaim that such
16 election is opened. When the polls are closed, proclama-
17 tion must be made of the fact by one of the commissioners
18 of election to the people outside, in a loud and audible
19 tone of voice, and a minute of such proclamation and of
20 the time when it was made must be entered on the poll
21 books by the clerks. After such minute has been made
22 and entered, no ballot of any voter shall be cast or re-
23 ceived.

Sec. 33. How Elections Conducted by Double Boards.—
2 In all precincts wherein two election boards shall have
3 been appointed, the receiving board shall attend at the
4 opening of the polls, shall open the polls, and shall pro-
5 ceed with the election. The counting board shall attend
6 at the voting place not later than three hours after the
7 opening of the polls, and shall take charge of the ballot
8 box containing the ballots theretofore cast in that pre-
9 cinct. They shall retire to a partitioned room or space
10 in the voting place and there proceed to count and tabu-
11 late the ballots cast, as they shall find them deposited
12 in the ballot box. The receiving board shall continue to
13 receive the vote of electors in the other box, until such

14 time as the counting board shall have finished counting
15 and tabulating the ballots cast in the first ballot box.
16 The counting board shall, before exchanging the ballot
17 boxes as herein provided, seal the ballots counted by it
18 in envelopes to be provided for the purpose, which shall
19 not be opened until the two boards shall together proceed
20 with counting, tabulating and summarizing the votes as
21 by this chapter provided. The two boards shall then
22 exchange the first box for the second box, and so continue
23 until the hour of closing the polls arrives.

Sec. 34. Voting Procedures Generally; Assistance to
2 **Voters; Voting Records.**—Any person offering to vote in
3 an election shall, upon entering the election room, clearly
4 state his name and residence to one of the poll clerks who
5 shall thereupon announce the same in a clear and distinct
6 tone of voice. If such person is found to be duly registered
7 as a voter at that precinct, he shall be required to sign his
8 name in the space marked “signature of voter” on the poll
9 book prescribed and provided for the precinct. If such
10 person be physically or otherwise unable to sign his name,
11 his mark shall be affixed by one of the poll clerks in the
12 presence of the other and the name of the poll clerk affix-
13 ing the voter’s mark shall be indicated immediately under
14 such affixation. No ballot shall be given to such person
15 until he so signs his name on the poll book or his signature
16 is so affixed thereon.

17 When the voter’s signature is properly on the poll
18 book, the two poll clerks shall sign their names in the
19 places indicated on the back of the official ballot and
20 shall deliver the ballot to the voter to be voted by him
21 then without leaving the election room. If he returns
22 the ballot spoiled to the clerks, they shall immediately
23 destroy the spoiled ballot and deliver to the voter another
24 official ballot, signed by the clerks on the reverse side as
25 before done. The voter shall thereupon retire alone to
26 the booth or compartment prepared within the election
27 room for voting purposes and there prepare his ballot,
28 using a black lead pencil or other means for the purpose.
29 In voting for candidates in general and special elections,
30 the voter shall comply with the rules and procedures

31 prescribed in section five of article six of this chapter.

32 Any person whose registration record indicates his
33 inability to write may declare his choice of candidates
34 to the poll clerks who, in the presence of the voter and
35 in the presence of each other, shall prepare the ballot for
36 voting in the manner hereinbefore provided, and, on
37 request, shall read over to such voter the names of candi-
38 dates on the ballot as so prepared; or such voter may re-
39 quire the poll clerks to indicate to him the relative posi-
40 tion of the names of the candidates on the ballot, where-
41 upon the voter shall retire to one of the booths or com-
42 partments to prepare his ballot in the manner herein-
43 before provided, or may request the poll clerks to mark
44 the ballot as he directs.

45 If the voter is unable to mark his ballot because of
46 blindness and the voter presents a doctor's certificate as
47 to such blindness, and if he shall so elect, said poll clerks
48 shall both withdraw, and permit the voter to be assisted
49 by any person designated by such voter.

50 After preparing the ballot the voter shall fold the same
51 so that the face shall not be exposed and so that the
52 names of the poll clerks thereon shall be seen. The voter
53 shall then announce his name and present his ballot to
54 one of the commissioners who shall hand the same to
55 another commissioner, of a different political party, who
56 shall deposit it in the ballot box, if such ballot is the
57 official one and properly signed. The commissioners of
58 election may inspect every ballot before it is deposited
59 in the ballot box, to ascertain whether it is single, but
60 without unfolding or unrolling it, so as to disclose its
61 content. When the voter has voted, he shall retire im-
62 mediately from the election room, and beyond the sixty-
63 foot limit thereof, and shall not return, except by per-
64 mission of the commissioners.

65 It shall be the duty of a poll clerk, in the presence of
66 the other poll clerk, to indicate by a check mark inserted
67 in the appropriate place on the registration record of
68 each voter the fact that such voter voted in the election.
69 In primary elections the clerk shall also insert thereon a
70 distinguishing initial or initials of the political party for
71 whose candidates the voter voted. If a person is chal-

72 lended at the polls, such fact shall be indicated by the
73 poll clerks on the registration record together with the
74 name of the challenger. The subsequent removal of the
75 challenge shall be recorded on the registration record
76 by the clerk of the county court.

Sec. 35. Ballots to Be Furnished Voters.—In general
2 and special elections the ballots for all voters of an elec-
3 tion precinct shall be the same. In primary elections the
4 ballot of the voter's political party at that election in that
5 precinct shall be furnished to the voter together with
6 separate ballots, if any, on any nonpartisan candidates
7 and any public questions submitted to the voters gener-
8 ally at such primary election. In the event the voter is
9 lawfully registered as "independent" or as an adherent
10 of a political party not appearing on any primary elec-
11 tion ballot to be voted in his precinct, he shall not, in a
12 primary election, be given or entitled to vote any party
13 ballot but shall be furnished any separate ballots to be
14 voted thereat on nonpartisan candidates and public
15 questions.

**Sec. 36. Report on and Disposition of Ballots Spoiled or
2 Not Used.**—Any voter who shall spoil, deface or mutilate
3 the ballot delivered to him, on returning the same to the
4 poll clerks, shall receive another in place thereof. Every
5 person who does not vote any ballot delivered to him
6 shall, before leaving the election room, return such ballot
7 to the poll clerks. When a spoiled or defaced ballot is
8 returned, the poll clerks shall make a minute of the fact
9 on the poll books, at the time, and such ballot shall then
10 be destroyed by them in the presence of the commis-
11 sioners of election.

12 Immediately on closing the polls, the commissioners
13 of election shall ascertain the number of ballots destroyed
14 during the election and the number of ballots remaining
15 not voted. The commissioners of election shall also ascer-
16 tain from the poll books the number of persons who
17 voted and shall report, over their signatures, to the clerk
18 of the county court, the number of votes cast, the number
19 of ballots destroyed during the election and the number
20 of ballots not voted. All unused ballots shall at the same

21 time be returned to the clerk of the county court, who
22 shall immediately destroy them by fire or otherwise.

23 Each commissioner who is a member of an election
24 board which fails to account for every ballot delivered
25 to it shall be guilty of a misdemeanor, and upon conviction
26 thereof shall be fined not more than one thousand
27 dollars or confined in the county jail for not more than
28 one year, or both.

29 The board of ballot commissioners of each county, or
30 the chairman thereof, shall preserve the ballots that are
31 left over in their hands, after supplying the precincts as
32 provided, until the close of the polls on the day of election,
33 and such ballots shall then be destroyed by such
34 board, or the chairman thereof, by fire or otherwise.

Sec. 37. Restrictions on Presence and Conduct at Polls.—

2 No person, except the election officers and voters while
3 going to the election room to vote and returning there-
4 from, shall be or remain within sixty feet of such room
5 while the polls are open; but this section shall not apply
6 to persons living or carrying on business within that
7 distance of the election room, while in the discharge of
8 their legitimate business, or to persons whose business
9 requires them to pass and repass within sixty feet of
10 such room.

11 Not more than one voter for each compartment or
12 booth at the precinct shall be allowed in the election room
13 at one time, and no person shall approach nearer than
14 five feet to any booth or compartment while the election
15 is being held, except the voters to prepare their ballots, or
16 the poll clerks when called on by a voter to assist in the
17 preparation of his ballot, and no person, other than election
18 officers and voters engaged in receiving, preparing
19 and depositing their ballots, shall be permitted to be
20 within five feet of any ballot box, except by authority of
21 the board of election commissioners, and then only for
22 the purpose of keeping order and enforcing the law.

23 Not more than one person shall be permitted to occupy
24 any booth or compartment at one time; and no person
25 shall remain in or occupy a booth or compartment longer
26 than may be necessary to prepare his ballot, and in no

27 event longer than five minutes. No voter, or person offer-
28 ing to vote, shall hold any conversation or communication
29 with any person other than the poll clerks or commission-
30 ers of election, while in the election room.

31 The provisions of this section shall not apply to persons
32 rendering assistance to blind voters as provided in section
33 thirty-four of this article.

Sec. 38. Disorder at Polls; Procedure.—The commis-
2 sioners of election shall preserve order at, and in the vi-
3 cinity of, the polls, and keep the way to the polls open
4 and free from obstruction, and may direct disorderly per-
5 sons to be removed therefrom, and, if necessary and prop-
6 er, to be taken and held in custody until sunrise of the
7 next day, or for any shorter time, which may be done by
8 any sheriff or constable or other person or persons desig-
9 nated by the commissioners of election. For such purpose
10 no warrant or authority in writing shall be necessary.
11 The jail of the county or other place designated by the
12 commissioners of election may be used as the place of
13 custody. But any person so arrested shall have an oppor-
14 tunity to vote, if he be entitled to do so, before he shall be
15 committed to jail, if he so desires and shall be prepared
16 to do so promptly.

Sec. 39. Illegal Voting; Affidavit; Arrest; Procedure.—
2 If at any time during the election any qualified voter shall
3 make affidavit, before a commissioner of election, that any
4 person who has voted is an illegal voter in such precinct,
5 the person accused shall at once be arrested by any constab-
6 le or other person designated by the election commis-
7 sioners to make the arrest, and by him delivered to the
8 civil authorities. Any person desiring to make such affi-
9 davit shall be admitted to the election room for that pur-
10 pose. Immediately after the close of the election, the com-
11 missioners of election shall deliver such affidavit to some
12 justice of the peace in the magisterial district, who shall
13 proceed thereon as if the affidavit had been made before
14 him.

**Sec. 40. Disposition of Other Affidavits Used at Polls;
2 Procedure; Grand Jury Action.**—All affidavits provided
3 for in this chapter, to be used on the day of election, at

4 the several polling places, shall, unless in this chapter
5 otherwise directed, at the close of the count, be placed
6 in a strong and durable envelope, by the commissioners
7 of election, and be securely sealed by them, and each of
8 them shall indorse his name on the back of such envelope,
9 which shall, within two days after the election, be de-
10 livered by one of the commissioners of election to the
11 clerk of the circuit court of the county, whose duty it shall
12 be to carefully preserve the same and deliver it, with the
13 seal unbroken, to the foreman of the grand jury when
14 next in session. It shall be the duty of such grand jury
15 to inquire into the truth or falsity of such affidavits.

Sec. 41. Challenged Voter Procedures; Counting of
2 **Challenged Voters' Ballots; Ballots of Election Officials.—**
3 It shall be the duty of the members of the receiving board,
4 jointly or severally, to challenge the right of any person
5 requesting a ballot to vote in any election, if such person's
6 registration record is not available at the time of the elec-
7 tion, or if the signature written by the person in the poll
8 book does not correspond with the signature purported to
9 be his on the registration record, or if the registration rec-
10 ord of such person indicates any other legal disqualifica-
11 tion.

12 Any person so challenged shall nevertheless be per-
13 mitted to vote in the election, but for that purpose he shall
14 be furnished an official ballot not endorsed by the poll
15 clerks. In lieu of such endorsements, the poll clerks shall
16 fill and sign an appropriate form indicating the challenge
17 and the reason thereof, and the name or names of the
18 challengers. Such form shall be securely attached to the
19 voter's ballot and deposited together with the ballot in a
20 separate box or envelope marked "challenged ballots."

21 The ballot of any voter so challenged shall not be
22 counted by the election officials. The county court shall,
23 on its own motion, at the time of canvassing of the elec-
24 tion returns, sit in session to determine the validity of
25 such challenges. If the county court shall determine that
26 the challenges are unfounded the ballot of each chal-
27 lenged voter, if otherwise valid, shall be counted and
28 tallied together with the regular ballots cast in the elec-

29 tion. In such determinations the county court shall dis-
30 regard technical errors, omissions or oversights, if it can
31 reasonably be ascertained that the challenged voter was
32 entitled to vote.

33 Any person duly appointed as an election commissioner
34 or clerk under the provisions of section twenty-eight of
35 this article and who serves in such capacity in a precinct
36 other than the precinct in which such person is legally
37 entitled to vote, may cast a challenged ballot in the pre-
38 cinct in which such person is serving as a commissioner
39 or clerk, and such ballot shall not be deemed invalid for
40 the sole reason of having been cast in a precinct other
41 than the precinct in which such person is legally entitled
42 to vote, and the county court shall record the challenged
43 ballot on the voter's permanent registration record.

Sec. 42. Time Off for Voting.—Every person entitled
2 to vote at any election who may be employed by any
3 person, company, or corporation on the day on which
4 such election shall be held in this state, shall, on written
5 demand of such employee, made at least three days prior
6 thereto, be given a period of not more than three hours, if
7 necessary, between the opening and the closing of the
8 polls on such day, for the purpose of enabling such person
9 to repair to the place of voting to cast his vote and return,
10 without liability to any penalty or deduction from his
11 usual salary or wages on account of such absence, except
12 that any employee, who has three or more hours of his
13 own time away from his work or place of employment at
14 any time between the hours of the opening and the closing
15 of the polls on election day and who fails or neglects to
16 vote or elects not to vote during such free time away from
17 his work or employment, may be subject to wage or salary
18 deductions for the time actually absent from his work or
19 employment for voting in such election.

20 In essential government, health, hospital, transportation
21 and communication services and in production, manufac-
22 turing and processing works requiring continuity in oper-
23 ation, the employer may, upon receipt of such written de-
24 mand for voting time off, arrange and schedule a calendar
25 of time off for any and all of his employees for voting so

26 as to avoid impairment or disruption of essential services
27 and operations, but every such schedule or calendar of
28 time off for voting so arranged shall provide ample and
29 convenient time and opportunity for each employee of
30 such services or works to cast his vote as herein provided.

Sec. 43. Disposition of Miscellaneous Election Papers.—

2 At the expiration of one year after any election, the af-
3 fidavits taken and returned by any registrar or any elec-
4 tion officer, applications for absent voters' ballots, re-
5 jected absent voters' ballots, and certificates of nomina-
6 tions of candidates shall be destroyed. At the expiration
7 of two years from the date of any election the written
8 designations of election officers and of ballot commission-
9 ers shall be destroyed. If the further preservation of any
10 of the documents mentioned in this section shall be re-
11 quired by the order of the court, the same shall be de-
12 stroyed at the expiration of the time fixed for the further
13 preservation thereof by such order.

Sec. 44. Compensation of Election Officials; Expenses.—

2 Each ballot commissioner shall be allowed and paid a
3 sum, to be fixed by the county court, not exceeding twen-
4 ty dollars for each day he shall serve as such, but in no
5 case shall a ballot commissioner receive allowance for
6 more than ten days' services for any one primary, general
7 or special election. Each commissioner of election and
8 poll clerk shall be allowed and paid a sum, to be fixed by
9 the county court, not exceeding ten dollars for one day's
10 services for attending the school of instructions for elec-
11 tion officials and a sum not exceeding twenty dollars for
12 his services at any one election. The commissioners of
13 election obtaining and delivering the election supplies,
14 as provided in section twenty-four of this article, and re-
15 turning them as provided in articles five and six of this
16 chapter, shall be allowed and paid an additional sum,
17 likewise fixed by the county court, not exceeding ten
18 dollars for all such services at any one election and, in
19 addition, shall be allowed and paid mileage at the rate of
20 seven cents per mile necessarily traveled in the perform-
21 ance of such services. The compensation of election of-
22 ficers, cost of printing ballots, and all other expenses in-

23 curred in providing for holding and making the return of
24 elections shall be audited by the county court and paid
25 out of the county treasury.

Sec. 45. Court Proceedings to Compel Performance of
2 **Duties, etc.**—Any officer or person, upon whom any duty
3 is devolved by this chapter, may be compelled to perform
4 the same by writ of mandamus. The circuit courts, or the
5 judges thereof in vacation, shall have jurisdiction by such
6 writ, and shall, upon affidavit filed, showing a proper case,
7 issue such writ, to be returned, heard and determined
8 without unnecessary delay. If a circuit court, or a judge
9 thereof in vacation, shall proceed against any board of
10 canvassers by mandamus, or otherwise, to control, in any
11 manner, the action of such board in the performance of its
12 duties, under the provisions of this article, in any case
13 concerning the election of a member of the house of dele-
14 gates, or a state senator, and shall fail to enter a final order
15 in such proceedings, settling all questions presented there-
16 in within fifteen days from the commencement of such
17 proceedings, unless delayed by proceedings in the supreme
18 court of appeals, or a judge thereof in vacation, the same
19 shall thereupon be dismissed; and such board shall con-
20 vene within not less than five days thereafter, and proceed
21 forthwith to the performance of its duties under the pro-
22 visions of this article. A mandamus shall lie from the
23 supreme court of appeals, or any one of the judges there-
24 of in vacation, returnable before said court, to compel any
25 officer herein to do and perform legally any duty herein
26 required of him. And respecting the election of a mem-
27 ber of the house of delegates and state senator, a writ of
28 certiorari, mandamus or prohibition shall lie from the
29 supreme court of appeals, or a judge thereof in vacation,
30 returnable before said court, to correct any error of law,
31 and review and correct the proceedings of any circuit
32 court, or the judge thereof in vacation, or any board of
33 canvassers. When any such writ of mandamus, prohibi-
34 tion or certiorari shall be issued by said court, or a judge
35 thereof in vacation, it shall be the duty of said court to
36 convene in special session at the state capital, not later
37 than ten days from the date of the writ, to hear and de-

38 termine all matters arising upon such writ, which matters
39 shall have precedence over all other business pending in
40 said court, and be determined within five days from the
41 assembling thereof, and, in any case, in ample time for
42 the case to be remanded and final action taken by the
43 circuit court and the board of canvassers, in order that
44 such board may perform its duty and issue the certificate
45 of election before the second Wednesday in January, then
46 next following. In mandamus and prohibition proceed-
47 ings under this section the same may be upon affidavit
48 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.
13. Compensation of registrars.
14. Clerical assistance.
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.
26. Registration of naturalized citizens.
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.

39. Interference with voter registration; penalties.

40. Damaging or destroying registration records; penalties.

Section 1. Permanent Registration Law.—This article,
2 providing a permanent and uniform system for the reg-
3 istration of the voters of the state of West Virginia, may
4 be cited as the “Permanent Registration Law.”

Sec. 2. Voter Registration Requirements.—No voter
2 otherwise qualified shall be permitted to vote at any elec-
3 tion unless he shall have been duly registered or shall
4 have placed himself within the “challenged voters” pro-
5 vision of this chapter, and only those persons who pos-
6 sess the constitutional and statutory qualifications for
7 voting shall be permitted to register, except that minors,
8 otherwise qualified, who shall have attained the age of
9 twenty-one years by the time of the next ensuing elec-
10 tion, may be permitted to register.

Sec. 3. Registration, Cancellation and Reinstatement.—
2 A permanent registration system shall hereby be estab-
3 lished which shall be uniform throughout the state and
4 all of its subdivisions. No voter so registered shall be
5 required to register again for any election while he con-
6 tinues to reside at the same address, or, having moved
7 from such address, is properly transferred according to
8 the provisions of section twenty-seven of this article, un-
9 less his registration is cancelled as provided in this ar-
10 ticle. If a voter fails to vote at least once during a period
11 covering two primary and general elections, his registra-
12 tion shall be cancelled and he shall, by letter, be given
13 proper notice thereof by the clerk of the county court, to
14 the effect that in order to vote he must register again or
15 execute and file, not later than thirty days before the next
16 primary or general election, with the clerk, an affidavit,
17 the form of which shall be prescribed by the secretary of
18 state, stating that he desires to be reinstated as a quali-
19 fied voter at the same address and the clerk shall replace
20 the registration card of the voter in the registration rec-
21 ords. A blank form of such affidavit shall be included
22 with and accompany the aforesaid notice to the voter.

**Sec. 4. Election Commission Continued; Composition;
2 Chairman; Traveling Expenses.**—The “State Election

3 Commission," heretofore created, is hereby continued and
4 shall be composed of five members, appointed by the
5 governor, by and with the advice and consent of the
6 senate. The commission shall, from this membership elect
7 a chairman for a term of two years. Each member of the
8 commission shall receive his actual and necessary travel-
9 ing expense incurred in the performance of his duties.

Sec. 5. Qualifications of Members of Commission.—No
2 member of the commission shall be a candidate for or hold
3 any public office other than that of membership in the
4 commission; nor shall he be a member of any committee
5 of a political party. At least one member shall be selected
6 with special reference to his expert knowledge as a stu-
7 dent of the problems of public elections. Of the remaining
8 four members, not more than two shall be affiliated with
9 the same major political party. In case a member be-
10 comes a candidate for or is appointed to any other public
11 office or political committee, his office as member of the
12 commission shall be deemed immediately vacated.

Sec. 6. Terms of Office of Commission Members.—The
2 terms of office of the members of the commission shall be
3 six years. Members in office when this section becomes
4 effective shall continue in office until their terms expire
5 or their membership is otherwise vacated. Appointments
6 to fill vacancies shall be for the unexpired terms. As
7 present terms expire, two members shall be appointed for
8 terms of six years commencing on the fourth day of June,
9 one thousand nine hundred sixty-three, two members
10 shall be appointed for terms of six years commencing on
11 the fourth day of June, one thousand nine hundred sixty-
12 five, and one member shall be appointed for a term of six
13 years commencing on the fourth day of June, one thou-
14 sand nine hundred sixty-seven, and successively every
15 six years thereafter.

Sec. 7. Commission's Office and Meetings.—The office
2 and place of meeting of the commission shall be the of-
3 fice of the secretary of state in the state capitol.

4 The commission shall hold such meetings as may be
5 called by the chairman, the governor, or the secretary of
6 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.

21 It shall be his further duty to advise with registration
22 officials; to furnish to the registration officials a sufficient
23 number of indexed copies of the current registration laws
24 of West Virginia and the administrative orders issued
25 thereunder; to investigate the administration of registra-
26 tion laws, frauds, and irregularities in any registration;
27 to report violations of registration laws to the appropri-
28 ate prosecuting officials, and to prepare an annual report
29 of registration.

30 The secretary of state shall also have the power to issue
31 subpoenas, administer oaths and affirmations, summon
32 witnesses, compel the production of books, papers, records
33 and other evidence, and fix the time and place for hearing
34 any matters relating to the administration and enforce-
35 ment of this article. In case of disobedience to a subpoena
36 or other process, he may invoke the aid of any circuit
37 court in requiring the evidence and testimony of witnesses
38 and the production of papers, books and documents.

39 All powers and duties vested in the secretary of state
40 under this article may be exercised by appointees of the
41 secretary of state at his discretion, but the secretary of
42 state shall be responsible for their acts.

Sec. 10. County Court Duties and Powers.—Subject to
2 the authority of the secretary of state, the county court
3 shall be the chief registration authority in each respective
4 county and all subdivisions therein, and shall supervise
5 the county clerk and registrars in the performance of
6 their respective duties.

7 The county court shall have power on its own motion
8 to summon and to interrogate any person concerning the
9 registration of voters, to investigate any irregularities in
10 registration, to summon and examine witnesses, to re-
11 quire the production of any relevant books and papers,
12 and to conduct hearings on any matters relating to reg-
13 istration of voters.

Sec. 11. Appointment of Registrars; Qualifications and
2 **Duties.**—The county court of each county shall, not less
3 than eighteen nor more than twenty weeks prior to the
4 date of a state-wide primary election, appoint two com-

5 petent persons, for one or more but not to exceed ten vot-
6 ing precincts in the county, to act as registrars for the
7 purpose of making a biennial or quadrennial check-up
8 required by this article. No person shall be eligible to
9 appointment as a registrar, or in any way act as such, if
10 he has been convicted of a felony or if he holds any elec-
11 tive or appointive office, or is a public employee, under
12 the laws of this state or of the United States; or cannot
13 read or write the English language; or is a candidate to
14 be voted for at such election. If any such registrar shall
15 fail or refuse to serve or is properly dismissed, the va-
16 cancy shall be filled either by the county court or by the
17 clerk thereof in vacation, in the manner provided for the
18 appointment of registrars. Each registrar, before enter-
19 ing upon the discharge of his duties, shall take an oath
20 that he will perform the duties of the office to the best of
21 his ability, which oath shall be filed in the office of the
22 clerk of the county court.

23 An equal number of such registrars shall be selected
24 from the two political parties which at the last preceding
25 election, cast the highest number and next highest num-
26 ber of votes in the county in which the election is to be
27 held. The county court shall, at least four weeks prior
28 to making such appointment, request the county execu-
29 tive committee of each of the said two political parties to
30 submit a list of names, equal to one half of the total num-
31 ber to be appointed, of persons qualified to act as reg-
32 istrars; and the county court shall, if such lists are sub-
33 mitted, appoint the respective registrars therefrom, and
34 shall notify each registrar of his appointment. Every
35 such list so presented shall be filed and preserved for one
36 year by the clerk of such court in his office. Any and
37 every act performed by any registrar under the provisions
38 of this article shall be void unless performed in conjunc-
39 tion with a registrar of the opposite political party at the
40 same time and place.

41 Before acting, all such registrars shall attend a session,
42 or sessions, of instruction by the clerk of the county court,
43 or some person designated by him, concerning the per-
44 formance of their duties.

45 Immediately following such instruction the clerk of the
46 county court shall deliver to the registrars a copy of the
47 laws and regulations relating to registration of voters
48 and all necessary forms and other supplies, including a
49 certified list of all registered voters within the precinct or
50 precincts for which such registrars were appointed, upon
51 such form as may be prescribed by the secretary of state.
52 Such registrars shall thereupon proceed together to make
53 a house-to-house canvass in their precincts for the pur-
54 pose of making the biennial or quadrennial check-up re-
55 quired by section twenty-one of this article. In making
56 such check-up the registrars shall not again register any
57 person who is already registered in such precinct, but
58 shall determine whether or not such person is duly regis-
59 tered and qualified to vote therein.

Sec. 12. Additional Duties of Registrars and Clerks;
2 **Checking; Notices.**—Upon the completion of the biennial
3 or quadrennial check-up, the registrars shall return the
4 records and lists to the clerk of the county court, together
5 with an affidavit that the returns, records and lists re-
6 turned to the clerk are true and correct to the best of
7 their knowledge and belief. The clerk of the county
8 court shall make the necessary changes in his other regis-
9 tration records. The list checked by the registrars in each
10 precinct shall be compared with the register of deaths
11 kept by the clerk of the county court in his office. Each
12 person named in the list who is not shown to have been
13 found and so checked by the registrars and whose death
14 is not shown on such register shall be given proper notice
15 by the clerk of the county court that his registration has
16 been cancelled and that in order to vote he must register
17 again. The notice shall be mailed to such person's last
18 address appearing on the registration record.

19 The clerk of the county court is authorized to publish
20 such notices as may be proper in his opinion to advise the
21 electorate of the respective dates after which transfers
22 and registration, and changes of registration, may not
23 be made with respect to any general or primary election.

Sec. 13. Compensation of Registrars.—As compensation
2 for his services during the house-to-house canvass each

3 registrar shall be paid at a rate, to be fixed by the county
4 court, of not less than ten nor more than twenty cents
5 for each person newly registered; and for each transfer
6 and for each previous registration checked, whether
7 cancelled or not, he shall be paid not less than eight nor
8 more than twelve cents. Each registrar shall be paid not
9 more than ten dollars for each day he attends a session
10 of instruction for registrars conducted by the clerk of
11 the county court.

12 Registrars shall be paid for their services by the county
13 court, but part or all of the compensation of any registrar
14 may be withheld by the county court until such time as
15 the county court shall have agreed that the duties of such
16 registrar have been fulfilled.

Sec. 14. Clerical Assistance.—The county court shall
2 have power to provide funds for the reasonable compen-
3 sation of clerical assistance needed by the clerk of the
4 county court in the performance of his duties in the
5 administration of voter registration.

Sec. 15. Registration Record Files.—The registration
2 records to be used in county-state elections shall be kept
3 in a separate file and arranged according to precinct,
4 street and sequence of house, apartment or room num-
5 bers, where possible. A duplicate set of these registra-
6 tion records shall be made and kept in a separate file,
7 and shall be arranged in alphabetical order. Such file
8 shall herein be referred to as the "alphabet file."

9 The registration records to be used in municipal elec-
10 tions shall be kept in a separate file and arranged, where
11 possible, according to precinct, street and sequence of
12 house, apartment or room numbers.

13 In any case where the county magisterial district and
14 municipal precinct lines coincide in such manner that
15 all the registrants entitled to vote in any county-state
16 election and the registrants entitled to vote in any mu-
17 nicipal election in any precinct are the same it shall not
18 be necessary for the registrar to maintain a separate
19 record for municipal elections, unless the governing body
20 of the municipality demands it by formal notice directed

21 to the county court, and offers to defray the expense of
22 maintaining such duplicate set of registration lists.

Sec. 16. Custody of Registration Records; Public In-
2 **spection.**—The registration records shall not be removed
3 from the custody of the county court except for use in
4 an election, or by the order of a court of record. The
5 registration records shall be open for public inspection
6 under reasonable regulations prescribed by the county
7 court.

Sec. 17. Administration of Oaths.—Whenever in any
2 matter concerning registration an oath or affirmation is
3 required, the clerk of the county court and registrars
4 shall have the power to administer the same.

Sec. 18. Party Affiliation; Primary and Nonpartisan
2 **Voting.**—Any person claiming the right to be registered
3 shall be requested to state the name of the political party
4 with which he desires to affiliate, and such affiliation shall
5 be indicated on the registration record in the proper
6 space. Any person desiring to be registered, who declines
7 to state any preference for party affiliation, shall be regis-
8 tered as an “independent” and such person, while such
9 registration continues, shall not be permitted to vote a
10 political party ballot in any primary election, but he shall
11 be entitled to vote any nonpartisan ballots for candidates
12 or on public questions submitted to the voters at such
13 primary election.

Sec. 19. Voter Registration Forms.—The voter registra-
2 tion forms for county-state elections and for municipal
3 elections shall be identical, except for color. The forms
4 shall be prescribed by the secretary of state and may be
5 by him revised and supplemented from time to time so
6 as to provide thereon for a continued record of voter
7 registration and voter election participation. The forms
8 shall be substantially as follows:

[illegible]

Sec. 20. Completing Registration Forms; Registration

2 **Receipts.**—Each applicant for voter registration shall fill
3 in and complete only one registration form, except in
4 those cases where a separate record for municipal elec-
5 tions is required, in which cases those registrants who are
6 required to be listed in separate municipal record lists
7 shall fill in and complete two forms. The signature of the
8 applicant on all forms shall be written in ink. Upon the
9 completion of the registration of any person, the registra-
10 tion official shall issue to such person a signed and dated
11 receipt of such registration. The form for such receipt
12 shall be prescribed by the secretary of state.

Sec. 21. Quadrennial and Biennial Check-up.—There

2 shall be a quadrennial check-up in every county in the
3 state, beginning with the year one thousand nine hundred
4 sixty-four and every four years subsequent thereto, and
5 the registrars, according to directions prescribed by the
6 secretary of state and as provided in sections eleven and
7 twelve of this article, shall proceed to register the names
8 of all persons not registered but who are qualified to
9 register, and shall also check and, if necessary, alter,
10 amend, correct or cancel the registration records of the
11 voters of the respective precincts so as to provide a com-
12 plete and accurate record of all persons qualified to vote.
13 During the year one thousand nine hundred sixty-six and
14 every two years subsequent thereto, except in those years
15 in which a quadrennial check-up is held as aforesaid,
16 there may be a biennial check-up for voter registration
17 if in the discretion of the county court such check-up is
18 deemed necessary and advisable.

Sec. 22. Registration in Clerk's Office.—The clerk of

2 the county court may register any qualified person as a
3 voter by having him fill in and complete the prescribed
4 voter registration form and having him sign same under
5 oath or affirmation. The clerk, upon proper proof, may
6 alter, amend, correct, or cancel the registration record
7 of any voter. Such registration or alteration, amendment,
8 correction or cancellation of registration records shall be
9 carried on throughout the year. If found necessary, the
10 county court may order and direct the clerk of the county

11 court to maintain additional office hours in the evening
12 or at other proper times and places for accommodation
13 of voter registration.

Sec. 23. Absentee Registration.—Any person who possesses 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 secretary of state.

Sec. 24. Registration of Persons Unable to Write.—If an applicant, although physically able, shall allege inability 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 personally 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 applicant shall be permitted to sign the registration form by making his mark.

12 If an applicant is literate, but physically unable to sign
13 his name, the registrar or clerk of the county court shall
14 insert the name of the applicant on the registration form
15 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 registration 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.

16 When the clerk of the county court shall ascertain that
17 any voter, who has declared himself physically disabled
18 or illiterate, no longer suffers from such physical dis-
19 ability or illiteracy, he shall forthwith cancel on the
20 registration record the entry relating to physical dis-
21 ability or illiteracy and shall notify such voter by mail
22 of his action.

Sec. 26. Registration of Naturalized Citizens.—Any nat-
2 uralized citizen, claiming the right to register, shall pro-
3 duce his naturalization papers or a certificate under the
4 seal of the court in which his naturalization was effected.
5 Any person, claiming citizenship by reason of the natural-
6 ization of his parent during his minority, may be regis-
7 tered either by the production of his parent's original
8 naturalization papers, or a certified copy thereof, or a
9 certificate of the court. Any woman claiming citizenship
10 by reason of her marriage prior to September twenty-
11 second, one thousand nine hundred twenty-two, may be
12 registered by the production of her husband's original
13 naturalization papers, or a certified copy thereof, or a
14 certificate of the court in which naturalization was
15 effected.

Sec. 27. Registration Transfers.—Whenever a voter re-
2 moves his residence from one place to another within
3 the same county he shall request that the change be made
4 on his registration record. Such request shall be made by
5 filling in, and, if he is able, signing under oath or affirma-
6 tion the necessary form, which may be procured in person
7 or by mail from the office of the clerk of the county court,
8 or from the registrars during the biennial check-up. The
9 form of such notice shall be prescribed by the secretary
10 of state.

11 Upon receipt of such notice the clerk of the county court
12 shall cause the signature thereon to be compared with
13 the signature of the applicant upon his registration card
14 and, if such signatures correspond, shall make entry of
15 such change of residence upon all the registration records
16 and the necessary transfers in the files. If the clerk of
17 the county court is not satisfied as to the genuineness of
18 the signature on the notice of change of residence, and

19 if the right of such applicant to register is challenged
20 according to the procedure herein prescribed, such trans-
21 fer shall not be made.

22 Transfers of the registration record may be made
23 throughout the year except during the thirty days im-
24 mediately preceding any election, and if any voter shall
25 move from one place to another within the county within
26 the thirty-day period, he shall, for that election only, vote
27 in the precinct from which he moved.

Sec. 28. Procedure on Change of Registered Voter's
2 Name.—Whenever a voter, previously registered, shall
3 change his name, such person shall be required to regis-
4 ter again. For this purpose such person may register by
5 mail in the same manner as an absentee registrant, ac-
6 cording to the procedure prescribed in section twenty-
7 three of this article. Upon such registration, the clerk of
8 the county court shall cancel the registration record
9 bearing the voter's former name. When such a change
10 of name is made during the thirty days immediately pre-
11 ceding any election, such voter, if duly registered, may
12 vote at the election under his former name.

Sec. 29. Challenges; Notice; Cancellation of Registra-
2 **tion.**—Any person claiming the right to be registered as
3 a voter may be challenged by the clerk of the county
4 court or by any registrar of the county or by the chair-
5 man of any political party committee or any voter who
6 shall appear in person at the clerk's office. Such challenge
7 shall be entered upon a form prescribed by the secretary
8 of state and shall be filed as a matter of record in the office
9 of the clerk of the county court. Upon the receipt and
10 filing of such challenge, the clerk of the county court
11 shall mail to the person so challenged a notice thereof
12 requesting such person to appear in person during business
13 hours at the clerk's office within a period of thirty days
14 from and after the mailing of such notice to show cause,
15 if any he can, why such challenge should be removed. The
16 form of the notice of challenge shall be prescribed by the
17 secretary of state and shall be mailed by registered or cer-
18 tified mail with return receipt requested. Failure of the
19 challenged person to appear and show cause within the

20 prescribed time shall constitute immediate cancellation
21 of his voter registration, if any, theretofore effected and
22 shall be prima facie evidence of his ineligibility to be
23 registered as a voter. If he does timely appear and show
24 cause, the clerk shall determine his eligibility to be regis-
25 tered as a voter as in any other case.

Sec. 30. Time of Registration Prior to Election;

2 **Changes.**—No person may vote in an election when he
3 has registered or his voter registration has been altered,
4 amended or corrected within a period of thirty days next
5 preceding such election, but this inhibition shall not pre-
6 vent, during such period of thirty days, additional regis-
7 trations and changes in voter registrations with reference
8 to future elections. If, during such period of thirty days
9 preceding an election, a voter is registered or his voter
10 registration is altered, amended or corrected, he shall not
11 be permitted or qualified to vote at such election.

Sec. 31. Registration When Precincts Changed; Re-Reg-

2 **istration When Deemed Necessary.**—Whenever a new
3 precinct has been created or the boundaries of any pre-
4 cinct have been changed, the clerk of the county court
5 shall correct and transfer accordingly the registration rec-
6 ords of the voters whose voting precincts have been thus
7 changed. The registration of a voter shall not be invali-
8 dated by such alteration or transfer.

9 Whenever the county court shall deem it necessary be-
10 cause of destruction of records or any other emergency,
11 it shall have the power to and may order a re-registration
12 of the voters in any precinct.

Sec. 32. Preparation and Furnishing of Precinct Voter

2 **Lists.**—Prior to any election the clerk of the county court
3 shall, upon request, prepare lists which may be photo-
4 stated, typed, printed, or mimeographed at the discretion
5 of such clerk. Such lists shall contain exact copies of the
6 names, addresses and political affiliation of the registered
7 voters in the order of their arrangement in the respective
8 county or municipal precinct registration files. Such copies
9 shall be known as the "precinct registration lists."

10 Any person, municipality, corporation, or other entity

11 may obtain copies of precinct registration lists containing
12 the name, address and political affiliation of each regis-
13 tered voter in such precinct from the clerk of the county
14 court, who shall charge a fee of one cent per name fur-
15 nished. The fees received by the clerk of the county court
16 shall be kept in a separate fund under his supervision for
17 the purpose of defraying the cost of the preparation of
18 the precinct lists. Any unexpended balance in the fund
19 shall be transferred to the general fund of the county
20 court.

**Sec. 33. Hearings on Registration Issues in County
2 Court; Review in Circuit and Supreme Court; Sessions of
3 Court.**—Any person affected adversely in regard to any
4 matter pertaining to his registration may obtain a hearing
5 before the county court. The county court shall preserve
6 and keep all record evidence offered at such hearing and
7 shall have all oral evidence heard reduced to writing and
8 preserved and kept with other records. From the decision
9 of the county court such person or the person challenging
10 his registration shall have, within thirty days, an appeal
11 of right by petition to the circuit court of the county. Such
12 appeal may be taken by petition without formal bill of
13 exceptions or certification. The clerk of the county court
14 shall give reasonable notice of such appeal thereof in writ-
15 ing to the party or parties to the proceedings.

16 The circuit court upon such appeal shall consider only
17 the record before the county court, which record shall
18 consist of the evidence considered by the county court in
19 reaching its decision. Such record shall be properly au-
20 thenticated by the clerk of the county court.

21 The circuit court may affirm the order of the county
22 court, whether the order be affirmative or negative; but if
23 it deems such order not to be reasonably justified by the
24 evidence considered, it may reverse such orders of the
25 county court in whole or in part as it deems just and right;
26 and if it deems the evidence considered by the county
27 court in reaching its decision insufficient, it may remand
28 the proceedings to the county court for further hearing.
29 Any such order or orders of the circuit court shall be cer-
30 tified to the county court.

31 Any party to such appeal, may, within thirty days after
32 the date of a final order by the circuit court, apply for an
33 appeal to the supreme court of appeals, which may grant
34 or refuse such appeal at its discretion. The supreme court
35 of appeals shall have jurisdiction to hear and determine
36 the appeal upon the record before the circuit court, and
37 to enter such order as it may find that the circuit court
38 should have entered.

39 It shall be the duty of the circuit court and the supreme
40 court of appeals, in order to expedite registration and
41 election procedure, to hold such sessions as may be neces-
42 sary to determine any cases involving the registration of
43 voters.

44 Judges of the circuit court and supreme court of ap-
45 peals in vacation shall have the same power as that pre-
46 scribed in this section for their respective courts.

Sec. 34. County Court Appropriations.—The county
2 court shall budget the funds necessary for the payment
3 of the compensation of registrars and other assistants and
4 employees, and the fees of witnesses, and likewise for
5 preparing, securing, distributing notices, stationery and
6 other supplies, and other services which are necessary
7 for the purpose of this article. The county court shall not
8 include in its budget any sum for the purpose of preparing
9 or printing precinct lists. Any unexpended balances of
10 any appropriation heretofore made by the county court
11 for the purpose of carrying out any provision of the exist-
12 ing registration law shall be transferred to and made
13 available to the county court for the expenses of carrying
14 out the provisions of this article.

**Sec. 35. Unlawful Registration or Rejection of Voter;
2 Penalties.**—Any registrar or clerk of the county court who
3 knowingly registers or permits to be registered a person
4 not lawfully entitled to be registered, or who knowingly
5 refuses to register a person entitled to be registered, or
6 who knowingly assists in preventing such person from
7 being registered, or who inserts or intentionally permits
8 to be inserted a name or other entries in any registration
9 form, knowing or having reason to know that such entry
10 should not be made, shall be guilty of a misdemeanor, and,

11 upon conviction, shall be fined not more than one thousand
12 dollars or confined in the county jail for not more than
13 one year, or both, at the discretion of the court.

14 Any person who registers or applies to be registered,
15 or who applies for a change of residence address, know-
16 ing or having reason to know that he is not entitled to be
17 registered, or to have his residence address changed on
18 his registration record, or any person who declares as his
19 address a place or address which he knows is not his legal
20 residence, or who impersonates another in an application
21 for registration, or who knowingly offers false naturaliza-
22 tion papers to establish his claim to be registered, shall
23 be guilty of a misdemeanor, and, upon conviction, shall be
24 fined not more than one thousand dollars or confined in
25 the county jail for not more than one year, or both, at the
26 discretion of the court.

Sec. 36. Neglect of Duty by Registration Officers; Pen-
2 **alties.**—Any registrar or clerk of the county court or their
3 authorized deputies or any other persons upon whom a
4 duty is laid by the permanent registration law, who shall
5 wilfully delay, neglect, or refuse to perform such duty,
6 shall be guilty of a misdemeanor, and, upon conviction,
7 shall be fined not more than one thousand dollars or con-
8 fined in the county jail for not more than one year, or
9 both, at the discretion of the court.

Sec. 37. Alteration or Destruction of Records; Penalties.
2 —Any person who wrongfully and intentionally inserts or
3 permits to be wrongfully inserted any name or material
4 entry on any registration form or any other record in con-
5 nection with registration; or who wrongfully alters or
6 destroys an entry which has been duly made; or who
7 wrongfully takes and removes any such registration form,
8 or any other record authorized or required in connection
9 with registration, from the custody of any person having
10 lawful charge thereof, shall be guilty of a misdemeanor,
11 and, upon conviction, shall be fined not more than one
12 thousand dollars or confined in the county jail for not
13 more than one year, or both, at the discretion of the court.

Sec. 38. Withholding Information; Penalties.—Any per-

2 son who neglects or refuses to furnish to the secretary of
3 state, the county court, or the clerk of the county court
4 any information which they are authorized to obtain in
5 connection with registration, or to exhibit any records,
6 papers, or documents herein authorized to be inspected
7 by them, shall be guilty of a misdemeanor, and, upon con-
8 viction thereof shall be fined not more than one thousand
9 dollars, or confined in the county jail for not more than
10 one year, or both, at the discretion of the court.

Sec. 39. Interference with Voter Registration; Penalties.—Any person who intentionally interferes with, hinders, 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 dollars 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 disability.
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.

14. Challenges of votes of absent voters.
15. Canvass of absent voter ballots; requirements; procedure.
16. Absentee voting in municipal elections.

Section 1. Persons Eligible to Vote as Absentees.—Any
2 qualified voter of the State of West Virginia, being duly
3 registered, (a) who by reason of the nature of his em-
4 ployment, business, or on account of other unavoidable
5 causes, expects to be absent from the county on the date of
6 any primary, general or special election, (b) who by
7 reason of physical disability, illness or injury will be un-
8 able to vote in person at the polls at such election as other-
9 wise required by law, (c) who is a student attending any
10 college or university, or is the spouse of any such student,
11 outside the county wherein he or she is legally registered
12 to vote, or (d) who is a member of any branch of the
13 armed services of the United States and who in the per-
14 formance of his duties expects to be absent on election
15 day from the county in which he is registered, or his wife
16 or husband or other member of his family living with
17 such person, may vote by absent voter's ballot as provided
18 in this article, at any such election.

19 The provisions of this article shall apply only to voters
20 necessarily absent from the county or from the polls on
21 election day for the reasons specified in this section.

Sec. 2. Application for Absent Voter Ballots; Time.—
2 Any voter, as defined and designated in section one of this
3 article, expecting to be absent from the county or from the
4 polls on the day of any primary, general or special elec-
5 tion, may, not more than sixty days prior to the date of
6 any such election, make application to the clerk of the
7 circuit court of the county in which his voting precinct
8 is situated for an official absent voter's ballot or ballots
9 to be voted at such election, except that the clerk shall
10 not receive and honor any such application for absent
11 voter ballots for a primary or general election made to
12 him after the Saturday next preceding the date of any
13 such primary or general election nor after regular business
14 hours on the third day next preceding the date of any spe-
15 cial election. In computing such third day the day of con-
16 ducting the special elections shall be excluded.

Sec. 3. Form of Application; Declaration; Physician's

2 **Statement as to Disability.**—Application for an absent
3 voter's ballot shall be made in person or by mail, on a
4 blank to be furnished by the clerk of any circuit court of
5 the state. Such blank shall, upon request, be sent to the
6 applicant by mail by any such clerk, or delivered to such
7 applicant in person upon his appearance at the office of
8 any such clerk. Application for an absent voter's ballot
9 shall be substantially in the following form, and shall be
10 signed by the applicant, as hereinafter provided. Such
11 completed application may be returned only to the clerk
12 of the circuit court of the county in which the applicant
13 is a qualified elector.

APPLICATION FOR ABSENT VOTER'S BALLOT

14 State of _____,

15 County of _____, to wit:

16 I, _____, hereby declare that I am now, or
17 will have been, a resident of the State of West Virginia for
18 twelve months, and of the county of _____ for sixty
19 days, next preceding the date of the ensuing election to be
20 held on the _____ day of _____, 19____;
21 that I am now a resident of election precinct No. _____,
22 in the magisterial district of _____,
23 in said county, that I am a duly qualified voter entitled
24 to vote in such election; that I am registered in the
25 precinct of my residence as provided by law; that (as
26 the case may be) I am _____ (stating business),
27 and because of the nature of my business or employ-
28 ment, or for the following reasons _____
29 (relating unavoidable cause of absence), I expect to
30 be absent from the said county on the date of such elec-
31 tion, or I am a (college or university student, member
32 of armed forces, spouse, etc., as specified in section one
33 of this article) and will be unable to vote in person at such
34 election, or because of physical disability, illness or injury
35 (here state reason, whether physical disability, illness or
36 injury) I will be unable to vote in person at such election,
37 as evidenced below by the statement of a duly licensed
38 physician; and I hereby make application for an official
39 ballot (or ballots if more than one are to be used) to be
40 voted by me at such election; and that I will return such
41

42 ballot (or ballots) to the officer issuing them not later
43 than four days prior to the day of such election.

44 (If application is made for a primary ballot, the appli-
45 cant shall also designate the party whose candidates he
46 expects to vote for:)

47 I hereby declare under penalty of false swearing, as
48 provided in section three, article nine, chapter three of the
49 code of West Virginia, as amended, that the statements
50 and declarations contained in this application are true
51 and correct to the best of my knowledge and belief.

52 Signed

53 Home address of applicant

54 P. O. address to which ballot is to be sent

55 The following statement must be executed if the reason
56 stated is physical disability of the voter:

57 **STATEMENT OF PHYSICIAN**

58 I,, a physician duly licensed to practice in
59 the State ofdo hereby certify under penalty
60 of false swearing, as provided in section three, article
61 nine, chapter three of the code of West Virginia, as
62 amended, that I have examined,
63 the applicant whose signature appears above, and that
64 in my opinion, because of physical disability, illness or
65 injury..... (here state reason, whether physical
66 disability, illness or injury), he will be unable to vote in
67 person at such election.

68 Signed

**Sec. 4. Clerk's Duties and Records on Absentee's Ap-
2 plication and Ballots.**—Upon receipt of an absent voter's
3 ballot application, the clerk of the circuit court of the
4 county in which the applicant is a qualified elector shall
5 file same in his office and enter the name of the voter
6 applicant, his home address, the address to which the
7 ballot is to be mailed, and the date of receipt of the appli-
8 cation on a record to be kept for that purpose. As subse-
9 quent events with reference thereto occur, the clerk shall
10 enter upon such record the date of his mailing the ballot
11 applied for, the date of his receipt of the returned ballot,
12 and such other pertinent information as he shall consider
13 necessary and advisable.

Sec. 5. Mailing of Ballots; Time.—Between the thirtieth 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 election), 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 continental limits of the United States of America. The clerk shall, without delay, mail all such absent voter ballots 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 computing 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 furnished 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

11 a resident of precinct No._____ of the magisterial district
12 of_____residing at_____in the County of_____
13 and State of West Virginia, and am entitled to vote in
14 such precinct at the election to be held on_____,
15 19____; that (as the case may be) I am_____
16 (stating business) and because of the nature of my em-
17 ployment, or for the following reasons _____
18 (relating unavoidable cause of absence), I expect to be
19 absent from the county on the date of such election, or
20 I am a (college or university student, member of armed
21 forces, spouse, etc., as specified in section one of this
22 article) and will be unable to vote in person at such
23 election, or because of physical disability, illness or in-
24 jury_____, (here state reason whether physi-
25 cal disability, illness or injury), I will be unable to vote
26 in person at such election. I further declare that I have
27 personally marked the enclosed ballot (or ballots) in
28 secret, and have enclosed the same in this envelope and
29 sealed the same without exhibiting it to any other person.

30 I hereby declare under penalty of false swearing, as
31 provided in section three, article nine, chapter three of
32 the code of West Virginia, as amended, that the above
33 statements and declarations are true and correct to the
34 best of my knowledge and belief.

35 Signed_____

Sec. 7. Marking and Mailing Ballot by Absent Voter.

2 —Such absent voter shall make and subscribe to the
3 declaration provided for in section six of this article, and
4 such voter shall thereupon, in the presence of no other
5 person, mark such ballot or ballots, and such ballot or
6 ballots shall then be folded by such voter so that each
7 ballot will be separate and so as to conceal the marking,
8 and shall be inclosed in such envelope, together with any
9 unused ballot, and the envelope shall be securely sealed.
10 The envelope shall then be mailed by such voter, postage
11 prepaid, to the officer issuing the ballot, or, if more con-
12 venient, it may be delivered in person, or, if the voter
13 be for any reason disabled, the envelope may be so mail-
14 ed or delivered by a person selected and designated by
15 the voter for that purpose. Any such ballot to be valid

16 shall be received by the clerk of the circuit court of the
17 county in time for him to deliver the same to the elec-
18 tion commissioners before the closing of the polls.

Sec. 8. Clerk's Receipt of and Action on Absent Voters'

2 **Ballots.**—Upon receipt of an absent voter's ballot, the
3 clerk of the circuit court of the county shall forthwith
4 enclose the same, unopened, together with the applica-
5 tion made by such absent voter, in a large carrier envel-
6 ope, which shall be securely sealed and indorsed with the
7 name and official title of such clerk and the words: "This
8 envelope contains an absent voter's ballot to be voted in
9 precinct No. in district in
10 county, and must be opened only at the polls on election
11 day while such polls are open." The clerk shall insert
12 the name of the district and the number of the precinct
13 in which the absent voter intends to vote and shall there-
14 after keep the same securely in his office until delivered
15 by him, as provided in section nine of this article.

Sec. 9. Delivery of Absent Voters' Ballots to Election

2 **Officers.**—In the event that an absent voter's ballot shall
3 be received by the clerk of the circuit court prior to the
4 delivery of the official ballots to the election commissioner
5 of the precinct in which such absent voter resides, such
6 ballot and application, sealed in the carrier envelope, as
7 provided in section eight of this article, shall be delivered
8 to the election commissioner of such precinct along with
9 such official ballots, but, if received after the delivery of
10 such official ballots, the same shall be delivered to the
11 election commissioners of such precinct, by the clerk in
12 person, or by messenger, before the closing of the polls,
13 provided such ballots are received by the clerk in time to
14 make such delivery.

Sec. 10. Return of Absent Voter and Ballot to Precinct.—

2 This article shall not be so construed as to prohibit any ab-
3 sent voter, returning to his place of residence, from vot-
4 ing in person at the proper precinct at any election con-
5 templated in this article, notwithstanding that he may
6 have made application for an absent voter's ballot or bal-
7 lots, and such ballot or ballots may have been mailed or

8 otherwise delivered by the proper clerk to him, (a) if
9 such voter has not availed himself of the privileges of an
10 absent voter, as provided in this article, and voted the
11 ballot or ballots mailed or otherwise delivered by such
12 clerk to him, and (b) if such voter shall return such bal-
13 lot or ballots, if received, to the commissioners of the
14 election of the precinct of his residence, by whom such
15 ballot or ballots shall be marked "Cancelled," a minute of
16 such action entered in the poll books, and such ballot or
17 ballots shall thereafter be destroyed with the unused
18 ballots.

Sec. 11. Action When Absent Voter Dies.—Whenever
2 it shall be made to appear by due proof to the election
3 commissioners that any voter, who has marked and for-
4 warding his ballot as hereinbefore provided in this article,
5 has died, then the ballot of such deceased voter shall be
6 returned by the commissioners with defective ballots, but
7 the casting of an absent voter's ballot of a deceased voter
8 shall not invalidate the election.

**Sec. 12. Preparation, Number and Handling of Absent
2 Voters' Ballots.**—Absent voters' ballots shall be in all re-
3 spects like other ballots. Not less than thirty days prior
4 to the date on which any primary, general or special
5 election is to be held, the clerk of the circuit courts of
6 the several counties shall estimate and determine the
7 number of absent voters' ballots of all kinds which will
8 be required in their respective counties for any such
9 election. The ballots for the election of all officers, or
10 the ratification, acceptance or rejection of any measure,
11 proposition or other public question to be voted on
12 by the voters, shall be prepared and printed under the
13 direction of the board of ballot commissioners constituted
14 as provided in article one of this chapter. The several
15 county boards of ballot commissioners shall prepare and
16 have printed, in such number as they shall determine,
17 such absent voters' ballots as are to be printed under their
18 directions as hereinbefore provided, and such ballots shall
19 be delivered to the clerk of the circuit court of the coun-
20 ty not less than thirty days prior to the day of the elec-
21 tion at which they are to be used.

Sec. 13. Clerk's Additional Duties and Responsibilities;

2 **Assistance to Voters Unable to Write.**—The clerk of the
3 circuit court shall be primarily responsible for the prepa-
4 ration, mailing, receiving, delivering and otherwise handl-
5 ing of all absent voter ballots. He shall keep a record of
6 all ballots so delivered for the purpose of absentee voting,
7 as well as all ballots, if any, marked before him, and shall
8 deliver to the commissioner of election to whom the bal-
9 lots for the precinct are delivered and at the time of the
10 delivery of such ballots a certificate stating the number of
11 ballots delivered or mailed to absent voters, and those
12 marked before him, if any, and the names of the voters to
13 whom such ballots have been delivered or mailed, or by
14 whom they have been marked, if marked before him.

15 In the event a voter, qualified to vote an absent voter's
16 ballot as herein prescribed, offers to vote such ballot or
17 ballots in the clerk's office but manifests inability to write
18 or mark his ballot, the voter may designate and call upon
19 any person of his choice then present to assist him in vot-
20 ing his absent voter's ballot or ballots thereat and such
21 designated person shall thereupon assist such voter in
22 the manner and to the extent of poll clerk assistance to
23 voters at the polling places under provisions of section
24 thirty-four of article one of this chapter.

Sec. 14. Challenges of Votes of Absent Voters.—The

2 vote of an absent voter may be challenged for any cause
3 for which it could be challenged if the voter were pres-
4 ent and voting in person. When any such challenge is
5 made, the procedure relating to challenges at the polls, as
6 provided in article one of this chapter, shall apply. Notice
7 of such challenge shall be sent by the clerk of the county
8 court to the absent voter by registered or certified mail
9 with return receipt requested.

Sec. 15. Canvass of Absent Voter Ballots; Require-

2 **ments; Procedure.**—At any time between the opening and
3 closing of the polls on such election day, the commission-
4 ers of election of the precinct, in the presence of each
5 other, shall open the absent voter ballot outer or carrier
6 envelope only, announce the absent voter's name and
7 compare the signature upon the application with the sig-

8 nature at the end of the declaration on the ballot envelope
9 and upon the voter's registration record. In case the elec-
10 tion commissioners find the declaration properly exe-
11 cuted, that the signatures correspond, that the applicant
12 is a duly qualified voter of the precinct indicated, that he
13 is duly registered, and that the applicant has not voted in
14 person at such election, or, in case of a primary election,
15 if he has not previously exercised the right of suffrage, if
16 he shall have executed the proper statement relative to
17 his age and qualifications and the party with which he
18 intends to affiliate, the election commissioners shall open
19 the envelope containing the absent voter's ballot in such
20 manner as not to deface or destroy the declaration there-
21 on, and take out the ballot or ballots inclosed therein,
22 without unfolding or permitting the same to be unfolded
23 or examined. The election commissioners shall then deliv-
24 er such ballot or ballots to the poll clerks who shall at
25 once proceed to write their names on the back of each of
26 such ballots in the same manner as other ballots are re-
27 quired to be endorsed by the poll clerks at precinct vot-
28 ing. A commissioner shall thereupon deposit the same in
29 the ballot box and the poll clerks shall indicate, in the
30 appropriate place on the registration record in the same
31 manner as if he had appeared personally, the fact that such
32 absent voter had voted, and shall enter the absent voter's
33 name on the poll book. In the event that such declara-
34 tion is found to be insufficient, or that the signatures
35 do not correspond, or that the applicant is not a duly qual-
36 ified voter in such precinct, or that he has voted in per-
37 son at such election, or that he has not registered, or that
38 the ballot is open, or has been opened and resealed, or
39 that the ballot envelope contains more than one ballot
40 of any one kind, or, in case of a primary election, if he
41 shall have failed to execute the proper statements rela-
42 tive to his age and qualifications and the party with which
43 he intends to affiliate, such vote may be challenged as
44 provided in the next preceding section of this article.

Sec. 16. Absentee Voting in Municipal Elections.—The
2 provisions of this article relating to absentee voting shall
3 apply to all municipal elections, except where clearly not
4 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 precincts.
5. Acquisition of machines by purchase or lease.
6. Bids and contracts for voting machines; false swearing or failure to disclose facts.
7. Voting machine commission; how composed; duties; compensation and expenses.
8. Minimum requirements of voting machines.
9. County court clerk custodian of machines; duties.
10. Ballot labels, instructions, and other supplies; vacancy changes; procedure and requirements.
11. Ballot label arrangement in machines; drawing by lot to determine position of candidates for house of delegates on machines; adjustment; records.
12. Inspection of machines; duties of county court, ballot commissioners, election commissioners; keys and records relating to machines.
13. Election boards where voting machines used; instructions; vacancies.
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 procedures.
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 accuracy; 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; attempts; 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

5 be governed by the terms, conditions, restrictions and
6 limitations imposed by this article.

Sec. 2. Procedures for Adopting Voting Machines.—

2 Voting machines may be adopted for use in general, pri-
3 mary and special elections in any county by either of the
4 following procedures, and not otherwise:

5 (1) By a majority of the members of the county court
6 voting to adopt the same at a meeting regularly called in
7 regular or special session: *Provided, however,* That such
8 meeting shall be held not less than six months prior to a
9 general election or six months prior to a primary election.
10 If at such meeting, such county court shall enter an order
11 of its intention to adopt the use of voting machines, it
12 shall thereafter forthwith cause to be published a certi-
13 fied copy of such order in some newspaper of general cir-
14 culation in such county. Such notice shall be published
15 at least once a week for four successive weeks beginning
16 not less than twenty days after the entry of such order,
17 and a copy of such order shall be posted at the front door
18 of the courthouse and at least three other public places
19 in such county for a like period. Such county court shall
20 not adopt the use of voting machines until ninety days
21 after the entry of such order of its intention to adopt the
22 same. Promptly after the expiration of ninety days after
23 the entry of such order of intention to adopt the use of
24 voting machines, if no petition has theretofore been filed
25 with such county court requesting a referendum on the
26 question of adoption of voting machines as hereinafter
27 provided, such county court shall enter a final order
28 adopting voting machines, and voting machines shall
29 thereby be adopted.

30 If five per cent or more of the registered voters of such
31 county shall sign a petition requesting that voting ma-
32 chines be not adopted for use in such county and such
33 petition be filed with the county court of such county
34 within ninety days after the entry of such order of intention
35 to adopt the use of voting machines, such county court shall
36 submit to the voters of such county at the next general
37 or primary election, whichever shall first occur, the ques-
38 tion: "Shall voting machines be adopted in

39 County?" If this question be answered in the affirmative
40 by a majority of the voters in such election upon the
41 question, voting machines shall thereby be adopted. If
42 such question shall not be answered in the affirmative by
43 such majority, the use of voting machines shall not be
44 adopted.

45 (2) By the affirmative vote of a majority of the voters
46 of such county voting upon the question of the adoption
47 of voting machines in such county. If five per cent or
48 more of the registered voters of such county shall sign
49 a petition requesting the adoption of voting machines for
50 use in such county, and such petition be filed with the
51 county court of such county, such county court shall submit
52 to the voters of such county at the next general or primary
53 election, following by not less than ninety days the date
54 of the filing of such petition, the question: "Shall voting
55 machines be adopted in County?" If this ques-
56 tion be answered in the affirmative by a majority of the
57 voters of such county voting upon the question, voting
58 machines shall thereby be adopted. If such question shall
59 not be answered in the affirmative by such majority, the
60 use of voting machines shall not be adopted.

Sec. 3. Procedures for Terminating Use of Voting Ma-
2 **chines.**—If at any time after the adoption of voting ma-
3 chines in any county as herein provided, five per cent or
4 more of the registered voters of such county shall sign a
5 petition requesting that the use of voting machines be
6 terminated, and such petition be filed with the county
7 court of such county, such county court shall submit to
8 the voters of such county at the next general or primary
9 election, following by not less than ninety days the date
10 of the filing of such petition, the question: "Shall the use
11 of voting machines in County be terminated?"
12 If this question be answered in the affirmative by a ma-
13 jority of the voters of such county voting upon the ques-
14 tion, the use of voting machines in all future elections shall
15 thereby be terminated; otherwise, the use of voting ma-
16 chines shall be continued.

17 Any vote pursuant to this section and the preceding
18 section which results in a failure to adopt, or in a termi-

19 nation of the use of voting machines shall not be con-
20 strued to preclude any future proceeding by the voters or
21 the county court of any county to adopt or readopt voting
22 machines in a lawful manner as provided herein.

**Sec. 4. Duty of County Court to Acquire Machines;
2 Provision in Some Precincts.**—If the use of voting ma-
3 chines shall have been adopted as hereinbefore provided,
4 it shall be the duty of the county court of such county to
5 acquire the necessary number of voting machines to sup-
6 ply each election precinct within such county as soon as
7 possible, and to acquire such reserve machine or machines
8 as will be deemed necessary, and to acquire for each ma-
9 chine an instruction model.

10 If it shall be impossible for the county court to supply
11 each election precinct with a voting machine or voting
12 machines for use at the next election following the adop-
13 tion of voting machines, as many voting machines shall
14 be supplied for that election and the next succeeding
15 elections as it is possible for the county court to acquire
16 in the manner as hereinafter provided, and the machines
17 so acquired may be used in such election precincts within
18 the county as the county court may direct until it shall
19 be possible to provide the requisite number of voting
20 machines properly to equip all precincts within the
21 county.

Sec. 5. Acquisition of Machines by Purchase or Lease.
2 —The county court may finance the acquisition of voting
3 machines by any one or any combination of the following
4 methods:

- 5 (1) By purchasing the same and paying the purchase
6 price therefor in cash from funds available from the maxi-
7 mum general levy or from any other lawful source; and
- 8 (2) By leasing the same under written contract of lease,
9 and paying the rentals therefor in cash from funds avail-
10 able from the maximum general levy or any other lawful
11 source.

**Sec. 6. Bids and Contracts for Voting Machines; False
2 Swearing or Failure to Disclose Facts.**—Contracts for the
3 purchase or lease of voting machines shall be based on

4 competitive bids. The county court shall solicit sealed bids:
5 by sending requests by mail to all known manufacturers
6 and suppliers of voting machines which have been previ-
7 ously approved by the voting machine commission as
8 hereinafter provided. The award of contracts of purchase
9 or lease shall be based on the quality, cost, specifications
10 and suitability of the particular voting machines.

11 No bid shall be accepted by the county court unless
12 accompanied by a contract which shall provide that in
13 the event the bid is accepted the party or parties making
14 the sale or lease shall:

15 (1) Guarantee in writing to keep the machine or ma-
16 chines in good working order for five years without addi-
17 tional cost to the county court.

18 (2) Warrant to defend and indemnify the county court
19 against any claim for patent infringement, and in case any
20 machine or machines shall be held to be an infringement
21 of a valid patent, to obtain a license for the use of such
22 patent on the machines sold or leased to the county court
23 or to modify the machines so that the offending infringe-
24 ment is removed without altering the mechanical efficiency
25 or statutory requirements of the machines; all at the
26 sole cost and expense of the supplier of the voting
27 machines.

28 (3) Provide a bond with good corporate surety duly
29 qualified to do business in West Virginia, conditioned upon
30 the due performance of said guaranty and said warranty,
31 in a penal sum to be fixed by the county court.

32 No bid shall be accepted by the county court unless the
33 party or parties submitting the bid shall file with the bid
34 an affidavit:

35 (1) Disclosing the name and address of, and the amount
36 of any contribution paid or to be paid to, any individual,
37 partnership, corporation or association hired regularly
38 and specially for the purpose, or partly for the pur-
39 pose, of attempting to influence directly or indirectly the
40 purchase or lease of the voting machine represented by
41 the bid.

42 (2) Declaring that no individual, partnership, corpora-
43 tion or association not disclosed in said affidavit shall

44 thereafter be regularly or specially hired and no contri-
45 bution shall thereafter be paid for the purpose or partly
46 for the purpose of attempting to influence directly or in-
47 directly the purchase or lease of the voting machine rep-
48 resented by the bid.

49 For the purpose of this affidavit, the word "contribution"
50 shall mean payment, distribution, loan, advance, de-
51 posit, gift of money, property, benefit or other considera-
52 tion, or any agreement providing for a payment, distri-
53 bution, loan, advance, deposit, or gift of money, property,
54 benefit, or other consideration at any future time.

55 Any person who shall knowingly or wilfully make any
56 false or fraudulent statement, or who shall knowingly or
57 wilfully fail to disclose any material fact in the affidavit
58 required by this section shall be guilty of a felony, and,
59 upon conviction thereof shall be punished by a fine of
60 not less than one thousand dollars nor more than five
61 thousand dollars or imprisonment in the state peniten-
62 tiary for not less than one year nor more than three years,
63 or both, in the discretion of the court.

64 In construing this section, the term "person" shall in-
65 clude an individual, partnership, committee, association,
66 and any other organization or group of persons.

Sec. 7. Voting Machine Commission; How Composed;
2 **Duties; Compensation and Expenses.**—There is hereby
3 created a voting machine commission, to be composed of
4 the secretary of state, and two persons appointed by the
5 governor, by and with the advice and consent of the sen-
6 ate, who shall be mechanical experts and not members
7 of the same political party. The term of office of such com-
8 missioners shall be four years, except that the commis-
9 sioners appointed by the governor shall be subject to re-
10 moval at his pleasure, and that any secretary of state,
11 in surrendering the duties of his office, shall be succeeded
12 on the commission by the succeeding secretary of state.
13 No member of the commission shall have any interest in
14 any voting machine.

15 Any person or corporation owning or being interested
16 in any voting machine may apply to said commission to

17 the end that such machine may be examined and a report
18 be made on its accuracy, efficiency, capacity, and safety.
19 The mechanical experts of the commission shall examine
20 the machine and make full report thereon to the secretary
21 of state. They shall state in the report whether or not the
22 machine so examined complies with the requirements of
23 this article and can be safely used by voters at elections
24 under the conditions prescribed in this article. If the
25 report be in the affirmative upon said question, the ma-
26 chine shall be deemed approved by the commission and
27 the machine of its make and design may be adopted for
28 use at elections as herein provided. Any form of voting
29 machine not so approved shall not be used at any election.
30 Each of the two mechanical experts on the commission
31 shall be entitled to two hundred dollars for his compen-
32 sation and expenses in making such examination and
33 report, and such compensation shall be paid by the person
34 or corporation applying for such examination, which sum
35 shall be paid in advance of making the examination and
36 which sum shall be the sole compensation to be received
37 by any such expert for his work hereunder.

Sec. 8. Minimum Requirements of Voting Machines.—

2 A voting machine of particular make and design shall not
3 be approved by the voting machine commission or be
4 purchased, leased, or used, by any county court unless it
5 shall fulfill the following requirements:

6 (1) It shall secure or insure the voter absolute secrecy
7 in the act of voting, or, at the voter's election, shall provide
8 for open voting;

9 (2) It shall be so constructed that no person except in
10 instances of open voting, as herein provided for, can see or
11 know for whom any voter has voted or is voting, and that
12 no voter or other person can, while the machine is un-
13 locked for operation, see or otherwise ascertain the nu-
14 merical total of votes cast for any candidate or for or
15 against any question;

16 (3) It shall permit each voter to vote at any election
17 for all persons and offices for whom and which he is law-
18 fully entitled to vote, whether or not the name of any such
19 person appears on a ballot label as a candidate; and it shall

20 permit each voter to vote for as many persons for an office
21 as he is lawfully entitled to vote for; and to vote for or
22 against any question upon which he is lawfully entitled
23 to vote;

24 (4) It shall preclude each voter from voting for any
25 person or office or upon any question for whom or which
26 and upon which he is not lawfully entitled to vote and
27 from voting for more persons for any office than he is law-
28 fully entitled to vote for, and from voting for any candi-
29 date for the same office and upon any question more than
30 once;

31 (5) It shall permit each voter to deposit, write in, or
32 affix upon devices to be provided for that purpose, ballots
33 containing the names of persons for whom he desires to
34 vote whose names do not appear upon the machine ballot
35 labels;

36 (6) It shall permit each voter to change his vote for any
37 candidate and upon any question appearing upon the bal-
38 lot labels up to the time when he starts to register his vote;

39 (7) It shall correctly register and accurately count all
40 votes cast for each candidate and for and against each
41 question appearing upon the ballot labels;

42 (8) It shall permit each voter at any election other than
43 primary elections, to vote a straight party ticket by one
44 device, and by one device to vote for all candidates of one
45 party for presidential electors; and to vote a mixed ticket
46 selected from the candidates of any and all parties and
47 from independent candidates;

48 (9) It shall be capable of adjustment by election officers
49 at a primary election so as to permit each voter to vote
50 only for the candidates of the party with which he has
51 declared his affiliation, and so as to preclude him from
52 voting for any candidate seeking nomination by any other
53 political party, and so as to permit each voter to vote for the
54 candidates, if any, for nonpartisan nomination or election
55 and on public questions;

56 (10) It shall have separate voting devices for candi-
57 dates and questions, which shall be arranged in separate
58 rows or columns. It shall also be arranged so that one

59 or more adjacent rows or columns may be assigned to the
60 candidates of each political party at primary elections;

61 (11) It shall have a public counter or other device, the
62 register of which is visible on the outside of the machine
63 and which shall show the total number of voters who have
64 voted on that machine in the election; also candidate and
65 question counters or other devices which shall not be
66 visible on the outside of the machine when the machine
67 is unlocked for operation, and upon which are registered
68 numerically the total votes cast for each candidate and
69 question appearing on the ballot labels; also a protective
70 counter or other device which will record the cumulative
71 total number of movements of the registering mechanism;

72 (12) It shall be provided with locks and seals by the
73 use of which all movement of the registering mechanism
74 is prevented, both before the polls are open or before the
75 operation of the machine for an election is begun and
76 immediately after the polls are closed or after the opera-
77 tion of the machine for an election is completed;

78 (13) It shall have the capacity to contain the names
79 of candidates constituting the tickets of at least nine po-
80 litical parties, and to accommodate the wording of at least
81 fifteen questions;

82 (14) It shall be durably constructed of material of good
83 quality and in a workmanlike manner and in a form which
84 shall make it safely transportable;

85 (15) It shall be so constructed with frames for the
86 placing of ballot labels and with transparent devices for
87 the protection of such labels, that the labels on which are
88 printed the names of candidates and their respective par-
89 ties, titles of offices, and wording of questions shall be rea-
90 sonably protected from mutilation, disfigurement or dis-
91 arrangement;

92 (16) It shall bear a number that will identify it or dis-
93 tinguish it from any other machine;

94 (17) It shall be so constructed that a voter may easily
95 learn the method of operating it and may expeditiously
96 cast his vote for all candidates of his choice; and

97 (18) It shall be accompanied by a mechanically oper-

98 ated instruction model which shall show the arrangement
99 of ballot labels, party columns or rows, and questions.

Sec. 9. County Court Clerk Custodian of Machines;

2 **Duties.**—When voting machines are acquired by any
3 county court, they shall be immediately placed in the cus-
4 tody of the county clerk, and shall remain in his custody
5 at all times except when in use at an election or when
6 in custody of a court or court officers during contest pro-
7 ceedings. The clerk shall see that the machines are prop-
8 erly protected and preserved from damage or unneces-
9 sary deterioration, and shall not permit any unauthorized
10 person to tamper with them. The clerk shall also be
11 charged with the duty of keeping the machines in repair
12 and of preparing the same for voting.

**Sec. 10. Ballot Labels, Instructions, and Other Sup-
plies; Vacancy Changes; Procedure and Requirements.**—

3 The ballot commissioners of any county in which voting
4 machines are to be used in any election shall cause to be
5 printed for use in such election the ballot labels for the
6 voting machines. The ballot labels so printed shall total
7 in number one and one-half times the total number of
8 voting machines to be used in the several precincts of the
9 county in such election. All such labels shall be delivered
10 to the clerk of the county court at least fifty days prior
11 to the day of the election in which such labels are to be
12 used. The labels shall contain the name of each candidate
13 and each question to be voted upon and shall be clearly
14 printed or typed in black ink on clear white material of
15 such size as will fit the ballot frames. One set of ballot
16 labels shall be inserted in the machine prior to the de-
17 livery of the machine to the polling place. The remainder
18 of such ballot labels for each machine shall be retained
19 by the clerk of the county court for use in the event the
20 set so inserted in a machine becomes lost, mutilated or
21 damaged.

22 If a nomination to fill a vacancy be made by a political
23 committee or the chairman thereof and be certified to the
24 ballot commissioners after the ballot labels to be used
25 at the ensuing election shall have been printed, it shall
26 be lawful for the chairman of the party executive com-

27 mittee for the political division to provide, or cause to be
28 provided, and deliver, or cause to be delivered, to the
29 clerk, a sufficient number of ballot labels containing
30 the name of such candidate. Such ballot labels shall con-
31 form to the specifications as set forth herein. If such ballot
32 labels are furnished to the clerk of the county court before
33 the machines are delivered to the election precincts, the
34 clerk, with the advice and consent of the ballot commis-
35 sioners, shall cause such ballot labels to be inserted in the
36 proper ballot frames.

37 In addition to all other equipment and supplies required
38 by the provisions of this article, the ballot commissioners
39 shall cause to be printed a supply of instruction cards,
40 sample ballots, facsimile diagrams of the voting machine
41 ballot and official printed ballots adequate for the orderly
42 conduct of the election in each precinct in their county.
43 In addition they shall provide all other materials and
44 equipment necessary to the conduct of the election, in-
45 cluding appropriate facilities for the reception and safe-
46 keeping of the ballots of absent voters and of challenged
47 voters and of such "independent" voters who shall, in
48 primary elections, cast their votes on nonpartisan candi-
49 dates and public questions submitted to the voters.

**Sec. 11. Ballot Label Arrangement in Machines; Draw-
2 ing by Lot to Determine Position of Candidates for House
3 of Delegates on Machines; Adjustment; Records.—**When
4 the ballot labels are printed and delivered to the clerk of
5 the county court, he shall place them in the ballot frames
6 of the voting machines in such manner as will most nearly
7 conform to the arrangement prescribed for paper ballots,
8 and as will clearly indicate the party designation or
9 emblem of each candidate. Each column or row contain-
10 ing the names of the office and candidates for such office
11 shall be so arranged as to clearly indicate the office for
12 which the candidate is running. The names of the candi-
13 dates for each office indicated shall be placed on the
14 ballot.

15 The clerk of the circuit court shall appoint a time at
16 which all candidates for the house of delegates are to
17 appear in his office for the purpose of drawing by lot

18 to determine where their names will appear on the
19 voting machines. The clerk shall give due notice of
20 such time to each such candidate by registered or certi-
21 fied mail, return receipt requested. At the time ap-
22 pointed, all such candidates for the house of delegates
23 shall assemble in the office of such clerk and such candi-
24 dates shall then proceed to draw by lot to determine
25 where their names shall appear on the voting machines.
26 The number so drawn by each such candidate shall de-
27 termine where his or her name shall appear on the voting
28 machines. In the event any candidate or candidates fail
29 to appear at the time appointed, the clerk shall draw
30 for such absent candidate or candidates in the presence
31 of those candidates assembled, if any, and the number
32 so drawn by the clerk shall determine where the name
33 of any absent candidate or candidates shall appear on
34 the voting machines.

35 The clerk shall then see that the counters referred to
36 in subsection eleven of section eight of this article are set
37 at zero (000) and shall lock the operating device and
38 mechanism and devices protecting the counters and ballot
39 labels. The clerk shall then enter in an appropriate book,
40 opposite the number of each precinct, the identifying or
41 distinguishing number of the specific voting machine or
42 machines to be used in that precinct.

**Sec. 12. Inspection of Machines; Duties of County
2 Court, Ballot Commissioners, Election Commissioners;
3 Keys and Records Relating to Machines.**—When the clerk
4 of the county court has completed the preparation of the
5 voting machines, as provided in the next preceding sec-
6 tion, and not later than seven days before the day of the
7 election, he shall notify the members of the county court
8 and the ballot commissioners that the machines are ready
9 for use. Thereupon the members of the county court
10 and the ballot commissioners shall convene at the office
11 of the clerk, or at such other place wherein the voting
12 machines are stored, not later than five days before the
13 day of the election, and shall examine the machines to
14 determine whether the requirements of this article have
15 been met. Any candidate, and one representative of each

16 political party having candidates to be voted on at the
17 election, may be present during such examination. If the
18 machines are found to be in proper order, the members
19 of the county court and the ballot commissioners shall
20 endorse their approval in the book in which the clerk
21 entered the numbers of the machines opposite the num-
22 bers of the precincts. The clerk shall then deliver the
23 keys to the voting machines to the ballot commissioners
24 who shall give a receipt for the keys, which receipt shall
25 contain identification of such keys. Not later than three
26 days before the election the election commissioner of each
27 precinct who shall have been previously designated by
28 the ballot commissioners, shall attend at the office of
29 the clerks of the circuit and county courts of such county
30 to receive the key or keys to the device covering the regis-
31 tering counters and such other keys as may be necessary
32 for the operation of the machine in registering votes, and
33 to receive the other necessary election records, books, and
34 supplies required by law. Such election commissioners
35 shall receive the per diem mileage rate prescribed by law
36 for this service. Such election commissioners shall give the
37 ballot commissioners a receipt for such keys, records, books
38 and supplies, and such receipt shall contain identification
39 of such keys. The master key and all other keys shall re-
40 main in the possession of the clerk of the county court.

Sec. 13. Election Boards Where Voting Machines Used;

2 **Instructions; Vacancies.**—The county court shall appoint
3 a uniform election board, consisting of three election com-
4 missioners and two poll clerks, to conduct each election
5 in each precinct of each county in which voting machines
6 have been adopted and are to be used.

7 The county court shall call the necessary meeting or
8 meetings for the instruction of all election officials in the
9 use of the voting machines. Such meeting or meetings
10 shall be held and the proper instructions given not less
11 than seven days prior to any election in which voting
12 machines are to be used. No election officer, upon being
13 so notified to appear for instruction, shall fail without
14 just cause to do so. If any officer does so fail to appear,
15 the county court may appoint some other qualified person,

16 and such person, after instruction, shall act in the place
17 of the defaulting officer. If such defaulting officer were
18 appointed by the county court upon the written recom-
19 mendation of a county executive committee as provided
20 in article one of this chapter, the county court shall give
21 written notice of such default to such county executive
22 committee and appoint a person to take the place of such
23 defaulting person upon the recommendation of such
24 county executive committee. The election officers shall
25 receive the per diem mileage rate prescribed by law for
26 attending such instruction meetings.

27 Where not inconsistent with the provisions of this sec-
28 tion, provisions of article one of this chapter, relating to
29 the appointment of election officers, shall be applicable
30 herein.

**Sec. 14. Instructions and Helps to Voters; Voting Ma-
2 chine Models; Facsimile Diagrams; Sample Ballots; Legal
3 Ballot Advertisements.**—For the instruction of the voters
4 on any election day there shall be provided for each pol-
5 ling place one instruction model for each voting machine.
6 Each such instruction model shall be constructed so as to
7 provide a replica of a portion of the face of the voting ma-
8 chine, and shall contain the arrangement of the ballot
9 labels, party columns or rows, office columns or rows, and
10 questions. Fictitious names shall be inserted in the ballot
11 labels of the models. Such models shall be located on the
12 election officers' tables or in some other place in which the
13 voter must pass to reach the voting machine. Each voter,
14 upon request, before voting, shall be offered instruction by
15 the election officers in the operation of the voting machine
16 by use of the instruction model, and each voter shall be
17 given ample opportunity to operate the model himself.

18 The ballot commissioners shall also provide facsimile
19 diagrams, at least two of which shall be posted on the
20 walls of each polling place. The facsimile diagrams shall
21 be exact diagrams of the face of the voting machines to
22 the end that the voter may become familiar with the loca-
23 tion of the parties, offices, candidates and questions as
24 they appear on the voting machine to be used in his pre-
25 cinct. Ballot labels may be affixed to the diagrams to in-

26 sure that the position of the names of the candidates in
27 each office division shall appear accurately on the dia-
28 grams of each precinct.

29 The ballot commissioners may, with the consent of the
30 county court, or the county court may prepare and mail
31 to each qualified voter at his address as shown on the
32 registration books a facsimile sample of the ballot for his
33 precinct.

34 In counties where voting machines have been adopted,
35 the legal ballot advertisements required by articles five
36 and six of this chapter, shall consist of a facsimile of the
37 face of the voting machine with the names of the candi-
38 dates and the offices for which they are running shown in
39 their proper positions.

Sec. 15. Delivery of Machines; Time; Arrangement for
2 **Voting.**—The clerk of the county court shall deliver or
3 cause to be delivered each voting machine to the polling
4 place where it is to be employed. Such delivery shall be
5 made not less than one hour prior to the opening of the
6 polls. At the time of the delivery of the voting machine
7 the operating device and mechanism and the device cov-
8 ering the registering counters shall be securely locked.
9 The election commissioners shall then cause the machine
10 to be arranged in the voting place in such manner that
11 the front of the machine, on which the ballot labels appear,
12 will not be visible, when the machine is being operated,
13 to any person other than the voter if the voter shall elect
14 to close the curtain, screen or hood furnished with the
15 voting machine.

Sec. 16. Check of Machines Before Use; Corrections;
2 **Reserve Machines.**—Before permitting the first voter to
3 vote, the election officers shall examine the machine to
4 ascertain whether it has been operated since the public
5 counters referred to in subsection eleven of section eight of
6 this article were set at zero (000) and to ascertain whether
7 the ballot labels are arranged as specified on the facsimile
8 diagram furnished to the precinct. If the machine indi-
9 cates that it has been operated or if the ballot labels are
10 arranged incorrectly, the officers shall not unlock the oper-
11 ating device or mechanism, but shall immediately secure

12 the attendance of one or more members of the county
13 court and one or more of the ballot commissioners, who
14 shall reset the counters at zero (000) and then relock the
15 device covering the counters, or properly arrange the bal-
16 lot labels, as the case may be, in the presence of the elec-
17 tion officers. If the attendance of such members of the
18 county court and ballot commissioners cannot be obtained
19 before the time for opening the polls or within one hour
20 thereafter, the election officers shall notify the clerk of the
21 county court of the foregoing facts and obtain from such
22 clerk a reserve voting machine, and thereafter proceed
23 to conduct the election. Any reserve machine so used
24 shall be prepared for use by the clerk or his duly appointed
25 deputy and said reserve machine shall be delivered and
26 examined in the same manner as hereinbefore provided.
27 The machine found to have been operated or provided
28 with incorrect ballot labels shall be returned immediately
29 to the custody of the clerk who shall then promptly cause
30 such machine to be repaired in order that it may be used
31 as a reserve machine if needed.

Sec. 17. Disrepair of Machines in Use; Reserve Ma-
2 **chines; Counting.**—If, during the conduct of an election,
3 a machine becomes in a state of disrepair so that it can-
4 not be operated in a manner that will comply with the
5 provisions of this article, the election officers shall lock
6 or seal the machine in such manner as to prevent further
7 voting thereon and shall record the numbers shown by
8 the public counter. Then the election officers shall se-
9 cure from the county clerk a reserve voting machine,
10 which shall be prepared for use, delivered and examined
11 in the same manner as hereinbefore provided, and shall
12 thereafter proceed to conduct the election. When the
13 polls are closed, both the original and reserve voting ma-
14 chines shall be examined and the votes thereon registered
15 shall be counted as provided in section twenty-three of
16 this article and the aggregate number of votes cast on
17 both machines for each candidate and on each question
18 shall be certified as the result of the election in that pre-
19 cinct.

Sec. 18. Conducting Voting Machine Elections Gener-

2 **ally; Duties of Election Officers.**—(1) The election officers
3 shall constantly and diligently maintain a watch in order
4 to see that no person votes more than once and to prevent
5 any voter from occupying the voting machine for more
6 than three minutes.

7 (2) In primary elections before a voter is permitted to
8 use the voting machine, the election officer representing
9 the party to which the voter belongs shall adjust the ma-
10 chine so that the voter will be able to vote only for the
11 candidates who are seeking nomination on the ticket of
12 the party with which the voter is affiliated.

13 (3) If the machine is so constructed as to require ad-
14 justment after one person has voted before another person
15 can vote, the election officers shall so adjust it after each
16 person has voted.

17 (4) The election officers shall issue to each voter when
18 he signs the poll book a card or ticket numbered to cor-
19 respond to the number on the poll book of such voter, and
20 in the case of a primary election, indicating the party
21 affiliation of such voter, which numbered card or ticket
22 shall be presented to the election officer in charge of the
23 voting machine.

Sec. 19. "Independent" Voting in Primary Elections.—

2 If at any primary elections nonpartisan candidates for
3 office and public questions are submitted to the voters
4 and on which candidates and questions persons registered
5 as "independent" are entitled to vote, as provided in sec-
6 tion eighteen of article two of this chapter, the election
7 officers shall adjust the voting machines, if mechanically
8 possible to do so, so that such "independent" voters may
9 vote only those portions of the voting machine ballot re-
10 lating to the nonpartisan candidates and the public ques-
11 tions submitted.

12 If the voting machines cannot be so adjusted for the
13 "independent" voters, then such "independent" voters,
14 under the close supervision of two commissioners of the
15 election of different political party affiliation, shall be
16 permitted to use the voting machines for voting only those
17 parts of the ballot relating to such nonpartisan candidates
18 and public questions so submitted to the voters.

19 In lieu of using the voting machines, such "independ-
20 ent" voters may request official printed ballots relating
21 to such nonpartisan candidates and public questions.
22 Such ballots, when signed on the back by the poll clerks
23 as in other elections, shall be voted and folded by the "in-
24 dependent" voter and shall be delivered to one of the
25 election commissioners who shall secure same in a sealed
26 or locked container until canvassed and counted in the
27 same manner as provided for handling and recording
28 absent voter ballots as provided in the section next here-
29 after.

Sec. 20. Recording and Disposition of Absent Voters' Ballots.—When absent voters' ballots have been voted
3 and delivered to the election board of any precinct, the
4 election commissioners shall as time permits proceed to
5 determine the legality of such ballots as prescribed in
6 article six of this chapter, and shall prior to the close of
7 the polls, before sealing the operating lever and before
8 unlocking the counter compartment, vote or record such
9 votes on the voting machine. Such recording of absent
10 voters' ballots shall be done by one of the election com-
11 missioners and the act of casting such votes shall be per-
12 formed in the presence, and under the careful observa-
13 tion and full view, of all members of the precinct elec-
14 tion board, and the votes as indicated by the voting point-
15 ers shall not be registered until each member of such
16 board is satisfied that the arrangement of such voting
17 pointers fully carries out the intent of the voter as shown
18 by the cross marks on the paper ballot.

19 After completion of the count, absentee ballots shall be
20 enclosed in a sealed package, properly endorsed, and re-
21 turned and filed with the statement of returns.

Sec. 21. Assistance to Illiterate and Disabled Voters.—
2 Any duly registered voter, who shall have indicated on
3 his registration record that he is unable, because of il-
4 literacy or physical disability, to write or whose physical
5 disability, in the opinion of the election officers, prevents
6 him from operation of the voting machine, may ask for
7 assistance from two election officers of opposite political
8 party affiliation to whom he shall thereupon declare his

9 choice of candidates and his position on public questions
10 appearing on the ballot labels. Such election officers, in
11 the presence of the voter and in the presence of each
12 other, shall thereupon cause such voter's declared choices
13 to be registered by the voting machine as votes.

Sec. 22. Persons Prohibited about Voting Machines;

2 **Penalties.**—Excepting the election officials acting under
3 authority of sections eighteen, nineteen, twenty and twen-
4 ty-one of this article in the conduct of the election, no per-
5 son other than the voter alone may be in, about or within
6 five feet of the voting machine during the time such voter
7 is in the process of voting at any election, and, during such
8 time, no person may communicate in any manner with the
9 voter and the voter may not communicate with any other
10 person or persons. Any conduct or action of an election of-
11 ficial about or around the voting machine while the voter
12 is in the process of voting, in excess of the authority vested
13 in such official by provisions of this article, shall consti-
14 tute a violation of the provisions hereof. Any person vio-
15 lating any provision or provisions of this section shall
16 be guilty of a misdemeanor and, upon conviction thereof,
17 shall be fined not exceeding one thousand dollars or be
18 sentenced to imprisonment in the county jail for a period
19 not exceeding twelve months, or, in the discretion of the
20 court, shall be subject to both such fine and imprison-
21 ment.

Sec. 23. Voting by Challenged Voters.—If the right of

2 any person to vote be challenged in accordance with pro-
3 visions of article one of this chapter relating to the chal-
4 lenging of voters, such person shall not be permitted to
5 cast his vote by use of the voting machine but he shall
6 be supplied by the election officer at the polling place with
7 an official printed ballot of such election. Such ballot
8 shall not be indorsed on the back by the poll clerks but,
9 when voted by the challenged voter, shall have affixed
10 thereto by the poll clerks their statement of information
11 as to the challenge on the form prescribed therefor. Such
12 challenged ballots shall be secured, handled and disposed
13 of as challenged ballots in other elections, as provided in
14 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-

41 didate, and for and against each question, shall then be
42 computed and entered on the general and triplicate re-
43 turn sheets and statement. There shall also be entered
44 on the general return sheet and statement the number of
45 voters who have voted, as shown by the poll books, and
46 the number who have voted on each machine, as shown
47 by the public counters, and also the number registered on
48 the protective counter on each machine immediately prior
49 to the opening of the polls and immediately after the
50 closing thereof and sealing of the machine. The number
51 or other designation of each machine used shall also be
52 entered thereon. In the case of primary elections, tripli-
53 cate return sheets shall be prepared for each party. The
54 registering counters of the voting machine shall remain
55 exposed to view until the returns and all other reports
56 have been fully completed.

57 (4) The proclamation of the results of the votes cast
58 shall be announced distinctly and audibly by one of the
59 election officers, who shall read the name of and votes
60 cast for each candidate, and the votes cast for and against
61 each question submitted. During such proclamation
62 ample opportunity shall be given to any person lawfully
63 present to compare the results so announced with the
64 counter dials of the machine, and any necessary correc-
65 tions shall then and there be made by the election officers,
66 after which the doors or other cover of the voting ma-
67 chine shall be closed and locked and the return sheets shall
68 be signed by each of the election officers. If any election
69 officer shall decline to sign such return, he shall state his
70 reason therefor in writing, and a copy thereof, signed by
71 him, shall be enclosed with such return. Each of the re-
72 turn sheets shall be enclosed in a separate envelope, which
73 shall be securely sealed with sealing wax, or other sealing
74 material, and each of the election officers shall write his
75 or her name across the fold of the envelope. One of the
76 triplicate returns shall be directed and delivered to the
77 clerk of the county court of the county in which the election
78 is being held, one to the circuit court clerk of such county
79 and one to the secretary of state at Charleston, West
80 Virginia, and the general return sheet and statement shall
81 be directed and immediately delivered to the clerk of the

82 county court of such county. The envelope shall have
83 endorsed thereon a certificate of the election officers,
84 stating the number of the machine, the precinct where it
85 has been used, the number of the seal, and the number
86 registered on the protective counter at the close of the
87 polls.

88 (5) As soon as possible after the completion of the
89 count, the election officers shall return to the county court
90 and the ballot commissioners the keys to the voting ma-
91 chine received and receipted for by them, and the clerk
92 of the county court shall have the voting machine prop-
93 erly boxed or securely covered and removed from the
94 polling place to a proper and secure place of storage.

Sec. 25. Form and Delivery of Return Sheets.—The
2 general return sheet, triplicate return sheets, and state-
3 ment, shall be printed to conform with the make of vot-
4 ing machine used. The designating number and letter,
5 if any, on the counter for each candidate shall be re-
6 printed thereon opposite the candidate's name. Immedi-
7 ately after the vote has been ascertained, the above men-
8 tioned return sheets shall be forthwith delivered to the
9 respective persons to whom they are addressed as pro-
10 vided in this chapter.

Sec. 26. Post-Election Custody and Inspection of Ma-
2 **chines; Canvass and Recounts.**—(1) The voting machines
3 shall remain locked against voting during the canvass of the
4 returns of the election and for a period of seven days after
5 the canvass is finally concluded, during which time any can-
6 didate or the chairman of any county executive committee
7 of any political party or their appointed representatives,
8 shall be permitted to examine the voting machines under
9 the supervision of the county court for the purpose of de-
10 termining the number of votes cast for any candidate or
11 for and against any question. After the expiration of the
12 seven-day period as herein provided, the voting machines
13 may be unlocked by the clerk of the county court and the
14 registering counters reset at zero (000) unless the board
15 of canvassers or a court of competent jurisdiction by ap-
16 propriate court order directs otherwise.

17 (2) During the period when such machine is required
18 to be kept locked, the keys thereto shall remain in the
19 possession of the county court. After such period, it shall
20 be the duty of the county court to return such keys to the
21 clerk of the county court.

22 (3) In canvassing the returns of the election, the board of
23 canvassers shall examine all of the voting machines used
24 in such election and shall determine the number of votes
25 cast for each candidate and for and against each ques-
26 tion and by such examination shall procure the correct
27 returns and ascertain the true results of the election. Any
28 candidate or his party representative may be present at
29 such examination.

30 (4) If any candidate shall demand a recount of the
31 votes cast at an election, the voting machines shall not be
32 reexamined during such recount for the purpose of re-
33 ascertaining the total number of votes registered on the
34 voting machines for any candidate.

Sec. 27. Incorrect Recordation or Tabulation of Votes;

2 Test of Machine Accuracy; Procedures and Requirements.

3 —(1) When during a canvass or a recount of votes cast in
4 an election it appears to the board of canvassers or if it is
5 so alleged in a petition for a recount, that a voting ma-
6 chine used in any precinct has by reason of mechanical
7 failure or improper or fraudulent preparation or tamper-
8 ing incorrectly recorded and tabulated the actual votes
9 cast on such machine, the board of canvassers shall pro-
10 ceed to determine the error, if any, in the vote registered
11 on such voting machine. If an error is found, the board of
12 canvassers shall correct the election returns from such
13 precinct so as to accurately reflect the votes cast in such
14 precinct at such election if it is possible to accurately
15 correct such error. If the board of canvassers is unable to
16 accurately correct such errors made by said voting ma-
17 chine and therefore cannot correct the returns from such
18 precinct to accurately reflect the actual votes cast at such
19 election, the total votes registered on such voting machine,
20 despite the fact that such vote may be erroneous, shall be
21 accepted in the canvass and in the recount as the votes
22 cast in such precinct.

23 (2) If it is necessary for the board of canvassers to test
24 any voting machine for its mechanical accuracy in record-
25 ing and tabulating the votes cast at such election, such
26 test shall be conducted by the clerk of the county court
27 in the presence of the board of canvassers and of any
28 candidate or his party representative. The registering
29 counter shall be reset at zero (000) before it is tested and
30 then the machine shall be operated at least one hundred
31 times. After the completion of such test the clerk will
32 then and there prepare and file a statement in writing
33 giving in detail the result of the examination and test.

Sec. 28. Adjustments in Voting Precincts Where Ma-
2 **chines Used.**—The provisions of section five of article one
3 of this chapter, relating to the number of registered
4 voters in each precinct, shall not apply to and control in
5 precincts in counties in which voting machines have been
6 adopted and the county courts of such county, subject to
7 other provisions of this chapter with respect to the alter-
8 ing or changing of the boundaries of voting precincts,
9 may change the boundaries of precincts or consolidate
10 precincts, as practicable, to achieve the maximum ad-
11 vantage from the use of voting machines.

12 The county court may in the urban centers of any coun-
13 ty adopting voting machines designate a voting place
14 without the limits of a precinct, provided such voting
15 place is in a public building, and in an adjoining precinct.
16 In such event more than one precinct may vote in any
17 such public building.

Sec. 29. Use of Voting Machines in Municipal Elections.
2 The county court of any county which has adopted the
3 use of voting machines is hereby authorized to make such
4 machines available to any municipality in, or partly in,
5 such county for use in elections conducted by such mu-
6 nicipality, and the use of voting machines by such mu-
7 nicipality shall be upon such terms and conditions as may
8 be agreed upon between the county court and the mu-
9 nicipality.

Sec. 30. Applicability of General Laws Relating to
2 **Elections.**—Except as modified by this article, the gen-

3 eral laws applying to regular, special and primary elec-
4 tions shall apply to elections conducted with the use of
5 voting machines.

6 If it shall be impracticable for the county court of any
7 county, after the adoption of voting machines by such
8 county, to supply the necessary voting machines to each
9 precinct of such county for use in any election, the hold-
10 ing of any election in such precincts, which have not been
11 supplied with voting machines, shall be governed by the
12 general laws with respect to conducting a regular, spe-
13 cial and primary election by the use of printed ballots.

Sec. 31. Tampering with Voting Machines; Other Dis-
2 **honest Practices; Attempts; Penalty.**—Any person not an
3 election officer or other public official who shall tamper or
4 attempt to tamper with such voting machines, or in any
5 way intentionally impair or attempt to impair, its use, and
6 any such person who shall be guilty of or shall attempt
7 any dishonest practice upon any such voting machine, or
8 with or by its use, shall be deemed guilty of a felony, and,
9 upon conviction thereof, shall be confined in the peniten-
10 tiary for not less than one year nor more than ten years.

11 Any clerk of a county court, county commissioner, bal-
12 lot commissioner, election commissioner, or poll clerk,
13 or any custodian, technician, or other public official au-
14 thorized to take part in the holding of an election or in
15 preparing for an election, who, with intent to cause or
16 permit any voting machine to fail to register correctly
17 all votes cast thereon, tampers with or disarranges
18 such machine in any way, or any part or appliance there-
19 of, or who causes or consents to the use of said machine
20 for voting at any election with knowledge of the fact
21 that the same is not in order, or not perfectly set and
22 adjusted so that it will correctly register all votes cast
23 thereon, or who, with the purpose of defrauding or de-
24 ceiving any voter or of causing it to be doubtful for what
25 ticket or candidate or candidates or proposition any vote
26 is cast, or of causing it to appear on said machine that the
27 votes cast for one ticket, candidate or proposition, were
28 cast for another ticket, candidate or proposition, removes,
29 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.
4. Nomination of candidates in primary elections.
5. Candidates for county board of education.
6. Election of county board of education members at primary elections.
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 Elections; Hours Polls Open.—Primary elections shall be held
2 at the voting place in each of the voting precincts in the
3 state, for the purposes set forth in this article, on the
4

5 second Tuesday in May in the year one thousand nine
6 hundred sixty-four and in each second year thereafter.

7 At such election the polls shall be opened and closed at
8 the hours provided for opening and closing the polls in a
9 general election.

Sec. 2. Delegates to National Conventions; Alternates.—

2 At the primary election to be held in the year nineteen
3 hundred sixty-four, and in each fourth year thereafter,
4 there shall be elected by the voters of each political party
5 of the state the number of persons to which the party is
6 entitled as delegates-at-large, and by the voters of each
7 political party in each congressional district in the state
8 the number of delegates to which the district is entitled,
9 in the national convention of the party to be next held
10 after the date of such primary. The persons receiving
11 the highest number of votes in the state as delegates-at-
12 large, to the number to which the state is entitled, shall
13 be elected delegates. The persons receiving the highest
14 number of votes as delegates in any congressional district,
15 to the number to which the district is entitled, shall be
16 elected delegates. Each delegate so elected shall then
17 appoint an individual to serve as alternate delegate, and
18 shall by registered letter notify the secretary of state of
19 such appointment within forty days after the primary
20 election.

Sec. 3. Presidential Preference.—In presidential elec-
2 tion years, in addition to the candidates required to
3 be nominated at the primary election, the qualified
4 voters of each political party shall have the opportunity
5 of voting for their choice among those aspiring to be
6 the candidates of their respective parties for president
7 of the United States. The names of such aspirants
8 shall be printed on the official election ballot of their
9 respective parties, as provided in section thirteen of this
10 article, upon the filing with the secretary of state of the an-
11 nouncement as provided in section seven of this article,
12 and the ballot shall be marked and the vote shall be
13 counted, canvassed and returned under the same condi-
14 tions as to names, certificates and other matters, as the

15 names and certificates of the party aspirants for the party
16 nomination for the office of governor.

Sec. 4. Nomination of Candidates in Primary Elections.

2 —At each primary election, the candidate or candidates of
3 each political party for all offices to be filled at the en-
4 suing general election by the voters of the entire state,
5 of each congressional district, of each state senatorial
6 district, of each judicial circuit of West Virginia, of each
7 county, and of each magisterial district in the state shall
8 be nominated by the voters of the different political
9 parties, except that no presidential elector shall be nomi-
10 nated at a primary election.

11 In primary elections a plurality of the votes cast shall
12 be sufficient for the nomination of candidates for office.
13 Where only one candidate of a political party for any of-
14 fice in a political division, including party committeemen
15 and delegates to national conventions, is to be chosen,
16 the candidate receiving the highest number of votes there-
17 for in the primary election shall be declared the party
18 nominee for such office. Where two or more such candi-
19 dates are to be chosen in the primary election, the candi-
20 dates constituting the proper number to be so chosen who
21 shall receive the highest number of votes cast in the politi-
22 cal division in which they are candidates shall be declared
23 the party nominees and choices for such office, except that
24 candidates for the office of commissioner of the county
25 court shall be nominated and elected in accordance with
26 the provisions of section twenty-three of article eight of
27 the constitution of this state and that members of county
28 boards of education shall be elected at primary elections in
29 accordance with the provisions of section six of this article.

30 In case of tie votes between candidates for party nomi-
31 nations or elections in primary elections, the choice of the
32 political party shall be determined by lot by the execu-
33 tive committee of the party for the political division in
34 which such persons are candidates.

Sec. 5. Candidates for County Board of Education.—

2 Any person who is eligible to hold office as a member of
3 a county board of education may file a certificate with
4 the clerk of the circuit court of the county, declaring

5 himself a candidate for election to such office. Such cer-
6 tificate shall be substantially in the following form: I,
7 _____, hereby certify that I am a candidate for non-
8 partisan election to membership on the _____
9 County Board of Education, and desire my name printed
10 on the ballot to be voted at the primary election to be
11 held on the _____ day of _____, 19____; that I am a
12 legally qualified voter of the county of _____, State
13 of West Virginia; that the address of my residence in
14 _____ County is _____; that I am eligible to
15 hold the office; and that I am a candidate therefor in
16 good faith.

17 _____
18 Candidate
19 Signed and acknowledged before me this ____ day of ____, 19____
20 _____
21 Signature and official title of
22 certifying officer.

23 Such announcement shall be signed and acknowledged
24 by the candidate before some officer qualified to admin-
25 ister oaths, who shall certify the same.

26 Such certificate shall be filed with the clerk of the cir-
27 cuit court not later than the first Saturday of February
28 next preceding the primary election day, and must be re-
29 ceived by the clerk before midnight, eastern standard
30 time, of that day or, if mailed, shall be postmarked be-
31 fore that hour.

Sec. 6. Election of County Board of Education Members
2 at **Primary Elections.**—An election for the purpose of
3 electing members of the county board of education shall
4 be held on the same date as the primary elections as now
5 provided by law, but upon a nonpartisan ballot printed
6 for the purpose. In such nonpartisan election the per-
7 son receiving the highest number of votes shall be elected
8 for a long term, and if more than one is to be elected for
9 a long term, the one receiving the next highest shall be
10 elected; and if more than two are to be elected the candi-
11 date or candidates receiving the next highest votes shall
12 be declared elected for any short term or terms, as the
13 case may be, to fill vacancies; but no more than two such

14 members shall be elected from the same magisterial dis-
15 trict, and then only when such magisterial district does
16 not have a hold-over member of said board, and if such
17 magisterial district has one hold-over member on said
18 board only one member shall be elected as aforesaid; and
19 if more persons from a magisterial district receive the
20 highest number of votes in said election, then of such
21 persons only the person or persons having the highest
22 vote who do not make the aggregate number of elected
23 members and hold-over members more than two from
24 such magisterial district shall be declared elected, and
25 the remaining members shall be declared from the high-
26 est from other magisterial districts; and in no event shall
27 any member be declared elected from the same magis-
28 terial district wherein reside two already elected or oth-
29 erwise qualified members of such board who will continue
30 to hold office after the beginning of the term for which
31 such election was held.

32 It is declared to be the intent of this statute that any
33 person declared to be elected under the preceding pro-
34 visions of the section shall take office as a duly elected
35 member or members, even though he, she or they may
36 not have received a majority or plurality of all votes cast
37 at such election.

38 In case of tie votes for county board of education mem-
39 ber candidates in any primary election, the provisions of
40 section twelve of article six of this chapter shall be in-
41 voked and shall control in determination of the election.

Sec. 7. Filing Announcements of Candidacies; Require-
2 **ments.**—Any person who is eligible to hold an office (in-
3 cluding that of member of a state or county executive
4 committee) shall file with the secretary of state, if it be
5 an office to be filled by the voters of more than one coun-
6 ty, or with the clerk of the circuit court, if it be for an
7 office to be filled by the voters of a county or a subdivision
8 less than a county, a certificate declaring himself a can-
9 didate for the nomination for such office; which certificate
10 shall be in form or effect as follows:

11 I, _____, hereby certify that I am a candidate for the
12 nomination for the office of _____ to represent the

13 _____ party, and desire my name printed on the of-
14 ficial ballot of said party to be voted at the primary elec-
15 tion to be held on the ____ day of _____, 19____; that I am
16 a legally qualified voter of the county of _____, State
17 of West Virginia; that my residence is number ____ of
18 _____ street in the city (or town) of _____ in
19 _____ county in said State; that I am eligible to hold
20 the said office; that I am a member of and affiliated with
21 said political party; that I am a candidate for said office
22 in good faith.

23

24

Candidate

25 Signed and acknowledged before me this ____ day of ____, 19 ____

26

27

Signature and official title of
28 person before whom signed.

29 Such announcement shall be signed and acknowledged
30 by the candidate before some officer qualified to admin-
31 ister oaths, who shall certify the same.

32 No person may be a candidate for nomination for of-
33 fice in any political party unless it be openly known that
34 such person is a bona fide member of such party.

35 Such certificate shall be filed with the secretary of state
36 or the clerk of the circuit court, as the case may be, not
37 earlier than the first Monday in January next pre-
38 ceding the primary election day, and not later than the
39 first Saturday of February next preceding the primary
40 election day, and must be received before midnight, east-
41 ern standard time, of that day or, if mailed, shall be post-
42 marked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every per-
2 son who becomes a candidate for nomination for, or elec-
3 tion to, office in any primary election, shall, at the time of
4 filing the certificate of announcement as required in this
5 article, pay a filing fee as follows:

6 (a) A candidate for president of the United States, for
7 vice president of the United States, for United States sen-
8 ator, for member of the United States house of representa-
9 tives, for governor and for all other state elective offices

10 shall pay a fee equivalent to one per cent of the annual
11 salary of the office for which the candidate announces;

12 (b) A candidate for the office of judge of a circuit court
13 and judge of any court of record of limited jurisdiction
14 shall pay a fee equivalent to one per cent of the total an-
15 nual salary of the office paid from any and all sources for
16 which the candidate announces;

17 (c) A candidate for member of the house of delegates
18 shall pay a fee of fifteen dollars, and a candidate for state
19 senator shall pay a fee of thirty dollars;

20 (d) A candidate for sheriff, prosecuting attorney, cir-
21 cuit clerk, county clerk, assessor, member of the county
22 court and member of the county board of education shall
23 pay a fee equivalent to one per cent of the annual salary
24 of the office for which the candidate announces: *Pro-*
25 *vided, however,* That the fee in no case shall be less than
26 five dollars. A candidate for any other county office shall
27 pay a fee of five dollars;

28 (e) A candidate for justice of the peace in districts
29 having a population of five thousand or less shall pay a
30 fee of ten dollars; in districts having a population of more
31 than five thousand and not more than twenty-five thou-
32 sand, fifteen dollars; and in districts having more than
33 twenty-five thousand population, each candidate shall
34 pay a fee of twenty-five dollars;

35 (f) A candidate for constable in districts having a pop-
36 ulation of five thousand or less shall pay a fee of five dol-
37 lars; in districts having a population of more than five
38 thousand and not more than twenty-five thousand, ten
39 dollars; and in all other districts fifteen dollars;

40 (g) Delegates to the national convention of any po-
41 litical party shall pay the following filing fees:

42 A candidate for delegate-at-large shall pay a fee of
43 twenty dollars; and a candidate for delegate from a con-
44 gressional district shall pay a fee of ten dollars;

45 (h) Candidates for members of political executive com-
46 mittees and other political committees shall pay the fol-
47 lowing filing fees:

48 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 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. 9. Certification and Posting of Candidacies.—During the week next following the last Saturday of February next preceding the day fixed for the primary election, 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 accordance 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

16 such certification in a conspicuous place in his office and
17 keep same posted until after the primary election.

18 Immediately upon completion of such certification, the
19 secretary of state shall ascertain therefrom the candidates
20 whose names are to appear on the primary election bal-
21 lots in the several counties of the state and shall certify
22 to the clerk of the circuit court in each county the cer-
23 tificate information relating to each of the candidates
24 whose names are to appear on the ballot in such county.
25 He shall transmit such certificate to the several clerks by
26 registered or certified mail, but, in emergency cases, he
27 may resort to other reliable and speedy means of trans-
28 mission which may be available so that such certificates
29 shall reach the several clerks by the sixtieth day next
30 preceding such primary election day.

Sec. 10. Publication and Printing of Ballots; Number.—

2 Between the sixtieth and the thirtieth days next prior to
3 the date of the primary election, the ballot commissioners
4 of each county shall prepare from the lists and certificates
5 of announcements, as provided in this article, a sample
6 official primary ballot for each party, placing thereon the
7 names of all the candidates of the political party, and, as
8 the case may be, the nonpartisan candidates to be voted
9 for at such primary election. During the two weeks next
10 preceding the primary election they shall publish such
11 sample official primary election ballot in two issues of
12 a newspaper of general circulation published in such
13 county and representing such party, if there be one, but,
14 if there be no such newspaper so published, then they
15 shall publish such ballot in two issues of some other news-
16 paper published and of general circulation in such county.

17 The ballot commissioners shall determine the total
18 number of official ballots required for conducting the
19 primary election in all of the election precincts of the
20 county and shall cause same to be printed at least thirty
21 days next preceding the date of the election and made
22 ready for delivery to the several precincts along with
23 other election supplies. The number of official ballots of
24 a political party prepared for delivery to a precinct shall
25 not exceed one and one-twentieth times the number of
26 registered voters of such party in that precinct.

Sec. 11. Candidacies Not Certified; Vacancies; Stickers.

2 —If, by satisfactory evidence, it shall appear to the ballot
3 commissioners of any county that announcements have
4 been made in conformity with the provisions of this
5 chapter and no certificate thereof has been received by
6 them, they shall include such persons among the names
7 of candidates to be printed upon the ballots, as in this
8 article provided.

9 If, after the time is closed for announcing as a candidate
10 for any office, and not later than the fifth day preceding
11 the date of the primary election, any person who has
12 filed an announcement of candidacy shall withdraw and
13 decline to stand as a candidate for the office, or shall die,
14 leaving no primary election candidate for his party's
15 nomination for such office, the executive committee of
16 the party, for the political division within which such
17 candidate was to be voted for, may, in its discretion, fill
18 the vacancy caused by such withdrawal or death by
19 naming another candidate for such office. The chairman
20 of such executive committee shall forthwith certify the
21 candidate so named for such vacancy to the ballot com-
22 missioners of the county or counties concerned and shall
23 immediately send a copy of such certification to the sec-
24 retary of state. If the ballots have been printed before
25 receipt of such certificate, the ballot commissioners shall
26 cause the name of the candidate so certified by the chair-
27 man of the executive committee to be printed on "stick-
28 ers" and supplied to the commissioners of election ap-
29 pointed to hold the primary election at the different pre-
30 cincts of the county wherein such candidate will stand
31 for nomination. The procedures prescribed in section four
32 of article six of this chapter, relating to the use of stickers
33 in general elections, shall be adaptable and applicable in
34 primary elections where not inconsistent with any pro-
35 visions hereof.

Sec. 12. Official and Sample Ballots; Color.—

2 There shall be a separate ballot printed on different colored
3 paper, for each political party participating in the primary
4 election, and the ballot of no two parties shall be of the
5 same color or tint. The secretary of state shall select and
6 determine the color of the paper of the ballot of each of

7 the parties, and shall notify the clerk of the circuit court
8 of each county thereof, at the time he certifies the names
9 of the candidates of the various parties to said clerk, as
10 herein provided.

11 The same color of paper selected and designated by the
12 secretary of state for any party shall also be used for
13 sample ballots of such party; but there shall be printed
14 across the face of such sample ballot in large letters the
15 words "sample ballot," and no sample ballot shall be voted
16 or counted in any election.

Sec. 13. Form and Contents of Ballots.—The official
2 primary ballot shall contain at the left of each column
3 of names of candidates, a perpendicular column, and shall
4 be so printed as to leave a square at the left of each name
5 on the ballot.

6 On such primary ballot, the names of candidates for
7 president of the United States, for United States senator,
8 for representative in congress, and for delegates to the
9 national convention of the party, shall be placed in the first
10 column of candidates; the names of candidates for all state
11 offices, and all other offices to be filled by the voters of a
12 political division greater than a county, including the
13 state executive committee, in the second column; the
14 names of all candidates for county offices, including mem-
15 bers of the house of delegates and congressional and
16 senatorial executive committees, shall be placed in the
17 third column; and the names of all candidates for office in
18 the magisterial districts shall be placed in the fourth
19 column.

20 The face of every primary election ballot shall conform
21 as nearly as practicable to that used at the general elec-
22 tion.

23 The secretary of state, or the circuit court clerk, as the
24 case may be, shall arrange the names of the candidates
25 to be printed on the ballot in alphabetical order, accord-
26 ing to the surname, under the title of the respective offices
27 upon the ballot.

28 A separate ballot, in connection with a primary election,
29 for election of members of county board of education, shall

30 be printed in bold type, under the caption, "Nonpartisan
31 Ballot for Election of Members of theCounty
32 Board of Education." The names of the candidates for
33 election to the county board of education, and the number
34 of candidates for which each voter is entitled to vote shall
35 be printed beneath the caption, without reference to po-
36 litical party affiliation, and without designation as to a
37 particular term of office.

38 In printing each set of ballots the position of the names
39 of the candidates shall be changed in each office division
40 as many times as there are candidates in that office divi-
41 sion. As nearly as possible an equal number of ballots
42 shall be printed after each change. In making the change
43 of position, the printer shall take the line of type con-
44 taining the first name in the office division concerned and
45 place it at the bottom of the list of names in that division
46 and move up the column so that the name that before was
47 second shall be first after the change. After the ballots
48 are printed they shall be kept in separate piles, one pile
49 for each change in position, and shall then be gathered
50 by taking one from each pile. Sample ballots shall be in
51 the same form as the official ballot, but the order of the
52 names thereon need not be alternated.

53 All ballots used in primary elections shall be printed on
54 paper conforming as nearly as practicable in weight, tex-
55 ture, and color to the samples furnished by the secretary
56 of state, and the paper shall be sufficiently thick so that
57 the printing cannot be discernible from the back. On the
58 back of the ballot shall be printed in black ink, and in plain
59 legible, black face pica type, the name of the political party
60 as contained in the heading or "Nonpartisan Board of Edu-
61 cation," as the case may be, followed by the word "ballot."
62 Under this designation shall be printed two blank lines
63 followed by the words "poll clerks."

Sec. 14. General Provisions Applicable to Primary
2 **Elections.**—Provisions of article one of this chapter relat-
3 ing to ballot commissioners, election commissioners and
4 clerks, procedures for obtaining election supplies and con-
5 ducting elections, loss and replacement of election sup-
6 plies, challenge of voters, leaves of absence for voting,

7 election expenses and recount procedures shall control and
8 govern primary elections wherever applicable.

9 In all other particulars, when no specific provision is
10 made in this article for the control, conduct and govern-
11 ment of any phase of primary elections, resort shall be had
12 to other provisions of this chapter which may be appli-
13 cable thereto and controlling thereof.

Sec. 15. Ascertaining and Certifying Primary Election

2 **Results.**—When the polls are closed, the commissioners of
3 election and the poll clerks shall proceed to ascertain the
4 result of the election as follows:

5 (a) The commissioners shall ascertain the number of
6 ballots destroyed during the election and the number of
7 ballots remaining not voted;

8 (b) The commissioners and clerks shall also ascertain
9 from the poll books, and set down therein the total number
10 of ballots of each party cast. The commissioners shall
11 report, over their signatures, to the clerk of the county
12 court, the number of votes of each party cast, the number
13 of ballots destroyed during the election, and the number
14 of ballots not voted. All unused ballots shall at the same
15 time be returned to the clerk of the county court, who shall
16 immediately destroy them by fire or otherwise;

17 (c) The ballot box shall be opened and one of the
18 commissioners shall take therefrom one ballot at a time,
19 in the presence of all the other officers, and shall announce
20 what political party's ballot it is, and shall read therefrom
21 the result of the vote on such ballot for each office, and
22 hand the ballot to another of the commissioners differing
23 in politics from himself, who, if satisfied that it is cor-
24 rectly read, shall string the same on thread. The ballots
25 of each party shall be strung on separate threads. Each
26 poll clerk shall keep an accurate tally of the contents of
27 each ballot of each party on tally paper, which shall be
28 provided for the purpose, so as to show the number of
29 votes received by every person for any office. The ballots
30 shall be counted as they are strung upon the thread, and
31 whenever the number counted for any party shall equal
32 the number of votes entered upon the poll book of that
33 party, any other ballot of such party found in the ballot

34 box shall be immediately destroyed by fire or otherwise,
35 without unfolding the same, or allowing anyone to
36 examine or know the contents thereof;

37 (d) As soon as the results at the precinct are ascer-
38 tained, the commissioners and clerks shall make out and
39 sign four certificates, for each party represented, of the
40 vote for all candidates of such party, in the following form:

41 Certificate of result forparty candidates.

42 We, the undersigned commissioners and poll clerks of
43 the primary election held at precinct No.of
44 district ofCounty, W. Va., on theday of
45, 19, do hereby certify that having been
46 first duly sworn, we have carefully and impartially ascer-
47 tained the result of said election at said precinct for the
48 candidates on the official ballot of theparty, and
49 the same is as follows:

50 For the office of governor, A. B. receivedvotes.

51 For the office of governor, E. F. receivedvotes.

52 For the office of governor, G. H. receivedvotes.

53 (And so on as to each office for which any candidate
54 was voted for, stating in words and figures the number
55 of votes cast for each candidate.)

56 Given under our hands thisday of, 19

57

58 Three of such certificates of result of election, for each
59 party, shall then be sealed in separately addressed en-
60 velopes, furnished for the purpose, and shall be disposed
61 of by the precinct commissioners as follows: One cer-
62 tificate for each party shall be returned, under seal, to
63 the clerk of the county court, with the election returns;
64 one for each party shall be delivered by the commissioners
65 to the clerk of the circuit court of the county; and one for
66 each party shall be sent by registered mail to the secretary
67 of state: *Provided, however,* That it shall not be neces-
68 sary for the precinct commissioners and clerks to include,
69 in the certificates to the secretary of state, the votes cast
70 for any candidates for county and district offices, other
71 than for members of the Legislature. The one not sealed
72 up shall be posted on the outside of the front door of the

73 polling place in said precinct. All ballots voted for can-
74 didates of each party shall be sealed up in separate en-
75 velopes and the commissioners and clerks shall each sign
76 his name across the seal. In all precincts in which a re-
77 ceiving board and a counting board of election officers
78 are appointed, the work of counting the votes and of ascer-
79 taining and certifying the result shall be divided between
80 the two boards, and be performed by them, respectively,
81 in the same manner provided in article one of this chapter
82 for counting the votes and ascertaining and certifying
83 the result of a general election.

Sec. 16. Return of Supplies and Certificates.—Within
2 twelve hours after completion of the count, tabulation and
3 declaration of the result of the primary election in each
4 precinct, one of the commissioners at such precinct, desig-
5 nated for that purpose, shall return to the clerk of the
6 county court the ballot boxes, registration list, and the
7 several packages of ballots, poll books, tally sheets, cer-
8 tificates, and all other election supplies and returns, except
9 he shall deliver to the clerk of the circuit court, within
10 the same time, packages containing one poll book, one
11 tally sheet, and one certificate of each political party pre-
12 pared and sealed as provided in the next preceding section.

**Sec. 17. Canvassing and Certifying Returns; Recount
2 Procedures.**—The county court, sitting as a board of can-
3 vassers, shall meet at the courthouse of the county on
4 the Friday next succeeding any primary election and shall
5 proceed to canvass the returns of such election. The proced-
6 ures prescribed in section nine of article six of this chapter,
7 relating to canvass of general election returns, shall, where
8 adaptable, be applied in the canvass of the primary elec-
9 tion returns. The board shall proceed to ascertain the
10 result of such election in the county and district, and elec-
11 tion precincts thereof, and cause to be prepared and re-
12 corded in the primary election precinct record book, a
13 table or tables which shall show, as to each candidate of
14 each political party for each office, the number of votes
15 cast for him at each precinct, and the total number thereof
16 cast in the entire county. The board shall then make up

17 and enter in said record book a certificate for each political
18 cal party, showing, as to each candidate for each political
19 party for each office, the total number of votes (in words
20 and also in figures) cast for him in the entire county and the
21 number of votes received by all the candidates of such party
22 in such district, which shall be in the following form:

23 The board of canvassers of the county of _____,
24 State of West Virginia, having carefully and impartially
25 examined the returns of the primary election held in said
26 county on the _____ day of _____, 19 _____, do
27 hereby certify that in said county or district, at said elec-
28 tion, on the official ballot of the _____ party for the
29 office of _____, A.B. received _____ (_____)
30 votes; C. D. received _____ (_____) votes.

31 And so on for each office for each political party according
32 to the truth. When the certificates are all entered, the re-
33 port shall be signed by the members of the board or a ma-
34 jority thereof. Such members shall also sign separate cer-
35 tificates of the result of said election, within the county,
36 for each of the offices to be filled by each political party,
37 as provided by the following section.

38 The provisions of article six of this chapter, relating to
39 the recount of votes in general elections, shall, to the
40 extent applicable, be operative in primary and other elec-
41 tions conducted under provisions of this article.

Sec. 18. Disposition of Certificates of Results.—The
2 certificates of the board of canvassers made pursuant to
3 the preceding section shall be by them disposed of as
4 follows: One of the certificates showing the votes re-
5 ceived by each candidate of each party for each office to
6 be filled by the voters of a political division greater than
7 a county, including members of the state executive com-
8 mittee, shall be filed with the secretary of state, and by
9 him preserved in his office, and a copy thereof filed in
10 the office of the clerk of the circuit court of the county
11 of such board, to be preserved by such clerk, and which
12 shall be open to public inspection; one certificate show-
13 ing the votes received by each candidate of each party
14 for each office to be filled by the voters of the county or
15 magisterial district within such county, including mem-

16 bers of the county executive committee, shall be filed
17 with the clerk of the circuit court, and by him preserved
18 in his office. If requested, the board of canvassers shall
19 furnish to the county chairman of each political party a
20 certificate showing the number of votes received by each
21 of the candidates of such party in the county or any
22 magisterial district therein.

23 The secretary of state shall certify, under the seal of
24 the state, to the clerk of the circuit court of each county
25 in which a candidate is to be voted for, the name of the
26 candidate of each political party receiving the highest
27 number of votes in the political division in which he is a
28 candidate, and who is entitled to have his name placed
29 on the official ballot in the general election as the nomi-
30 nee of the party for such office. The secretary of state
31 shall also certify in the same manner the names of all
32 candidates nominated by political parties or by groups of
33 citizens, not constituting a political party, in any manner
34 provided for making such nominations in this chapter.

Sec. 19. Vacancies in Nominations; How Filled; Fees.—

2 If any vacancy shall occur in the party nomination of
3 candidates for office, caused by the death, withdrawal,
4 failure to make a nomination for the office at the primary
5 election, or otherwise, it may be filled and the name of
6 the candidate certified by the executive committee of the
7 political party for the political division in which the
8 vacancy occurs. If such vacancy be not filled by the
9 executive committee by the sixty-fifth day next preceding
10 the date of the election, it shall be lawful for the chair-
11 man of the political party executive committee for the
12 political division to fill such vacancy, make a certificate
13 thereof, and file the same with the officer with whom the
14 original certificate of nomination was or might have been
15 regularly filed. Such certificate shall be filed not later
16 than the sixtieth day next preceding the date of the
17 election and, when filed, such officer shall proceed there-
18 with in the same manner in all respects as in cases of
19 original nominations. When any such vacancy exists be-
20 cause of failure to make a nomination for the office at
21 the primary election, no nomination for such office shall
22 be deemed filed under provisions of this section until the

23 required filing fee for such office candidacy shall have
24 been paid as provided in section eight of this article.

Sec. 20. Election Contests and Court Review.—Any
2 candidate for nomination for or election to an office to
3 be filled by the voters of the state or any political sub-
4 division thereof or any candidate for membership on any
5 county political party executive committee, may contest
6 the primary election before the county court of the
7 county in which any primary election procedures, prac-
8 tices or results may be in issue. The procedure in such
9 case shall be the same as that governing the contest of
10 a general election by candidates for county offices or
11 offices in magisterial districts. The decision of the county
12 court upon such contest may be reviewed by the circuit
13 court of the county and by the supreme court of appeals
14 of the state. Wherever practicable, the circuit court, on
15 review, may, by order entered of record, consolidate and
16 hear together any such primary election cases arising in
17 one or more counties of the circuit, and the supreme court
18 of appeals, on further review, may likewise consolidate
19 and hear together any such cases whenever considered
20 practicable by the court so to do.

21 Any action of a political party executive committee in
22 the discharge of any of the duties imposed upon such
23 committee by this article, or of any board of election
24 officials in conducting and ascertaining the result of the
25 primary election, or of any board of canvassers in can-
26 vassing and certifying the result of the primary election
27 for the county, may be reviewed by the circuit court of
28 the county, upon the petition of any candidate, political
29 committeeman or delegate voted for at such primary and
30 affected adversely by the action of such committee, board
31 of election officials, or board of canvassers. From the
32 judgment of the circuit court in any such proceeding,
33 an appeal shall lie to the supreme court of appeals of the
34 state.

35 Any such contest, or petition for review, of a candidate
36 for a nomination not finally determined within ten days
37 next preceding the date of the next election after the
38 primary, or of a candidate for delegate to any convention

39 within ten days next preceding the date fixed for holding
40 the convention, shall stand dismissed, and the person
41 shown by the face of the returns of the primary election
42 to be nominated for any office shall be entitled to have
43 his name printed upon the regular ballot to be voted at
44 the election, and the person shown upon the face of the
45 returns to have been elected as a delegate to any con-
46 vention shall be entitled to sit in such convention as a
47 delegate.

**Sec. 21. Party Conventions to Nominate Presidential
2 Elector Candidates; Organization; Duties.**—Candidates for
3 presidential electors shall be nominated by the delegated
4 representatives of the political party assembled in a state
5 convention to be held between the first and fifteenth days
6 of August next preceding any general election at which
7 presidential electors are to be elected. The state execu-
8 tive committee of the political party, by resolution, shall
9 designate the place and fix the date of such convention,
10 shall prescribe the number of delegates thereto, and shall
11 apportion the delegates among the several counties of
12 the state in proportion to the vote cast in the state for
13 the party's candidate for governor at the last preceding
14 general election at which a governor was elected. The
15 state executive committee shall also ascertain and desig-
16 nate all offices for which candidates are to be nominated
17 at such convention.

18 At least sixty days prior to the date fixed for holding
19 any state convention, the chairman of the party's state
20 executive committee shall cause to be delivered to the
21 party's county executive committee in each county of the
22 state a copy of the resolutions fixing the time and place
23 of holding the state convention and prescribing the num-
24 ber of delegates from each county to the convention.
25 Within ten days after receipt of the copy of such resolu-
26 tions, the party executive committee of each county shall
27 meet and, by resolution, shall apportion the delegates to
28 the state convention among the several magisterial dis-
29 tricts of the county, on a basis of the vote received in
30 the county by the candidate of the party for governor at
31 the last preceding general election at which a governor
32 was elected, but in such apportionment of county dele-

33 gates each magisterial district shall be entitled to at least
34 one delegate to such state convention. The party's county
35 executive committee shall call a meeting of the members
36 of the political party in mass convention in the several
37 magisterial districts of the county, which district meeting
38 shall be held at least thirty days prior to the date fixed
39 for the state convention and at which meeting the mem-
40 bers of the political party in each magisterial district
41 shall elect the number of delegates to which such district
42 is entitled in the state convention.

43 The meeting place in the magisterial district shall be
44 as central and convenient as can reasonably be selected,
45 and all recognized members of the political party shall
46 be entitled to participate in any such mass convention
47 and in the selection of delegates. Notice of the time and
48 place of holding the several magisterial district mass
49 conventions and of the person who shall act as temporary
50 chairman thereof shall be given by publication in at least
51 two issues of a newspaper of the political party, if any
52 such there be, published in the county, the first publica-
53 tion to be not more than fifteen and the second publica-
54 tion to be not less than five days prior to the date fixed
55 for holding the convention. If no such newspaper be
56 published in the county, notice may be given by posting
57 the same in at least five conspicuous places in the magis-
58 terial district, at least ten days before the date of the
59 mass convention. The notice published or posted shall
60 specify the number of delegates which each magisterial
61 district in the county is entitled to elect to the state con-
62 vention.

63 Upon assembling, the mass convention of each magis-
64 terial district shall choose a chairman and a secretary,
65 who, within five days after the holding of such conven-
66 tion, shall certify to the chairman of the state executive
67 committee of the political party and the chairman of the
68 county committee of the political party, the names and
69 addresses of the parties selected as delegates to the state
70 convention.

71 All contests over the selection of delegates to conven-
72 tions shall be heard and determined by the party execu-
73 tive committee of the county from which the delegates

74 are chosen, and such county executive committee shall,
75 upon written petition of any contestant, meet for such
76 hearings and determinations within ten days after the
77 holding of such magisterial district mass convention. The
78 circuit court of the county and the supreme court of ap-
79 peals of the state shall have concurrent original jurisdic-
80 tion to review, by mandamus or other proper proceeding,
81 the decision of a county executive committee in any
82 contest.

83 The delegates chosen and certified by and from the
84 several magisterial districts in the state, and, in the event
85 of any contest, those prevailing in the contest, shall make
86 up the state convention. The number present of those
87 entitled to participate in any convention shall cast the
88 entire vote to which the county is entitled in such con-
89 vention, and it shall require a majority vote to nominate
90 any candidate for office.

91 All nominations made at state conventions shall be
92 certified within fifteen days thereafter, by the chairman
93 and the secretary of the convention, to the secretary of
94 state, who shall certify them to the clerk of the circuit
95 court of each county concerned, and the names of the
96 persons so nominated shall be printed upon the regular
97 ballot to be voted at the ensuing general election, except
98 that the names of the presidential elector candidates shall
99 not be printed thereon.

100 The delegates to any state convention may formulate
101 and promulgate such party platform or declaration of
102 party principles as to them shall seem advisable.

Sec. 22. Other Party and Group Nominations; Proce-
2 **ure.**—Any political party which polled less than ten per
3 cent of the total vote cast only for governor at the gen-
4 eral election immediately preceding may nominate can-
5 didates and select committees by party conventions, pro-
6 vided such nominations are made and the certificates
7 thereof filed within the time and in the manner provided
8 in section twenty-four of this article, or by certificate in
9 the same manner as groups of citizens may make nomi-
10 nations as provided in the following section.

11 No delegate or person participating in the selection of

12 delegates under this section shall vote in any primary
13 election held in that year.

Sec. 23. Certificate Nominations; Requirements and

2 **Control; Penalties.**—(a) Groups of citizens having no
3 party organization may nominate candidates for public
4 office otherwise than by conventions or primary elections.
5 In such case, the candidate or candidates, jointly or sev-
6 erally, shall file a declaration containing the name of the
7 political party he or they propose to represent, its plat-
8 form, principles or purposes, with the secretary of state
9 if the office is to be filled by the voters of more than one
10 county, or with the clerk of the circuit court of the
11 county if the office is to be filled by the voters of one
12 county or political subdivision thereof; such declaration
13 to be filed at least thirty days prior to the time of filing
14 the certificate provided by section twenty-four of this
15 article, and at the time of filing of such declaration each
16 candidate shall pay the filing fee required by law, and if
17 such declaration is not so filed or the filing fee so paid the
18 certificate shall not be received by the secretary of state,
19 or clerk of the circuit court, as the case may be;

20 (b) The person or persons soliciting or canvassing sig-
21 natures of duly qualified voters on such certificate or cer-
22 tificates, shall be residents and qualified, registered voters,
23 of the magisterial district of the county in which such
24 solicitation or canvassing is made, and may solicit or can-
25 vass duly registered voters resident within their own re-
26 spective magisterial district, but must first obtain from
27 the clerk of the county court of which such canvasser or
28 solicitor is a resident, credentials which must be exhibited
29 to each voter canvassed or solicited, which credentials
30 may be in the following form or effect:

31 State of West Virginia, County of _____, ss:

32 This certifies that _____, a duly registered voter of
33 Precinct No. _____, _____ District, of this county
34 and state; whose postoffice address is _____, is
35 hereby authorized to solicit and canvass duly registered
36 voters residing in _____ District of this County to
37 sign a certificate purporting to nominate _____
38 (here place name of candidate heading list on certificate)

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 with-
52 in the magisterial district of the county wherein such
53 canvass or solicitation is made by the person or persons
54 duly authorized. Such signatures need not all be on one
55 certificate. The number of such signatures shall be equal
56 to not less than one per cent of the entire vote cast at the
57 last preceding general election for the office in the state,
58 district, county or other political division for which
59 the nomination is to be made, but in no event shall the
60 number be less than twenty-five. Where two or more
61 nominations may be made for the same office, the total
62 of the votes cast at the last preceding general election
63 for the candidates receiving the highest number of votes
64 on each ticket for such office shall constitute the entire
65 vote. No signature on such certificate shall be counted
66 unless it be that of a duly registered voter of a precinct
67 within the magisterial district wherein such certificate
68 was presented. No person signing such certificate shall
69 vote at any primary election to be held to nominate can-
70 didates for office to be voted for at the election to be held
71 next after the date of signing such certificate;

72 (d) Such certificates shall state the name and residence
73 of each of such candidates; that he is legally qualified to
74 hold such office; that the subscribers are legally qualified
75 and duly registered as voters and desire to vote for such
76 candidates; and shall designate, by not more than five
77 words, a brief name of the party which such candidates
78 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 nominated under the provisions of this chapter. At the top of each certificate shall be the following form or to the following 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 public 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 nominated; 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 device).

Signature	Precinct No.	Residence	Postoffice Address
(Names of Voters)	(Number of precinct in magisterial district)	(Describe it)	(Name of office):

(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 determine his or their right to such nomination to public of-

119 fice, and upon request being made, the attorney general
120 or prosecuting attorney shall institute such quo war-
121 ranto proceeding; and

122 (f) Any person violating the provisions hereof, in ad-
123 dition to penalties prescribed elsewhere for violations of
124 this chapter, shall be guilty of a misdemeanor, and, upon
125 conviction, shall be fined not more than one thousand
126 dollars, or confined in the county jail for not more than
127 one year, or both, in the discretion of the court.

Sec. 24. Filing of Nomination Certificates; Time.—All
2 certificates nominating candidates for office under the
3 preceding section, including a candidate for the office of
4 presidential elector, shall be filed, in the case of a candi-
5 date to be voted for by the voters of the entire state or by
6 any subdivision thereof other than a single county, with
7 the secretary of state, and in the case of all candidates for
8 county and magisterial district offices, including all of-
9 fices to be filled by the voters of a single county, with
10 the clerk of the circuit court of the county, not later than
11 the day preceding the date on which the primary election
12 is held. After such date no such certificate shall be re-
13 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.
6. Ballot counting procedures.
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-
2 **tions; Applicability of Other Provisions of Chapter; Ap-**
3 **plicability of Article to Primary and Special Elections.**—
4 The provisions of this article shall govern the conduct and
5 administration of general elections. Other provisions of
6 this chapter, where applicable, shall be considered supple-

7 mentary and complementary to the provisions of this
8 article regulating and controlling general elections.

9 In all voting precincts in which voting machines have
10 been approved, procured, and are in use, the provisions
11 of article four of this chapter shall be applicable to the
12 conduct and administration of general elections.

13 Where applicable and not inconsistent with other posi-
14 tive provisions of law, the provisions of this article shall
15 govern the conduct of and procedures in primary and
16 special elections.

Sec. 2. Preparation and Form of General Election Bal-
2 **lots.**—All ballots prepared under the provisions of this
3 article shall be printed in black ink on number two white
4 book paper sufficiently thick so that the printing cannot be
5 distinguished from the back, and shall contain the names
6 of every candidate whose nomination for any office to be
7 voted for at the election has been certified and filed ac-
8 cording to law, and no others, except that if it shall appear
9 to the satisfaction of the ballot commissioners that a per-
10 son has been legally nominated as a candidate for an office
11 and is lawfully entitled to have his name upon the ballot
12 and no certificate of the nomination has been received by
13 the clerk of the circuit court, they shall print the name of
14 such candidate upon the ballot in its proper place.

15 The tickets, except the heading, which shall be in dis-
16 play type, shall be printed in eight point type; the name or
17 designation of the office and the residence of the candidate
18 in lower case letters, and the name of the candidate in cap-
19 ital letters. The name and residence of the candidate may
20 be printed in the same line. The name of each candidate
21 shall be printed in a space defined by ruled lines, and with a
22 black square on its left inclosed by heavy dark lines. If, upon
23 any ticket, there be no candidate or candidates for a desig-
24 nated office, a blank space equal to the space that would be
25 occupied by such name or names, if they were printed
26 thereon, with the blank space herein provided for, shall be
27 left. The heading of each party ticket including the name of
28 the party and the device or emblem above and the large cir-
29 cle between the device or emblem and such name, shall be

30 separated from the rest of the ticket by heavy lines and the
31 circle above the name of the party in which the voter is to
32 place the cross mark, if he desires to vote the straight tick-
33 et, shall be defined by heavier lines than the lines defining
34 the blank spaces before the names of candidates, and such
35 circle shall be surrounded by the following words printed
36 in heavy face six point type: "For a straight ticket mark
37 within this circle." Each party ticket shall be separated
38 from other party tickets and bordered on either side by a
39 heavy border, or a broad solid line, at least one sixteenth
40 of an inch wide, and the edges of the ballot on either side
41 trimmed off to within one-half inch of the border or solid
42 line described.

43 The names of the candidates shall be arranged on the
44 ballot in tickets or lists, in separate columns under the
45 respective party or political or other designation certified,
46 each column or ticket containing the names of candidates
47 nominated by the same political party and no others. In
48 elections for presidential electors, the names of candidates
49 for electors of any political party or group of petitioners,
50 shall not be placed on the ballot, but shall, after nomina-
51 tion, be filed with the secretary of state. In place of their
52 names, there shall be printed first on the ballots the names
53 of the candidates for president and vice president, re-
54 spectively, of each such party or group of petitioners, and
55 they shall be arranged under the title of the office. Before
56 the names of such candidates for president and vice
57 president of each party, or group, a single square shall
58 be printed, in front of a brace, in which the voter shall
59 place the cross mark for the candidate of his choice for
60 such offices. A vote for any of such candidates shall be
61 a vote for the electors of the party by which such candi-
62 dates were named, and whose names have been filed with
63 the secretary of state.

64 The names of the candidates on each ticket shall be
65 arranged in groups, with a heading over each group
66 printed in heavy faced eight point type to indicate the
67 political divisions in which such group is to be voted for.
68 The arrangement of the ballot shall conform as nearly as
69 practicable to the plan here given:

Device	Device	Device
Republican Ticket	Democratic Ticket	Prohibition Ticket
For Governor	For Governor	For Governor
Name.	Name.	Name.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

70 The tickets of the several political parties shall be
 71 printed on the ballot in parallel columns, each ticket in a
 72 separate column headed by the chosen device, and the
 73 tickets in such order on the ballot and the names of the
 74 office in such order on the ticket as the secretary of state
 75 shall direct, preference, however, being given to the po-
 76 litical party which cast the highest number of votes for
 77 the head of the ticket at the last preceding presidential
 78 election, and so on. No ticket or list of candidates shall
 79 be printed under the name of any party containing more
 80 candidates for any office than are to be elected.

81 The ballot shall be so printed as to give each voter a
 82 clear opportunity to designate by a cross mark in a large,
 83 blank, circular space, three-quarters of an inch in diameter,
 84 below the device and above the name of the party at the
 85 head of the ticket or list of candidates, his choice of a
 86 party ticket and desire to vote for each and every candi-
 87 date thereon; and by a cross mark, in a blank, inclosed
 88 space on the left and before the name of each candidate,
 89 his choice of particular candidates.

90 On the back of the ballot shall be printed or stamped
 91 in black ink the words "Official Ballot," with the date of

92 the election, and underneath shall be two blank lines, fol-
93 lowed by the words "Poll Clerks."

Sec. 3. Publication of Nominations.—At least ten days
2 before an election to fill any public office at which the
3 voters of any county are entitled to vote, the clerk of the
4 circuit court of such county shall cause to be published
5 in two newspapers, if such there be published within the
6 county, representing the political parties which at the last
7 preceding general election cast the largest and second
8 largest number of votes in the state, or, if there be only
9 one newspaper published therein, then in such newspaper,
10 the nominations for office certified to him and filed in his
11 office, excepting nominations for office to be filled by the
12 voters of any subdivision less than a county. He shall
13 make two publications thereof in each of such newspapers
14 before the election, the second of which in each newspaper,
15 shall be on the last day upon which such newspaper is
16 issued before the election. If there be no newspaper pub-
17 lished in the county, the clerk of the circuit court shall,
18 at least ten days before the election, cause to be posted
19 in his office, and at some public place in each voting pre-
20 cinct in the county, a printed notice of the nominations for
21 office certified to and filed by him as aforesaid. Whenever
22 it shall appear by affidavit that an error or omission has
23 occurred in the publication of the names or description
24 of candidates nominated for public office, or in the printing
25 of the ballots, the board of ballot commissioners shall cor-
26 rect such error. The list of nominations published or
27 posted by clerks of the circuit courts of the several coun-
28 ties shall be arranged in the order and form in which
29 they will be printed upon the ballot.

Sec. 4. Late Nominations; Stickers.—If a nomination to
2 fill a vacancy be made by a political party executive com-
3 mittee or, on its failure to so act within the time pre-
4 scribed by law, be made by the chairman of such commit-
5 tee, and be certified to the clerk of the circuit court after
6 the ballots to be used at the ensuing election shall have
7 been printed, the clerk shall forthwith lay such certificates
8 before the ballot commissioners who, without delay, shall
9 prepare, or cause to be prepared, and deliver, or cause to

10 be delivered, to the election commissioners of each pre-
11 cinct in which such candidate is to be voted for, a number
12 of stickers, containing only the name of such candidate,
13 at least equal to the total number of ballots provided for
14 such precinct; but no such stickers shall be furnished to
15 or received by any person except a commissioner of elec-
16 tion. It shall be the duty of the commissioners holding the
17 election to deliver such stickers to the poll clerks, who
18 shall, in the presence of the election commissioners, affix
19 one of such stickers in a careful manner at the proper place
20 for the name of the candidate, upon each ballot to be
21 voted at the election, before the poll clerks shall sign their
22 names on the ballots. Such stickers may be delivered to
23 the election officers, by the clerk of the county court, with
24 the ballots, poll books and other supplies.

Sec. 5. Rules and Procedures in Elections Other Than

2 **Primaries.**—The provisions of article one of this chapter
3 relating to elections generally shall govern and control
4 arrangements and election officials for the conduct of elec-
5 tions under this article. The following rules and pro-
6 cedures shall govern the voter in his voting for candidates
7 in general and special elections:

8 (a) If the voter desires to vote a straight ticket, or, in
9 other words, for each and every candidate for one party
10 for whatever office nominated, he shall either:

11 (1) Make a cross mark in the circular space below the
12 device and above the name of the party at the head of the
13 ticket; or

14 (2) Make a cross mark on the left and opposite the
15 name of each and every candidate of such party in the
16 blank space provided therefor; or

17 (3) Mark out, by lines, all the tickets on the ballot,
18 other than the ticket he desires to vote.

19 (b) If the voter desires to vote a mixed ticket, or, in
20 other words, for candidates of different parties, he shall
21 either:

22 (1) Omit making a cross in the circular space above
23 the name of the party, and make a cross mark in the blank

24 space before the name of each candidate for whom he
25 desires to vote on whatever ticket the name may be; or

26 (2) Make a cross mark in the circular space above the
27 name of the party for some of whose candidates he desires
28 to vote, and then make a cross mark before the name of
29 any candidate of any other party for whom he may desire
30 to vote; in which case the cross mark in the circular space
31 above the name of the party will cast his vote for every
32 candidate on the ticket of such party except for offices for
33 which candidates are marked on other party tickets, and
34 the cross marks before the name of such candidates will
35 cast his vote for them; or

36 (3) Write with black lead pencil or other means the
37 name of any person for whom he desires to vote in the
38 space immediately below the name of the opposing can-
39 didate for the same office, on the ticket voted by him, and
40 the name so written shall be counted.

41 If, in marking either a straight or mixed ticket as above
42 defined, a cross mark is made in the circular space above
43 the name of a party at the head of the ticket, and also one
44 or more cross marks made before the name or names of can-
45 didates on the same ticket for offices for which candidates on
46 other party tickets are not individually marked, such
47 marks before the name of candidates on the ticket so
48 marked shall be treated as surplusage and ignored.

49 If the voter desires to vote for any person whose name
50 does not appear on the ticket, he may substitute the name
51 by writing it with black lead pencil or other means in the
52 proper place, and making a cross mark in the blank space
53 at the left of the name so written.

54 If the voter marks more names than there are persons
55 to be elected to an office, or if, for any reason, it is im-
56 possible to determine the voter's choice, for an office to
57 be filled, the ballot shall not be counted for such office.

58 No ballot shall be rejected for any technical error which
59 does not make it impossible to determine the voter's
60 choice.

Sec. 6. Ballot Counting Procedures.—When the polls
2 are closed in an election precinct where two election

3 boards have served, both the receiving and counting
4 boards shall conclude the counting of the votes cast, the
5 tabulating and summarizing of the number of the votes
6 cast, unite in certifying and attesting to the returns of
7 the election, and join in making out the certificates of the
8 result of the election provided for in this article. They
9 shall not adjourn until the work shall be completed.

10 In all election precincts wherein the election shall be
11 conducted by a single election board, immediately on
12 closing the polls the commissioners and clerks shall pro-
13 ceed to ascertain the result of the election in the follow-
14 ing manner: The ballot box shall then be opened, and
15 one of the commissioners taking therefrom one ballot
16 at a time, in the presence of all the other officers, shall
17 read therefrom the designations of the offices to be filled,
18 and the names of the persons voted for, for each office,
19 and hand the ballot to another of such commissioners,
20 differing in politics from himself, who, if satisfied that it
21 was correctly read, shall string it on a thread. The con-
22 tents of the ballots, as they are read, shall be entered by
23 the poll clerks, under the supervision of the commis-
24 sioners, on tally sheets for the purpose, by suitable marks,
25 in ink, made opposite to or under the name of each person
26 voted for, so as to show the number of votes received by
27 every person, for any office to be filled. The ballots shall
28 be counted as they are strung upon the thread, and when-
29 ever the number counted shall be equal to the number
30 of votes entered upon the poll books, the excess, if any,
31 remaining in the ballot box shall immediately be de-
32 stroyed by fire or otherwise, without unfolding or un-
33 rolling the same, or allowing anyone to examine or know
34 the contents thereof.

35 They shall not adjourn until all of the votes are counted
36 and certificates of the result made and signed by them.
37 In precincts wherein there are double boards, the count-
38 ing boards, in counting the ballots, shall proceed in the
39 manner prescribed in this section.

Sec. 7. Ballot Irregularities; Procedures.—If two or
2 more ballots be found folded or rolled together and the
3 names voted for thereon be the same, one of them only
4 shall be counted; but if the names voted for thereon be

5 different, in any particular, neither of them shall be
6 counted except as hereinbefore provided; and in either
7 case, the commissioners of election shall, in writing in
8 ink, place a common number on such ballots and state
9 thereon that they were folded or rolled together when
10 voted. If any ballot be found to contain more than the
11 proper number of names for any office, such ballot shall
12 not be counted as to such office. In any election for state
13 senator, if a person be voted for on any ballot who is not
14 a resident of the proper county, as required by the fourth
15 section of the sixth article of the constitution, such ballot
16 shall not be counted for said office. Any ballot which is
17 not indorsed with the names of the poll clerks, as pro-
18 vided in this chapter, shall be void and shall not be
19 counted; and any ballot, or part of a ballot from which
20 it is impossible to determine the elector's choice of candi-
21 dates, shall not be counted as to the candidates affected
22 thereby.

Sec. 8. Precinct Returns; Certificates; Procedures.—As
2 soon as the results are ascertained, the commissioners of
3 election and poll clerks at each place of voting shall
4 make out and sign four certificates thereof, in the fol-
5 lowing form or to the following effect: "We, the under-
6 signed, who acted as commissioners and poll clerks of
7 the election held at precinct No. in the district
8 of, and county of, on the
9 day of, do certify that, having been first duly
10 sworn, we have fairly and impartially held the said elec-
11 tion according to law, and the result thereof is as follows:
12 For the office of, (here designate the office,
13 as for example, 'Delegate for the county of Barbour,' or
14 'Senator for the first senatorial district,' 'Judge of the first
15 circuit,' 'Representative in the congress of the United
16 States for the first congressional district,' 'Governor of the
17 State,' 'Judge of the supreme court of appeals,' 'Justice
18 of the peace of said district,' and so forth, as the case may
19 be), 'A. B. received votes, C. D. votes, E. F.
20 votes,' and so on throughout stating, according to
21 the truth, the full name of every person voted for, for
22 every office, and in words at length, and also in figures,
23 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
26 taken at such place of voting for every office to be filled,
27 and shall be sealed and disposed of as is provided in sec-
28 tion fifteen of article five of this chapter for certificates
29 as to the result of a primary election. When the certifi-
30 cates are signed, the ballots shall be inclosed by the com-
31 missioners in an envelope which they shall seal up, and
32 write their names in ink across the place or places where
33 it is sealed, and indorse in ink on the outside of the
34 envelope as follows: "Ballots of the election held at
35 precinct No., in the district of, and
36 county of, the day of"
37 One of the commissioners of the election shall, within
38 twelve hours after the completion of the count, tabula-
39 tion and declaration of the result, deliver the ballots so
40 sealed up, one set of the poll books and tally sheets, one
41 of such certificates, the registration book and the ballot
42 box or boxes, to the clerk of the county court, and one
43 certificate and set of poll books and tally sheets, to the
44 clerk of the circuit court, all of which shall be preserved
45 in the respective offices of said clerks as in this chapter
46 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-
4 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

19 questions to the witnesses and all the answers thereto,
20 and evidence, shall be taken down in writing and filed
21 and preserved. All orders made shall be entered upon
22 the record. They may adjourn from time to time, but
23 no longer than absolutely necessary, and, when a ma-
24 jority of the commissioners are not present, their meeting
25 shall stand adjourned until the next day, and so from day
26 to day, until a quorum be present. The board shall pro-
27 ceed to open each sealed package of ballots so laid before
28 them, and, without unfolding them, count the number in
29 each package and enter the same upon their record. The
30 ballots shall then be again sealed up carefully in a new
31 envelope, and each member of the board shall write his
32 name across the place where such envelope is sealed.
33 After canvassing the returns of the election, the board
34 shall, upon the demand of any candidate voted for at such
35 election, open and examine any one or more of the sealed
36 packages of ballots, and recount the same; but in such
37 case they shall seal the same again, along with the
38 envelope above named, and the clerk of the county court
39 and each member of the board shall write his name
40 across the place or places where it is sealed, and indorse
41 in ink, on the outside: "Ballots of the election held at
42 precinct No., in the district of, and
43 county of, on the day of"
44 Every candidate who demands such recount shall be re-
45 quired to furnish bond in a reasonable amount with good
46 sufficient surety to guarantee payment of the costs and
47 the expenses of such recount in the event the result of
48 the election be not changed by such recount; but the
49 amount of such bond shall in no case exceed three hun-
50 dred dollars. When they have made their certificates and
51 declared the results as hereinafter provided, they shall
52 deposit the sealed packages of ballots, absent voter bal-
53 lots, registration records, poll books, tally sheets, and
54 precinct certificates with the clerks of the county and
55 circuit courts from whom they were received, who shall
56 carefully preserve the same for sixty days, and if there
57 be no contest pending as to any such election, and their
58 further preservation be not required by any order of a
59 court, such ballots, poll books, tally sheets and certificates

60 shall be destroyed by fire or otherwise, without opening
61 the sealed packages of ballots; and if there be such contest
62 pending, then they shall be so destroyed as soon as the
63 contest is ended. If the result of the election be not
64 changed by such recount, the costs and expenses thereof
65 shall be paid by the party at whose instance the same
66 was made.

Sec. 10. Certificates of Election Results.—Whenever an
2 election is held in any county or district to fill any na-
3 tional, state, county, or district office, the board of can-
4 vassers of the county, or a majority of them, under the
5 regulations prescribed in the next preceding section, shall
6 carefully and impartially ascertain the result of the elec-
7 tion in their county and in each district thereof, and shall
8 record the same in the following form, or to the follow-
9 ing effect: "The board of canvassers of the county of
10 _____, having carefully and impartially examined
11 the returns of the election held in said county, in each
12 district thereof, on the _____ day of _____, do hereby
13 certify that in said county for the office of _____,
14 A. _____ B. _____ received _____ votes, C. _____ D. _____
15 received _____ votes, and E. _____ F. _____ received _____
16 votes. And we further certify that at said election held
17 in the district of _____, in the said county, for the
18 office of _____, G. _____ H. _____ received _____
19 votes, and I. _____ J. _____ received _____ votes." (And
20 so on as to each particular office.) In such certificates
21 shall be set forth, according to the truth, the full name
22 of every person voted for, and, in words at length, the
23 number of votes received for any office. When the cer-
24 tificates are all entered, the record shall be signed by the
25 board or majority of them. The board shall then sign
26 separate certificates of the result of the election within
27 the county, for each of the offices to be filled.

Sec. 11. Disposition of Certificates; Procedures Thereon.—The separate certificates of the board of canvassers,
2 made pursuant to the preceding section, shall be by them
3 disposed of as follows: Of the certificates respecting the
4 election for delegate or delegates in the Legislature, they
5 shall transmit one to each person voted for as delegate,
6

7 and shall transmit one to the secretary of state, who shall
8 submit the same to the house, on the first day of the next
9 ensuing session, together with a list of the persons ap-
10 pearing thereby to be elected. Of the certificates respect-
11 ing the election of state senator, they shall transmit one
12 to each person voted for as state senator, and shall trans-
13 mit one to the secretary of state, to be submitted by him
14 to the senate, on the first day of the next ensuing session,
15 together with a list of persons appearing thereby to be
16 elected. Of the certificates respecting the election of state
17 officers, one, as to each of such officers, except judge of
18 the supreme court of appeals, shall be sealed and trans-
19 mitted by such commissioners to the secretary of state
20 indorsed on the envelope as follows: "Returns of the
21 election for state officers." The secretary of state shall
22 deliver the same to the speaker of the house of delegates,
23 on the first day of the next session of the Legislature; and
24 the speaker shall, immediately after the organization of
25 the house, and before proceeding to other business, open
26 and publish the same, in the presence of a majority of
27 each house of the Legislature, which bodies shall, for that
28 purpose, assemble in the hall of the house of delegates.
29 The person having the highest number of votes for any
30 one of such offices shall be declared duly elected thereto;
31 but if two or more persons have the same and the highest
32 number of votes for the same office, the Legislature shall,
33 by a joint vote of the two houses, choose one of said per-
34 sons for such office; and one of each of such last men-
35 tioned certificates shall also be transmitted, under seal,
36 to the governor, who shall immediately tabulate the vote
37 in all the counties, for each office, and cause the same to
38 be printed in some newspaper published at the seat of
39 government. Of the certificates respecting the election
40 for United States senator, member of the house of repre-
41 sentatives in the Congress of the United States, judge of
42 the supreme court of appeals, judge of a circuit court,
43 and president and vice president of the United States,
44 respectively, the commissioners shall transmit one in each
45 case to the person voted for, and one to the governor; and
46 the governor shall ascertain who are elected, and make
47 proclamation thereof. Of the certificates respecting the

48 election of all county and district officers, one shall be
49 transmitted to each person for whom votes were cast.

Sec. 12. Tie Vote Procedures.—Whenever the governor
2 or the board of canvassers of a county is to declare the
3 result of an election, and it appears to him or them that
4 two or more of the persons voted for have received the
5 highest and an equal number of votes for the same office,
6 so that the election to the office is not decided by the re-
7 turns, he, or they, being required to declare the result,
8 shall decide the tie by the election of one of such persons,
9 but in the event the board of canvassers shall have failed
10 to decide the tie within thirty days after such tie shall
11 have been found by them to exist, upon application to the
12 governor by any one of such persons so voted for, he shall
13 break the tie by the selection of one of such persons and
14 shall certify his choice to such board of canvassers and
15 declare such person duly elected for the office for which
16 such person was a candidate.

Article 7. Contested Elections.

Section

1. State officers and judge contests; procedure.
2. Procedure of legislature on governor contest.
3. Contests before special court; procedure; enforcement.
4. Contests of seats in Legislature; notices and procedures.
5. Depositions; subpoenas; time; tie vote decision.
6. County and district contests; notices; time.
7. County court to hear county and district contests; procedure; re-
view.
8. Correction of returns; extent.
9. Costs in election contests.

Section 1. State Officers and Judge Contests; Procedure.

2 —If the election of governor, secretary of state, treasurer,
3 auditor, attorney general, commissioner of agriculture,
4 a judge of the supreme court of appeals, or a judge of a
5 circuit court, be contested, the contestant shall give not-
6 ice, with specifications and affidavit, to the person whose
7 election is contested, within sixty days after the day upon
8 which the election was held, in case the election of gov-
9 ernor, secretary of state, treasurer, auditor, attorney gen-
10 eral, or commissioner of agriculture, be contested, and
11 within forty-five days after the day upon which the elec-
12 tion was held in case the election of a judge of the su-
13 preme court of appeals, or a judge of a circuit court, be

14 contested; and within thirty days thereafter the return
15 notice shall be given to the contestant. The parties shall
16 finish taking depositions within forty days after the last
17 mentioned notice is delivered. The depositions shall be
18 transmitted to the clerk of the house of delegates, to be
19 delivered by him to the joint committee or special court
20 hereinafter provided for. In other respects the regula-
21 tions contained in this article respecting contests for a
22 seat in the Legislature shall be observed, so far as they
23 are applicable.

Sec. 2. Procedure of Legislature on Governor Contest.—

2 When the election of governor is contested, the notice of
3 contest and the depositions shall be referred to a joint
4 committee of the two houses, for examination and re-
5 port, which committee shall consist of two senators
6 elected by ballot by the senate, and three delegates elect-
7 ed in the same manner by the house of delegates. The con-
8 test shall be determined by the Legislature, both houses
9 thereof sitting in joint session in the hall of the house of
10 delegates, and the president of the senate shall preside.

Sec. 3. Contests before Special Court; Procedure; En-

2 **forcement.**—Where the election of secretary of state, au-
3 ditor, treasurer, attorney general, commissioner of ag-
4 riculture, or of a judge of the supreme court of appeals,
5 or of a circuit court, is contested, the case shall be heard
6 and decided by a special court constituted as follows:
7 The contestee shall select one, the contestant another,
8 and the governor a third person, who shall preside in said
9 court; and the three, or any two of them, shall meet at a
10 time and place within the state to be appointed by the
11 governor, and, being first duly sworn impartially to de-
12 cide according to law and the truth upon the petition, re-
13 turns and evidence to be submitted to them, shall pro-
14 ceed to hear and determine the case and certify their de-
15 cision thereon to the governor. They shall be entitled to
16 ten dollars a day each, and the same mileage as members
17 of the Legislature, to be paid out of the treasury of the
18 state, and such special court is hereby given authority to
19 employ a stenographer at a reasonable compensation, to
20 be also paid out of the treasury of the state. In all hear-

21 ings or proceedings before such special court, the evi-
22 dence of witnesses and the production of documentary
23 evidence may be required at any designated place of
24 hearing by such special court, or any member thereof;
25 and in case of disobedience to a subpoena or other process
26 of such special court, or any member thereof, such special
27 court, or any member thereof, or either of the parties to
28 such contest, may invoke the aid of any circuit court in
29 requiring the evidence and testimony of witnesses and
30 the production of papers, books and documents. And
31 such circuit court, in case of a refusal to obey the subpoena
32 issued to any person, shall issue an order requiring such
33 person to appear before such special court and produce
34 all books and papers, if so ordered, and give evidence
35 touching the matter in question. Any failure to obey
36 such order of the circuit court may be punished by such
37 court as a contempt thereof. A written record shall be kept
38 of all testimony and other proceedings before such special
39 court.

40 Either party to such contest feeling aggrieved by the
41 final decision of such special court may present his peti-
42 tion in writing to the supreme court of appeals, or a judge
43 thereof in vacation, within thirty days after such final
44 decision is certified to the governor, as hereinbefore pro-
45 vided, praying for the suspension, setting aside, or vaca-
46 tion of such final decision. The applicant shall deliver,
47 or cause to be delivered, a copy of such petition to the
48 other party to such contest, or, in case of his absence from
49 the state or from his usual place of abode, he shall mail,
50 or cause to be mailed a copy of such petition addressed to
51 his last known postoffice address, before presenting the
52 same to the court, or the judge. The court, or the judge,
53 shall fix a time for the hearing on the application, but
54 such hearing shall not be held sooner than five days, un-
55 less by agreement of the parties, after the presentation of
56 such petition, and notice of the time and place of such
57 hearing shall be forthwith delivered to the other party to
58 such contest, or, in case of absence from the state or from
59 his usual place of abode, such notice may be given by
60 mailing, or causing to be mailed, the same, or a copy
61 thereof, addressed to him at his last known postoffice

62 address. If the court, or the judge, after such hearing,
63 be of the opinion that a suspending order should issue,
64 the court in its, or the judge in his, discretion, may sus-
65 pend such final decision and may require bond upon such
66 conditions and in such penalty, and impose such terms
67 and conditions upon the petitioner, as are just and rea-
68 sonable; and the court, or the judge, shall fix a time for
69 the final hearing on the application. The hearing of the
70 matter shall take precedence over all other matters be-
71 fore the court. For such final hearing, and before the day
72 fixed therefor, the special court shall file with the clerk
73 of the supreme court of appeals all papers, documents,
74 testimony, evidence, and records, or certified copies there-
75 of, which were before it at the hearing resulting in the
76 final decision from which the petitioner appeals, together
77 with a copy in writing of its final decision; and, after argu-
78 ment by counsel, the court shall decide the matter in con-
79 troversy, both as to the law and the evidence, as may
80 seem to it to be just and right. The supreme court of ap-
81 peals is hereby given jurisdiction to enforce the provisions
82 of this section by writ of prohibition, mandamus and
83 certiorari, as may be appropriate.

Sec. 4. Contests of Seats in Legislature; Notices and
2 **Procedure.**—Any person intending to contest the election
3 of another as senator or delegate shall, within twenty-one
4 days after the election, in case of a delegate, and within
5 thirty days after the election, in case of a senator, give
6 him notice thereof in writing, and a list of the votes he
7 will dispute, with the objections to each, and of the votes
8 rejected for which he will contend. If the contestant ob-
9 jects to the legality of the election, or the qualification of
10 the person returned, the notice shall set forth the facts
11 on which such objection is founded. The person whose
12 election as delegate is contested shall, within fourteen
13 days after receiving such notice, and the person whose
14 election as senator is contested shall, within twenty days
15 after receiving such notice, deliver to the contestant a
16 like list of the votes he will dispute and of the objection
17 to each, and of the rejected votes he will claim; and, if
18 he has any objection to the qualification of the contestant,

19 shall specify in such notice the facts on which the objec-
20 tion is founded. Each party shall append to the notice an
21 affidavit that the matters therein set forth, so far as they
22 are stated of his knowledge, are true, and that, so far as
23 they are stated on the information of others, he believes
24 them to be true. If new facts be discovered by either
25 party after he has given notice as aforesaid, he may give
26 an additional notice or notices to his adversary, with spe-
27 cifications and affidavit as above prescribed.

28 The notice of contest shall be presented to the proper
29 branch of the Legislature, within ten days after its meet-
30 ing.

Sec. 5. Depositions; Subpoenas; Time; Tie Vote Decision.—
2 Either party may begin to take the depositions in
3 such contests for seats in the Legislature at any time after
4 the delivery of the original notice by the contestant. But
5 reasonable notice of every such deposition shall be given,
6 and such notice shall specify the names of the witnesses
7 to be examined. The depositions may be taken before a
8 justice, notary, or any officer authorized to take deposi-
9 tions in civil suits; and the officer before whom they are
10 taken shall certify and seal the same, and indorse his
11 name across the place where they are sealed, and address
12 and transmit the same, by mail or otherwise, to the clerk
13 of the body in which the seat is contested. When the
14 contest is referred to a committee, the clerk shall deliver
15 the depositions to such committee for examination and
16 report. The parties shall finish taking depositions five
17 days at least before the second Wednesday of January
18 next following. Neither party shall have the benefit of
19 any deposition taken otherwise than as aforesaid, unless
20 further time be given by resolution of the proper branch
21 of the Legislature.

22 Subpoenas for witnesses shall be issued by the clerk of
23 the circuit court, or by a justice, upon application of either
24 party; and witnesses shall be entitled to the same al-
25 lowances and privileges, and be subject to the same pen-
26 alties, as if summoned to attend before the circuit court
27 in civil suits.

28 If it be ascertained that an equal number of legal votes

29 was given for the contestant and the person returned, the
30 senate or the house of delegates, as the case may be, in
31 which the contest is pending, shall declare which of them
32 is elected.

Sec. 6. County and District Contests; Notices; Time.—

2 In all cases of contested elections, the county court shall
3 be the judge of the election, qualifications and returns
4 of their own members, and of all county and district offi-
5 cers.

6 A person intending to contest the election of another to
7 any county or district office, including judge of any crimi-
8 nal, intermediate, common pleas, or other inferior court,
9 or any office that shall hereafter be created to be filled
10 by the voters of the county or of any magisterial or other
11 district therein, shall, within ten days after the result of
12 the election is declared, give the contestee notice in writing
13 of such intention, and a list of the votes he will dispute,
14 with the objections to each, and of the votes rejected for
15 which he will contend. If the contestant object to the le-
16 gality of the election, or the qualification of the person
17 returned as elected, the notice shall set forth the facts on
18 which such objection is founded. The person whose elec-
19 tion is so contested shall, within ten days after receiving
20 such notice, deliver to the contestant a like list of the
21 votes he will dispute, with the objections to each, and
22 of the rejected votes for which he will contend; and, if
23 he has any objection to the qualification of the contestant,
24 he shall specify in writing the facts on which the objection
25 is founded. Each party shall append to his notice an affi-
26 davit that he verily believes the matters and things set
27 forth to be true. If new facts be discovered by either party
28 after he has given notice as aforesaid, he may, within ten
29 days after such discovery, give an additional notice to his
30 adversary, with the specifications and affidavit prescribed
31 in this section.

**Sec. 7. County Court to Hear County and District Con-
tests; Procedure; Review.—**The county court shall hear
3 and decide election contests initiated pursuant to the
4 provisions of the preceding section. Subpoenas for wit-
5 nesses for either party shall be issued by the clerk of the

6 county court, and served as in other cases, and the wit-
7 nesses shall be entitled to the same allowances and privi-
8 leges, and be subject to the same penalties, as witnesses
9 attending a circuit court in a civil suit. The notice of
10 contest shall be presented to the county court at its first
11 term after the same is delivered to the person whose elec-
12 tion is contested, and the same shall be docketed for trial
13 in such court. At the trial of such contest, the court shall
14 hear all such legal and proper evidence that may be
15 brought before it by either party, and may, if deemed
16 necessary, require the production of the poll books, cer-
17 tificates and ballots deposited with its clerk, and examine
18 the same. The hearing may be continued by the court
19 from time to time, if it be shown that justice and right
20 require it, but not beyond three months from the day of
21 election. At the final trial of such contest the court shall
22 declare the true result of such election, and cause the
23 same to be entered on the records of the court. When the
24 result of the election is declared, as aforesaid, a certified
25 copy of the order declaring such result shall, if required,
26 be delivered by the clerk of the court to the person de-
27 clared elected, if such be the result of the trial, and such
28 copy shall be received in all courts and places as legal
29 evidence of the result of the election therein declared.
30 Either the contestant or contestee shall have the right of
31 appeal to the circuit court of the county from the final
32 order or decision of the county court in such proceeding,
33 upon the filing of a bond with good personal security, by
34 the party desiring the appeal, to be approved by the county
35 court, in a sum deemed sufficient by such court, with con-
36 dition to the effect that the person proposing to appeal
37 will perform and satisfy any judgment which may be
38 rendered against him by the circuit court on such appeal.
39 But such appeal shall not be granted unless the party
40 desiring the appeal shall make application for such appeal,
41 and file such bond, within thirty days from the entering
42 of the final order in such proceeding; and the circuit court
43 may at any time require a new bond or increase the pen-
44 alty thereof when the court deems it necessary. When
45 such appeal is taken to the circuit court, as hereinbefore
46 provided, it shall be heard and determined upon the

47 original papers, evidence, depositions and records filed
48 before and considered by the county court, and the cir-
49 cuit court shall decide the contest upon the merits. From
50 the decision of the circuit court, an appeal shall lie to the
51 supreme court of appeals, as in other cases, but such appeal
52 shall be heard upon the original papers and copies of all
53 orders made, without requiring the same to be printed.

Sec. 8. Correction of Returns; Extent.—Though illegal
2 votes be received, or legal votes be rejected, at any place
3 of voting, the returns of the votes taken at such place shall
4 not be set aside for that cause, but it may be shown, by
5 proper evidence before the tribunal authorized by law
6 to hear and determine contested elections, for whom such
7 illegal votes or any of them were cast, or for whom the
8 legal votes which were rejected would have been given,
9 and the returns shall be corrected only to the extent that
10 it is so shown.

Sec. 9. Costs in Election Contests.—The cost of every
2 contested election shall include only the expenses of
3 serving notices, taking depositions and the allowances to
4 witnesses; and shall be noted at the foot of every deposi-
5 tion or set of depositions, by the person taking the same.
6 If the contestant fails in setting aside the election, there
7 shall be awarded against him the amount of such costs
8 incurred or expended by the person who was returned
9 or declared elected. Otherwise, each party shall pay his
10 own costs; unless it appears that the person returned or
11 declared elected was guilty of fraud or malpractice in the
12 election, or in procuring such return or declaration, in
13 which case costs shall be awarded against him in favor
14 of the contestant. Where costs are awarded in favor of
15 either party, the amount thereof shall be ascertained under
16 direction of the house joint session, or court, which decides
17 the case, and a certificate thereof, authenticated by the
18 signature of the presiding officer, shall be delivered to
19 the party in whose favor they are awarded, which cer-
20 tificate shall have the force of a judgment, and if such
21 costs be not paid within ten days after the date thereof,
22 the clerk of the circuit court, of the county in which the
23 party against whom the costs were awarded resides, may

24 issue execution on such certificate, upon its delivery to
25 such clerk, in like manner as upon a judgment of the cir-
26 cuit court. But no person contesting the seat of another
27 in the Legislature shall be entitled to pay or mileage if
28 the contest fails.

Article 8. Regulation and Control of Elections.

Section

1. Provisions to regulate and control elections.
2. Accounting for receipts and expenditures in elections.
3. Committee treasurers; required to receive and disburse funds.
4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.
5. Detailed accounts and verified financial statements required; "contribution" defined.
6. Financial statement forms; filing; disposition.
7. Failure to file statement; penalty.
8. Corporation contributions forbidden; penalties.
9. Lawful and unlawful election expenses.
10. Limitations on election expenses.
11. Specific acts forbidden; penalties.
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.
13. Parties liable and subject to penalties.

Section 1. Provisions to Regulate and Control Elections.

2 —Political campaign contributions, receipts and expend-
3 itures of money, advertising, influence and control of
4 employees, and other economic, political and social con-
5 trol factors incident to primary, special and general elec-
6 tions shall be regulated and controlled by the provisions
7 of this article and other applicable provisions of this
8 chapter.

Sec. 2. Accounting for Receipts and Expenditures in Elections.—In all elections for nomination of candidates,
3 for party committeemen, and for officers, except elec-
4 tions for officers in towns and cities and for magisterial
5 and school district officers, records of receipts and ex-
6 penditures for political purposes shall be kept by or on
7 behalf of all candidates. All such receipts and expendi-
8 tures shall be subject to regulation by the provisions of
9 this article. Verified statements of such receipts and ex-
10 penditures shall be made and filed as public records by all
11 candidates and by their political agents, representatives,
12 or any person acting for and on behalf of any candidate,
13 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
3 appoint and retain a treasurer to receive, keep and dis-
4 burse all sums of money which may be collected or re-
5 ceived by such committee, or by any of its members, for
6 election expenses, and, unless such treasurer is first ap-
7 pointed and thereafter retained, it shall be unlawful for
8 any such committee or any of its members to collect,
9 receive or disburse money for any such purposes. All
10 moneys collected or received by any such committee, or
11 by any of its members, for election expenses, shall be paid
12 over to, and pass through the hands of, the treasurer, and
13 shall be disbursed by him, and it shall be unlawful for any
14 such committee, or any of its members, to disburse any
15 money for election expenses unless such money shall be
16 paid to, and disbursed by, the treasurer. The same person
17 may be designated to act as treasurer for two or more
18 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
3 political party committee, or as financial agent for any
4 candidate for nomination or election to any office to be
5 filled by the voters of the entire state, delegates-at-large
6 to a national convention, and candidates for president of
7 the United States, unless a written statement designating
8 him as such treasurer or financial agent shall be filed
9 with the secretary of state, at least sixty days before the
10 election at which he is to act. No person shall act as
11 treasurer of any such committee or as financial agent for
12 any candidate to be nominated or elected by the voters
13 of any political division less than the entire state, and
14 greater than a county, including delegates to national
15 conventions, unless a written statement designating him
16 as such treasurer or financial agent is filed with the clerk
17 of the county court of each county within such political
18 division at least sixty days before the election at which
19 he is to act. No person shall act as treasurer of any such
20 committee, or as financial agent for any candidate to be
21 nominated or elected by the voters of a county or district
22 therein, or as the treasurer or financial agent for a can-
23 didate for the nomination or election to any other office
24

25 not herein mentioned, unless a written statement design-
26 nating him as such treasurer or financial agent shall be
27 filed with the clerk of the county court at least sixty days
28 before the election at which he is to act.

29 As used in this article:

30 The term "person" shall include an individual, part-
31 nership, committee, association, corporation, and any
32 other organization or group of persons; and

33 The term "financial agent" shall include any person
34 acting for and by himself, or any two or more natural
35 persons acting together or cooperating in a financial way
36 to aid or take part in the nomination or election of any
37 candidate for public office, or to aid or promote the suc-
38 cess or defeat of any political party or principal at any
39 election, or any proposition submitted to a vote at a public
40 election.

**Sec. 5. Detailed Accounts and Verified Financial State-
2 ments Required; "Contribution" Defined.**—Every candi-
3 date, financial agent, person and association of persons,
4 organization of any kind, including the treasurer, or
5 equivalent officer of such association or organization, op-
6 posing or advocating the defeat or passage of any matter,
7 thing or item to be voted upon, or touching upon or per-
8 taining to the holding or the conduct of any election and
9 the treasurer of every political party committee, shall
10 keep detailed accounts of all money, or its equivalent, re-
11 ceived by them, and of all expenditures and disburse-
12 ments made, and liabilities incurred, by such candidate,
13 agent, such person, association or organization or com-
14 mittee, for political purposes, or by any of the officers or
15 members of such committee, or any person acting under
16 its authority or on its behalf.

17 Not less than seven nor more than fifteen days before
18 each primary or other election, and again within thirty
19 days after each primary or other election, every candidate
20 for public office, and every financial agent, person, the
21 treasurer or equivalent officer of any association, or organ-
22 ization of any kind opposing or advocating the defeat or
23 passage of any matter, thing or item to be voted upon or
24 touching upon or pertaining to the holding or conduct of
25 any election and the treasurer of every political party

26 committee, shall file with the officers hereinafter pre-
27 scribed a detailed itemized statement subscribed and
28 sworn to before an officer authorized to administer oaths,
29 setting forth all financial transactions in connection with
30 such primary or other election. Such statement shall show
31 each and every sum of money or other thing of value con-
32 tributed or advanced; the name of each person, firm, asso-
33 ciation or committee by whom it was contributed or ad-
34 vanced; the amount and purpose of every expenditure
35 made or liability incurred, and the name of each person,
36 firm, association or committee to whom such expenditure
37 was made or liability incurred, with dates of each transac-
38 tion. Any unexpended balance, remaining in the hands of
39 any financial agent, or of the treasurer of any such com-
40 mittee at the time of making the statements herein pro-
41 vided for, shall be properly accounted for in said state-
42 ment, and shall appear as a balance in the next following
43 report of such agent or treasurer or his successor in office.
44 Such sworn statements shall be filed with the secretary
45 of state, by candidates for state and other offices to be
46 nominated or elected by the voters of a political division
47 greater than a county, and with the clerk of the county
48 court, by candidates for offices to be nominated or elected
49 by the voters of a county or district therein, and by all
50 candidates for other offices not otherwise provided for.

51 The term "contribution," as used in this article, shall
52 include a gift, subscription, loan, advance, or deposit of
53 money, or anything of value given or offered in connec-
54 tion with political activity. It shall also include a con-
55 tract, promise, or agreement, whether or not legally en-
56 forceable, to make a contribution.

Sec. 6. Financial Statement Forms; Filing; Disposition.

2 —Blank forms for all financial statements required under
3 this article shall be prepared by the secretary of state,
4 and copies thereof, together with a copy of this article,
5 shall be furnished through the county clerk or otherwise,
6 as the secretary of state may deem expedient, to all treas-
7 urers of political committees, to all political financial
8 agents, and to all candidates for nomination or election
9 to any office, upon the filing of a petition or announce-
10 ment for nomination, and to all other persons required

11 by law to file such statements who shall apply therefor.
12 All statements filed in accordance with the provisions of
13 this article shall be received, indorsed and filed by the
14 secretary of state and county clerks, and shall be pre-
15 served for one year after the election to which they re-
16 late, after which time they may be destroyed, if not re-
17 quired to be further preserved by the order of any court.

Sec. 7. Failure to File Statement; Penalty.—Any can-
2 didate, financial agent, or treasurer of a political party
3 committee, who shall fail to file a sworn, itemized state-
4 ment as in this article provided, within the time required,
5 shall be guilty of a misdemeanor, and, upon conviction,
6 shall be fined not less than fifty dollars, or imprisoned
7 in the county jail for not more than one year, or both, in
8 the discretion of the court. Forty days after any such
9 primary or other election, the secretary of state, or county
10 clerk, as the case may be, shall give notice of any failure
11 to file such statement by any candidate, financial agent
12 or treasurer of such committee, to the prosecuting at-
13 torney of the county where such delinquent resides. No can-
14 didate nominated at a primary election, who has failed to
15 make a sworn statement as required by this article, shall
16 have his name placed on the official ballot for the ensu-
17 ing election, unless there has been filed by or on behalf
18 of such candidate, or by his financial agent, if any, the
19 financial statement relating to nominations required by
20 this article. It shall be unlawful to issue a commission
21 or certificate of election, or to administer the oath of of-
22 fice, to any person elected to any public office who has
23 failed to file a sworn statement as required by this ar-
24 ticle, and no such person shall enter upon the duties of
25 his office until he has filed such statement, nor shall he
26 receive any salary or emolument for any period prior to
27 the filing of such statement.

Sec. 8. Corporation Contributions Forbidden; Penalties.
2 —No officer of any corporation, or agent or person on be-
3 half of such corporation, whether incorporated under the
4 laws of this or any other state, or foreign country, shall
5 pay, give or lend, or authorize to be paid, given or lent,
6 any money or other thing of value belonging to such

7 corporation, to any candidate, financial agent or political
8 committee or other person, for the payment of any pri-
9 mary or other election expenses whatever. No person
10 shall solicit or receive such payment, contribution or
11 other thing from any corporation, officer or agent there-
12 of, or other person acting on behalf of such corporation.
13 Any person or corporation violating any provision of this
14 section shall be guilty of a misdemeanor, and, on convic-
15 tion, shall be fined not more than five thousand dollars.

Sec. 9. Lawful and Unlawful Election Expenses.—No
2 candidate, financial agent, or treasurer of a political party
3 committee, shall pay, give or lend, either directly or in-
4 directly, any money or other thing of value for any elec-
5 tion expenses, except for the following purposes:

6 (a) For rent, maintenance and furnishing of offices to
7 be used as political headquarters and for the payment of
8 necessary clerks, stenographers, typists, janitors and mes-
9 sengers actually employed therein;

10 (b) For printing and distributing books, pamphlets,
11 circulars and other printed matter and radio and tele-
12 vision broadcasting and painting, printing and posting
13 signs, banners and other advertisements, all relating to
14 political issues and candidates;

15 (c) For renting and decorating halls for public meet-
16 ings and political conventions; for advertising public
17 meetings, and for the payment of traveling expenses of
18 speakers and musicians at such meetings;

19 (d) For the necessary traveling and hotel expenses of
20 candidates, political agents and committees, and for sta-
21 tionery, postage, telegrams, telephone, express, freight
22 and public messenger service;

23 (e) For preparing, circulating and filing petitions for
24 nomination of candidates;

25 (f) For examining the lists of registered voters, secur-
26 ing copies thereof, investigating the right to vote of the
27 persons listed therein, and conducting proceedings to pre-
28 vent unlawful registration or voting;

29 (g) For conveying voters to and from the polls; and

30 (h) For securing publication in newspapers and by

31 radio and television broadcasting of documents, articles,
32 speeches, arguments and any information relating to any
33 political issue, candidate, or question or proposition, sub-
34 mitted to a vote.

35 Every liability incurred and payment made shall be at
36 a rate and for a total amount which is proper and reason-
37 able and fairly commensurate with the services rendered.

Sec. 10. Limitations on Election Expenses.—No pay-
2 ment shall be made and no liability shall be incurred by
3 or on behalf of any candidate for office in this state to aid
4 in securing his nomination or election, or both, which
5 shall in the aggregate exceed the amounts herein pro-
6 vided for, that is to say: Candidates for United States
7 senate or any state office, the sum of seventy-five dollars
8 for each county in the state, for the primary election, and
9 a like amount for the general election; candidates for
10 members of the Legislature, the sum of one hundred and
11 twenty-five dollars for each county in which such can-
12 didate is voted for, for the primary election, and a like
13 amount for the general election; for members of the
14 United States house of representatives, the sum of sev-
15 enty-five dollars for each county in the district for the
16 primary election, and a like amount for the general elec-
17 tion; for any county office, a sum not to exceed two hun-
18 dred dollars in each county, for the primary election, and
19 a like amount for the general election; and for any other
20 office, not hereinbefore mentioned, a sum not to exceed
21 fifty dollars in the political division in which such person
22 is a candidate, for the primary election, and a like amount
23 for the general election. Any candidate may delegate to
24 a financial agent or a political party committee, in a writ-
25 ing duly subscribed by him, the expenditure of any por-
26 tion of the total expenses authorized to be incurred by
27 him, or on his behalf; but the aggregate of all expenses
28 made and incurred by such candidate, by any political
29 agent on his behalf and by any such committee on his be-
30 half, shall not exceed the amounts hereinbefore provided.
31 No payments shall be made and no liability shall be in-
32 curred by any financial agent or political party commit-
33 tee 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-
45 ately, 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-
18 scribe 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

28 been a contributor for more than six months before his
29 candidacy; or

30 (c) Any person who shall, directly or indirectly, by
31 himself, or by any other person on his behalf, make use
32 of, or threaten to make use of, any force, violence or
33 restraint, or inflict, or threaten to inflict, any damage,
34 harm or loss, upon or against any person, or by any other
35 means attempt to intimidate or exert any undue influ-
36 ence, in order to induce such person to vote or refrain
37 from voting, or on account of such person having voted
38 or refrained from voting, at any election, or who shall,
39 by abduction, duress or any fraudulent device or con-
40 trivance, impede or prevent the free exercise of the
41 suffrage by any elector, or shall thereby compel, induce
42 or prevail upon any elector either to vote or refrain from
43 voting for or against any particular candidate or meas-
44 ure; or

45 (d) Any person who, being an employer, or acting for
46 or on behalf of any employer, shall give any notice or
47 information to his employees, containing any threat,
48 either express or implied, intended or calculated to in-
49 fluence the political view or actions of the workmen or
50 employees; or

51 (e) Any person who shall, knowingly, make or publish,
52 or cause to be made or published, any false statement in
53 regard to any candidate, which statement is intended or
54 tends to affect any voting at any election whatever; or

55 (f) Any person who shall pay any owner, publisher,
56 editor or employee, or any newspaper or other periodical,
57 to advocate or oppose editorially, any candidate for nomi-
58 nation or election, or any political party, or any measure
59 to be submitted to the vote of the people; or any owner,
60 publisher, editor, or employee, who shall solicit or accept
61 such payment:

62 Shall be guilty of a misdemeanor, and, on conviction
63 thereof, shall be fined not more than ten thousand dollars,
64 or confined in jail for not more than one year, or, in the
65 discretion of the court, shall be subject to both such fine
66 and imprisonment.

**Sec. 12. Additional Acts Forbidden; Circulation of
2 Written Matter; Newspaper Advertising; Solicitation of**

3 **Contributions; Intimidation and Coercion of Employees;**
4 **Promise of Employment or Other Benefits; Limitations**
5 **on Contributions; Public Contractors; Penalty.**—(a) No
6 person shall publish, issue or circulate, or cause to be pub-
7 lished, issued or circulated, any anonymous letter, circu-
8 lar, placard, or other publication tending to influence
9 voting at any election;

10 (b) No owner, publisher, editor, or employee of a
11 newspaper or other periodical shall insert, either in its
12 advertising or reading columns, any matter, paid for or
13 to be paid for, which tends to influence the voting at any
14 election whatever, unless distinctly designating it as a
15 paid advertisement and stating the name of the person
16 authorizing its publication and the candidate in whose
17 behalf it is published;

18 (c) No person shall, in any room or building occupied
19 for the discharge of official duties by any officer or em-
20 ployee of the state or a political subdivision thereof,
21 solicit orally or by written communication delivered
22 therein, or in any other manner, any contribution of
23 money or other thing of value for any party or political
24 purpose whatever, from any postmaster or other officer
25 or employee of the federal government, or officer or em-
26 ployee of the state, or a political subdivision thereof. No
27 officer, agent, clerk, or employee of the federal govern-
28 ment, or of this state, or any political subdivision thereof,
29 who may have charge or control of any building, office or
30 room, occupied for any official purpose, shall knowingly
31 permit any person to enter the same for the purpose of
32 therein soliciting or receiving any political assessments
33 from, or delivering or giving written solicitations for, or
34 any notice of, any political assessments to, any officer
35 or employee of the state, or a political subdivision thereof;

36 (d) No person entering into any contract with the
37 state or its subdivisions, or any department or agency
38 thereof, either for rendition of personal services or fur-
39 nishing any material, supplies or equipment or selling
40 any land or building to the state, or its subdivisions, or
41 any department or agency thereof, if payment for the
42 performance of such contract or payment for such ma-
43 terial, supplies, equipment, land or building is to be made

44 in whole or in part from public funds shall, during the
45 period of negotiation for or performance under such con-
46 tract or furnishing of materials, supplies, equipment, land
47 or buildings, directly or indirectly make any contribution
48 to any political party, committee or candidate for public
49 office or to any person for political purposes or use; nor
50 shall any person or firm solicit any contributions for any
51 such purposes during any such period;

52 (e) No person shall, directly or indirectly, promise any
53 employment, position, work, compensation, or other bene-
54 fit provided for, or made possible, in whole or in part by
55 act of the Legislature, to any person as consideration,
56 favor, or reward for any political activity for the support
57 of or opposition to any candidate, or any political party in
58 any election;

59 (f) No person shall, directly or indirectly, make any
60 contribution in excess of the value of five thousand dollars
61 in connection with any campaign for nomination or elec-
62 tion to or on behalf of any elective office in the state or
63 any of its subdivisions, or in connection with or on behalf
64 of any committee or other organization or person engaged
65 in furthering, advancing or advocating the nomination or
66 election of any candidate for any such office; and

67 (g) No person shall solicit any contribution from any
68 nonelective salaried employee of the state government
69 or of any of its subdivisions or coerce or intimidate any
70 such employee into making such contribution. No per-
71 son shall coerce or intimidate any nonsalaried employee
72 of the state government or of any of its subdivisions into
73 engaging in any form of political activity. The provisions
74 hereof shall not be construed to prevent any such em-
75 ployee from making such a contribution or from engag-
76 ing in political activity voluntarily, without coercion, in-
77 timidation or solicitation.

78 Any person violating any provision of this section shall
79 be guilty of a misdemeanor, and, on conviction thereof,
80 shall be fined not more than one thousand dollars, or con-
81 fined in jail for not more than one year, or, in the discre-
82 tion of the court, be subject to both such fine and impris-
83 onment.

Sec. 13. Parties Liable and Subject to Penalties.—In

- 2 all cases of violation of the provisions of this article by
- 3 any partnership, committee, association, corporation, or
- 4 other organization or group of persons, the officers, di-
- 5 rectors, or managing or controlling heads thereof, who
- 6 knowingly and willingly participate in such violation,
- 7 shall be subject to the penalties and punishments pro-
- 8 vided herein.

Article 9. Offenses and Penalties.**Section**

1. False or fraudulent returns; tampering with, destroying or mis-
- delivering ballots, records, etc.; forgeries; aiding, etc., in offense;
- penalties.
2. Unlawful printing, possession, or delivery of ballots; penalties.
3. False swearing; penalties.
4. Commissioner's failure to get supplies; penalties.
5. Destruction or removal of election supplies and equipment; at-
- tempts; penalties.
6. Unauthorized presence in election room; sixty-foot limit; penalties.
7. Wrongful refusal or allowance of votes; malicious or frivolous
- challenges; penalties.
8. Distinguishing marks on ballots; conspiracies; penalties.
9. Unlawful acts at polling places; penalties.
10. Disorder at polls; prevention; failure to assist in preventing dis-
- order; penalties.
11. Failure to make returns; disclosing results; penalties.
12. Candidate influence and bribes; penalties.
13. Unlawful influence acts; penalties.
14. Unlawful acts by corporations; penalties.
15. Unlawful acts by employers; penalties.
16. Bribes and influence by voters; penalties.
17. Illegal voting; deceiving voters; penalties.
18. Unlawful voting in primary elections; penalties.
19. Violations concerning absent voters' ballots.
20. Obstructing employees' freedom to vote; penalties.
21. Failure to destroy unused ballots; penalty.
22. Wagering or betting on elections; penalties.
23. Punishment where penalty not prescribed; failure to perform duty
- not specifically made an offense.
24. Limitations on prosecutions.

- Section 1. False or Fraudulent Returns; Tampering**
- 2 **with, Destroying or Misdelaying Ballots, Records, etc.;**
 - 3 **Forgeries; Aiding, etc., in Offense; Penalties.—**Every per-
 - 4 son named and identified in this section, who shall violate
 - 5 any of the provisions of the election laws as herein speci-
 - 6 fied, shall be deemed guilty of a felony and, upon convic-
 - 7 tion thereof, shall be punished by imprisonment in the
 - 8 penitentiary for not less than one nor more than ten
 - 9 years:
 - 10 (a) Any commissioner of election or poll clerk who
 - 11 shall knowingly make or cause to be made, or conspire

12 with others to make, a false return of the result of the
13 votes cast for any candidate at any precinct in an elec-
14 tion held pursuant to law; or

15 (b) Any commissioner of election receiving the ballot
16 of a voter to be deposited in the ballot box at any election
17 precinct, who shall put another ballot in the box instead
18 of the one received by him; or

19 (c) Any commissioner of election or poll clerk, who
20 knowingly shall count and string a ballot not taken from
21 the ballot box, in lieu of one taken, or which should have
22 been taken from such ballot box; or

23 (d) Any commissioner of a county court, whether act-
24 ing as such or ex officio as a member of a board of can-
25 vassers or otherwise, clerk of a county court, or other
26 person, who shall, except as authorized by law, abstract
27 any ballot from any package of ballots voted, sealed or
28 returned from any election precinct, either before or
29 after they are filed with the clerk of the county court, or
30 who shall in any manner change any such ballot from
31 what it was when voted by the voter, or who shall put
32 another ballot in such package in the place of the one so
33 abstracted therefrom; or

34 (e) Any commissioner of a county court, whether act-
35 ing as such commissioner or ex officio as a member of a
36 board of canvassers, or otherwise, who shall knowingly
37 make and enter of record, or in any way aid, counsel, or
38 advise the same to be done, or permit the same to be done
39 without objection on his part, any false or fraudulent
40 statement of the result of any election held within the
41 county; or

42 (f) Any person who shall falsely make, or fraudu-
43 lently deface, or fraudulently destroy, any certificate of
44 nomination, or any part thereof, or file any certificate of
45 nomination, knowing the same, or any part thereof, to be
46 falsely made, or suppress any certificate of nomination
47 which has been duly filed, or any part thereof; or erase,
48 deface, or change in any manner, any election record, or
49 any ballot, poll book, tally sheet or certificate of election,
50 deposited with either of the clerks of the county or cir-
51 cuit courts; or conspire with another to do any of said

52 acts; or induce or attempt to induce any other persons to
53 do any of said acts; or

54 (g) Any person who shall aid, assist, counsel or ad-
55 vise in the commission of any of the offenses above speci-
56 fied, whether or not said acts, or any of them be commit-
57 ted or attempted to be committed; or

58 (h) Any person, who, without the assent of another,
59 shall sign the name of such other person to any certificate,
60 affidavit, ballot, report, statement or writing, required
61 under any provision of this chapter, with intent to mis-
62 lead and deceive; or who shall use or employ any certifi-
63 cate, affidavit, ballot, report, statement or writing to
64 which the name of a person has been signed without the
65 authority of such person, knowing that such name has
66 been so signed with intent to mislead or deceive; or

67 (i) Any clerk of a court, poll clerk, member of the
68 board of ballot commissioners, commissioner of election,
69 or messenger intrusted with the custody of the ballots,
70 who shall open unlawfully any of the packages in which
71 the ballots are contained, or permit any of them to be
72 opened, or destroy any of such ballots, or permit them to
73 be destroyed, or give, or deliver any such packages or bal-
74 lots to any person not lawfully entitled to receive them, as
75 in this chapter provided, or conspire to procure, or in any
76 way aid, abet, or connive at any robbery, loss or unlawful
77 destruction of any such ballots or packages; or

78 (j) Any person not duly authorized by law who shall,
79 during the progress of any election in this state, or after
80 the closing of the polls and before the ballots are counted
81 and the results ascertained, or within twelve months
82 thereafter, open without breaking, or break open or vio-
83 late, the seals or locks of any ballot box, paper, envelope
84 or bag, in which ballots have been deposited at or after
85 such election, or who shall obtain possession of such bal-
86 lot box, paper, envelope or bag containing such ballots,
87 and cancel, withhold, or destroy such ballots, or who shall
88 fraudulently or forcibly add to or diminish the number
89 of ballots legally deposited therein, or who shall fraudu-
90 lently make any erasure or alteration of any kind, upon
91 any tally sheet, poll book, list of voters, or election re-
92 turns, deposited therein.

Sec. 2. Unlawful Printing, Possession, or Delivery of

2 Ballots; Penalties.—No one, except the person employed
3 and authorized by the ballot commissioners to do so, shall
4 print any ballot for any election. No person engaged or
5 employed in printing such ballots shall deliver any ballot
6 to any person except a member of the board of ballot
7 commissioners, or knowingly permit any other person to
8 obtain possession of any ballot; or print, or cause to be
9 printed, any ballot in any other form, or with the names
10 of any other persons thereon, or with the names thereon
11 spelled or arranged in any other manner than that pre-
12 scribed by the ballot commissioners. No person shall
13 print, have in his possession, or deliver, any imitation
14 ballot having a similitude or likeness to the official bal-
15 lot, and which would be calculated to deceive: *Provided,*
16 *however,* That nothing herein contained shall prohibit
17 any person from printing or having in his possession a
18 sample ballot printed on paper of a color different from
19 the official ballot, and not calculated to deceive. Any
20 person violating any provision of this section shall be
21 guilty of a felony, and, on conviction thereof, shall be
22 punished by imprisonment in the state penitentiary for
23 not less than one nor more than ten years.

24 Any person who shall unlawfully take or remove, with
25 or without the consent of the lawful custodian thereof,
26 any ballot from the place at which such ballots are law-
27 fully kept for the time being; or unlawfully remove or at-
28 tempt to remove any ballot from the election room; or
29 have in his possession outside of the election room during
30 the election any ballot, shall be guilty of a felony, and,
31 upon conviction thereof, shall be confined in the peniten-
32 tiary not less than one nor more than five years, or, in the
33 discretion of the court, be confined in jail for not more
34 than one year.

Sec. 3. False Swearing; Penalties.—If any election of-
2 ficial, or other person, making any affidavit required un-
3 der any provision of this chapter, shall therein knowingly
4 swear falsely, or if any person shall counsel, advise, aid
5 or abet another in the commission of false swearing, he
6 shall be guilty of a misdemeanor, and, on conviction there-
7 for 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 dec-
14 laration 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.
11

Sec. 5. Destruction or Removal of Election Supplies 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
15

16 county jail for not more than one year, or both, in the
17 discretion of the court.

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

14 the county jail for not more than one year, or both, in
15 the discretion of the court.

Sec. 9. Unlawful Acts at Polling Places; Penalties.—

2 No officer of election shall disclose to any person the name
3 of any candidate for whom a voter has voted. No officer
4 of election shall do any electioneering on election day.
5 No person shall do any electioneering on election day
6 within any polling place, or within sixty feet of any poll-
7 ing place. No person shall apply for or receive any ballot
8 in any polling place, other than that in which he is en-
9 titled to vote, nor shall any person examine a ballot which
10 any voter has prepared for voting, or solicit the voter to
11 show the same, nor ask, nor make any arrangement, di-
12 rectly or indirectly, with any voter, to vote an open bal-
13 lot. No person, except a commissioner of election, shall
14 receive from any voter a ballot prepared by him for vot-
15 ing. No voter shall receive a ballot from any person other
16 than one of the poll clerks; nor shall any person other
17 than a poll clerk deliver a ballot to a commissioner of
18 election to be voted by such commissioner. No voter
19 shall deliver any ballot to a commissioner of election to
20 be voted, except the one he receives from the poll clerk.
21 No voter shall place any mark upon his ballot, or suffer
22 or permit any other person to do so, by which it may be
23 afterward identified as the ballot voted by him. Who-
24 ever shall violate any provision of this section shall be
25 guilty of a misdemeanor, and, on conviction thereof, shall
26 be fined not more than one thousand dollars, or confined
27 in jail for not more than one year, or both, in the discre-
28 tion of the court.

**Sec. 10. Disorder at Polls; Prevention; Failure to Assist
2 in Preventing Disorder; Penalties.—**Any person who shall,
3 by force, menace, fraud or intimidation, prevent or at-
4 tempt to prevent any officer whose duty it is by law to as-
5 sist in holding an election, or in counting the votes cast
6 thereat, and certifying and returning the result thereof,
7 from discharging his duties according to law; or who shall,
8 by violence, threatening gestures, speeches, force, menace
9 or intimidation, prevent or attempt to prevent an election
10 being held; or who shall in any manner obstruct or attempt
11 to obstruct the holding of an election, or who shall, by any

12 manner of force, fraud, menace or intimidation, prevent or
13 attempt to prevent any voter from attending any election,
14 or from freely exercising his right of suffrage at any elec-
15 tion at which he is entitled to vote, shall be guilty of a mis-
16 demeanor, and, upon conviction, fined not more than one
17 thousand dollars, or confined in the county jail for not
18 more than one year, or both, in the discretion of the court.

19 Any person who, being thereto commanded by the com-
20 missioners of election, or either of them, shall fail or re-
21 fuse to assist to the utmost of his power, in whatever may
22 be necessary or proper to prevent intimidation, disorder
23 or violence at the polls, shall be guilty of a misdemeanor,
24 and, upon conviction thereof, shall be fined not less than
25 ten nor more than one hundred dollars.

Sec. 11. Failure to Make Returns; Disclosing Results;
2 **Penalties.**—Any election officer who shall wilfully fail,
3 neglect or refuse to prepare and return certificates of the
4 result of the election in the manner provided, within
5 twelve hours after the completion of the count, tabulation
6 and declaration of the results, shall be guilty of a misde-
7 meanor, and, upon conviction, fined not more than one
8 thousand dollars, or confined in the county jail for not
9 more than one year, or both, in the discretion of the court.

Sec. 12. Candidate Influence and Bribes; Penalties.—
2 Whoever, being a candidate for any office, loans or gives,
3 directly or indirectly, or offers or promises to loan, or
4 give, any money, or other thing of value, to any elector,
5 for the purpose of influencing or retaining the vote of
6 such elector, or inducing such elector to work or labor for
7 the election of such candidate, or to refrain from work-
8 ing or laboring for the election of any other candidate;
9 or to any person to secure or to retain the influence or
10 vote of such elector, in his behalf as such candidate, or
11 to be used by such person in any way to influence the
12 vote of any elector, or of electors generally, for himself
13 or any candidate or ticket, shall be guilty of a misde-
14 meanor, and, on conviction thereof, shall be fined not more
15 than one thousand dollars, or confined in the county
16 jail for not more than one year, or both, in the discretion
17 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

2 employer or agent of any employer or corporation, who
3 prints or authorizes to be printed upon any pay envelope
4 or who distributes directly or indirectly, or gives directly
5 to any employee any statement intended or calculated
6 to influence the political action of his employees for any
7 candidate for public office, or posts or exhibits in the es-
8 tablishment, any posters, placards, or handbills, or de-
9 livers verbally any message to any such employees, con-
10 taining any threat, notice or information that if any such
11 candidate is elected or defeated, work in the establish-
12 ment will cease, in whole or in part, or other threats ex-
13 pressed or implied, intended to influence the political
14 opinions or votes of his employees, shall be guilty of cor-
15 rupt practices, and, upon conviction, shall be fined not less
16 than one thousand dollars nor more than twenty thou-
17 sand dollars or be imprisoned in jail not more than one
18 year, or both.

Sec. 16. Bribes and Influence by Voters; Penalties.—Any
2 voter who shall, before or during any election, directly or
3 indirectly, by himself, or by any other person on his be-
4 half, solicit, demand, receive, agree or contract for any
5 money, gift, loan, or valuable consideration, office, place
6 of employment, or solicit any indorsement on a note or
7 other paper, public or private, for himself or for any
8 other person, for voting or agreeing to vote, or for voting
9 for any person or candidate or object, or agreeing so to vote,
10 or from refraining or agreeing to refrain from voting at
11 any election; or any person who shall, after any election,
12 directly or indirectly, by himself, or by any other person
13 on his behalf, solicit, demand or receive any money or
14 valuable consideration on account of any person having
15 voted or refrained from voting, or having induced any
16 other person to vote or refrain from voting at any elec-
17 tion, shall be guilty of a misdemeanor, and, on conviction
18 thereof, shall be fined not more than one thousand dol-
19 lars, or confined in jail for not more than one year, or
20 both, in the discretion of the court.

Sec. 17. Illegal Voting; Deceiving Voters; Penalties.—
2 If any person knowingly votes when not legally entitled;
3 or votes more than once in the same election; or know-

4 ingly votes or attempts to vote more than one ballot for
5 the same office, or on the same question; or procures or as-
6 sists in procuring an illegal vote to be admitted, or re-
7 ceived, at an election, knowing the same to be illegal; or a
8 legal vote to be rejected, knowing the same to be legal; or,
9 with intent to deceive, alters the ballot of a voter by mark-
10 ing out the name of any person for whom such voter de-
11 sires to vote; or, with like intent, writes the name of any
12 person on such ballot other than those directed by the
13 voter; or with like intent, makes any alteration thereof,
14 whether such ballot be voted or not; or defrauds any voter
15 at any election, by deceiving and causing him to vote for
16 a different person for any office than he intended or de-
17 sired to vote for, he shall be guilty of a misdemeanor,
18 and, on conviction thereof, shall for each offense be fined
19 not more than one thousand dollars or confined in the
20 county jail for not more than one year, or both, in the
21 discretion of the court.

Sec. 18. Unlawful Voting in Primary Elections; Pen-
2 **alties.**—Any person voting, in any primary election, any
3 ticket of a party other than that of which he is registered
4 as a member, and any election officer receiving the vote of
5 any such person, knowing, or having reason to believe,
6 that such voter is not a member of the party the ticket
7 of which he is voting; or who, having signed or joined
8 in any petition or certificate nominating any candidate
9 for office, shall, at the primary election to be held to nom-
10 inate candidates for the same office, vote at such primary
11 election; shall in each instance be guilty of a misde-
12 meanor, and, on conviction thereof, shall be fined not
13 more than one thousand dollars, or be confined in the
14 county jail for not more than one year, or both, in the
15 discretion of the court.

Sec. 19. Violations Concerning Absent Voters' Ballots;
2 **Penalties.**—Any person who, having procured an absent
3 voter's official ballot or ballots, shall wilfully neglect or
4 refuse to return the same as provided in article three of
5 this chapter, or who shall otherwise wilfully violate any
6 of the provisions of said article three of this chapter, shall
7 be guilty of a misdemeanor, and, on conviction thereof,

8 shall be fined not more than two hundred and fifty dol-
9 lars, or confined in the county jail for not more than three
10 months. If the clerk of the circuit court of any county,
11 or any member of the board of ballot commissioners, or
12 any member of the board of canvassers shall refuse or
13 neglect to perform any of the duties required of him by
14 any of the provisions of articles three, five and six of this
15 chapter relating to voting by absentees or shall disclose
16 to any other person or persons how any absent voter
17 voted, he shall, in each instance, be guilty of a misde-
18 meanor, and, upon conviction thereof, shall be fined not
19 more than five hundred dollars, or confined in the county
20 jail for not more than six months.

Sec. 20. Obstructing Employees' Freedom to Vote; Pen-
2 **alties.**—Any corporation violating any provision of section
3 forty-two of article one of this chapter or preventing or
4 attempting to prevent any voter in its employ from at-
5 tending any election, or from freely exercising his right of
6 suffrage, at any election, at which he is entitled to vote, by
7 any threat, direct or indirect, express or implied, to dis-
8 charge such voter or deprive him of his employment, or
9 shall discharge such voter or deprive him of his employ-
10 ment because of any vote he may cast, or refuse to cast, at
11 any election at which he is entitled to vote, under the pro-
12 visions of this chapter, shall, in each instance, be guilty
13 of a misdemeanor, and, on conviction thereof, shall be
14 fined not more than one thousand dollars. Any employer,
15 other than a corporation, whether an individual or mem-
16 ber of an association or partnership, and any officer,
17 agent or manager of any corporation violating any pro-
18 vision of this section or of section forty-two of article one
19 of this chapter shall be guilty of a misdemeanor, and,
20 upon conviction thereof, shall be fined not exceeding five
21 hundred dollars or imprisoned in the county jail for a
22 period not exceeding six months, or, in the discretion of
23 the court, be subject to both such fine and imprisonment.

Sec. 21. Failure to Destroy Unused Ballots; Penalty.—
2 For failure to destroy the ballots left over after supplying
3 the polls, as provided in article one of this chapter, each
4 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 **ense.**—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.
2. Vacancy in office of governor.
3. State officials, United States senator and judge vacancies.
4. Congressmen vacancies.
5. Vacancies in state Legislature.
6. Circuit court clerk vacancies.
7. County commissioner, clerk of county court, justice and constable vacancies.
8. Prosecuting attorney, sheriff, assessor and surveyor 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,

7 having first duly qualified, shall enter upon the duties of
8 their respective offices.

Sec. 2. Vacancy in Office of Governor.—In case of the
2 death, conviction or impeachment, failure to qualify, res-
3 ignation or other disability of the governor, the president
4 of the senate shall act as governor until the vacancy is
5 filled or the disability removed; and if the president of
6 the senate, for any of the above named causes, shall be or
7 become incapable of performing the duties of governor,
8 the same shall devolve upon the speaker of the house of
9 delegates; and in all other cases where there is no one to
10 act as governor, one shall be chosen by the joint vote of
11 the Legislature. Whenever a vacancy shall occur in the
12 office of governor before the first three years of the term
13 shall have expired, a new election for governor shall take
14 place to fill the vacancy. If the vacancy shall occur more
15 than thirty days next preceding a general election, the
16 vacancy shall be filled at such election and the acting
17 governor for the time being shall issue a proclamation
18 accordingly, which shall be published once each week for
19 four successive weeks prior to such election in one news-
20 paper, in each county, of each of the two political parties
21 which polled the highest and the second highest number
22 of votes at the preceding general election in the state,
23 published and having the largest circulation in such
24 county. But if it shall occur less than thirty days next
25 preceding such general election, and more than one year
26 before the expiration of the term, such acting governor
27 shall issue a proclamation, fixing a time for a special
28 election to fill such vacancy, which shall be published as
29 hereinbefore provided.

30 If the vacancy is to be filled at a general election and
31 shall occur before the primary election to nominate can-
32 didates to be voted for at such general election, candidates
33 to fill the vacancy shall be nominated at such primary
34 election in accordance with the time requirements and
35 the provisions and procedures prescribed in article five of
36 this chapter. When nominations to fill such vacancy can-
37 not be so accomplished at such primary election, and in
38 all cases wherein the vacancy is to be filled at a special

39 election, candidates to be voted for at such general or
40 special elections shall be nominated by a state convention
41 to be called, convened and held under the resolutions,
42 rules and regulations of the political party executive com-
43 mittees of the state. The laws prescribing the manner
44 of calling, constituting and holding conventions to nomi-
45 nate candidates for presidential electors shall, in so far
46 as applicable, govern conventions to nominate candidates
47 to fill any vacancy in any office to be filled by the voters
48 of the state as a whole, except that, in lieu of the mag-
49 isterial district conventions in the several counties, the
50 county executive committee shall call and convene a
51 county convention at the county seat with delegates
52 thereto apportioned to and representative of the several
53 magisterial districts of the county as provided in section
54 twenty-one of article five of this chapter. The county
55 convention shall proceed to select the county's prescribed
56 number of state convention delegates from the several
57 magisterial districts thereof and the chairman and sec-
58 retary of the convention shall promptly certify the names
59 and addresses of the persons so selected as delegates to
60 the state convention to the chairman of the state execu-
61 tive committee of the political party.

Sec. 3. State Officials, United States Senator and Judge
2 **Vacancies.**—Any vacancy occurring in the office of secre-
3 tary of state, auditor, treasurer, attorney general, commis-
4 sioner of agriculture, United States senator, judge of the
5 supreme court of appeals, or in any office created or made
6 elective, to be filled by the voters of the entire state, or
7 judge of a circuit court, a common pleas, intermediate,
8 criminal or other inferior court, shall be filled by the gov-
9 ernor of the state by appointment. If the unexpired term
10 of a judge of the supreme court of appeals, or a judge
11 of the circuit court, a common pleas, intermediate, crim-
12 inal or other inferior court, be for less than two years; or
13 if the unexpired term of any other office named in this
14 section be for a period of less than two years and six
15 months, the appointment to fill the vacancy shall be for
16 the unexpired term. If the unexpired term of any of-
17 fice be for a longer period than above specified, the ap-

18 pointment shall be until the next general election and
19 until the election and qualification of a successor to the
20 person appointed, at which election the vacancy shall be
21 filled by election for the unexpired term. Proclamation
22 of any election to fill an unexpired term shall be made by
23 the governor of the state, and, in the case of an office to
24 be filled by the voters of the entire state, shall be published
25 once a week for four successive weeks prior to the elec-
26 tion in at least one newspaper of general circulation in
27 each county in the state, of each of the two political
28 parties which, at the last general election in the state,
29 cast the highest and second highest number of votes. If
30 the election be to fill a vacancy in the office of judge of a
31 circuit court, the proclamation shall be published for a
32 like period in the two leading newspapers of opposite
33 party politics, having the largest and second largest cir-
34 culation in each county in the judicial circuit. If the
35 election be to fill a vacancy in the office of judge of a
36 common pleas, intermediate, criminal or other inferior
37 court, the proclamation shall be published for a like period
38 in the two leading newspapers of opposite party politics,
39 having the largest and second largest circulation in the
40 county. Candidates to fill any vacancy in any office named
41 in this section shall be nominated in the manner pro-
42 vided in this article for nominating candidates to fill a
43 vacancy in the office of governor, to be voted for at a
44 general election, but, in selecting candidates for the office
45 of judge to serve in a single county, the county executive
46 committee of the county shall perform the duties relat-
47 ing thereto, and, in selecting candidates for the office of
48 judge of a circuit court in circuits embracing more than
49 one county, the county executive committees of the coun-
50 ties concerned shall resolve themselves into a judicial
51 circuit committee for discharge of the duties relating to
52 such nominations.

Sec. 4. Congressmen Vacancies.—If there be a vacancy
2 in the representation from this state in the house of rep-
3 resentatives in the Congress of the United States, the gov-
4 ernor shall, within ten days after the fact comes to his
5 knowledge, give notice thereof by proclamation, to be

6 published once each week for two successive weeks in
7 two newspapers of opposite politics in each county in the
8 district where such vacancy may occur. In such procla-
9 mation he shall appoint some day, not less than thirty
10 nor more than seventy-five days from the date thereof,
11 for holding the election to fill such vacancy. Nomina-
12 tions to fill such vacancy shall be made in the manner
13 prescribed for nominating a candidate to fill a vacancy
14 in the office of governor, to be voted for at a special elec-
15 tion. The congressional district executive committee of
16 a party shall perform the duties devolving upon the state
17 executive committee in filling a state office.

Sec. 5. Vacancies in State Legislature.—Any vacancy
2 in the office of state senator or member of the house of
3 delegates shall be filled by appointment by the governor,
4 in each instance from a list of three legally qualified per-
5 sons submitted by the county party executive committee
6 in the case of a member of the house of delegates, and by
7 the party executive committee of the state senatorial dis-
8 trict in the case of a state senator, of the party with which
9 the person holding the office immediately preceding the
10 vacancy was affiliated, and of the county or state sena-
11 torial district, respectively, in which he resided at the
12 time of his election or appointment. The appointment to
13 fill a vacancy in the house of delegates shall be for the
14 unexpired term. If the unexpired term in the office of
15 state senator be for less than two years and two months,
16 the appointment shall be for the unexpired term. If the
17 unexpired term be for a period longer than two years
18 and two months, the appointment shall be until the
19 next general election and until the election and quali-
20 fication of a successor to the person appointed, at which
21 general election the vacancy shall be filled by election
22 for the unexpired term. Notice of an election to fill
23 a vacancy in the office of state senator shall be given
24 by the governor by proclamation and shall be pub-
25 lished once a week for two successive weeks prior to
26 the date of the election, in two newspapers having the
27 largest and second largest circulation, and of opposite
28 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

7 governor of the state shall fill any vacancy in such county
8 court necessary to create a quorum thereof, until the next
9 general election, at which election every such vacancy
10 shall be filled by election for the unexpired term. In the
11 case of a vacancy in the office of the county court com-
12 missioner in any county in the state, if the remaining
13 members of such county court fail, refuse or neglect to
14 fill such vacancy within sixty days from the time it occurs,
15 then the governor of the state shall appoint some qualified
16 citizen of said county belonging to the same political party
17 as the vacating member to serve as county court com-
18 missioner until the next general election. Notice of such
19 election shall be given by order of the county court, and
20 published as prescribed in the next preceding section,
21 except that such notice in case of an election to fill a
22 vacancy in the office of justice of the peace or constable,
23 instead of being published in a newspaper, may, in the
24 discretion of such court, be posted at the front door of the
25 courthouse of the county, and at each voting place in
26 the district wherein such vacancy occurs. Nominations of
27 candidates to fill any vacancy in the office of county com-
28 missioner, clerk of the county court, justice or constable
29 shall be made in the manner prescribed for making nomi-
30 nations to fill a vacancy in the office of the clerk of the
31 circuit court.

**Sec. 8. Prosecuting Attorney, Sheriff, Assessor and Sur-
veyor 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. Nomina-
tion 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.

CHAPTER 65

(Com. Sub. for Senate Bill No. 17—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 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
- 3 agency or political subdivision thereof, and if the appli-
- 4 cant shall have given the person residing thereon, if any,
- 5 at least three days' notice of its intent, the applicant, by
- 6 its authorized contractors, officers, agents, and employees,
- 7 may enter and bring necessary or desirable machinery,

8 equipment and tools upon any property, waters and
9 premises in this state, to make thereon such surveys,
10 inspections, examinations, investigations, tests, soundings
11 and drillings as the applicant shall deem necessary or
12 desirable for the purpose for which the property, or an
13 interest or right therein, is proposed to be taken, which
14 shall include, but shall not be limited to, laying out the
15 lands, ways and easements, and acquiring data and in-
16 formation deemed necessary or desirable by the appli-
17 cant in contemplation of acquiring the property, waters
18 or premises, or an interest or right therein, by the power
19 of eminent domain. Such entry or acts authorized by
20 this section shall not be deemed either a trespass or an
21 entry under any condemnation proceeding which may
22 then be pending. Such entry or acts shall not continue
23 longer than one year, except by the consent in writing
24 of the owner, or by authority of the circuit court of the
25 county wherein the property lies. It shall be the duty
26 of the applicant to compensate the owner reasonably for
27 the use of his property and to pay him the amount of
28 any actual or demonstrable damages proximately result-
29 ing from any such entry or acts. In the event the appli-
30 cant and the owner cannot agree as to the amount of such
31 damage, if any, the applicant shall institute a condemna-
32 tion proceeding for the purpose of determining the
33 amount thereof, if any. If the applicant shall fail to in-
34 stitute such a proceeding within sixty days after receipt
35 of demand therefor from the owner, by certified or reg-
36 istered mail, the owner may have a writ of mandamus
37 in the circuit court of the county wherein such entry or
38 act authorized by this section was made or performed,
39 to compel the applicant to institute and prosecute to com-
40 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. Report of commissioners.
- 9-a. Separate findings of compensation and damages.

10. Proceedings on report; trial by jury.
- 11-a. Waiver of findings by commissioners.
12. Vesting of title in applicant.
- 14-a. Condemnation by state or its political subdivision; alternative method.
- 16-a. Costs.
18. Payment to clerk; disposition of money paid into court.

Section 4-a. Lis Pendens Notice; Effect.—At the time
2 of the filing of an eminent domain petition, the applicant
3 may file a notice of the pendency of such proceeding as
4 provided in section two, article eleven, chapter fifty-five
5 of this code, containing the information therein required
6 so far as the provisions therein are applicable. From the
7 time of such filing every purchaser or encumbrancer whose
8 conveyance or encumbrance is not then recorded or dock-
9 eted shall be deemed a subsequent purchaser or encum-
10 brancer and shall be bound by the proceeding to the same
11 extent and in the same manner as if he were a party
12 therein.

Sec. 5. Commissioners; Qualifications.—When it shall
2 appear to the court, or the judge thereof in vacation, that
3 proper notice has been given and that the case is one in
4 which the applicant has lawful right to take property
5 for the purposes stated in the petition, upon making just
6 compensation, five disinterested freeholders shall be ap-
7 pointed commissioners to ascertain what will be a just
8 compensation and any damages to the persons entitled
9 thereto, for the property, or interest or right therein, pro-
10 posed to be taken.

11 The following persons shall be deemed interested and
12 shall not be appointed as commissioners: Any person who
13 is personally interested in the property, or interest or
14 right therein, proposed to be taken or in the compensation
15 and any damages to be awarded therefor, or who is re-
16 lated by blood or marriage to any person having such
17 personal interest, or who stands in the relation of guar-
18 dian and ward, master and servant, principal and agent,
19 or partner, real estate broker, or surety to any per-
20 son having such personal interest, or who has enmity
21 against or bias in favor of any person who has such
22 personal interest, or who is the owner of, or interested in,
23 any real estate over or through which the work of internal

24 improvement will pass. No person shall be deemed in-
25 terested or incompetent to act as commissioner by reason
26 of his being an inhabitant of the county, district, or mu-
27 nicipal corporation, on behalf of which application is
28 made, or holding property therein.

Sec. 7. Oath of Commissioners.—Before entering upon
2 the discharge of his duties, each commissioner shall take
3 an oath, before some person authorized by law to ad-
4 minister it, that he will honestly, faithfully, and impar-
5 tially ascertain to the best of his skill and judgment what
6 will be a just compensation to the persons entitled thereto
7 for the property, or interest or right therein, proposed
8 to be taken, including, where applicable, any damages to
9 the extent provided by section nine of this article. The
10 oath shall be certified, by the person administering it, and
11 shall be filed, with the papers of the proceeding, in the
12 office of the clerk of the court.

Sec. 7-a. Information for Commissioners.—Before en-
2 tering upon the discharge of his duties, each commissioner
3 shall be informed generally, in writing or otherwise, by
4 the court, or the judge thereof in vacation, as to the duties
5 and responsibilities of a condemnation commissioner and
6 as to the law applicable to the deliberations of condemna-
7 tion commissioners.

Sec. 7-b. Supervision of Hearings.—The court may, and
2 upon motion of any party shall, preside over and super-
3 vise all hearings held by the condemnation commission
4 or appoint for such purpose one of its own commissioners,
5 or a special commissioner, to be known as a court com-
6 missioner, who shall preside over and supervise all hear-
7 ings held by the condemnation commission. The person
8 presiding, or the clerk of the court, may sign and issue
9 subpoenas for witnesses, including subpoenas duces tecum,
10 and may swear any witness that the evidence which he
11 will give relating to the matter to be reported by the con-
12 demnation commission shall be the truth, the whole truth,
13 and nothing but the truth. The person presiding shall
14 rule on all questions of evidence, instruct the condemna-
15 tion commissioners as to the law, and otherwise exercise

16 all the functions of a judge in the trial of a civil action
17 to the extent necessary for the determination of any issues
18 before the condemnation commission. In the event a court
19 commissioner is appointed to preside over and supervise
20 all of the hearings to be held by a condemnation commis-
21 sion such court commissioner shall be allowed for his
22 services a reasonable sum to be fixed by the court, such
23 sum to be taxed in the bill of costs against the moving
24 party.

Sec. 8. Powers of Commissioners; Hearings.—Any three
2 of the commissioners may act in the absence of the others,
3 and any one of them may sign and issue subpoenas for
4 witnesses in like manner as a justice, and with like effect;
5 and may swear any witness who appears before them,
6 that the evidence which he will give relating to the mat-
7 ters to be reported upon by the said commissioners shall
8 be the truth, the whole truth, and nothing but the truth.
9 They may adjourn their sessions from time to time as
10 shall be necessary; and any person interested may attend
11 in person or by attorney, produce and examine witnesses,
12 read depositions duly taken, and other proper evidence,
13 and be heard, if he requests it, in support of his rights,
14 according to the usages and rules of law.

15 A view of the property to be taken shall not be required
16 unless a demand therefor is made by a party in interest.
17 In the event a court commissioner is appointed to preside
18 over and supervise all of the hearings to be held by a con-
19 demnation commission pursuant to the provisions of sec-
20 tion seven-b of this article such court commissioner shall
21 go with the commissioners and shall control the pro-
22 ceedings.

Sec. 9. Report of Commissioners.—The commissioners,
2 after viewing the property, if a view is demanded, and
3 hearing any proper evidence which is offered shall ascer-
4 tain what will be a just compensation to the person entitled
5 thereto for so much thereof as is proposed to be taken,
6 or for the interest therein, if less than a fee, and for
7 damage to the residue of the tract beyond all benefits to
8 be derived, in respect to such residue, from the work to
9 be constructed, or the purpose to which the land to be

10 taken is to be appropriated, including, when less than the
11 fee is taken, the actual damage, if any, done, or that may
12 be done, to the fee by such construction, and make report
13 to the following effect: We, the commissioners, appointed
14 by the circuit court of _____ county, (or by the judge
15 thereof in vacation, as the case may be) by an order made
16 on the _____ day of _____ on the application of _____,
17 respectfully report, that having first been duly sworn,
18 we have viewed the real estate owned by _____, men-
19 tioned in the said application, and are of opinion that
20 _____ dollars will be a just compensation for so much
21 of the said real estate as is proposed to be taken by the
22 said applicant, that is to say: (here describe the part to
23 be taken, and the interest therein, if less than a fee, so
24 as to identify the same with reasonable certainty, which
25 description may be supplemented by reference to a plat
26 annexed to the report, or in any manner that would be
27 sufficient in a conveyance) as well as for damages to the
28 residue of the said real estate beyond all benefits which
29 will be derived in respect to such residue from the work
30 to be constructed (or from the purposes to which the part
31 to be taken by said applicant is to be appropriated).

32 Given under our hands this _____ day of _____.

33 But if the property is proposed to be taken by a com-
34 pany incorporated for construction of a railroad, no
35 damages shall be ascertained for the construction of any
36 farm crossing, fences, or cattle guards, or for keeping the
37 same in repair. The report shall be signed by at least
38 three of the commissioners, and forthwith returned to
39 the clerk's office of the court, to be filed with the papers
40 of the case.

**Sec. 9-a. Separate Findings of Compensation and Dam-
2 ages.**—If the report of the commissioners includes any
3 sum for damages, in addition to the sum for just compen-
4 sation for the property, or interest or right therein, pro-
5 posed to be taken, the commissioners shall, if the owner
6 or owners of the property request the same, state in their
7 report what sum has been fixed as damages.

Sec. 10. Proceedings on Report; Trial by Jury.—Within
2 ten days after the report required by the provisions of

3 section nine of this article is returned and filed, either
4 party may file exceptions thereto, and demand that the
5 question of the compensation, and any damages to be
6 paid, be ascertained by a jury, in which case a jury of
7 twelve freeholders shall be selected and impaneled for
8 the purpose, as juries are selected in civil actions. But
9 no person shall sit on such jury who would not be eligible
10 to serve as a condemnation commissioner in the pro-
11 ceeding. The cause shall be tried as other causes in such
12 court, except that any person who served as a condemna-
13 tion commissioner in the proceeding shall not be ex-
14 amined as a witness in regard to just compensation or
15 any damages. The jury, ascertaining the damages or com-
16 pensation to which the owner of the property, or interest
17 or right therein, proposed to be taken is entitled, shall
18 be governed by sections nine and nine-a of this article
19 except that a view of the property proposed to be taken
20 shall not be required: *Provided*, That in the event a de-
21 mand therefor is made by a party in interest, the jury
22 shall be taken to view the property, and in such case,
23 the judge presiding at the trial shall go with the jury
24 and shall control the proceedings.

25 If no exceptions be filed to such report, and neither
26 party demand a trial by jury as aforesaid, the court, or
27 the judge thereof in vacation, unless good cause be
28 shown against it, or it be defective or erroneous on its
29 face, shall confirm such report, and order it to be re-
30 corded in the proper order book of the court.

Sec. 11-a. Waiver of Findings by Commissioners.—If at
2 any time prior to the appointment of condemnation com-
3 missioners, or in the event condemnation commissioners
4 have been appointed, if at any time prior to the making
5 of a report by the condemnation commissioners pursuant
6 to the provisions of section nine of this article, all of the
7 parties who have appeared in the proceeding agree to
8 waive the findings of the condemnation commissioners
9 and file a stipulation to this effect with the clerk of the
10 court, the question of the compensation and any damages
11 to be paid shall be ascertained by a jury in the manner
12 provided by section ten of this article and a hearing before

13 the condemnation commissioners shall not be necessary.
14 Any such stipulation shall be filed with the papers of this
15 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-

26 tect such deposit with the clerk; and if such bond is re-
27 quired, the applicant shall pay the necessary premiums.

28 Upon such payment into court, the title to the property,
29 or interest or right therein, sought to be condemned, shall
30 be vested in the applicant, and the court or judge shall,
31 at the request of the applicant, make an order permitting
32 the applicant at once to enter upon, take possession, ap-
33 propriate and use the property, or interest or right there-
34 in, sought to be condemned for the purposes stated in the
35 petition, but the owners of such property, or interest or
36 right therein, at the time of such payment, including
37 lienors and conflicting claimants, shall have such title,
38 interest, or right in the money paid into court as they
39 had in the property, or interest or right therein, sought
40 to be condemned, and all liens by deed of trust, judgment
41 or otherwise, upon such property, or interest or right
42 therein, shall be transferred to such fund in court, subject
43 to the provisions of this section. The title in the applicant
44 shall be defeasible until the compensation and any dam-
45 ages are determined in the condemnation proceedings and
46 the applicant has paid any excess amount into court.

47 Upon petition to the court or judge, any person entitled
48 thereto may be paid his pro rata share of the money paid
49 into court, or a portion thereof, as ordered by the court or
50 judge, but the acceptance of such payment shall not limit
51 the amount to be allowed by the report of the condemna-
52 tion commissioners, or the verdict of a jury, if there be
53 one. Proceedings for the distribution of the money so
54 paid into court shall be conducted as provided in section
55 eighteen of this article to the extent that the provisions
56 therein are applicable. No party to the condemnation pro-
57 ceeding shall be permitted to introduce evidence of such
58 payment or of the amount so paid into court, or of any
59 amount which has been accepted by any party, nor shall
60 reference be made thereto during the course of the trial.

61 If the applicant shall enter upon or take possession of
62 the property, under the authority of this section, and shall
63 injure the property, the applicant shall not be entitled,
64 without the consent of the defendant, to abandon the
65 proceeding for the condemnation thereof, but such pro-

66 ceeding shall proceed to final award or judgment, and
67 the amount of compensation and any damages as finally
68 determined in such proceeding shall be paid in the man-
69 ner provided by this section.

70 When, after payment into court as provided under the
71 authority of this section, the amount allowed by the re-
72 port of the condemnation commissioners, or the verdict
73 of a jury, if there be one, exceeds the amount which has
74 been paid into court, the excess amount, together with
75 interest thereon at six per cent from the date of such
76 original deposit to the date of payment of the excess
77 amount into court, may, at any time within three months
78 after the report or verdict of a jury, as the case may be,
79 has been confirmed and ordered to be recorded, be paid
80 into court by the applicant for the persons entitled there-
81 to. In no other instance shall interest be allowed on pay-
82 ments made pursuant to the provisions of this section.
83 If the amount which has been paid into court pursuant
84 to this section exceeds the amount allowed by the report
85 of the condemnation commissioners, or the verdict of a
86 jury, if there be one, the excess shall be repaid to the
87 applicant out of such fund in court, or, if the amount re-
88 maining in the fund be insufficient, then the persons to
89 whom the fund, or any part thereof, has been paid, shall
90 reimburse the applicant, on a pro rata basis, but without
91 interest. If the applicant has the right to abandon the
92 proceeding and does so, the amount which has been paid
93 into court pursuant to this section shall be repaid to the
94 applicant from such fund in court and by any persons
95 to whom the fund, or any part thereof, has been paid,
96 on a pro rata basis, but without interest.

97 If the amount allowed by the report of the condemna-
98 tion commissioners, or the verdict of the jury, if there be
99 one, does not exceed the sum paid into court and it shall
100 appear that the latter amount was tendered by the appli-
101 cant to the defendant prior to the institution of the pro-
102 ceeding, the defendant shall pay the costs of the proceed-
103 ing in the trial court unless the refusal to accept the
104 tender was based on some ground other than that of
105 insufficiency of compensation and any damages.

106 When the report of the condemnation commissioners,
107 or the verdict of a jury, if there be one, has been con-
108 firmed and ordered to be recorded, and the excess amount,
109 if any, has been paid into court as provided herein, the
110 title to the property, or interest or right therein, so paid
111 for shall be absolutely and indefeasibly vested in the
112 applicant in fee simple or to the extent described in the
113 petition: *Provided*, That in the case of a public road title
114 to the right of way only shall absolutely vest in the
115 applicant.

Sec. 16-a. Costs.—Except as otherwise specially pro-
2 vided, all costs of a condemnation proceeding in the trial
3 court shall be paid by the applicant. In every condemna-
4 tion proceeding in an appellate court, costs shall be re-
5 covered in such court by the party substantially prevailing.

Sec. 18. Payment to Clerk; Disposition of Money Paid
2 into Court.—Payment of an award or judgment, or any
3 money, under any of the provisions of this chapter may
4 be made to the clerk of the court in which such proceed-
5 ing is had, and such payment shall be deemed to be a
6 payment into court. The clerk to whom payment is so
7 made, together with the surety on his official bond, shall
8 be liable therefor, as for other moneys collected by him
9 by virtue of his office.

10 Upon money being paid into court, pursuant to the pro-
11 visions of this chapter, and the court or judge being sat-
12 isfied that the persons entitled thereto are before the court
13 or judge, it or he shall make such distribution or disposi-
14 tion of such money as is proper, having due regard to the
15 interest of all persons therein, and in what proportions
16 such money is properly payable.

17 If it shall appear that the petition states the persons or
18 classes of persons, who, in the opinion of the applicant,
19 are vested with the superior right or claim of title in the
20 property, or interest or right therein, condemned or sought
21 to be condemned or in the amount allowed or to be al-
22 lowed by the report of the condemnation commissioners,
23 or the verdict of a jury, if there be one, and it does not
24 appear from the record or otherwise that there is any de-
25 nial or dispute, by any person or party in interest, of such

26 statement in the petition, the court or judge may direct
27 that the money paid into court, after withholding there-
28 from any sum necessary for payment of any taxes which
29 are a lien upon the property, interest, or right, be dis-
30 bursed and distributed in accordance with the statement
31 in the petition, among the persons entitled thereto, except
32 that with respect to any persons appearing to be infants,
33 incompetents, incarcerated convicts, or under any other
34 legal disability, the court or judge shall inquire into their
35 rights or claims, independent of any statement in the pe-
36 tition, and any order for disbursement or distribution shall
37 conserve and protect the rights or claims of such persons
38 in and to the money paid into court.

39 If it shall appear to the court or judge, from the record
40 or otherwise, that there exists a controversy among claim-
41 ants to the money paid into court, or to the ownership of
42 the property, or interest or right therein, condemned or
43 sought to be condemned, the court or judge shall enter
44 an order setting a time for hearing the case and deter-
45 mining the rights and claims of all persons entitled to the
46 money paid into court or to any interest or share therein.
47 To aid in properly disposing of the money, the court or
48 judge may appoint a commissioner to take evidence of
49 the conflicting claims. The court or judge may direct
50 publication to be made requiring all who are interested
51 to appear at the time set for hearing the case to present
52 their respective claims. Such costs shall be allowed to
53 the prevailing persons as the court or judge shall direct.
54 Upon a determination by the court or judge of the
55 rights and claims of the persons entitled to the money
56 paid into court, with or without a report of such commis-
57 sioner, judgment shall be entered directing the disburse-
58 ment or distribution, after withholding for taxes as pro-
59 vided in the next preceding paragraph, to the persons
60 entitled thereto, provided that the rights or claims of
61 persons under legal disability shall be protected as pro-
62 vided in the next preceding paragraph.

CHAPTER 66

(House Bill No. 133—By Mr. Speaker, Mr. Singleton)

[Passed March 7, 1963; in effect April 1, 1963. Approved by the Governor.]

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.
- 1-a. Powers formerly granted director vested in commissioner; references to director construed to mean commissioner.
2. Qualifications.
3. Oath.
4. Offices.
5. Compensation; traveling expenses.
6. Powers and duties generally.
- 6-a. Reciprocal agreements.
7. Divisions within the department.
8. Assistants and employees.
9. Classification of services and compensation.
10. Examinations and annual merit ratings.
11. Dismissal, termination, lay-off, suspension.
12. Delegation of duties.
13. Deputies.
14. State employment service.
15. Employment offices.
16. Federal-state cooperation.
17. Acceptance of aid.
18. Legal assistants.
19. Rules and regulations.
20. Oaths and witnesses.
21. Subpoenas.
22. Publication.

Section 1. Appointment.—The department shall be
2 under the supervision of a commissioner of employment
3 security. The commissioner shall be appointed by the
4 governor, by and with the advice and consent of the sen-
5 ate, for a term of six years and shall hold his office sub-
6 ject 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 commissioner of employment security.

Sec. 2. Qualifications.—The commissioner shall be selected with special reference to his training, experience, and capacity.

He shall not be a candidate for or hold any other public office 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.—Notwithstanding 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. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

- 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-

40 tract or agreement with the federal government, its
41 agencies, other states, their subdivisions, or private per-
42 sons;

43 (10) Prescribe a salary scale to govern compensation
44 of appointees and employees of the department;

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

47 (12) Make recommendations, and an annual report to
48 the governor concerning the condition, operation, and
49 functioning of the department;

50 (13) Invoke any legal or special remedy for the
51 enforcement of orders or the provisions of this chap-
52 ter; and

53 (14) Exercise any other power necessary to standard-
54 ize administration, expedite departmental business, as-
55 sure the establishment of fair rules and regulations and
56 promote the efficiency of the service.

Sec. 6-a. **Reciprocal Agreements.**—(1) The commis-
2 sioner may enter into reciprocal arrangements with
3 appropriate and duly authorized agencies of other states
4 or the federal government, or both, whereby:

5 (a) Services performed by an individual for a single
6 employing unit for which services are customarily per-
7 formed by such individual in more than one state shall
8 be deemed to be services performed entirely within any
9 one of the states (i) in which any part of such indi-
10 vidual's service is performed or (ii) in which such indi-
11 vidual has his residence or (iii) in which the employing
12 unit maintains a place of business, provided there is in
13 effect, as to such services, an election by an employing
14 unit, and approved by the agency charged with the ad-
15 ministration of such state's unemployment compensation
16 law pursuant to which services performed by such indi-
17 vidual for such employing unit are deemed to be per-
18 formed entirely within such state;

19 (b) Potential rights to benefits accumulated under the
20 unemployment compensation laws of one or more states
21 or under one or more such laws of the federal govern-
22 ment, or both, may constitute the basis for the payment

23 of benefits through a single appropriate agency under
24 terms which the commissioner finds will be fair and
25 reasonable as to all affected interests and will not result
26 in any substantial loss to the fund;

27 (c) Wages or services, upon the basis of which an
28 individual may become entitled to benefits under an
29 unemployment compensation law of another state or of
30 the federal government, shall be deemed to be wages
31 for insured work for the purpose of determining his
32 rights to benefits under this chapter, and wages for in-
33 sured work, on the basis of which an individual may be-
34 come entitled to benefits under this chapter and shall be
35 deemed to be wages or services on the basis of which
36 unemployment compensation under such law of another
37 state or of the federal government is payable, but no
38 such arrangement shall be entered into unless it contains
39 provisions for reimbursements to the fund for such of the
40 benefits paid under this chapter upon the basis of such
41 wages or services, and provisions for reimbursements
42 from the fund for such of the compensation paid under
43 such other law upon the basis of wages for insured work,
44 as the commissioner finds will be fair and reasonable as
45 to all affected interests; and

46 (d) Contributions due under this chapter with respect
47 to wages for insured work shall for the purposes of this
48 chapter be deemed to have been paid to the fund as of
49 the date payment was made as contributions therefor
50 under another state or federal unemployment compen-
51 sation law, but no such arrangement shall be entered
52 into unless it contains provisions for such reimbursement
53 to the fund of such contributions as the commissioner
54 finds will be fair and reasonable as to all affected inter-
55 ests.

56 (2) Reimbursements paid from the fund pursuant to
57 paragraph (c) of subsection one of this section shall be
58 deemed to be benefits for the purpose of this chapter.
59 The commissioner is authorized to make to other states or
60 federal agencies and to receive from such other states or
61 federal agencies, reimbursements from or to the fund,
62 in accordance with arrangements entered into pursuant to
63 subsection one of this section.

64 (3) To the extent permissible under the laws and
65 constitution of the United States, the commissioner is
66 authorized to enter into or cooperate in arrangements
67 whereby facilities and services provided under this chap-
68 ter and facilities and services provided under the un-
69 employment compensation law of any foreign govern-
70 ment, may be utilized for the taking of claims and the
71 payment of benefits under the employment security law
72 of this state or under a similar law of such government.

Sec. 7. Divisions within the Department.—The com-
2 missioner shall establish within the department the divi-
3 sion of unemployment compensation, and the division of
4 employment service and such other divisions as will pro-
5 mote efficiency and economy in administration. Each
6 division shall be a separate administrative division with
7 respect to personnel, budget and duties, except insofar
8 as the commissioner may find that such separation is
9 impracticable.

Sec. 8. Assistants and Employees.—Upon a non-
2 partisan merit basis the commissioner shall appoint the
3 division and unit heads, and such assistants and employees
4 as may be necessary to the efficient operation of the
5 department. He shall fix their compensation in accord-
6 ance with the provisions of section nine of this article.

Sec. 9. Classification of Services and Compensation.—
2 The commissioner shall by uniform regulations:

3 (1) Classify the different types of services to be per-
4 formed for the department;

5 (2) Prescribe the qualifications of education, training,
6 and experience for the appointees and employees of each
7 class; and

8 (3) Fix a maximum and minimum salary for each
9 class.

Sec. 10. Examinations and Annual Merit Ratings.—
2 The commissioner shall hold examinations to determine
3 the technical and professional qualifications of applicants
4 for positions. The examinations shall be a guide to the
5 commissioner in making his appointments.

6 The commissioner shall annually rate the employees
7 according to their merit and shall determine whether they
8 are maintaining standards of eligibility.

Sec. 11. Dismissal, Termination, Lay-Off, Suspension.

2 —The commissioner shall establish regulations governing
3 dismissals, terminations, lay-offs, and suspensions. Sever-
4 ance of employees' relationship with the department shall
5 be in accordance with these regulations. All severances
6 shall be for good cause. Failure to maintain technical
7 or professional qualifications shall be a good cause for
8 severance.

Sec. 12. Delegation of Duties.—All powers and duties

2 vested in the commissioner may be delegated by him to
3 his appointees and employees; but the commissioner shall
4 be responsible for their acts.

Sec. 13. Deputies.—For the original determination of

2 benefit claims, the commissioner shall appoint a necessary
3 number of deputies as his representatives.

Sec. 14. State Employment Service.—The commis-

2 sioner shall appoint upon a nonpartisan merit basis the
3 head of the division of the employment service and shall
4 fix his salary and prescribe his duties.

Sec. 15. Employment Offices.—The commissioner shall

2 establish and maintain free public employment offices
3 in such places as necessary for the proper administration
4 of this chapter and for the purpose of performing the
5 duties within the purview of the act of Congress entitled
6 "An act to provide for the establishment of a national
7 employment system and for cooperation with states in
8 the promotion of such system, and for other purposes,"
9 approved June six, one thousand nine hundred thirty-
10 three, as amended.

Sec. 16. Federal-State Cooperation.—The commissioner

2 shall have all powers and duties necessary to secure to
3 the state the benefits of congressional action for the
4 promotion and maintenance of a system of public em-
5 ployment offices. To this end the provisions of the act
6 referred to in the preceding section and such additional
7 congressional action consistent with the above act are

8 accepted by the state and the state pledges its observance
9 and compliance therewith.

10 The department of employment security, by its com-
11 missioner, is designated the agent of this state for the
12 purpose of compliance with the act of Congress entitled
13 "An act to provide for the establishment of a national
14 employment system and for cooperation with states in
15 the promotion of such systems, and for other purposes,"
16 approved June six, one thousand nine hundred thirty-
17 three, as amended.

18 The department of employment security, by its com-
19 missioner, is designated the agent of this state for the
20 purpose of complying with and administering sections
21 sixteen and seventeen of an act of Congress entitled "An
22 act to extend and improve the unemployment compensa-
23 tion program," approved September one, one thousand
24 nine hundred fifty-four.

25 The department of employment security, by its com-
26 missioner, is designated the agent of this state for the
27 purpose of complying with and administering an act of
28 Congress entitled "An act to amend title XV of the
29 Social Security Act to extend the unemployment insur-
30 ance system to ex-servicemen, and for other purposes,"
31 approved August twenty-eight, one thousand nine hun-
32 dred fifty-eight.

33 The department of employment security, by its com-
34 missioner, is designated the agent of this state for the
35 purpose of complying with and administering an act of
36 Congress entitled "An act relating to manpower require-
37 ments, resources, development, and utilization, and for
38 other purposes," approved March fifteen, one thousand
39 nine hundred sixty-two.

40 The department of employment security, by its com-
41 missioner, is designated the agent of this state for the
42 purpose of complying with and administering an act of
43 Congress entitled "An act to establish an effective pro-
44 gram to alleviate conditions of substantial and persistent
45 unemployment and underemployment in certain economi-
46 cally distressed areas," approved May one, one thousand
47 nine hundred sixty-one.

48 The department of employment security, by its com-
49 missioner, is designated the agent of this state for the
50 purpose of complying with and administering chapter
51 three of title III of an act of Congress entitled "An act
52 to promote the general welfare, foreign policy, and
53 security of the United States through international trade
54 agreements and through adjustment assistance to domes-
55 tic industry, agriculture, and labor, and for other pur-
56 poses," approved October eleven, one thousand nine hun-
57 dred sixty-two.

58 The department of employment security, by its com-
59 missioner, is designated the agent of this state for the
60 purpose of complying with and administering an act of
61 Congress entitled "An act to provide for the establish-
62 ment of a temporary program of extended unemployment
63 compensation, to provide for a temporary increase in the
64 rate of the federal unemployment tax, and for other
65 purposes," approved January three, one thousand nine
66 hundred sixty-one.

67 The department of employment security, by its com-
68 missioner, is also designated the agent of this state for
69 the purpose of complying with and administering other
70 programs of the United States government such as the
71 foregoing.

72 The commissioner of employment security is desig-
73 nated as the officer of this state for the purpose of com-
74 plying with and administering the tasks assigned to the
75 West Virginia department of employment security pur-
76 suant to section six, article two-b of chapter eighteen of
77 this code relating to the area vocational educational pro-
78 gram of this state.

79 The commissioner is also authorized, with the approval
80 of the advisory council, to apply for an advance to the
81 unemployment compensation fund in accordance with
82 the conditions specified in title twelve of the social
83 security act, as amended, in order to secure to this state
84 and its citizens the advantages available under the pro-
85 visions of that title.

Sec. 17. Acceptance of Aid.—All moneys received by
2 this state under the said act of Congress, as amended,

3 shall be paid into the employment service account, to
4 be expended as provided by this chapter and by said
5 act of Congress. For the purpose of establishing and
6 maintaining free public employment offices, the com-
7 missioner may enter into agreements with any political
8 subdivision of the state or with any private nonprofit
9 organization, and as part of such an agreement the com-
10 missioner may accept money, services, or quarters as a
11 contribution to the employment service account.

Sec. 18. Legal Assistants.—The attorney general and
2 his assistants and the prosecuting attorneys of the several
3 counties shall render to the commissioner without addi-
4 tional compensation such legal services as in the dis-
5 charge of his duties he shall require.

6 The commissioner may employ temporarily or as
7 regular members of the department additional legal
8 counsel. The remuneration of such counsel shall be paid
9 from the administration fund.

Sec. 19. Rules and Regulations.—The commissioner
2 may issue rules and regulations in accordance with such
3 regular procedure as the commissioner shall prescribe.

Sec. 20. Oaths and Witnesses.—The commissioner and
2 his specially authorized representatives shall have the
3 power to administer oaths, take depositions, certify offi-
4 cial acts, and issue subpoenas to compel the attendance
5 of witnesses and production of papers necessary as evi-
6 dence in connection with a dispute or the administration
7 of this chapter.

Sec. 21. Subpoenas.—The commissioner or his author-
2 ized representative shall have the power to issue subpoena
3 for the production of persons and papers in all proceed-
4 ings within the purview of this chapter. In case a person
5 refuses to obey such subpoena the commissioner or his
6 representative may invoke the aid of any circuit court in
7 order that the testimony or evidence be produced. Upon
8 proper showing, such court shall issue a subpoena or order
9 requiring such persons to appear before the commissioner
10 or his representative and produce all evidence and give
11 all testimony touching the matter in question.

12 A person failing to obey such order may be punished
13 by such court as for contempt.

Sec. 22. Publication.—The commissioner shall print
2 for public distribution:

- 3 (1) The text of this chapter;
- 4 (2) The regulations and general rules of the division;
- 5 and
- 6 (3) Such other material as the commissioner deems
7 relevant and suitable for the more effective administra-
8 tion of the chapter, including, for distribution to em-
9 ployers and organizations and associations representative
10 of employer and employee interests, quarterly statements
11 of the condition of the unemployment compensation trust
12 fund and any other information relating to the adminis-
13 tration thereof which the commissioner may deem to be
14 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

1. Department of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
9. Employment Security Administration Fund.

Article 1. Department of Employment Security.

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

29 paid wages in his base period sufficient to make him eli-
30 gible for benefits under the provisions of this chapter.

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

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecu-
35 tive calendar months ending on March thirty-one, June
36 thirty, September thirty, or December thirty-one, or the
37 equivalent thereof as the director may by regulation pre-
38 scribe.

39 "Commissioner" means the employment security com-
40 missioner.

41 "Computation date" means June thirty of the year im-
42 mediately preceding the January one on which an em-
43 ployer's contribution rate becomes effective.

44 "Employing unit" means an individual, or type of or-
45 ganization, including any partnership, association, trust,
46 estate, joint stock company, insurance company, corpora-
47 tion (domestic or foreign), or the receiver, trustee in
48 bankruptcy, trustee or successor thereof, or the legal rep-
49 resentative of a deceased person, which has on January
50 first, one thousand nine hundred thirty-five, or subsequent
51 thereto, had in its employ one or more individuals per-
52 forming service within this state.

53 "Employer" means:

54 (1) Any employing unit which for some portion of a
55 day, not necessarily simultaneously, in each of twenty
56 different calendar weeks, which weeks need not be con-
57 secutive, within either the current calendar year, or the
58 preceding calendar year, has had in employment four or
59 more individuals irrespective of whether the same indi-
60 viduals were or were not employed on each of such days;

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

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

67 (4) Any employing unit which, after December thirty-
68 one, one thousand nine hundred sixty-three, in any one
69 calendar quarter, in any calendar year, has in employment
70 four or more individuals and has paid wages for employ-
71 ment in the total sum of five thousand dollars or more, or
72 which, after such date, has paid wages for employment in
73 any calendar year in the sum total of twenty thousand
74 dollars or more;

75 (5) Any employing unit which, after December thirty-
76 one, one thousand nine hundred sixty-three, in any three
77 weeks period, in any calendar year, has in employment
78 ten or more individuals.

79 “Employment,” subject to the other provisions of this
80 section, means:

81 (1) Service, including service in interstate commerce,
82 performed for wages or under any contract of hire, writ-
83 ten or oral, express or implied;

84 (2) The term “employment” shall include an indi-
85 vidual’s entire service, performed within or both within
86 and without this state if: (a) The service is localized in
87 this state; or (b) the service is not localized in any state
88 but some of the service is performed in this state and (i)
89 the base of operations, or, if there is no base of operations,
90 then the place from which such service is directed or con-
91 trolled, is in this state; or (ii) the base of operations or
92 place from which such service is directed or controlled
93 is not in any state in which some part of the service is
94 performed but the individual’s residence is in this state;

95 (3) Service not covered under paragraph two of this
96 subsection and performed entirely without this state,
97 with respect to no part of which contributions are re-
98 quired and paid under an unemployment compensation
99 law of any other state or of the federal government, shall
100 be deemed to be employment subject to this chapter if
101 the individual performing such services is a resident of
102 this state and the commissioner approves the election of
103 the employing unit for whom such services are performed
104 that the entire service of such individual shall be deemed
105 to be employment subject to this chapter;

106 (4) Service shall be deemed to be localized within a
107 state, if: (a) The service is performed entirely within
108 such state; or (b) the service is performed both within
109 and without such state, but the service performed with-
110 out such state is incidental to the individual's service
111 within this state. For example, is temporary or transitory
112 in nature or consists of isolated transactions;

113 (5) Services performed by an individual for wages
114 shall be deemed to be employment subject to this chapter
115 unless and until it is shown to the satisfaction of the com-
116 missioner that: (a) Such individual has been and will con-
117 tinue to be free from control or direction over the per-
118 formance of such services, both under his contract of
119 service and in fact; and (b) such service is either outside
120 the usual course of the business for which such service
121 is performed or that such service is performed outside
122 of all the places of business of the enterprise for which
123 such service is performed; and (c) such individual is
124 customarily engaged in an independently established
125 trade, occupation, profession or business;

126 (6) All service performed by an officer or member of
127 the crew of an American vessel (as defined in section
128 three hundred five of an act of Congress entitled "Social
129 Security Act Amendment of 1946," approved August
130 tenth, one thousand nine hundred forty-six) on or in con-
131 nection with such vessel, provided that the operating
132 office, from which the operations of such vessel operating
133 on navigable waters within or within and without the
134 United States ordinarily and regularly supervised, man-
135 aged, directed and controlled, is within this state.

136 *Included and Excluded Service.*—If the services per-
137 formed during one half or more of any pay period by an
138 employee for the person employing him constitute employ-
139 ment, all the services of such employee for such period
140 shall be deemed to be employment; but if the services per-
141 formed during more than one half of any such pay period
142 by an employee for the person employing him do not con-
143 stitute employment, then none of the services of such em-
144 ployee for such period shall be deemed to be employment.

145 The term "employment" shall not include:

146 (1) Services performed in the employ of this state or
147 any political subdivision thereof, or any instrumentality
148 of this state or its subdivisions;

149 (2) Service performed directly in the employ of another
150 state, or its political subdivisions;

151 (3) Service performed in the employ of the United
152 States or an instrumentality of the United States exempt
153 under the constitution of the United States from the pay-
154 ments imposed by this law, except that to the extent that
155 the Congress of the United States shall permit states to
156 require any instrumentalities of the United States to make
157 payments into an unemployment fund under a state un-
158 employment compensation law, all of the provisions of this
159 law shall be applicable to such instrumentalities, and to
160 service performed for such instrumentalities, in the same
161 manner, to the same extent and on the same terms as to all
162 other employers, employing units, individuals, and serv-
163 ices: *Provided*, That if this state shall not be certified for
164 any year by the secretary of labor under section 1603 (c)
165 of the Federal Internal Revenue Code, the payments re-
166 quired of such instrumentalities with respect to such year
167 shall be refunded by the commissioner from the fund in
168 the same manner and within the same period as is pro-
169 vided in section nineteen, article five of this chapter, with
170 respect to payments erroneously collected;

171 (4) Service performed after June thirty, one thousand
172 nine hundred thirty-nine, with respect to which unem-
173 ployment compensation is payable under the Railroad
174 Unemployment Insurance Act (52 Stat. 1094), and service
175 with respect to which unemployment benefits are payable
176 under an unemployment compensation system for mari-
177 time employees established by an act of Congress. The
178 commissioner may enter into agreements with the proper
179 agency established under such an act of Congress to pro-
180 vide reciprocal treatment to individuals who, after ac-
181 quiring potential rights to unemployment compensation
182 under an act of Congress, or who have, after acquiring
183 potential rights to unemployment compensation under
184 an act of Congress, acquired rights to benefit under this
185 chapter. Such agreements shall become effective ten days

186 after such publications as comply with the general rules
187 of the department.

188 (5) *Agricultural Labor*.—For the purposes of this chap-
189 ter, the term “agricultural labor” includes all services
190 performed—

191 On a farm, in the employ of any person, in connection
192 with cultivating the soil, or in connection with raising or
193 harvesting any agricultural or horticultural commodity,
194 including the raising, shearing, feeding, caring for, train-
195 ing, and management of livestock, bees, poultry, and fur-
196 bearing animals and wildlife;

197 In the employ of the owner or tenant or other operator
198 of a farm, in connection with the operation, management,
199 conservation, improvement, or maintenance of such farm
200 and its tools and equipment, or in salvaging timber or
201 clearing land of brush and other debris left by a hurri-
202 cane, if the major part of such service is performed on
203 a farm;

204 In connection with the production or harvesting of
205 maple syrup or maple sugar or any agricultural com-
206 modity, or in connection with the raising or harvesting
207 of mushrooms, or in connection with the hatching of poul-
208 try, or in connection with the ginning of cotton, or in con-
209 nection with the operation or maintenance of ditches,
210 canals, reservoirs, or waterways used exclusively for sup-
211 plying and storing water for farming purposes; or

212 In handling, planting, drying, packing, packaging, proc-
213 essing, freezing, grading, storing, or delivering to storage
214 or to market or to a carrier for transportation to market,
215 any agricultural or horticultural commodity; but only if
216 such service is performed as an incident to ordinary farm-
217 ing operations or, in the case of fruits and vegetables,
218 as an incident to the preparation of such fruits or vege-
219 tables for market. The provisions of this paragraph shall
220 not be deemed to be applicable with respect to service
221 performed in connection with commercial canning or
222 commercial freezing or in connection with any agricul-
223 tural or horticultural commodity after its delivery to a
224 terminal market for distribution for consumption.

225 As used in this definition, the term "farm" includes
226 stock, dairy, poultry, fruit, fur-bearing animal, and truck
227 farms, plantations, ranches, greenhouses and nurseries,
228 or other similar land areas or structures used primarily
229 for the raising of any agricultural or horticultural com-
230 modity, and orchards. The term "greenhouses and nurs-
231 eries" shall not include greenhouses and nurseries em-
232 ploying more than fifteen full-time employees.

233 (6) Domestic service in a private home.

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

236 (8) Service performed by a child under the age of twen-
237 ty-one years in the employ of his father or mother.

238 (9) Service performed in the employ of an employing
239 unit organized and operated exclusively for religious,
240 charitable, scientific, literary, or educational purposes or
241 for prevention of cruelty to children or animals, no part
242 of the net earnings of which inure to the benefit of any
243 private shareholder or individual.

244 (10) Service as an officer or member of a crew of an
245 American vessel, performed on or in connection with
246 such vessel, if the operating office, from which the opera-
247 tions of the vessel operating on navigable water within
248 or without the United States are ordinarily and regularly
249 supervised, managed, directed and controlled, is without
250 this state.

251 (11) Services performed by agents of mutual fund
252 broker-dealers or insurance companies, exclusive of in-
253 dustrial insurance agents, or by agents of investment com-
254 panies, who are compensated wholly on a commission
255 basis.

256 Notwithstanding the foregoing exclusions from the defi-
257 nition of "employment", services, except agricultural labor
258 and domestic service in a private home, shall be deemed
259 to be in employment if with respect to such services a tax
260 is required to be paid under any federal law imposing a
261 tax against which credit may be taken for contributions
262 required to be paid into a state unemployment compen-
263 sation fund.

186 after such publications as comply with the general rules
187 of the department.

188 (5) *Agricultural Labor*.—For the purposes of this chap-
189 ter, the term “agricultural labor” includes all services
190 performed—

191 On a farm, in the employ of any person, in connection
192 with cultivating the soil, or in connection with raising or
193 harvesting any agricultural or horticultural commodity,
194 including the raising, shearing, feeding, caring for, train-
195 ing, and management of livestock, bees, poultry, and fur-
196 bearing animals and wildlife;

197 In the employ of the owner or tenant or other operator
198 of a farm, in connection with the operation, management,
199 conservation, improvement, or maintenance of such farm
200 and its tools and equipment, or in salvaging timber or
201 clearing land of brush and other debris left by a hurri-
202 cane, if the major part of such service is performed on
203 a farm;

204 In connection with the production or harvesting of
205 maple syrup or maple sugar or any agricultural com-
206 modity, or in connection with the raising or harvesting
207 of mushrooms, or in connection with the hatching of poul-
208 try, or in connection with the ginning of cotton, or in con-
209 nection with the operation or maintenance of ditches,
210 canals, reservoirs, or waterways used exclusively for sup-
211 plying and storing water for farming purposes; or

212 In handling, planting, drying, packing, packaging, proc-
213 essing, freezing, grading, storing, or delivering to storage
214 or to market or to a carrier for transportation to market,
215 any agricultural or horticultural commodity; but only if
216 such service is performed as an incident to ordinary farm-
217 ing operations or, in the case of fruits and vegetables,
218 as an incident to the preparation of such fruits or vege-
219 tables for market. The provisions of this paragraph shall
220 not be deemed to be applicable with respect to service
221 performed in connection with commercial canning or
222 commercial freezing or in connection with any agricul-
223 tural or horticultural commodity after its delivery to a
224 terminal market for distribution for consumption.

225 As used in this definition, the term "farm" includes
226 stock, dairy, poultry, fruit, fur-bearing animal, and truck
227 farms, plantations, ranches, greenhouses and nurseries,
228 or other similar land areas or structures used primarily
229 for the raising of any agricultural or horticultural com-
230 modity, and orchards. The term "greenhouses and nurs-
231 eries" shall not include greenhouses and nurseries em-
232 ploying more than fifteen full-time employees.

233 (6) Domestic service in a private home.

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

236 (8) Service performed by a child under the age of twen-
237 ty-one years in the employ of his father or mother.

238 (9) Service performed in the employ of an employing
239 unit organized and operated exclusively for religious,
240 charitable, scientific, literary, or educational purposes or
241 for prevention of cruelty to children or animals, no part
242 of the net earnings of which inure to the benefit of any
243 private shareholder or individual.

244 (10) Service as an officer or member of a crew of an
245 American vessel, performed on or in connection with
246 such vessel, if the operating office, from which the opera-
247 tions of the vessel operating on navigable water within
248 or without the United States are ordinarily and regularly
249 supervised, managed, directed and controlled, is without
250 this state.

251 (11) Services performed by agents of mutual fund
252 broker-dealers or insurance companies, exclusive of in-
253 dustrial insurance agents, or by agents of investment com-
254 panies, who are compensated wholly on a commission
255 basis.

256 Notwithstanding the foregoing exclusions from the defi-
257 nition of "employment", services, except agricultural labor
258 and domestic service in a private home, shall be deemed
259 to be in employment if with respect to such services a tax
260 is required to be paid under any federal law imposing a
261 tax against which credit may be taken for contributions
262 required to be paid into a state unemployment compen-
263 sation fund.

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

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

271 "Payments" means the money required to be paid or
272 that may be voluntarily paid into the state unemployment
273 compensation fund as provided in article five of this
274 chapter.

275 "Separated from employment" means, for the purposes
276 of this chapter, the total severance whether by quitting,
277 discharge, or otherwise, of the employer-employee re-
278 lationship.

279 "State" includes, in addition to the states of the United
280 States, Puerto Rico and the District of Columbia.

281 "Total and partial unemployment":

282 (1) An individual shall be deemed totally unemployed
283 in any week in which such individual is separated from
284 employment for an employing unit and during which he
285 performs no services and with respect to which no wages
286 are payable to him.

287 (2) An individual who has not been separated from
288 employment shall be deemed to be partially unemployed
289 in any week in which due to lack of work he performs
290 no services and with respect to which no wages are pay-
291 able to him, or in any week in which due to lack of full-
292 time work wages payable to him are less than his weekly
293 benefit amount plus ten dollars.

294 "Wages" means all remuneration for personal service,
295 including commissions and bonuses and the cash value of
296 all remuneration in any medium other than cash: *Pro-*
297 *vided*, That the term "wages" shall not include:

298 (1) That part of the remuneration which, after remunera-
299 tion equal to three thousand dollars has been paid to an in-
300 dividual by an employer with respect to employment dur-
301 ing any calendar year, is paid after December thirty-one,
302 one thousand nine hundred thirty-nine, and prior to Janu-

303 ary one, one thousand nine hundred forty-seven, to such in-
304 dividual by such employer with respect to employment dur-
305 ing such calendar year; or that part of the remuneration
306 which, after remuneration equal to three thousand dollars
307 with respect to employment after one thousand nine hun-
308 dred thirty-eight has been paid to an individual by an em-
309 ployer during any calendar year after one thousand nine
310 hundred forty-six, is paid to such individual by such em-
311 ployer during such calendar year, except that for the pur-
312 poses of sections one, ten, eleven and thirteen of article six
313 of this chapter, all remuneration earned by an individual in
314 employment shall be credited to the individual and includ-
315 ed in his computation of base period wages: *Provided*, That
316 notwithstanding the foregoing provisions, on and after
317 January one, one thousand nine hundred sixty-two, the
318 term "wages" shall not include:

319 That part of the remuneration which, after remuneration
320 equal to three thousand six hundred dollars has been paid
321 to an individual by an employer with respect to employ-
322 ment during any calendar year, is paid during any calendar
323 year after one thousand nine hundred sixty-one, except
324 that for the purposes of sections one, ten, eleven and thir-
325 teen of article six of this chapter, all remuneration earned
326 by an individual in employment shall be credited to the in-
327 dividual and included in his computation of base period
328 wages: *And provided further*, That the remuneration paid
329 to an individual by an employer with respect to employ-
330 ment in another state or other states upon which contribu-
331 tions were required of and paid by such employer under an
332 unemployment compensation law of such other state or
333 states shall be included as a part of the remuneration equal
334 to the amounts of three thousand dollars or three thousand
335 six hundred dollars herein referred to. In applying such lim-
336 itation on the amount of remuneration that is taxable an
337 employer shall be accorded the benefit of all or any
338 portion of such amount which may have been paid by
339 its predecessor or predecessors: *Provided, however*, That
340 if the definition of the term "wages" as contained in
341 section 3306 (b) of the Internal Revenue Code of 1954
342 is amended (a) effective prior to January one, one thou-

343 sand nine hundred sixty-two, to include remuneration
344 in excess of three thousand dollars, or (b) effective on
345 or after January one, one thousand nine hundred sixty-
346 two, to include remuneration in excess of three thousand
347 six hundred dollars, paid to an individual by an employer
348 under the Federal Unemployment Tax Act during any
349 calendar year, wages for the purposes of this definition
350 shall include remuneration paid in a calendar year to
351 an individual by an employer subject to this article or his
352 predecessor with respect to employment during any cal-
353 endar year up to an amount equal to the amount of re-
354 muneration taxable under the Federal Unemployment
355 Tax Act;

356 (2) The amount of any payment made after December
357 thirty-one, one thousand nine hundred fifty-two (includ-
358 ing any amount paid by an employer for insurance or
359 annuities, or into a fund, to provide for any such pay-
360 ment), to, or on behalf of, an individual in its employ,
361 or any of his dependents, under a plan or system estab-
362 lished by an employer which makes provision for indi-
363 viduals in its employ generally (or for such individuals
364 and their dependents), or for a class or classes of such
365 individuals (or for a class or classes of such individuals
366 and their dependents), on account of (A) retirement, or
367 (B) sickness or accident disability, or (C) medical or hos-
368 pitalization expenses in connection with sickness or acci-
369 dent disability, or (D) death;

370 (3) Any payment made after December thirty-one, one
371 thousand nine hundred fifty-two, by an employer to an
372 individual in its employ (including any amount paid by
373 an employer for insurance or annuities, or into a fund,
374 to provide for any such payment) on account of retire-
375 ment;

376 (4) Any payment made after December thirty-one, one
377 thousand nine hundred fifty-two, by an employer on ac-
378 count of sickness or accident disability, or medical or hos-
379 pitalization expenses in connection with sickness or acci-
380 dent disability, to, or on behalf of, an individual in its
381 employ after the expiration of six calendar months fol-

382 lowing the last calendar month in which such individual
383 worked for such employer;

384 (5) Any payment made after December thirty-one, one
385 thousand nine hundred fifty-two, by an employer to, or
386 on behalf of, an individual in its employ or his beneficiary
387 (A) from or to a trust exempt from tax under section
388 165 (a) of the Federal Internal Revenue Code at the time
389 of such payment unless such payment is made to such
390 individual as an employee of the trust as remuneration
391 for services rendered by such individual and not as a
392 beneficiary of the trust, or (B) under or to an annuity
393 plan which, at the time of such payment, meets the re-
394 quirements of section 165 (a) (3), (4), (5) and (6) of the
395 Federal Internal Revenue Code;

396 (6) The payment by an employer (without deduction
397 from the remuneration of the individual in its employ) of
398 the tax imposed upon an individual in its employ under
399 section 1400 of the Federal Internal Revenue Code;

400 (7) Remuneration paid by an employer after Decem-
401 ber thirty-one, one thousand nine hundred fifty-two, in
402 any medium other than cash to an individual in its employ
403 for service not in the course of the employer's trade or
404 business;

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

411 (9) Payments, not required under any contract of hire,
412 made to an individual with respect to his period of train-
413 ing or service in the armed forces of the United States by
414 an employer by which such individual was formerly em-
415 ployed.

416 Gratuities customarily received by an individual in the
417 course of his employment from persons other than his
418 employing unit shall be treated as wages paid by his
419 employing unit, if accounted for and reported to such em-
420 ploying unit.

421 The reasonable cash value of remuneration in any

422 medium other than cash shall be estimated and deter-
423 mined in accordance with rules prescribed by the com-
424 missioner.

425 "Week" means a calendar week, ending at midnight
426 Saturday, or the equivalent thereof, as determined in ac-
427 cordance with the regulations prescribed by the commis-
428 sioner.

429 "Weekly benefit rate" means the maximum amount of
430 benefit an eligible individual will receive for one week
431 of total unemployment.

432 "Year" means a calendar year or the equivalent there-
433 of, as determined by the commissioner.

Sec. 4. Department of Employment Security.—There
2 is created a department of employment security, com-
3 posed of a division of unemployment compensation and
4 a division of employment service, and such other divisions
5 or units as the commissioner determines to be necessary.

6 Wherever, within this chapter, the term department is
7 used, it shall be taken to mean department of employment
8 security.

Article 5. Employer Coverage and Responsibility.

Section

- 7. Joint and separate accounts.
- 10-a. Modification or suspension of decreased rates.

Section 7. Joint and Separate Accounts.—(1) The com-
2 missioner shall maintain a separate account for each em-
3 ployer, and shall credit his account with all contributions
4 paid by him prior to July first, one thousand nine hundred
5 sixty-one. On and after July first, one thousand nine hun-
6 dred sixty-one, the commissioner shall maintain a separate
7 account for each employer, and shall credit said employ-
8 er's account with all contributions of such employer in
9 excess of seven tenths of one per cent of taxable wages:
10 *Provided*, That any adjustment made in an employer's
11 account after the computation date shall not be used in
12 the computation of the credit balance of an employer
13 until the next following computation date: *Provided fur-*
14 *ther*, That nothing in this chapter shall be construed to
15 grant an employer or individual in his service prior
16 claims or rights to the amounts paid by him into the fund,

17 either on his own behalf or on behalf of such individuals.
18 The account of any employer which has been inactive for
19 a period of four consecutive calendar years shall be
20 terminated for all purposes.

21 (2) Benefits paid to an eligible individual for total un-
22 employment beginning after the effective date of this act
23 shall be charged to the account of the last employer with
24 whom he has been employed as much as thirty working
25 days, whether or not such days are consecutive: *Provided*,
26 That no employer's account shall be charged with benefits
27 paid to any individual who has been separated from a
28 noncovered employing unit in which he was employed
29 as much as thirty days, whether or not such days are
30 consecutive: *And provided further*, That benefits paid to
31 an eligible individual for partial unemployment begin-
32 ning after the effective date of this act shall be charged
33 to the account of the claimant's current employer.

34 (3) The commissioner shall, for each calendar year here-
35 after, classify employers in accordance with their actual
36 experience in the payment of contributions on their own
37 behalf and with respect to benefits charged against their
38 accounts, with a view of fixing such contribution rates as
39 will reflect such experiences. For the purpose of fixing
40 such contribution rates for each calendar year, the books
41 of the department shall be closed on July thirty-one of
42 the preceding calendar year, and any contributions there-
43 after paid, as well as benefits thereafter paid with respect
44 to compensable weeks ending on or before June thirty
45 of the preceding calendar year, shall not be taken into
46 account until the next annual date for fixing contribution
47 rates: *Provided, however*, That if an employer has failed
48 to furnish to the commissioner on or before July thirty-
49 one of such preceding calendar year the wage information
50 for all past periods necessary for the computation of the
51 contribution rate, such employer's rate shall be, if it is
52 immediately prior to such July thirty-one, less than two
53 and seven-tenths per cent, increased to two and seven-
54 tenths per cent: *Provided further*, That any payment
55 made or any information necessary for the computation
56 of a reduced rate furnished on or before the termination
57 of an extension of time for such payment or reporting of

58 such information granted pursuant to a regulation of the
59 commissioner authorizing such extension, shall be taken
60 into account for the purposes of fixing contribution rates:
61 *Provided further*, That when the time for filing any report
62 or making any payment required hereunder falls on
63 Saturday, Sunday, or a legal holiday, the due date shall
64 be deemed to be the next succeeding business day: *Pro-*
65 *vided further*, That whenever through mistake or in-
66 advertence erroneous credits or charges are found to have
67 been made to or against the reserve account of any em-
68 ployer, the rate shall be adjusted as of January one of the
69 calendar year in which such mistake or inadvertence is
70 discovered; but payments made under any rate assigned
71 prior to January one of such year shall not be deemed to
72 be erroneously collected.

73 (4) The commissioner may prescribe regulations for the
74 establishment, maintenance, and dissolution of joint ac-
75 counts by two or more employers, and shall, in accordance
76 with such regulations and upon application by two or
77 more employers to establish such an account, or to merge
78 their several individual accounts in a joint account, main-
79 tain such joint account as if it constituted a single em-
80 ployer's account.

Sec. 10-a. Modification or Suspension of Decreased
2 **Rates.**—(1) As used in this section, unless the context
3 clearly requires otherwise:

4 “Due date” means the last day of the month next fol-
5 lowing a calendar quarter. In determining the amount
6 in the fund on any due date, contributions received, but
7 not benefits paid, for such month next following the end
8 of a calendar quarter shall be included.

9 (2) The commissioner shall as of the due date for the
10 payment of contributions for each calendar quarter deter-
11 mine the amount in the unemployment compensation
12 fund, including the trust fund, the clearing account, and
13 the benefit account; and if, at any such time or times the
14 fund is below the sum of sixty million dollars, the com-
15 missioner shall, effective at the commencement of the next
16 calendar quarter, increase each employer's rate one step,
17 and if, at any time or times the fund is below the sum of

18 fifty-five million dollars, the commissioner shall further
19 increase each employer's rate one additional step; and if,
20 at any such time or times the fund is below the sum of
21 fifty million dollars, the commissioner shall further in-
22 crease each employer's rate one additional step; and if, at
23 any such time or times the fund is below the sum of forty-
24 five million dollars, the commissioner shall further in-
25 crease each employer's rate one additional step.

26 Where the employer rates have been increased by vir-
27 tue of the provisions of this section, they shall be cor-
28 respondingly decreased in the same manner when the
29 balance in the fund returns to the successive levels here-
30 inabove set forth.

31 For the purposes of this subsection the term "one step"
32 or "one additional step" shall mean two tenths of one per
33 cent, except that for an employer whose rate is zero the
34 term "one step" shall mean three tenths of one per cent:
35 *Provided, however,* That under no circumstances shall
36 any employer's rate be increased above the maximum
37 rate of two and seven-tenths per cent.

38 (3) If, as of the due date for the payment of contribu-
39 tions for any calendar quarter, the unemployment com-
40 pensation fund, including the trust fund, clearing account
41 and benefit account, is below the sum of forty million
42 dollars, the commissioner shall, effective at the commence-
43 ment of the next calendar quarter, suspend the decreased
44 rates as provided in this chapter, and all contributions of
45 employers due thereafter shall be paid at the rate of two
46 and seven-tenths per cent: *Provided, however,* That for
47 the period through and including the second calendar
48 quarter of one thousand nine hundred fifty-nine such
49 suspending of decreased rates shall not be made until the
50 fund is below the sum of thirty-five million dollars.

51 (4) As of January first of the year next following the
52 date on which the unemployment compensation fund,
53 including the trust fund, clearing account and benefit ac-
54 count, reaches and remains above the sum of forty-five
55 million dollars, the commissioner shall supersede the sus-
56 pension of the decreased rates as provided for in subsection
57 three: *Provided, however,* That in the event such sus-

58 pending of the decreased rates was made when the fund
59 was below thirty-five million dollars as also provided in
60 subsection three, then such superseding of the suspension
61 of the decreased rates shall occur when the fund reaches
62 and remains above the sum of forty million dollars.

Article 6. Employee Eligibility; Benefits.

Section

1. Eligibility qualifications.
- 1-a. Seasonal employment.
2. Waiting period construed.
3. Disqualification for benefits.
4. Individual not disqualified by receiving vocational training.
5. Suitable work.
6. Suitable work; further requirements.
7. Disqualification in case of labor dispute; exception.
8. Payment of benefits.
9. Place of payment.
10. Benefit rate; total unemployment.
11. Benefit rate; partial unemployment.
12. Suspension of partial benefit rights.
13. Computation of wage credits; determination of maximum benefits.
14. Payment of benefits upon decease of claimant.

Section 1. Eligibility Qualifications.—An unemployed

2 individual shall be eligible to receive benefits only if the
3 commissioner finds that:

- 4 (1) He has registered for work at and thereafter con-
5 tinues to report at an employment office in accordance with
6 the regulations of the commissioner.
- 7 (2) He has made a claim for benefits in accordance with
8 the provisions of article seven of this chapter.
- 9 (3) He is able to work and is available for full-time
10 work for which he is fitted by prior training or experience.
- 11 (4) He has been totally unemployed during his benefit
12 year for a waiting period of one week prior to the week
13 for which he claims benefits for total unemployment.
- 14 (5) He has within his base period earned wages for
15 employment equal to not less than seven hundred dollars.

Sec. 1-a. Seasonal Employment.—An individual work-

2 ing less than one hundred days during his base period
3 in an industry recognized as seasonal, such as food proc-
4 essing and canning, shall not be eligible for benefits
5 unless he has earned wages during his base period in other

6 covered employment equal to not less than one hundred
7 dollars.

2 **Sec. 2. Waiting Period Construed.**—If the benefit year
3 ends during a period of total unemployment for any indi-
4 vidual, such individual shall serve a new waiting period
5 of one week before benefits accruing in the new benefit
6 year shall be payable.

7 During the waiting period, the individual must be eligi-
8 ble in all respects, except for the requirements of subsec-
9 tion (2) of section one of this article. No week shall be
10 counted as the waiting period week if benefits have been
paid with respect to such week.

2 **Sec. 3. Disqualification for Benefits.**—Upon the de-
3 termination of the facts by the commissioner, an individ-
4 ual shall be disqualified for benefits:

5 (1) For the week in which he left his most recent work
6 voluntarily without good cause involving fault on the part
7 of the employer and the six weeks immediately following
8 such week. Such disqualification shall carry a reduction
9 in the maximum benefit amount equal to six times the
10 individual's weekly benefit rate. However, if the claimant
11 returns to work in covered employment during his benefit
12 year, the maximum benefit amount shall be increased by
13 the amount of the decrease imposed under the disqualifica-
14 tion. For the purpose of this subsection, the term "work"
15 means employment with the last employing unit with
16 whom such individual was employed as much as thirty
days, whether or not such days are consecutive.

17 (2) For the week in which he was discharged from his
18 most recent work for misconduct and the six weeks im-
19 mediately following such week. Such disqualification shall
20 carry a reduction in the maximum benefit amount equal
21 to six times the individual's weekly benefit rate. However,
22 if the claimant returns to work in covered employment for
23 thirty days during his benefit year, whether or not such
24 days are consecutive, the maximum benefit amount shall
25 be increased by the amount of the decrease imposed under
26 the disqualification; except that:

27 If he were discharged from his most recent work for one
28 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.

39 (3) For the week in which he failed without good cause
40 to apply for available suitable work, accept suitable work
41 when offered, or return to his customary self-employment
42 when directed to do so by the commissioner, and for the
43 four weeks which immediately follow and for such an
44 additional period as any offer of suitable work shall con-
45 tinue open for his acceptance, and his maximum benefit
46 amount shall be reduced by an amount equal to his weekly
47 benefit rate times the number of weeks of disqualification.
48 However, if the claimant returns to work in covered em-
49 ployment during his benefit year, the maximum benefit
50 amount shall be increased by the amount of the decrease
51 imposed under the disqualification.

52 (4) For a week in which his total or partial unemploy-
53 ment is due to a stoppage of work which exists because of
54 a labor dispute at the factory, establishment, or other
55 premises at which he was last employed, unless the com-
56 missioner is satisfied that he was not (one) participating,
57 financing, or directly interested in such dispute, and (two)
58 did not belong to a grade or class of workers who were
59 participating, financing, or directly interested in the labor
60 dispute which resulted in the stoppage of work. No dis-
61 qualification under this subsection shall be imposed if the
62 employees are required to accept wages, hours or condi-
63 tions of employment substantially less favorable than
64 those prevailing for similar work in the locality, or if em-
65 ployees are denied the right of collective bargaining
66 under generally prevailing conditions, or if an employer
67 shuts down his plant or operation or dismisses his em-
68 ployees in order to force wage reduction, changes in hours
69 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.

110 (9) For each week in which he is unemployed because
111 of his request, or that of his duly authorized agent, for a
112 vacation period at a specified time that would leave the
113 employer no other alternative but to suspend operations.

114 (10) For each week in which he is receiving or has re-
115 ceived remuneration in the form of an annuity, pension,
116 or other retirement pay, from an employer or from any
117 trust or fund contributed to by an employer. But if such
118 remuneration for any week is less than the benefits which
119 would otherwise be due him for such week under this
120 chapter, he shall be entitled to receive for such week, if
121 otherwise eligible, benefits reduced by the amount of such
122 remuneration: *Provided*, That if such amount of benefits
123 is not a multiple of one dollar, it shall be computed to the
124 next higher multiple of one dollar: *Provided further*, That
125 there shall be no disqualification if in the individual's
126 base period there are no wages which were paid by the
127 employer paying such remuneration, or by a fund into
128 which the employer has paid during said base period.
129 Claimant may be required to certify as to whether or not
130 he is receiving or has received remuneration in the form
131 of an annuity, pension, or other retirement pay from an
132 employer or from a trust fund contributed to by an em-
133 ployer.

134 (11) For each week in which he knowingly made a
135 false statement or representation knowing it to be false
136 or knowingly failed to disclose a material fact in order to
137 obtain or increase a benefit under this article. For each
138 such week of disqualification he shall be disqualified an
139 additional five weeks and his maximum benefit amount
140 shall be reduced by an amount equal to five times his
141 weekly benefit rate. Such five weeks disqualification
142 periods are to run consecutively beginning with the first
143 week in which it is determined a fraudulent claim was
144 filed: *Provided*, That an individual shall not be disquali-
145 fied under this subsection for a period of more than fifty-
146 two consecutive weeks: *Provided further*, That disquali-
147 fication under this subsection shall not preclude prosecu-
148 tion under article ten, section seven.

149 (12) For the purposes of this section an employer's ac-
150 count 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 Vocational Training.—Notwithstanding any other provision in
2 this act, no individual shall be disqualified from obtain-
3 ing unemployment compensation benefits because of his
4 receiving training as part of an area vocational program,
5 or similar program, which has as its object the training
6 of unemployed individuals in new occupational skills:
7 *Provided, That* such individual's training and training
8 institution are approved by the commissioner, and pro-
9 vided such individual produces evidence of his continued
10 attendance and satisfactory progress at such training in-
11 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.—Not-

withstanding 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; Ex-

ception.—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 eli-

gible 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

Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
(Column A)	(Column B)	(Column C)	(Column D)
	Under \$700.00	Ineligible	
1	700.00- 799.99	\$12.00	\$312.00
2	800.00- 899.99	13.00	338.00
3	900.00- 999.99	14.00	364.00
4	1000.00-1149.99	15.00	390.00
5	1150.00-1299.99	16.00	416.00
6	1300.00-1449.99	17.00	442.00
7	1450.00-1599.99	18.00	468.00
8	1600.00-1749.99	19.00	494.00
9	1750.00-1899.99	20.00	520.00
10	1900.00-2049.99	21.00	546.00
11	2050.00-2199.99	22.00	572.00
12	2200.00-2349.99	23.00	598.00
13	2350.00-2499.99	24.00	624.00
14	2500.00-2599.99	25.00	650.00
15	2600.00-2699.99	26.00	676.00
16	2700.00-2799.99	27.00	702.00
17	2800.00-2899.99	28.00	728.00
18	2900.00-2999.99	29.00	754.00
19	3000.00-3099.99	30.00	780.00

Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
20	3100.00-3199.99	31.00	806.00
21	3200.00-3349.99	32.00	832.00
22	3350.00-3499.99	33.00	858.00
23	3500.00-3649.99	34.00	884.00
24	3650.00—and over	35.00	910.00

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,

17 may rescind, and whenever the unemployment compen-
18 sation fund, including the trust fund, clearing account and
19 benefit account, and excluding therefrom an amount,
20 estimated by the commissioner, equal to the sum of the
21 benefit liabilities then accrued and unpaid, reaches the
22 sum of ten million dollars, the commissioner shall rescind
23 such suspension as to periods of partial unemployment
24 not then completed.

Sec. 13. Computation of Wage Credits; Determination
2 **of Maximum Benefits.**—The commissioner shall compute
3 wage credits for each individual by crediting him with the
4 wages paid to him for employment by employers during
5 his base period. The maximum total amount of benefits
6 payable to any eligible individual during any benefit year
7 shall not exceed the amount appearing in column (D) on
8 line indicating individual's wage class, of Table A, in this
9 article hereinabove contained.

Sec. 14. Payment of Benefits upon Decease of Claimant.
2 —Accrued benefits due and unpaid on claims filed prior
3 to decease of a claimant may, in the discretion of the
4 commissioner, be paid, without letters of administration,
5 to the surviving spouse, children, or parents of the de-
6 ceased, in the order of priority enumerated.

Article 9. Employment Security Administration Fund.

Section

5-a. Special administration fund.

Section 5-a. Special Administration Fund.—There is
2 hereby created in the state treasury a fund to be known
3 as the employment security special administration fund,
4 which shall consist of interest collected on delinquent
5 payments pursuant to section seventeen of article five of
6 this chapter. The moneys deposited with this fund are
7 hereby appropriated and made available to the order of
8 the commissioner for the purpose of (a) replacements in
9 the employment security administration fund as provided
10 in section eight of this article, (b) to meet special, extra-
11 ordinary, and contingent expenses not provided for in the
12 employment security administration fund, and (c) refunds
13 pursuant to section nineteen of article five, of interest
14 erroneously collected. This fund shall be administered

15 and disbursed in the same manner and under the same
16 conditions as other special funds of the state treasury.
17 Balances to the credit of the special administration fund
18 shall not lapse at any time but shall be continuously avail-
19 able to the commissioner for expenditures consistent with
20 this chapter: *Provided*, (1) That not more than fifty thou-
21 sand dollars shall be expended from said fund in any
22 fiscal year for purposes (a) and (b); (2) that at the be-
23 ginning of each calendar quarter the commissioner shall
24 estimate the amount that may be required in that quarter
25 for refunds of interest erroneously collected; (3) that
26 thereupon the excess, if any, over the amounts provided
27 to be expended under this section shall be paid into the
28 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
2 Nonpayment of Delay Rental after Demand Therefor,**

3 and Barring Any Action or Proceeding in the Courts of
4 This State for the Purpose of Enforcing or Perpetuating
5 during the Term Thereof Any Oil and/or Gas Lease Here-
6 tofore Executed for the Nonpayment of Delay Rental
7 after Demand Therefor.—Except in the case where opera-
8 tions for the drilling of a well are being conducted there-
9 under, any undeveloped lease for oil and/or gas in this
10 state hereafter executed in which the consideration there-
11 in provided to be paid for the privilege of postponing ac-
12 tual drilling or development or for the holding of said
13 lease without commencing operations for the drilling of a
14 well, commonly called delay rental, has not been paid
15 when due according to the terms of such lease, or the
16 terms of any other agreement between lessor and lessee,
17 shall be null and void as to such oil and/or gas unless pay-
18 ment thereof shall be made within sixty days from the
19 date upon which demand for payment in full of such delay
20 rental has been made by the lessor upon the lessee there-
21 in, as hereinafter provided, except in such cases where a
22 bona fide dispute shall exist between lessor and lessee as
23 to any amount due under such lease.

24 No person, firm, corporation, partnership or association
25 shall maintain any action or proceeding in the courts of
26 this state for the purpose of enforcing or perpetuating
27 during the term thereof any lease heretofore executed
28 covering oil and/or gas, as against the owner of such oil
29 and/or gas, or his subsequent lessee, if such person, firm,
30 corporation, partnership or association has failed to pay
31 to the lessor such delay rental in full when due according
32 to the terms thereof, for a period of sixty days after de-
33 mand for such payment has been made by the lessor upon
34 such lessee, as hereinafter provided.

35 The demand for payment referred to in the two pre-
36 ceding paragraphs shall be made by notice in writing and
37 shall be sufficient if served upon such person, firm, part-
38 nership, association, or corporation whether domestic or
39 foreign, whether engaged in business or dissolved, by
40 United States registered mail, return receipt requested,
41 to the lessee's last known address.

42 A copy of such notice, together with the return receipt
43 attached thereto, shall be filed with the clerk of the coun-

44 ty court in which such lease is recorded, or in which such
45 oil and/or gas property is located in whole or in part, and
46 upon payment of a fee of fifty cents for each such lease,
47 said clerk shall permanently file such notice alphabetical-
48 ly under the name of the first lessor appearing in such
49 lease and shall stamp or write upon the margin of the rec-
50 ord in his office of such lease hereafter executed the words
51 "cancelled by notice"; and as to any such lease executed
52 before the enactment of this statute said clerk shall file
53 such notice as hereinbefore provided and shall stamp or
54 write upon the margin of the record of such lease in his
55 office the words "enforcement barred by notice."

56 The word "lessor" shall include the original lessor, as
57 well as his or its successors in title to the oil and/or gas
58 involved. The word "lessee" shall include the original
59 lessee, his or its assignee properly of record at the time
60 such demand is made, and his or its successors, heirs, or
61 personal representatives. No assignee of such lease whose
62 assignment is not recorded in the proper county shall be
63 heard in any court of this state to attack the validity or
64 sufficiency of the notice hereinbefore mentioned.

65 The continuation in force of any such lease after de-
66 mand for and failure to pay such delay rental as herein-
67 before set forth is deemed by the Legislature to be op-
68 posed to public policy and against the general welfare. If
69 any part of this section shall be declared unconstitutional
70 such declaration shall not affect any other part thereof.

3

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 thousand 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:

Article 7. Gifts to Minors Act.

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.

31 (h) An "issuer" is a person who places or authorizes
32 the placing of his name on a security (other than as a
33 transfer agent) to evidence that it represents a share,
34 participation or other interest in his property or in an
35 enterprise or to evidence his duty or undertaking to per-
36 form an obligation evidenced by the security, or who be-
37 comes responsible for or in place of any such person.

38 (i) A "legal representative" of a person is his executor
39 or the administrator, general guardian, guardian, com-
40 mittee, conservator, tutor or curator of his property or
41 estate.

42 (j) A "member" of a "minor's family" means any of
43 the minor's parents, grandparents, brothers, sisters, uncles
44 and aunts, whether of the whole blood or the half blood,
45 or by or through legal adoption.

46 (k) A "minor" is a person who has not attained the
47 age of twenty-one years.

48 (l) A "security" includes any note, stock, treasury
49 stock, bond, debenture, evidence of indebtedness, col-
50 lateral trust certificate, transferable share, voting trust
51 certificate or, in general, any interest or instrument com-
52 monly known as a security, or any certificate of interest
53 or participation in, any temporary or interim certificate,
54 receipt or certificate of deposit for, or any warrant or
55 right to subscribe to or purchase, any of the foregoing.
56 The term does not include a security of which the donor
57 is the issuer. A security is in "registered form" when it
58 specifies a person entitled to it or to the rights it evi-
59 dences and its transfer may be registered upon books
60 maintained for that purpose by or on behalf of the
61 issuer.

62 (m) A "transfer agent" is a person who acts as
63 authenticating trustee, transfer agent, registrar or other
64 agent for an issuer in the registration of transfers of its
65 securities or in the issue of new securities or in the can-
66 cellation of surrendered securities.

67 (n) A "trust company" is a bank authorized to exer-
68 cise trust powers in the state.

CHAPTER 70

(Com. Sub. for Senate Bill No. 245—Originating in the
Senate Committee on Finance)

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

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 Kana-
37 wha county within thirty days of such finding or holding.

CHAPTER 71

(House Bill No. 525—By Mr. Poindexter and Mr. Corder)

[Passed March 6, 1963; 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.

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
32 health, is hereby authorized to receive such funds as
33 transferred by the department of public institutions and
34 the department of mental health to be added to other
35 state or federal funds now being used by the state depart-
36 ment of health, division of dental health, for general den-
37 tal 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.

Section 1. Autopsy on Body of Deceased Persons in

- 2 Interest of Medical Science; Who May Perform; Written**
3 Consent Required; Who May Give Consent.—In case of
4 the death of any person in the state of West Virginia,
5 the attending physician, or if there be none, any physi-
6 cian, if he deems it advisable in the interest of medical
7 science, may perform or cause to be performed an
8 autopsy on the body of such deceased person without
9 liability therefor, provided consent to such autopsy, in
10 writing, is first obtained from (1) the surviving spouse

11 of deceased; (2) if there be no surviving spouse, then
12 any child of deceased over the age of twenty-one years:
13 *Provided*, That the child's permission shall not be valid,
14 if any other child of the deceased over the age of twenty-
15 one years objects prior to said autopsy and said objection
16 shall be made known in writing to the physician who is to
17 perform the autopsy; (3) if there be no surviving spouse,
18 nor any child of deceased over the age of twenty-one
19 years, then the mother or father of deceased; (4) if there
20 be no surviving spouse, nor any child over the age of
21 twenty-one years, nor mother or father, then the duly
22 appointed and acting fiduciary of the estate of the de-
23 ceased; or (5) if there be no surviving spouse, nor any
24 child over the age of twenty-one years, nor mother or
25 father, nor duly appointed and acting fiduciary of the
26 estate of deceased, then the person, firm, corporation or
27 agency legally responsible for the financial obligation in-
28 curred in disposing of the body of deceased.

29 In the event the spouse, child or parent of deceased
30 be mentally incompetent then the person authorized to
31 consent to such autopsy shall be the next in the order
32 of priority hereinabove defined.

— C —

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 hundred 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.
4. License fees.
12. Injunction; severability of article.

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-

2 standing the existence or pursuit of any other remedy, the
3 department may, in the manner provided by law, main-
4 tain an action in the name of the state for injunction
5 against any person, partnership, association, corporation,
6 or any local governmental unit, or any division, depart-
7 ment, board or agency thereof to restrain or prevent the
8 establishment, conduct, management or operation of any
9 hospital, sanatorium, rest home, nursing home or other
10 institution having five or more beds for the hospitalization
11 or care of the sick or injured or for the care of any human
12 being requiring or receiving chronic or convalescent care
13 without first obtaining a license therefor in the manner
14 hereinbefore provided.

15 If any part of this article shall be declared unconstitu-
16 tional, such declaration shall not affect any other part
17 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 reenacted 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.;

2 **Penalty.**—(1) No person shall obtain or attempt to obtain
3 a narcotic drug, or procure or attempt to procure the ad-
4 ministration of a narcotic drug, (a) by fraud, deceit, mis-
5 representation, or subterfuge; or (b) by forgery or alter-
6 ation of a prescription or of any written order; or (c)
7 by the concealment of a material fact; or (d) by the use
8 of a false name or the giving of a false address.

9 (2) Information communicated to a physician in an
10 effort to unlawfully procure a narcotic drug, or unlaw-
11 fully to procure the administration of any such drug,
12 shall not be deemed a privileged communication.

13 (3) No person shall wilfully make a false statement
14 in any prescription, order, report, or record, required by
15 this article.

16 (4) No person shall, for the purpose of obtaining a
17 narcotic drug, falsely assume the title of, or represent
18 himself to be, a manufacturer, wholesaler, pharmacist,
19 pharmacy owner, physician, dentist, veterinarian, or other
20 authorized person.

21 (5) No person shall make or utter any false or forged
22 prescription or false or forged written order.

23 (6) No person shall affix any false or forged label to a
24 package or receptacle containing narcotic drugs.

25 (7) The provisions of this section shall apply to all
26 transactions relating to narcotic drugs under the provi-
27 sions of section eight of this article, and in the same way
28 as they apply to transactions under all other sections.

29 (8) Whoever violates any provision of this section
30 shall be guilty of a misdemeanor, and, upon conviction
31 for the first offense, shall be fined not less than fifty nor
32 more than one hundred dollars; and, upon conviction for
33 a subsequent offense shall be fined not less than one hun-
34 dred nor more than two hundred dollars and, in addition
35 to such fine, any person so convicted may be imprisoned
36 in the county jail for not more than six months.

Sec. 23. Penalties for Violation.—Whoever violates any
2 provision of this article, where punishment is not other-
3 wise provided, shall be guilty of a felony, and, upon con-

4 viction, shall be fined not more than one thousand dol-
5 lars and be imprisoned in the penitentiary for not less
6 than two nor more than five years. For a second offense,
7 or if, in case of a first conviction of violation of any pro-
8 vision of this article, the offender shall previously have
9 been convicted of any violation of the laws of the United
10 States or of any other state, territory or district relating
11 to narcotic drugs or marihuana, the offender shall be
12 fined not more than five thousand dollars and be im-
13 prisoned in the penitentiary for not less than five nor
14 more than ten years. For a third or subsequent offense, or
15 if the offender shall previously have been convicted two
16 or more times in the aggregate of any violation of the
17 law of the United States or of any other state, territory
18 or district relating to narcotic drugs or marihuana, the
19 offender shall be fined not more than ten thousand dol-
20 lars and be imprisoned in the penitentiary not less than
21 ten nor more than twenty years.

22 Except in the case of conviction for a first offense in
23 violation of the provisions of this article, and except
24 where punishment is otherwise provided, the imposition
25 or execution of sentence shall not be suspended and pro-
26 bation or parole shall not be granted until the minimum
27 imprisonment herein provided for the offense shall have
28 been served. The court shall in each case fix and deter-
29 mine the exact length of sentence to be served for each
30 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:

Article 13-a. Public Service Districts for Water and Sewerage Services.

Section

3-a. Removal of members of public service district board.

18-a. Sale, lease or rental of water system by district.

Section 3-a. Removal of Members of Public Service

2 District Board.—The county court or any other appointive
3 body creating or establishing a public service district
4 under the provisions of this article shall have the author-
5 ity to remove any member of the governing board there-
6 of for any violation of any provisions of this article, for
7 any misconduct in office or upon written petition signed
8 by a majority of the registered voters residing within
9 the public service district: *Provided, however,* That such
10 appointee shall only be removed after a full hearing of
11 any complaint presented against him and after due notice
12 of such hearing.

Sec. 18-a. Sale, Lease or Rental of Water System by

2 District.—In any case where a public service district shall
3 own a water system, and all the members of the public
4 service board thereof shall deem it for the best interests
5 of the district to sell, lease or rent such water system
6 to any municipally or privately owned water system, or
7 to any water system owned by an adjacent public service
8 district, said board shall have full power and authority
9 to so sell, lease or rent such water system upon such
10 terms and conditions as said board shall, in its discretion,
11 consider in the best interests of the district: *Provided,*
12 *however,* That such sale, leasing or rental shall be made
13 only upon approval by the public service commission of
14 West Virginia.

15 In the event of any such sale, the proceeds thereof, if
16 any, remaining after payment of all outstanding bonds
17 and other obligations of the district shall be ratably dis-
18 tributed to any persons who have made contributions in
19 aid of construction of such water system, such distribu-
20 tion not to exceed the actual amount of any such con-
21 tribution, without interest, and any balance of funds
22 thereafter remaining shall be paid to the county court
23 of the county in which the major portion of such water
24 system is located to be placed in the general funds of
25 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.
5. Same; powers and duties generally; rules and regulations; public hearings.
6. Notice of alleged violations; hearings; factors considered; complaints before the commission and procedure thereon; orders of commission; petitions to modify or vacate order; confirming or modifying order; when order final; record of proceedings.

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

24 other branches of such state government as are necessary
25 to accomplish the purposes of this article.

**Sec. 5. Same; Powers and Duties Generally; Rules and
2 Regulations; Public Hearings.**—The commission is hereby
3 authorized and empowered:

4 (1) To develop ways and means for the regulation and
5 control of pollution of the air of the state;

6 (2) To advise, consult and cooperate with other agen-
7 cies of the state, political subdivisions of the state, other
8 states, agencies of the federal government, industries, and
9 with affected groups in furtherance of the declared pur-
10 poses of this article;

11 (3) To encourage and conduct such studies and re-
12 search relating to air pollution and its control and abate-
13 ment as the commission may deem advisable and neces-
14 sary;

15 (4) To adopt and to promulgate reasonable regulations,
16 not inconsistent with the provisions of this article, relating
17 to the control of air pollution: *Provided*, That no rule or
18 regulation of the commission shall specify the design of
19 equipment, type of construction, or particular method
20 which a person shall use to reduce the discharge of air
21 pollutants, nor shall any such rule or regulation apply to
22 any aspect of an employer-employee relationship;

23 (5) To enter orders requiring compliance with the pro-
24 visions of this article and the regulations lawfully pro-
25 mulgated hereunder;

26 (6) To consider complaints, subpoena witnesses, ad-
27 minister oaths, make investigations, and hold hearings
28 relevant to the promulgation of regulations and the entry
29 of compliance orders hereunder;

30 (7) To encourage voluntary cooperation by municipali-
31 ties, counties, industries and others in preserving the
32 purity of the air within the state;

33 (8) To employ personnel, including specialists and con-
34 sultants, purchase materials and supplies, and enter into
35 contracts necessary, incident or convenient to the accom-
36 plishment of the purposes of this article;

37 (9) To enter at reasonable times upon any private or

38 public property for the purpose of investigating an alleged
39 statutory air pollution: *Provided, however,* That no such
40 investigation shall extend to information relating to sec-
41 ret processes or methods of manufacturing or production;

42 (10) Upon reasonable evidence of a violation of this ar-
43 ticle, which presents an imminent and serious hazard to
44 public health, to give notice to the public or to that por-
45 tion of the public which is in danger by any and all
46 appropriate means;

47 (11) To cooperate with, receive and expend money from
48 the federal government and other sources;

49 (12) To represent the state in any and all matters per-
50 taining to plans, procedures and negotiations for interstate
51 compacts in relation to the control of air pollution; and

52 (13) To appoint technical advisory councils from such
53 areas of the state as it may determine. Each such council
54 so appointed shall consist of not more than five members
55 for each area so designated, at least two of whom shall
56 be truly representative of industries operating within
57 such area, and may advise and consult with the commis-
58 sion about all matters pertaining to the regulation, control
59 and abatement of air pollution within such area.

60 The attorney general and his assistants and the prose-
61 cuting attorneys of the several counties shall render to
62 the commission without additional compensation such
63 legal services as the commission may require of them
64 to enforce the provisions of this article.

65 No rule or regulation of the commission pertaining to
66 the control, reduction or abatement of air pollution shall
67 become effective until after at least one public hearing
68 thereon shall have been held by the commission within
69 the state. Notice to the public of the time and place of
70 any such hearing shall be given by the commission at
71 least thirty days prior to the scheduled date of such hear-
72 ing by advertisement published once a week for two suc-
73 cessive weeks in at least one daily newspaper of general
74 circulation in the county wherein such hearing is to be
75 held. Full opportunity to be heard shall be accorded to
76 all persons in attendance and any person, whether or not
77 in attendance at such hearing, may submit in writing his

78 views with respect to any such rule or regulation to the
79 commission within thirty days after such hearing. The
80 proceedings at the hearing before the commission shall
81 be recorded by mechanical means or otherwise as may be
82 prescribed by the commission. Such record of proceedings
83 need not be transcribed unless requested by an interested
84 party, in which event the prevailing rates for such tran-
85 scripts will be required from such interested party. The
86 commission may, in its discretion, solicit the comments
87 in writing of any person who may be affected by or in-
88 terested in such proposed rules and regulations.

**Sec. 6. Notice of Alleged Violations; Hearings; Factors
2 Considered; Complaints Before the Commission and Pro-
3 cedure Thereon; Orders of Commission; Petitions to
4 Modify or Vacate Order; Confirming or Modifying Order;
5 When Order Final; Record of Proceedings.—**If, from any
6 investigation made by it or from any complaint filed be-
7 fore it, the commission shall be of the opinion that there
8 is sufficient cause to believe that a person may be violat-
9 ing the provisions of this article, the commission may give
10 written notice to such person to appear before the com-
11 mission at a time and place, within the county wherein
12 the pollution is alleged to have originated, to be specified
13 in such notice, then and there to show cause, if any shall
14 exist, why said commission should not enter an order
15 finding that such person has violated the provisions of
16 this article and regulating or controlling the alleged pol-
17 lution. The said notice shall with reasonable particularity
18 specify the nature of the alleged air pollution which is
19 to be the subject of inquiry at such hearing. No such
20 hearing shall be held less than thirty days from the date
21 of said notice. Any such notice may be served and re-
22 turned in the same manner as a summons in a civil action
23 or may be served by sending a copy thereof by registered
24 mail addressed to the person or persons alleged to be
25 causing such pollution at his and/or its usual, or last
26 known, postoffice address. Any person to whom such
27 notice has been given may appear in person or by counsel
28 at the hearing and adduce evidence in answer to the
29 alleged violation.

30 In any proceeding under this article the commission
31 shall consider all pertinent factors, including a balancing
32 of the conflicting interests and equities involved, the avail-
33 ability and practicality of control devices, the physical and
34 economic feasibility of eliminating, controlling or reduc-
35 ing the alleged pollution, the nature of the locality af-
36 fected by the alleged pollution, the reasonableness of
37 existing conditions and such other factors as may appear
38 to the commission to be consonant with the policy de-
39 clared in section one of this article.

40 For the purpose of holding a hearing on a complaint
41 said hearing can be held by no less than two members
42 of the commission who have been designated by the
43 chairman, and the transcript from such hearing shall
44 be reviewed by the commission for the purpose of issuing
45 such orders as may be necessary.

46 Consistent with the evidence adduced at the hearing
47 and a consideration of the aforesaid factors, the commis-
48 sion shall enter such order as in its opinion will best pro-
49 mote the declared policy of this article. Such order shall
50 contain specific findings of fact with respect to all factors
51 considered by the commission and shall require that the
52 statutory air pollution, if any be found, be corrected with-
53 in a reasonable period of time to be fixed therein. A true
54 copy of such order shall be promptly served, either by
55 service as a summons in a civil action or by registered
56 mail as aforesaid, upon all persons substantially affected
57 by such order. Within twenty days after service of such
58 order, any person substantially affected thereby may file
59 with the secretary of the commission a petition in writ-
60 ing requesting the commission to modify or vacate such
61 order. The petition shall assign the grounds relied upon
62 by the petitioner in support of a modification or vacation
63 of such order. The commission shall thereupon reconsider
64 its original order and shall, within twenty days after the
65 filing of the petition, enter of record an order confirming,
66 modifying or vacating the original order. A true copy
67 of such order shall be promptly served upon all persons
68 substantially affected thereby in the same manner as
69 the original order was served. Any order of the com-
70 mission entered hereunder shall become final and con-

71 clusive upon all persons affected thereby unless an appeal
72 therefrom is taken in the manner provided in section
73 seven of this article.

74 The proceedings at any such hearing shall be recorded
75 by mechanical means or otherwise as may be prescribed
76 by the commission: *Provided*, That the proceedings shall
77 be taken by a stenographer appointed by the commission
78 upon demand of any interested person. A copy of such
79 transcript shall be furnished on demand to any person
80 substantially affected upon payment of the fee prescribed
81 therefor in the rules and regulations of the commission,
82 such fee not to exceed that prescribed for transcripts in
83 the circuit court.



CHAPTER 77

(House Bill No. 543—By Mr. Nuzum)

[Passed March 9, 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 twenty-one, creating a "West Virginia Water Development Commission," as an agency of the state of West Virginia; prescribing its powers and duties; authorizing it to construct water works systems, to acquire existing water works systems not now publicly owned, to improve water works systems so constructed or acquired, to establish rates to be charged for water service rendered by such systems, to operate and maintain water works systems so constructed or acquired, to dispose of any water works systems so acquired or constructed only to political subdivisions or other public agencies or instrumentalities, to issue water revenue bonds to finance such construction, acquisitions and improvements; providing for the payment of said bonds solely from the revenues of water works systems so constructed or acquired; providing for the

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:

Article 21. Water Works Systems.

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.
4. Powers and duties of commission generally.
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.
20. Provisions of article separable and severable.

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:

The term "commission" shall mean the West Virginia water development commission created by section two of this article.

The term "bonds" shall mean revenue bonds issued by

9 the commission pursuant to this article, including refund-
10 ing revenue bonds.

11 The term "water works system" or "water works" as
12 used in this article shall include a water supply, treat-
13 ment and distribution system in its entirety, or any in-
14 tegral part thereof, including but not limited to mains,
15 distribution lines, hydrants, meters, valves, standpipes,
16 storage tanks, pumping stations, intakes, wells, impound-
17 ing reservoirs, treatment plants, buildings, supplies, ease-
18 ments, rights of way, and all other property, real or per-
19 sonal, ordinarily used in connection with the operation of
20 a water works system.

21 The term "public body" shall mean any municipality or
22 other political subdivision, or any agency or instrumental-
23 ity of such municipality or other political subdivision.

24 The term "publicly owned" shall mean owned by a mu-
25 nicipality or other political subdivision, or public body.

**Sec. 2. West Virginia Water Development Commis-
2 sion Created; Composition; Appointment, Confirmation
3 and Terms of Members; Vacancies.**—There shall be a state
4 water development commission, to be known as the West
5 Virginia water development commission, and the same is
6 hereby made a body corporate, and is hereby declared to
7 be an agency of the state of West Virginia. The commis-
8 sion shall consist of five members who shall be citizens of
9 the state, appointed by the governor, by and with the
10 advice and consent of the senate, for overlapping terms of
11 five years, except that the original appointments shall be
12 for terms of one, two, three, four and five years, respec-
13 tively, and each subsequent term for a period of five years.
14 For the purpose of purchasing any system or systems, the
15 commission shall not enter into any binding contract or
16 agreement nor sell any bonds herein provided for, nor
17 enter into any other contract or agreement for the pur-
18 chase or acquisition of any water system or systems until
19 the members of such commission have been confirmed
20 by the state senate: *Provided*, That not more than one
21 member of the commission shall be selected from each
22 congressional district, and that not more than three mem-
23 bers shall be of the same political party.

24 The governor shall appoint all members of the commis-

25 sion as soon after the effective date hereof as is practic-
26 able for respective terms of office beginning on the first
27 day of April, one thousand nine hundred sixty-three. Any
28 vacancy on the commission shall be filled by appointment
29 for the unexpired term.

Sec. 3. Compensation and Expenses of Members of
2 **Commission.**—The compensation and expenses of mem-
3 bers of the commission shall be fixed by resolution of the
4 commission but shall not exceed the sum of twenty-five
5 dollars per day for compensation for each member and the
6 amount of the actual bona fide expenses of each member
7 while actually engaged in the business of the commission
8 and the compensation and expenses of each member shall
9 not exceed in the aggregate the sum of four thousand
10 dollars per annum for compensation and four thousand
11 dollars per annum for bona fide expenses.

Sec. 4. Powers and Duties of Commission Generally.—
2 The commission shall have power:
3 1. To sue and be sued, plead and be impleaded;
4 2. To have a seal and alter the same at pleasure;
5 3. To acquire, construct, improve and operate, in the
6 name of the commission, by purchase or otherwise, water
7 works systems wherever located in West Virginia, and to
8 acquire rights, easements, franchises and permits neces-
9 sary or convenient for the acquisition, construction, im-
10 provement and operation of water works systems: *Pro-*
11 *vided, however,* That the commission may not acquire wa-
12 ter works systems which are now publicly owned;
13 4. To acquire by purchase, hold and dispose of real
14 and personal property for any proper purpose;
15 5. To make by-laws for the management and regula-
16 tion of its affairs;
17 6. To employ counsel, appoint officers, agents and em-
18 ployees and to fix their compensation, paying for the
19 same from the income of the water works system or sys-
20 tems operated by the commission;
21 7. To renegotiate all contracts entered into by it when-
22 ever, due to a change in situation, it appears to the com-
23 mission that its interest will be best served;
24 8. To fix and establish fees, rates and other charges

25 for the supply of water and the services and facilities of
26 any water works system or systems owned and operated
27 by the commission, and such fees, rates or other charges
28 shall be subject to the rules and regulations of the
29 public service commission. It shall be the mandatory
30 duty of the commission to fix and establish such fees,
31 rates or other charges, and to revise the same whenever
32 necessary, as will always provide revenues in each year
33 at least sufficient to pay the principal of and interest
34 on all bonds issued by the commission, and reserves
35 therefor, as the same shall become due in such year,
36 together with the cost of the operation and maintenance
37 of such water works system or systems in such year, and
38 together with all other payments required in such
39 year by the proceedings which authorized the issuance
40 of such bonds, including reasonable margins for any
41 of such purposes. Such fees, rates and other charges
42 shall further comply with any covenants made by the
43 commission with the holders of such bonds, including cov-
44 enants prohibiting the reduction of such fees, rates or
45 other charges except under the terms, conditions and lim-
46 itations provided in such covenants with such bond-
47 holders;

48 9. To establish by resolution and enforce regulations
49 relating to the billing and collecting of the fees, rates or
50 other charges for the services and facilities of any water
51 works system or systems, including penalties for the de-
52 linquent payment of such fees, rates or other charges and
53 for the restoration of service after the same has been dis-
54 continued;

55 10. To shut off and discontinue the supply of water
56 and the services and facilities of any water works system
57 or systems for the failure of the users of such system or
58 systems to pay such fees, rates or other charges as the
59 same become due, and to make valid and legally binding
60 covenants with the holders of such bonds as to the time,
61 manner and method of the shutting off and discontinu-
62 ance of the services and facilities of such system or sys-
63 tems for the failure to pay such fees, rates or other
64 charges, and the penalties to be imposed for restoration
65 of service upon the payment of such delinquent fees, rates

66 or other charges, which covenants shall be enforceable by
67 the holders of any of said bonds in any court of competent
68 jurisdiction;

69 11. To use and apply the revenues derived from
70 any water works system or systems for the reimburse-
71 ment of municipalities and other political subdivisions
72 and public bodies for any taxes which would have ac-
73 crued to such municipalities and other political subdivi-
74 sions and public bodies if such water works system or sys-
75 tems were privately owned and operated, under such
76 terms and conditions as shall be determined by the com-
77 mission: *Provided, however,* That all such payments shall
78 be subject to and comply fully with all terms, covenants
79 and provisions contained in any resolutions, trust agree-
80 ments or mortgages which authorized the issuance of any
81 bonds of the commission then outstanding;

82 12. To issue negotiable revenue bonds and to provide
83 for the rights of the holders thereof;

84 13. To enter on any lands and premises for the purpose
85 of making surveys and examinations; and

86 14. To do any and all things necessary or convenient
87 to carry out the powers given in this article.

Sec. 5. Commission Authorized to Acquire, Construct,
2 **Improve and Operate Water Works Systems.**—The com-
3 mission shall have authority to acquire any existing water
4 works system, or systems, in this state not now publicly
5 owned, to construct new water works systems, to con-
6 struct betterments and improvements to systems acquired
7 or constructed and to operate any and all water works
8 systems so acquired, constructed or improved: *Provided,*
9 *however,* That the commission shall not purchase or
10 acquire any water works system or water works, located
11 in any municipality in this state, unless the municipality
12 in which the same is located shall have a period of sixty
13 days within which to contract for the purchase or ac-
14 quisition thereof, with the owner or owners thereof,
15 at the same price as the commission proposes to pur-
16 chase or acquire the same.

Sec. 6. Estimate of Cost for Acquisition, Construction,
2 **etc., of System; Resolution for Issuance of Revenue Bonds;**

3 Tax Exemptions; Interest; Terms and Conditions of
4 Bonds; Mortgage Lien and Trust Agreement; Priority of
5 Payments from Revenues; Combination of Projects.—
6 Whenever the commission shall determine to acquire,
7 construct or improve a water works system under the pro-
8 visions of this article, it shall cause an estimate to be
9 made of the cost thereof, and shall, by resolution, provide
10 for the issuance of revenue bonds under the provisions of
11 this article, which resolution shall set forth a brief de-
12 scription of the contemplated acquisition, construction or
13 improvement, the estimated cost thereof, the rate or
14 maximum rates of interest, the amount, time and place of
15 payment of such bonds, and other information in connec-
16 tion with the issuance of the bonds. Such bonds shall be
17 in such form and shall be issued in such manner, at such
18 prices and upon such terms as the commission may by
19 resolution specify, as provided in section seven hereof. All
20 such bonds and the interest thereon and all properties and
21 revenues and income derived from such water works
22 systems, shall be exempt from all taxation by the state
23 of West Virginia, or by any county, municipality, political
24 subdivision or agency thereof. Such bonds shall bear
25 interest at not more than six per centum per annum semi-
26 annually, and shall be payable at such times, not exceed-
27 ing forty years from their date, and at such place or
28 places, within or without the state, as shall be prescribed
29 in the resolution providing for their issuance. Such reso-
30 lution shall also declare that a statutory mortgage lien
31 shall exist upon the property so to be acquired, con-
32 structed or improved, and the events of default and terms
33 and conditions upon which such statutory mortgage lien
34 may be foreclosed by bondholders or any trustee for such
35 bondholders. Such statutory mortgage lien may be fore-
36 closed in the same manner as a mortgage upon real prop-
37 erty may be foreclosed under the laws of the state of
38 West Virginia. Such resolution or any trust agreement or
39 mortgage may pledge all or any part of the revenues de-
40 rived from the water works system or systems then being
41 acquired, constructed or improved, either alone or in
42 combination with other water works systems then to be
43 acquired or constructed or which have been theretofore

44 or shall thereafter be acquired or constructed, for the pur-
45 pose of paying the principal of and interest on such bonds,
46 and reserves therefor and any other payments required
47 by such resolution or trust agreement or mortgage, and
48 may provide for the order and priority of the application
49 of such revenues between the payment of the principal of
50 and interest on such bonds and reserves therefor, and
51 the payment of the cost of the operation and maintenance
52 of such water works system or systems and reserves
53 therefor, and any other payments required by such resolu-
54 tion, trust agreement or mortgage. The commission may
55 also provide for such rank and priority as to payment
56 from said revenues and in any other respect between any
57 bonds issued by the commission either between bonds of
58 the same issue or any other bonds theretofore or there-
59 after issued. The commission may acquire, construct or
60 improve more than one water works system at one time
61 and may, in its discretion, combine any two or more of
62 said systems for the purpose of financing, and may further
63 provide in any resolution, trust agreement or mortgage
64 for the financing of any water works system or systems,
65 or additions, extensions or improvements to any existing
66 water works system or systems, pursuant to such resolu-
67 tion, trust agreement or mortgage under such terms,
68 conditions and provisions as shall be contained in such
69 resolution, trust agreement or mortgage.

**Sec. 7. Revenue Bonds Declared Negotiable; Redemp-
2 tion; Form, Denomination and Execution of Bonds; Ex-
3 change or Sale of Bonds; Additional Bonds to Cover De-
4 ficiencies; Temporary Bonds; Bonds Eligible for Deposit
5 as Collateral; Condemnation Not Authorized.**—All bonds
6 issued hereunder shall have and are hereby declared to
7 be and have all the qualities of negotiable instruments
8 under the law merchant and the negotiable instruments
9 law of the state of West Virginia; they may be made re-
10 deemable at the option of the commission, at such price
11 and under such terms and conditions as the commission
12 may fix prior to the issuance of such bonds.

13 The commission shall determine the form of such bonds,
14 including coupons to be attached thereto to evidence the
15 right of interest payments, which bonds shall be signed

16 by the chairman and secretary of the commission, under
17 the great seal of the state, attested by the secretary of
18 state, and the coupons attached thereto shall bear the
19 facsimile signature of said chairman of the commission.
20 The great seal of the state may be affixed to or reproduced
21 or imprinted on said bonds, and the signatures on said
22 bonds may be either manual or facsimile signatures: *Pro-*
23 *vided*, That the signature of either said chairman or secre-
24 tary on said bonds of the commission shall be a manual
25 signature. In case any of the officers whose signatures
26 appear on the bonds or coupons shall cease to be such of-
27 ficers before the delivery of such bonds, such signatures
28 shall nevertheless be valid and sufficient for all purposes
29 in like manner as if they had remained in office until such
30 delivery. The commission shall fix the denomination of
31 said bonds, the principal and interest of which shall be
32 payable at the office of the sinking fund commission of
33 the state of West Virginia, at the capitol of said state, or,
34 at the option of the holder, at some bank or trust company
35 within or without the state to be named in the bonds, in
36 such medium as may be determined by the commission.
37 The commission may provide for the registration of such
38 bonds as to principal alone, and as to both principal and
39 interest, under such terms and conditions as the commis-
40 sion may determine. The commission may exchange
41 bonds, in whole or in part, for any water system or sys-
42 tems or water properties being acquired or for outstand-
43 ing bonds in the case of refunding bonds, or may sell such
44 bonds in such manner as it may determine to be for the
45 best interest of the state, taking into consideration the fi-
46 nancial responsibility of the purchaser, the terms and con-
47 ditions of the purchase, and especially the availability of
48 the proceeds of the bonds when required for payment of
49 the cost of water works system or systems or water im-
50 provements to be constructed or acquired: *Provided*,
51 *however*, That such exchange or sale shall be made at a
52 price not lower than the price which will yield to the pur-
53 chasers, or to the holders of outstanding bonds exchanged
54 for refunding bonds, or to the owners of any water works
55 system or systems or water properties exchanged for such
56 bonds, net income at a rate of six per centum per annum

57 to the maturity date or average maturity date of such
58 bonds on the moneys paid for such bonds, or the principal
59 amount of outstanding bonds exchanged for refunding
60 bonds, or the fair value of any water system or systems or
61 water properties exchanged for such bonds, computed in
62 such manner as the commission shall in its discretion de-
63 termine. The proceeds of such bonds shall be deposited
64 and checked out as provided by section thirteen of this
65 article, and under such restrictions as the commission may
66 provide. If the proceeds of such bonds, by error in cal-
67 culation or otherwise, shall be less than the cost of ac-
68 quisition or construction of the system or systems for
69 which they are issued, or the improvements thereto, or if,
70 after such acquisition or construction, the commission de-
71 termines that additions, improvements or betterments
72 thereto should be acquired or constructed, additional
73 bonds may in like manner be issued to provide the amount
74 of the deficiency or the cost of the additions, improve-
75 ments or betterments, as the case may be, and, unless
76 otherwise provided for in the trust agreement or mort-
77 gage hereinafter mentioned, shall be deemed to be of the
78 same issue, and shall be entitled to payment from the
79 same fund, without preference or priority, as the bonds
80 before issued relating to the same system or systems.
81 Prior to the preparation of definitive bonds, the commis-
82 sion may, under like restrictions, issue temporary bonds,
83 with or without coupons, exchangeable for definitive
84 bonds upon the issuance of the latter. Such bonds may be
85 issued without any other proceedings or the happening of
86 any other conditions or things than those proceedings,
87 conditions and things which are specified and required by
88 this article or by the constitution of the state.

89 Bonds issued under the authority of this article shall
90 constitute securities eligible for deposit as collateral for
91 all public deposits or funds.

92 Under no circumstances shall the commission have
93 the right to exercise the power of eminent domain or
94 condemnation.

Sec. 8. Acquisitions by Purchase.—The commission
2 shall be under no obligation to accept and pay for any
3 property purchased except from the funds provided

4 pursuant to this article. In event of the acquisition by
5 purchase, the commission may obtain and exercise an
6 option from the owner or owners of said property for
7 the purchase thereof, or may enter into a contract for the
8 purchase thereof, and such purchase may be made upon
9 such terms and conditions, and in such manner as the
10 commission may deem proper.

Sec. 9. Cost of Works.—The cost of the works shall be
2 deemed to include: The cost of acquisition or construction
3 thereof, the cost of all property, rights, easements, and
4 franchises deemed necessary or convenient therefor and
5 for the improvements determined upon as provided in this
6 article; interest upon bonds prior to and during construc-
7 tion or acquisition and for a reasonable period thereafter,
8 not exceeding two years; engineering and legal expenses;
9 expenses for estimates of cost and of revenues; expenses
10 for plans, specifications and surveys; fees for financial
11 services or advisors or consultants; other expenses neces-
12 sary or incident to determining the feasibility or prac-
13 ticability of the enterprise; administrative expense; and
14 such other expenses as may be necessary or incident to
15 the financing herein authorized and the construction or
16 acquisition of the works and the placing of the works in
17 operation and the performance of the things herein re-
18 quired or permitted in connection therewith.

**Sec. 10. Bonds Known as "West Virginia Water Reve-
2 nue Bonds"; Credit of State or Political Subdivision Not
3 Pledged.**—Water works system revenue bonds issued
4 under the provisions of this article shall be known as
5 "West Virginia Water Revenue Bonds" and shall not be
6 deemed to constitute a debt of the state or of any political
7 subdivision thereof or a pledge of the faith and credit of
8 the state or of any political subdivision thereof, but such
9 bonds shall be payable solely from the funds herein pro-
10 vided therefor from revenues. All such revenue bonds
11 shall contain on the face thereof a statement to the effect
12 that neither the state nor any political subdivision thereof
13 shall be obligated to pay the same or the interest thereon
14 except from revenues of the system or systems for which
15 they are issued, and that neither the faith nor the credit
16 nor the taxing power of the state or any political sub-

17 division thereof is pledged to the payment of the principal
18 of, or the interest on, such bonds.

Sec. 11. Combining Systems for Issuance of Bonds.—

2 The commission may provide, by said resolution author-
3 izing the issuance of the bonds or in the trust agreement
4 hereinafter referred to, for combining two or more water
5 works systems for the purpose of financing the acquisition
6 or construction of and improvements to such systems, or
7 any of them, and may also provide in said resolution or
8 in said trust agreement that additional bonds may there-
9 after be authorized and issued at one time or from time
10 to time under such limitations and restrictions as may be
11 set forth in said resolution and/or trust agreement, for the
12 purpose of acquiring or constructing other water works
13 systems, or for the purpose of extending, improving or
14 bettering water works systems acquired or constructed by
15 the commission, when deemed desirable in the public in-
16 terest, such additional bonds, subject to any provisions
17 contained in such resolution or trust agreement, to be se-
18 cured and be payable from the revenues of such water
19 works system or systems equally with all other bonds
20 issued pursuant to said resolution without preference or
21 distinction between any one bond and any other bond by
22 reason of priority of issue, the identity of the water works
23 systems whose revenues were pledged to secure any one
24 bond or series of bonds, or otherwise.

Sec. 12. Trust Agreement to Secure Holders of Bonds.—

2 The commission may enter into an agreement or agree-
3 ments with any corporate trustee, in or out of the state,
4 having power and authority to act as trustee in a security
5 trust, as trustee, securing the bonds issued or which may
6 be issued pursuant to the resolution of the commission.
7 Such agreement, whether in the form of a trust agreement
8 only, or a trust agreement and a mortgage of any water
9 works system or systems, may contain such provisions for
10 protecting and enforcing the rights and remedies of the
11 bondholders as the commission considers reasonable and
12 proper, including, without limitation, covenants regard-
13 ing the duties of the commission in relation to the con-
14 struction, acquisition, improvement, operation, repair,
15 maintenance and insurance of the water works system or

16 systems, the revenues which are to pay the bonds, the cus-
17 tody, safeguarding and application by such trustee of the
18 proceeds of such bonds, the revenues derived from such
19 water works system or systems, and any other moneys of
20 the commission, and may provide that the water works
21 systems to be acquired, constructed or improved, shall be
22 contracted for, constructed, continuously operated and
23 paid for under the supervision and approval of consulting
24 engineers employed or designated by the commission and
25 satisfactory to the bondholders or their designated repre-
26 sentatives or nominees. Such agreement may set forth
27 the rights and remedies of bondholders and/or such trustee,
28 restricting the individual right of action of bondholders
29 as is customary in trust indentures securing bonds and
30 debentures of corporations; may provide for the foreclosure
31 of any mortgage executed in connection therewith
32 in the manner provided in the laws of the state for the
33 foreclosure of mortgages on real property; may provide
34 for the appointment of a receiver by any court of competent
35 jurisdiction of any water works system or systems
36 on default of the commission to pay any principal of or interest
37 on such bonds as the same become due or to comply
38 with any covenants with bondholders, and the terms and
39 conditions of such receivership; may provide for the investment
40 or reinvestment of any funds of the commission;
41 and may provide for such other and additional covenants,
42 agreements and provisions as shall be deemed desirable
43 or necessary by the commission for the security of the
44 holders of such bonds.

**Sec. 13. Deposit and Disposition of Funds; Examination
2 of Accounts and Books of Commission.**—All moneys of the
3 commission, unless the trust agreement referred to in section
4 twelve shall provide for such moneys to be held and
5 applied by a trustee, from whatever source derived shall
6 be paid to the state treasurer, with advice to the treasurer
7 in each case as to the water works system (or group of
8 systems, where appropriate), to which such money shall
9 be credited. The state treasurer shall not commingle said
10 moneys with any other moneys, but shall deposit them in
11 a separate bank account for each water works system (or
12 group of systems if so instructed by the commission).

13 The moneys in each said account shall be paid out on
14 check of the treasurer on requisition of the chairman of
15 the commission, or of such other person as the commis-
16 sion may authorize to make such requisition. All de-
17 posits of such money shall be secured by obligations of
18 the United States, of the state of West Virginia, or of the
19 commission, of a market value equal at all times to the
20 amount of the deposit, and all banking institutions are
21 authorized to give such security for such deposits. The
22 state tax commissioner and his legally authorized repre-
23 sentatives are hereby authorized and empowered from
24 time to time to examine the accounts and books of the
25 commission, including its receipts, disbursements, con-
26 tracts, leases, sinking funds, investments, and any other
27 matters relating to its financial standing. All moneys re-
28 quired by the bond resolution to be remitted to the state
29 sinking fund commission for principal, interest and re-
30 serve funds, shall be transferred by the state treasurer to
31 the state sinking fund commission, upon requisition of the
32 commission. The commission may withdraw moneys from
33 the state treasurer as it may deem desirable from time to
34 time and deposit same with the state sinking fund com-
35 mission for investment, in such manner as may be pro-
36 vided by law, in direct obligations of the government of
37 the United States.

Sec. 14. Disposition of Water Works Systems.—When-
2 ever the principal and interest on all bonds issued to fi-
3 nance the acquisition, construction and improvement of
4 a water works system (or any group of systems combined
5 for the purpose of issuing bonds hereunder) have been
6 fully paid, the commission may convey and transfer any
7 such water works systems, or any part thereof, to any ap-
8 propriate municipality or other political subdivision or
9 other public body which the commission deems advisable
10 and in the best interest of the state, and upon such terms
11 and conditions as the commission may determine to be
12 just and proper.

13 The commission shall also have power, at any time, to
14 sell, transfer and convey all or any part of any water works
15 system or systems acquired or constructed by it to any
16 municipality or other political subdivision or other public

17 body under such terms, conditions and restrictions and at
18 such price as the commission shall deem proper and in
19 the best interests of the state and such municipality or
20 other political subdivision or other public body: *Provided,*
21 *however,* That no such sale, conveyance or transfer shall
22 ever be made which will jeopardize the security of the
23 holders of any bonds of the commission then outstanding,
24 and any such sale, conveyance or transfer shall be made
25 only in full and strict compliance with any and all terms,
26 restrictions, conditions, covenants and agreements con-
27 tained in the resolutions, trust agreements or mortgages
28 pursuant to which any bonds of the commission then out-
29 standing were issued. The proceeds derived from the sale
30 of any part or all of said water works system, or systems,
31 shall be applied as provided in such resolutions, trust
32 agreements or mortgages pursuant to which any bonds
33 of the commission then outstanding were issued, and
34 after full compliance with such resolutions, trust agree-
35 ments or mortgages, in such manner as the commission
36 shall deem proper.

**Sec. 15. Commission Constituted a Body Corporate and
Agency of the State.**—The commission is hereby made
2 and shall be a body corporate, and is hereby declared to
3 be an agency of the state of West Virginia, and shall con-
4 tinue in existence until dissolved by an act of the Legis-
5 lature of the state of West Virginia: *Provided, however,*
6 That the commission shall in any event continue in exist-
7 ence as long as any bonds issued by the commission are
8 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,
2 repair, operate, manage and control all water works sys-
3 tems acquired, constructed or improved by it, fix rates or
4 charges for water and water service furnished to custom-
5 ers, and establish by-laws and rules and regulations for
6 the use and operation of such water works systems and
7 each of them, and may make and enter into all contracts
8 or agreements necessary and incidental to the perform-
9 ance of its duties and the execution of its powers under
10 this article.
11

Sec. 17. Issuance of Refunding Bonds.—The commission
2 shall have power to issue refunding bonds for the pur-
3 pose of funding or refunding any bonds theretofore issued
4 and then outstanding, and may either sell such refund-
5 ing bonds for the purpose of paying and redeeming such
6 outstanding bonds or may exchange such refunding bonds
7 for such outstanding bonds in such manner and under
8 such terms and conditions as the commission shall deem
9 advisable.

10 The commission shall have power to refund any of
11 said outstanding bonds either at or prior to the maturity
12 thereof or on the first date upon which such outstanding
13 bonds are redeemable prior to maturity. If the com-
14 mission shall determine to refund said outstanding bonds
15 prior to maturity, or prior to the first date upon which
16 such outstanding bonds are redeemable prior to maturity,
17 and shall not exchange such refunding bonds for said
18 outstanding bonds, then the commission shall be author-
19 ized to issue and sell such refunding bonds and invest
20 the proceeds or part of the proceeds in obligations of
21 the United States of America or other securities ap-
22 proved by the commission or in time deposits in banks
23 or trust companies represented by certificates of deposit,
24 pending the payment or prior redemption of said out-
25 standing bonds to be refunded. In such event the pro-
26 ceeds of such refunding bonds, together with the securi-
27 ties in which the same are invested, shall be deposited
28 in an irrevocable trust fund and used only for the pur-
29 pose of paying the principal, interest and redemption
30 premiums, if any, on said outstanding bonds as the same
31 mature and become due at the maturity or date of prior
32 redemption thereof.

33 In making the deposit into said irrevocable trust fund,
34 the commission may either deposit the full amount which
35 will be sufficient to pay all the principal of and interest
36 on the outstanding bonds maturing prior to and on the
37 date on which such outstanding bonds are to be redeemed
38 prior to maturity, together with the principal of and
39 redemption premiums thereon due on the date of such
40 prior redemption; or, may deposit in such irrevocable
41 trust fund only the amount which the commission shall

42 determine will be sufficient, together with the income to
43 be realized from the investment of such money so de-
44 posited, to pay all the principal of and interest on the
45 outstanding bonds maturing prior to and on the date on
46 which such outstanding bonds are to be redeemed prior
47 to maturity, together with the principal of and redemp-
48 tion premiums thereon due on the date of such prior
49 redemption.

50 The issuance of said refunding bonds shall as to the
51 manner of sale and exchange thereof for outstanding
52 bonds and in all other respects be subject to all the
53 applicable provisions of this article relating to the au-
54 thorization and issuance of bonds.

Sec. 18. Jurisdiction of Public Service Commission.—

2 The West Virginia water development commission shall
3 at all times comply with the provisions of chapter twenty-
4 four of this code in carrying out the provisions of this
5 article and shall be subject to the jurisdiction of the
6 public service commission.

Sec 19. Construction of Article.—Being for the public
2 health, safety and welfare, this article shall be liberally
3 construed to effectuate the purposes thereof.

Sec. 20. Provisions of Article Separable and Severable.

2 —The various provisions of this article shall be construed
3 as separable and several, and should any of the pro-
4 visions or parts thereof be construed or held to be un-
5 constitutional or for any other reason invalid, the re-
6 maining provisions of this article shall not be thereby
7 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 Vir-
ginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article two^{cd},
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-~~d~~ 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.
8. Security for bonds.
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.
14. Bonds made legal investments.
15. Exemption from taxation.
16. Construction of article.
17. No notice, consent, or publication required.
18. Severability.
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
2 and may be cited as the “Industrial Development Bond
3 Act”.

Sec. 2. Legislative Finding.—It is hereby determined
2 and declared as a matter of legislative finding (a) that
3 critical conditions of unemployment exist in many areas
4 of this state; (b) that lack of employment and business
5 opportunities have resulted in thousands of people leaving
6 this state to find employment elsewhere, and this exodus
7 has adversely affected the tax base of counties and munic-
8 ipalities within this state, resulting in an impairment of
9 their ability to support local government; (c) that the
10 development of new commercial, industrial and manu-
11 facturing plants are essential to relieve unemployment
12 and establish a balanced economy within the state; (d)
13 that the present and prospective health, happiness, safety,
14 right of gainful employment, and general welfare of the
15 citizens of each of the counties and municipalities of this
16 state will be promoted by the establishment of industrial
17 plants as herein provided; (e) and that the means and
18 measures herein authorized for the promotion of indus-
19 trial plants are as a matter of public policy, for the

20 public purpose of the several counties, municipalities
21 and the state of West Virginia.

Sec. 3. Definitions.—The following terms, whenever
2 used in this article, shall have the following meaning:

3 (a) The term “municipality” shall mean any incor-
4 porated town or city.

5 (b) The term “county court” shall mean the govern-
6 mental body created by section twenty-two, article eight
7 of the West Virginia constitution.

8 (c) The term “governmental body” shall mean the
9 county court, the council of a town or city, or any other
10 governing body in lieu thereof.

11 (d) The term “industrial plant” shall mean any site,
12 structure, building, fixtures, machinery, equipment, and
13 related facilities, including both real and personal prop-
14 erty or any combination thereof which shall be suitable
15 as a factory, mill, shop, processing, assembly, manufac-
16 turing, or fabricating plant but not to include facilities
17 designed for sale or distribution to the public of elec-
18 tricity, gas, water, telephone or other services commonly
19 classified as “public utilities”.

Sec. 4. Powers Conferred on Counties and Municipal-
2 **ities.**—In addition to any other powers which a county or
3 municipality may now have, each county, by and through
4 its county court, and each municipality, by and through
5 its council or other governing body in lieu thereof, shall
6 have the following powers: (1) To acquire, whether by
7 purchase, construction, or gift, one or more industrial
8 plants, or additions thereto, which shall be located within
9 this state; (2) to lease to others any or all of its indus-
10 trial plants for such rentals and upon such terms and
11 conditions as the governing body may deem advisable
12 and such governmental body may grant unto its lessee
13 an option to purchase said industrial plant, at the expi-
14 ration of the term of said lease, upon such terms as may
15 be agreed upon; (3) to issue revenue bonds for the pur-
16 pose of defraying the cost of acquiring, by construction
17 and purchase, or by either, an industrial plant, or an
18 addition, extension, or improvement thereto, and to se-
19 cure the payment of such bonds, all as hereinafter pro-

20 vided; and (4) to issue and deliver revenue bonds in
21 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

7 bonds are issued or any other revenue derived from such
8 industrial plant. The bonds and interest coupons issued
9 under the authority of this article shall never constitute
10 an indebtedness of the county, or of the municipality
11 issuing the same, within the meaning of any constitutional
12 provision or statutory limitation and shall never consti-
13 tute or give rise to a pecuniary liability of the county,
14 or of the municipality issuing the same. Neither shall
15 such bond and/or interest thereon be a charge against
16 the general credit or taxing powers of the county, or the
17 municipality and such fact shall be plainly stated on the
18 face of each such bond. Such bonds may be executed,
19 issued and delivered at any time and from time to time,
20 may be in such form and denomination; may be of such
21 tenor, must be negotiable but may be registered as to the
22 principal thereof, may be payable in such amounts and
23 at such time or times; may be payable at such place or
24 places, may bear interest at such rate or rates not to ex-
25 ceed six per cent per annum, payable at such place or
26 places and evidenced in such manner, and may contain
27 such provisions therein not inconsistent herewith, all as
28 shall be provided in the proceedings of the governing
29 body whereunder the bonds shall be authorized to be
30 issued. Said bonds may be sold by the governing body at
31 public or private sale and such sale to be made at a price
32 not lower than a price which, computed upon standard
33 tables of bond values, will have a net return of not more
34 than six per cent per annum to the purchaser upon the
35 amount paid therefor. The said bonds may also be issued
36 and delivered to the owners of an industrial plant in ex-
37 change therefor and in payment of the purchase price
38 thereof.

39 The bonds issued pursuant to this article by a county
40 court shall be signed by the president and attested by the
41 clerk of the county court under the seal of the court and
42 the bonds issued by a municipality shall be signed by the
43 mayor or other chief officer thereof and attested by the
44 clerk, recorder, or other official custodian of the records
45 of said municipality and under the seal of the municipal-
46 ity. The coupons attached thereto shall bear the facsimile
47 signature of the president of the county court or the

48 mayor or other chief officer of the municipality. In case
49 any of the officials whose signatures appear on the bonds
50 or coupons shall cease to be such officers before the
51 delivery of such bonds, such signatures shall, nevertheless,
52 be valid and sufficient for all purposes to the same extent
53 as if they had remained in office until such delivery.

54 If the proceeds of such bonds by error of calculation or
55 otherwise, shall be less than the cost of the industrial
56 plant, additional bonds may in like manner be issued to
57 provide the amount of the deficiency, and unless other-
58 wise provided for in the trust agreement, mortgage, or
59 deed of trust, shall be deemed to be of the same issue,
60 and shall be entitled to payment from the same fund,
61 without preference or priority, and shall be of equal
62 priority as to any security.

Sec. 8. Security for Bonds.—There is hereby created
2 a statutory mortgage lien upon all real estate, buildings,
3 structures, improvements and personal property included
4 as a part of an industrial plant which was acquired, pur-
5 chased, constructed, or built or improved with the pro-
6 ceeds of the bonds authorized to be issued under this
7 article, for the purpose of securing the principal of said
8 bonds and the interest thereon. The principal of and inter-
9 est on any bonds issued under the authority of this article
10 shall be secured by a pledge of the income and revenues
11 derived from the lease of the industrial plant, and also
12 be secured by a pledge of the proceeds of any sale
13 thereof. In the discretion and at the option of the county
14 court or municipality, such revenue bonds may be secured
15 by a trust indenture by and between the county court or
16 the municipality and a corporate trustee, which may be a
17 trust company or bank having trust powers, within or
18 without the state of West Virginia. The governing body
19 may authorize the issuance of such revenue bonds by
20 resolution. The resolution authorizing the revenue bonds
21 and fixing the details thereof may provide that such trust
22 indenture may contain such provisions for the protection
23 and enforcing the rights and remedies of the bondholders
24 as may be reasonable and proper, not in violation of law,
25 including covenants setting forth the duties of the county

26 court or the municipality in relation to the construction
27 or acquisition of an industrial plant, or part thereof, or
28 an addition thereto, and the improvement, repair, maintenance
29 and insurance thereof, and for the custody, safeguarding
30 and application of all moneys, and may provide
31 that the plant shall be constructed and paid for under
32 the supervision and approval of the consulting engineers
33 or architects, employed and designated by the governing
34 body and satisfactory to the purchasers of the bond, their
35 successors, assigns, or nominees, and the lessee, or either
36 thereof, who may require the security given by any contractor
37 and/or any depository of the proceeds of the bonds
38 or the revenues received from the lease or sale of the
39 industrial plant be satisfactory to such purchasers, their
40 successors, assigns, or nominees, and/or be satisfactory
41 to the lessee or purchaser of the industrial plant. Such
42 indenture may set forth the rights and remedies of the
43 bondholders, the county or municipality and/or such
44 trustee and said indenture may provide for accelerating
45 the maturity of the revenue bonds, at the option of the
46 bondholders and/or the governmental body issuing the
47 same, upon default by the lessee in the payment of rentals,
48 or for other cause. The governing body may also provide
49 by resolution and in such trust indenture for the payment
50 of the proceeds of the sale of the bonds and the
51 revenues from the industrial plant to such depository, as
52 it may determine, for the custody thereof and for the
53 method of distribution thereof, with such safeguard and
54 restrictions as it may determine to be necessary or advisable
55 for the protection thereof and upon the filing of a
56 certified copy of such resolution, or of the indenture
57 agreement for record in the office of the clerk of the
58 county court of any county, in which an industrial plant
59 is located, the same shall have the same effect as to notice,
60 as the recordation of a deed of trust or other recordable
61 instrument.

62 In lieu of the indenture agreement provided for herein
63 above the principal of and interest on said bonds may be
64 secured by a mortgage or deed of trust covering all or any
65 part of the industrial plant from which the revenues so
66 pledged may be derived and the same may be secured

67 by an assignment of the lease on said industrial plant
68 and by assignment or pledge of the income received by
69 virtue of said lease. The proceedings under which such
70 bonds are authorized to be issued, when secured by a
71 mortgage or deed of trust, may contain the same terms,
72 conditions, and provisions provided for herein when an
73 indenture agreement is entered into between the govern-
74 ing body and a trustee and any such mortgage or deed of
75 trust may contain any agreements and provisions custo-
76 marily contained in instruments securing bonds, includ-
77 ing, without limiting the generality of the foregoing, pro-
78 visions respecting the fixing and collection of rents for
79 any plant covered by such proceedings or mortgage, the
80 terms to be incorporated in the lease of such plant, the
81 maintenance and insurance of such plant, the creation
82 and maintenance of special funds from the revenues re-
83 ceived from the lease of such plant and the rights and
84 remedies available in event of default to the bondholders,
85 the governmental body, or to the trustee under a mort-
86 gage, or deed of trust, all as the governing body shall deem
87 advisable and as shall not be in conflict with the pro-
88 visions of this article or any existing law: *Provided,*
89 *however,* That in making any such agreements or pro-
90 visions a county or municipality shall not have the power
91 to obligate itself by indenture, ordinance, resolution,
92 mortgage, or deed of trust, except with respect to the plant
93 and the application of the revenues therefrom, and shall
94 not have the power to incur a pecuniary liability or a
95 charge upon its general credit or against its taxing
96 powers. The proceedings authorizing any bonds here-
97 under and any indenture, mortgage, or deed of trust
98 securing such bonds may provide that, in the event of
99 default in payment of the principal of or the interest on
100 such bonds or in the performance of any agreement con-
101 tained in such proceedings, indenture, mortgage, or deed
102 of trust, such payment and performance may be en-
103 forced by the appointment of a receiver in equity with
104 power to charge and collect rents and to apply the reve-
105 nues from the plant in accordance with such proceedings
106 or the provisions of such indenture, agreement, mortgage,
107 or deed of trust. Any such mortgage or deed of trust

108 may provide also that, in the event of default in such
109 payment or the violation of any agreement contained in
110 the mortgage or deed of trust, the mortgage or deed of
111 trust may be foreclosed either by sale at public outcry
112 or by proceedings in equity, and may provide that the
113 holder of any of the bonds secured thereby may become
114 the purchaser at any foreclosure sale, if the highest
115 bidder therefor. No breach of any such agreement shall
116 impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against
117 its taxing powers.
118

Sec. 9. Requirements Respecting Lease of Industrial
2 **Plant.**—Prior to the issuance of any bonds, the county
3 court or the municipality shall lease the industrial plant
4 to a lessee under an agreement providing for payment to
5 the county court or municipality or designated depository
6 of such rentals as will be sufficient (a) to pay the principal
7 of and interest on the bonds issued to finance the plant as
8 such principal and interest respectively mature, (b) to
9 build up and maintain any reserves deemed by the governing
10 body to be advisable in connection therewith, and
11 (c) unless the agreement of lease obligates the lessee to
12 pay for the cost of maintaining, repairing and insuring of
13 the plant to pay the costs of maintaining the plant in good
14 repair and keeping it properly insured. The said lease
15 shall contain a provision for the revision of the lease from
16 time to time, so as to produce sufficient revenue to pay the
17 interest and create a sinking fund sufficient to pay the
18 principal of said bonds when due and to provide for the
19 maintenance, repair, and insurance of the industrial
20 plant unless the latter be assumed by the lessee. The said
21 lease shall also contain such other provisions relating to
22 the industrial plant and the operation, maintenance and
23 improvement thereof and as to the rights of the lessor
24 and lessee thereof as shall be deemed necessary and
25 advisable by the governmental body.

Sec. 10. Redemption of Bonds.—The revenue bonds
2 issued pursuant to this article may contain a provision
3 therein to the effect that they, or any of them, may be
4 called for redemption at any time prior to maturity by

5 the governmental body, and at such redemption prices,
6 or premiums, which terms shall be stated in the bond.

Sec. 11. Refunding Bonds.—Any bonds issued here-
2 under and at any time outstanding may at any time and
3 from time to time be refunded by a county or municipal-
4 ity by the issuance of its refunding bonds in such amount
5 as the governing body may deem necessary to refund the
6 principal of the bonds so to be refunded, together with
7 any unpaid interest thereon; to make any improvements
8 or alterations in the industrial plant; and any premiums
9 and commissions necessary to be paid in connection
10 therewith. Any such refunding may be effected whether
11 the bonds to be refunded shall have then matured or
12 shall thereafter mature, either by sale of the refunding
13 bonds and the application of the proceeds thereof for
14 the redemption of the bonds to be refunded thereby, or
15 by exchange of the refunding bonds for the bonds to be
16 refunded thereby: *Provided*, That the holders of any
17 bonds so to be refunded shall not be compelled without
18 their consent to surrender their bonds for payment or
19 exchange prior to the date on which they are payable
20 or, if they are called for redemption, prior to the date
21 on which they are by their terms subject to redemption.
22 Any refunding bonds issued under the authority of this
23 article shall be payable from the revenues out of which
24 the bonds to be refunded thereby were payable, and shall
25 be subject to the provisions contained in section seven
26 of this article and shall be secured in accordance with the
27 provisions of section eight of this article.

Sec. 12. Use of Proceeds from Sale of Bonds.—The
2 proceeds from the sale of any bonds issued under author-
3 ity of this article shall be applied only for the purpose for
4 which the bonds were issued: *Provided, however*, That
5 any accrued interest and premium received in any such
6 sale shall be applied to the payment of the principal of
7 or the interest on the bonds sold: *And provided further*,
8 That if for any reason any portion of such proceeds shall
9 not be needed for the purpose for which the bonds were
10 issued, then such unneeded portion of said proceeds shall
11 be applied to the payment of the principal of or the
12 interest on said bonds, or held in reserve for the payment

13 thereof. The cost of acquiring any plant shall be deemed
14 to include the following: The cost of acquiring any real
15 estate deemed necessary, the actual cost of the construc-
16 tion of any part of a plant which may be constructed,
17 including architects', engineers', financial or other con-
18 sultants', and legal fees; the purchase price of any part
19 of a plant that may be acquired by purchase; all expense
20 incurred in connection with the authorization, sale and
21 issuance of the bonds to finance such acquisition; and the
22 interest on such bonds for a reasonable time prior to
23 construction, during construction, and for not exceeding
24 twelve months after completion of construction and any
25 other cost and expense necessary in the establishment
26 and acquisition of such industrial plant and the financing
27 thereof.

Sec. 13. No Contribution by County or Municipality.—

2 No county court or municipality shall have the power to
3 pay out of its general funds, or otherwise contribute, any
4 of the cost of acquiring or constructing an industrial plant,
5 to be financed out of the proceeds from the sale of revenue
6 bonds issued under the authority of this article: *Pro-*
7 *vided, however,* That this provision shall not be con-
8 strued to prevent a county or municipality from ac-
9 cepting donations of property to be used as a part of
10 an industrial plant or any to be used for defraying any
11 part of the cost of any such plant. The bonds issued pur-
12 suant to this article shall be payable solely from the rev-
13 enue derived from the industrial plant and shall not con-
14 stitute an indebtedness of the county or of the municipal-
15 ity within the meaning of any constitutional provision
16 and it shall be plainly stated on the face of each bond
17 that it has been issued under the provisions of this article
18 and that it does not constitute an indebtedness of the
19 county or municipality within the meaning of the consti-
20 tution of West Virginia.

21 No county court or municipality shall have the author-
22 ity under this article to levy any taxes for the purpose of
23 paying any part of the cost of acquiring an industrial
24 plant. However, all necessary preliminary expenses ac-
25 tually incurred by a county court or a municipality in
26 the making of surveys, taking options, preliminary plan-

27 ning, and all other expenses necessary to be paid prior
28 to the issuance, sale, and delivery of the revenue bonds,
29 may be paid by such governmental body out of any sur-
30 plus contained in any item of budgetary appropriation or
31 any revenues collected in excess of anticipated revenues,
32 which shall be reimbursed and repaid out of the proceeds
33 of the sale of the revenue bonds.

Sec. 14. Bonds Made Legal Investments.—Bonds issued
2 under the provisions of this article shall be legal invest-
3 ments for banks, building and loan associations, and in-
4 surance companies organized under the laws of this state
5 and for a business development corporation organized
6 pursuant to chapter thirty-one, article fourteen of the
7 code of West Virginia.

Sec. 15. Exemption from Taxation.—The revenue
2 bonds issued pursuant to this article and the income
3 therefrom shall be exempt from taxation except inheri-
4 tance, estate, and transfer taxes; and the real and personal
5 property which a county court or a municipality may
6 acquire to be leased to an industrial plant according to
7 the provision of this article, shall be exempt from tax-
8 ation by the state, or any county, municipality, or other
9 levying body, as public property, so long as the same is
10 owned by such county or municipality.

Sec. 16. Construction of Article.—Neither this article
2 nor anything herein contained shall be construed as a
3 restriction or limitation upon any powers which a county
4 or municipality might otherwise have under **any laws**
5 of this state, but shall be construed as alternative or addi-
6 tional; and this article shall not be construed as requir-
7 ing an election by the voters of a county or municipality
8 prior to the issuance of bonds hereunder by such county
9 or municipality, and same shall not be construed as re-
10 quiring any proceeding under any law or laws, other than
11 that which is required by this article.

Sec. 17. No Notice, Consent, or Publication Required.—
2 No notice to or consent or approval by any other govern-
3 mental body or public officer shall be required as a pre-
4 requisite to the issuance or sale of any bonds or the mak-
5 ing of any agreement, a mortgage or deed of trust under

6 the authority of this article. No publication or notice
7 shall be necessary to the validity of any resolution or pro-
8 ceeding had under this article.

Sec. 18. Severability.—If any section, clause, provision
2 or portion of this article shall be held to be invalid or
3 unconstitutional by any court of competent jurisdiction,
4 such holding shall not affect any other section, clause or
5 provision of this article which is not in and of itself un-
6 constitutional.

Sec. 19. Public Officials Exempt from Personal Liabil-
2 **ity.**—No official or member of a municipality or of a
3 county court shall be personally liable on any contract,
4 or obligation executed pursuant to the authority herein
5 contained, nor shall the issuance of bonds hereunder be
6 considered as misfeasance in office.

Sec. 20. Prohibition of Financial Interest of Public
2 **Officials.**—No member of a county court or the governing
3 body of a municipality issuing revenue bonds under the
4 provisions of this article shall have any financial inter-
5 est, directly or indirectly, in the leasing of an industrial
6 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.

2 **Section 14-b. Credits against Premium Tax for Invest-**
3 **ment in West Virginia Securities.**—If the annual state-
4 ment of any insurance company covering a calendar year
5 shows it to have investments at the close of said year in
6 West Virginia securities, as hereinafter defined, of as
7 much as twenty-five per centum of its admitted assets,
8 it shall be entitled to a credit against the premium tax
9 levied by section fourteen-a of this article in an amount
10 equal to one hundred per centum of such tax for such
11 calendar year.

12 West Virginia securities, as used in this section, shall
13 mean real estate situate in this state; bonds or interest
14 bearing notes or obligations of this state; bonds or interest
15 bearing notes or obligations of any county, district, school
16 district or independent school district, municipality or
17 any other political subdivision of this state; bonds or notes
18 secured by mortgages or deeds of trust on real estate
19 situate in this state; securities of corporations organized
20 and existing under the laws of this state including, but
21 not by way of limitation, bonds, debentures, notes, equip-
22 ment trust obligations or other evidences of indebtedness,
23 and shares of common and preferred stock of such cor-
24 porations; cash deposits in regularly established national
25 or state banks in this state; and investment shares and in-
26 vestment share accounts in federal savings and loan asso-
27 ciations in this state: *Provided, however,* That such cash
28 deposits and such investment shares and investment share
29 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:

Article 7. Assets and Liabilities.

Section

9. Standard valuation law for life policies.

Section 9. Standard Valuation Law for Life Policies.—

2 (1) The commissioner shall annually value, or cause to
3 be valued, the reserve liabilities (hereinafter called re-
4 serves) for all outstanding life insurance policies and an-
5 nuity and pure endowment contracts of every life insurer
6 transacting insurance in this state, except that in the
7 case of an alien insurer such valuation shall be limited
8 to its United States business, and may certify the amount
9 of any such reserves, specifying the mortality table or
10 tables, rate or rates of interest and methods (net level
11 premium method or other) used in the calculation of such
12 reserves.

13 All valuations made by him or by his authority shall
14 be made upon the net premium basis.

15 In every case the standard of valuation employed shall
16 be stated in his annual report.

17 In calculating such reserves, he may use group methods
18 and approximate averages for fractions of a year or oth-
19 erwise. In lieu of the valuation of the reserves herein
20 required of any foreign or alien insurer, he may accept
21 any valuation made, or caused to be made, by the insur-
22 ance supervisory official of any state or other jurisdiction
23 when such valuation complies with the minimum stand-
24 ard herein provided and if the official of such state or
25 jurisdiction accepts as sufficient and valid for all legal
26 purposes the certificate of valuation of the commissioner
27 when such certificate states the valuation to have been
28 made in a specified manner according to which the aggre-
29 gate reserves would be at least as large as if they had
30 been computed in the manner prescribed by the law of
31 that state or jurisdiction.

32 Any such insurer which at any time shall have adopted
33 any standard of valuation producing greater aggregate
34 reserves than those calculated according to the minimum
35 standard herein provided may, with the approval of the
36 commissioner, adopt any lower standard of valuation, but
37 not lower than the minimum herein provided.

38 (2) This subsection shall apply to only those policies and
39 contracts issued prior to the original operative date of the
40 Standard Nonforfeiture Law (now section thirty of article
41 thirteen of this chapter). All valuations shall be according
42 to the standard of valuations adopted by the insurer for
43 the obligations to be valued. Any insurer may adopt
44 different standards for obligations of different dates or
45 classes, but if the total value determined by any such
46 standard for the obligation for which it has been adopted
47 shall be less than that determined by the legal minimum
48 standard hereinafter prescribed, or if the insurer adopts
49 no standard, said legal minimum standard shall be used.

50 The legal minimum standard for contracts issued before
51 the first day of January, in the year one thousand nine
52 hundred one, shall be actuaries' or combined experience
53 table of mortality with interest at four per cent per annum,
54 and for contracts issued on or after said date shall be the
55 "American Experience Table" of mortality with interest
56 at three and one-half per cent per annum. Policies issued
57 by insurers doing business in this state may provide for not
58 more than one year preliminary term insurance: *Provided,*
59 *however,* That if the premium charged for term insurance
60 under a limited payment life preliminary term policy pro-
61 viding for the payment of all premiums thereof in less than
62 twenty years from the date of the policy, or under an en-
63 dowment preliminary term policy, exceeds that charged
64 for like insurance under twenty payment life preliminary
65 term policies of the same insurer, the reserve thereon at
66 the end of any year, including the first, shall not be less
67 than the reserve on a twenty payment life preliminary
68 term policy issued in the same year and at the same age,
69 together with an amount which shall be equivalent to the
70 accumulation of a net level premium sufficient to provide
71 for a pure endowment at the end of the premium payment
72 period, equal to the difference between the value at the

73 end of such period of such a twenty payment life prelimi-
74 nary term policy and a full reserve at such time of such a
75 limited payment life or endowment policy.

76 The commissioner may vary the standards of interest
77 and mortality in the case of alien insurers and in par-
78 ticular cases of invalid lives and other extra hazards.

79 Reserves for all such policies and contracts may be cal-
80 culated, at the option of the insurer, according to any
81 standards which produce greater aggregate reserves for
82 all such policies and contracts than the minimum re-
83 serves required by this subsection.

84 (3) This subsection shall apply to only those policies
85 and contracts issued on or after the original operative
86 date of the Standard Nonforfeiture Law (now section
87 thirty of article thirteen of this chapter).

88 (a) The minimum standard for the valuation of all
89 such policies and contracts shall be the commissioner's
90 reserve valuation method defined in paragraph (b), three
91 and one-half percent interest, and the following tables:

92 (i) For all ordinary policies of life insurance issued
93 on the standard basis, excluding any disability and acci-
94 dental death benefits in such policies—the Commissioners
95 1941 Standard Ordinary Mortality Table for such policies
96 issued prior to the operative date of subsection four-a of
97 section thirty, article thirteen of this chapter, and the
98 Commissioners 1958 Standard Ordinary Mortality Table
99 for such policies issued on or after such operative date:
100 *Provided*, That for any category of such policies issued on
101 female risks all modified net premiums and present values
102 referred to in this section may be calculated according to
103 an age not more than three years younger than the actual
104 age of the insured.

105 (ii) For all industrial life insurance policies issued
106 on the standard basis, excluding any disability and acci-
107 dental death benefits in such policies—the 1941 Standard
108 Industrial Mortality Table for such policies issued prior
109 to the operative date of subsection four-b of section thirty,
110 article thirteen of this chapter, and the Commissioners
111 1961 Standard Industrial Mortality Table for such policies
112 issued on or after such operative date.

113 (iii) For individual annuity and pure endowment
114 contracts, excluding any disability and accidental death
115 benefits in such policies—the 1937 Standard Annuity Mor-
116 tality Table or, at the option of the company, the Annuity
117 Mortality Table for 1949, ultimate, or any modification
118 of either of these tables approved by the commissioner.

119 (iv) For group annuity and pure endowment con-
120 tracts, excluding any disability and accidental death bene-
121 fits in such policies—the Group Annuity Mortality Table
122 for 1951, any modification of such table approved by the
123 commissioner, or, at the option of the company, any of
124 the tables or modification, of tables specified for individual
125 annuity and pure endowment contracts.

126 (v) For total permanent disability benefits in or
127 supplementary to ordinary policies or contracts—for
128 policies or contracts issued on or after January first, one
129 thousand nine hundred sixty-six, the tables of period
130 two disablement rates and the one thousand nine hundred
131 thirty to one thousand nine hundred fifty termination
132 rates of the one thousand nine hundred fifty-two dis-
133 ability study of the society of actuaries, with due re-
134 gard to the type of benefit; for policies or contracts
135 issued on or after January first, one thousand nine hun-
136 dred sixty-one and prior to January first, one thousand
137 nine hundred sixty-six, either such tables or, at the
138 option of the company, the Class (3) Disability Table
139 (1926); and for policies issued prior to January first, one
140 thousand nine hundred sixty-one, the Class (3) Disability
141 Table (1926). Any such table shall, for active lives, be
142 combined with a mortality table permitted for calcu-
143 lating the reserves for life insurance policies.

144 (vi) For accidental death benefits in or supplemen-
145 tary to policies—for policies issued on or after January
146 first, one thousand nine hundred sixty-six, the 1959 Acci-
147 dental Death Benefits Table; for policies issued on or after
148 January first, one thousand nine hundred sixty-one and
149 prior to January first, one thousand nine hundred sixty-
150 six, either such table or, at the option of the company,
151 the Inter-company Double Indemnity Mortality Table;
152 and for policies issued prior to January first, one thousand

153 nine hundred sixty-one, the Inter-company Double In-
154 demnity Mortality Table. Either table shall be combined
155 with a mortality table permitted for calculating the re-
156 serves for life insurance policies.

157 (vii) For group life insurance, life insurance issued
158 on the substandard basis and other special benefits—
159 such tables as may be approved by the commissioner.

160 (b) Reserves according to the commissioner's reserve
161 valuation method, for the life insurance and endowment
162 benefits of policies providing for a uniform amount of
163 insurance and requiring the payment of uniform pre-
164 miums shall be the excess, if any, of the present value,
165 at the date of valuation, of such future guaranteed
166 benefits provided for by such policies, over the then pres-
167 ent value of any future modified net premiums therefor.
168 The modified net premiums for any such policy shall be
169 such uniform percentage of the respective contract pre-
170 miums for such benefits that the present value, at the
171 date of issue of the policy, of all such modified net pre-
172 miums shall be equal to the sum of the then present value
173 of such benefits provided for by the policy and the excess
174 of (A) over (B), as follows:

175 (A) A net level annual premium equal to the present
176 value, at the date of issue, of such benefits provided for
177 after the first policy year, divided by the present value,
178 at the date of issue, of an annuity of one per annum
179 payable on the first and each subsequent anniversary of
180 such policy on which the premium falls due: *Provided,*
181 *however,* That such net level annual premium shall not
182 exceed the net level annual premium on the nineteen-year
183 premium whole life plan for insurance of the same
184 amount at an age one year higher than the age at issue
185 of such policy.

186 (B) A net one-year term premium for such benefits
187 provided for in the first policy year.

188 Reserves according to the commissioner's reserve valu-
189 ation method for (i) life insurance policies providing
190 for a varying amount of insurance or requiring the pay-
191 ment of varying premiums, (ii) annuity and pure en-
192 dowment contracts, (iii) disability and accidental death

193 benefits in all policies and contracts, and (iv) all other
194 benefits, except life insurance and endowment benefits
195 in life insurance policies, shall be calculated by a method
196 consistent with the principles of this paragraph (b),
197 except that any extra premiums charged because of im-
198 pairments or special hazards shall be disregarded in the
199 determination of modified net premiums.

200 (c) In no event shall an insurer's aggregate reserves
201 for all life insurance policies, excluding disability and
202 accidental death benefits, be less than the aggregate re-
203 serves calculated in accordance with the method set forth
204 in paragraph (b) and the mortality table or tables and
205 rate or rates of interest used in calculating nonforfeit-
206 ure benefits for such policies.

207 (d) Reserves for any category of policies, contracts
208 or benefits as established by the commissioner may be
209 calculated, at the option of the insurer, according to any
210 standards which produce greater aggregate reserves for
211 such category than those calculated according to the
212 minimum standard herein provided, but the rate or rates
213 of interest used shall not be higher than the correspond-
214 ing rate or rates of interest used in calculating any non-
215 forfeiture benefits provided for therein: *Provided, how-*
216 *ever,* That reserves for participating life insurance policies
217 may, with the consent of the commissioner, be calculated
218 according to a rate of interest lower than the rate of in-
219 terest used in calculating the nonforfeiture benefits in
220 such policies, with the further proviso that if such lower
221 rate differs from the rate used in the calculation of the
222 nonforfeiture benefits by more than one-half per cent the
223 insurer issuing such policies shall file with the commis-
224 sioner a plan providing for such equitable increases, if
225 any, in the cash surrender values and nonforfeiture bene-
226 fits in such policies as the commissioner shall approve.

227 (e) If the gross premium charged by any life insurer
228 on any policy or contract is less than the net premium
229 for the policy or contract according to the mortality
230 table, rate of interest and method used in calculating the
231 reserve thereon, there shall be maintained on such policy
232 or contract a deficiency reserve in addition to all other

233 reserves required by law. For each such policy or con-
234 tract the deficiency reserve shall be the present value,
235 according to such standard, of an annuity of the differ-
236 ence between such net premium and the premium
237 charged for such policy or contract, running for the re-
238 mainder 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
2 may invest in entire first mortgages on improved un-
3 encumbered real estate or the entire issue of bonds se-
4 cured thereby located within any state worth at least
5 thirty-three and one-third per centum more than the
6 amount loaned thereon, based on sound appraisal by a
7 competent appraiser and duly certified by him, provided
8 that the investment in any one mortgage or any one
9 issue of bonds or any one contract for deed does not
10 exceed twenty-five thousand dollars or two per centum
11 of the insurer's assets, whichever is the greater.

12 (b) "Improved real estate," as used in this section,
13 means all farm land which has been reclaimed and is

14 used for the purpose of husbandry, whether for tillage or
15 pasture, and all real property on which permanent build-
16 ings suitable for residence or commercial use are situated.

17 (c) Real property shall not be deemed to be encum-
18 bered within the meaning of this section by reason of the
19 existence of instruments reserving or excepting mineral
20 rights and interests, rights-of-way, sewer rights and rights
21 in walls or easements, nor by reason of building restric-
22 tions or other restrictive covenants, nor by reason of the
23 fact that it is subject to lease under which rents or
24 profits are reserved to the owners: *Provided*, That the
25 security for such investment is a full and unrestricted
26 first lien upon such real property and that there is no
27 condition nor right of re-entry or forfeiture under which
28 such investments can be cut off, subordinated or other-
29 wise disturbed.

30 (d) Notwithstanding the restrictions set forth in this
31 section any insurer may invest (1) in bonds or notes se-
32 cured by mortgage or trust deed insured by the federal
33 housing administration or in debentures issued by it
34 under the terms of an act of Congress of the United
35 States entitled the "National Housing Act," as hereto-
36 fore or hereafter amended and (2) in securities issued
37 by national mortgage associations established by or under
38 the authority of the National Housing Act, and (3) in
39 bonds or notes secured by mortgage or trust deed guar-
40 anteed as to principal by the administrator of veterans'
41 affairs pursuant to the provisions of Title III of an act of
42 Congress of the United States as of June twenty-two, one
43 thousand nine hundred forty-four, entitled the "Service-
44 men's Re-Adjustment Act of one thousand nine hundred
45 forty-four," as heretofore or hereafter amended.

46 (e) Notwithstanding the restrictions herein set forth
47 the amount of any first mortgage investment as limited
48 by paragraph (a) of this section may be exceeded if and
49 to the extent that such excess shall be guaranteed by the
50 administrator of veterans' affairs pursuant to the provi-
51 sions of Title III of an act of Congress of the United
52 States of June twenty-two, one thousand nine hundred
53 forty-four, entitled the "Servicemen's Re-Adjustment Act

54 of one thousand nine hundred forty-four," as heretofore
55 or hereafter amended.

56 (f) No such insurer shall in any manner, either di-
57 rectly or indirectly, by means of corporations, holding
58 companies, trustees or otherwise, invest in real estate
59 securities junior to first mortgages unless the first mort-
60 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, chapter 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 insurance.

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.

Section 1. Scope of Article.—Nothing in this article
2 shall apply to or affect:

3 (a) Any policy of liability or workmen's compensation
4 insurance nor shall any of the references to "other insur-
5 ance" contained in this article be interpreted to mean,
6 include, or apply to, any policy of liability or workmen's
7 compensation insurance.

8 (b) Any group accident and sickness policy issued in
9 accordance with article sixteen of this chapter.

10 (c) Life insurance (including endowment or annuity
11 contracts), or contracts supplemental thereto, which con-
12 tain only such provisions relating to accident and sick-
13 ness insurance as (1) provide additional benefits in case
14 of death by accidental means, or as (2) operate to safe-
15 guard such contracts against lapse, or to give a special
16 surrender value or special benefit or an annuity in the
17 event that the insured shall become totally and perma-
18 nently disabled as defined by the contract or supplemental
19 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
2 of the peace shall charge and shall collect in advance
3 from the party or parties requesting such services the
4 following fees:

- 5 (1) For entering and trying any civil suit and the
6 issuance of all papers including distress war-
7 rant and attachment orders and the per-
8 formance of all other services in connection
9 with any such civil suit whether the suit be

10	contested or uncontested and whether or not	
11	the suit be completed or discontinued but	
12	excepting services in connection with exe-	
13	cutions or garnishments and suggestee exe-	
14	cutions	\$5.00
15	(2) For all services in connection with an exe-	
16	cution on judgment, suggestion on judgment,	
17	execution and garnishment whether execu-	
18	tion be without garnishment or there be both	
19	execution and garnishment or suggestee	
20	execution	2.50
21	(3) For each bond filed in a case, appeal bond,	
22	stay-of-execution bond, bail bond, civil order	
23	of arrest, detinue bond, except bond in	
24	attachment case and docketing same	1.00
25	(4) For taking depositions of witnesses if done	
26	in an hour or less	1.00
27	(5) If not completed in an hour, for additional	
28	time at the rate, per hour of	1.00
29	(6) For taking an inquest on a dead body, to be	
30	audited and paid from the treasury of the	
31	county	5.00
32	(7) Order of appraisement, appointing appraisers,	
33	swearing of the same and docketing same,	
34	to be paid by plaintiff	1.00
35	(8) For taking and certifying acknowledgment	
36	of deed or other instrument of writing .....	.50
37	(9) For mailing each suggestee execution by reg-	
38	istered and/or certified mail and return	
39	receipt requested .....	.35

C

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	
2	constable shall charge and collect in advance from the
3	party or parties requesting such services the following
4	fees in civil cases:
5	(1) For service and return of summons to com-
6	mence a suit \$2.75, and for every additional
7	summons in same suit_____ .75
8	(2) For servicing and returning order of attach-
9	ment, for each garnishee summoned_____ 1.00
10	(3) For taking property under order of attach-
11	ment, including inventory and appraisement,
12	besides the reasonable expenses of removing,
13	securing and keeping the property attached... 2.50
14	(4) For subpoenas, for each person served there-
15	with _____ .50
16	(5) For summoning and returning a jury_____ 1.50
17	(6) For levying an execution on personal prop-
18	erty and return _____ 2.00
19	(7) For posting notices of sale (3) for suggestee
20	execution, suggestion order, attachment, dis-
21	tress warrant, each _____ .40
22	(8) For money collected and paid to justice, con-
23	stable or plaintiff, after levy, under execution,
24	suggestee execution, suggestion order, dis-
25	tress warrant or attachment, sale or no sale 5%
26	(9) For executing a writ of possession under sec-
27	tion ten, article one of this chapter_____ 4.00
28	(10) For summoning the jury and witnesses for in-
29	quest on a dead body, to be audited and paid
30	from the treasury of the county_____ 3.00
31	(11) <i>Provided, however, That in an action brought</i>

32	before a justice to recover a sum of money	
33	where an attachment, garnishment or sugges-	
34	tion order is issued against the wages of a	
35	defendant, the maximum fee to be charged by	
36	the constable for said attachment, garnish-	
37	ment, or suggestion order shall be two dollars	
38	and fifty cents.....	2.50
39	(12) Second summons in attachment, each	1.00
40	(13) Extra time necessary in taking and removing	
41	property under attachment order, and eviction	
42	execution, distress warrant or writ of detinue	1.00
43	(14) For delivering a temporary or permanent	
44	release .....	.50

Sec. 12. Fees of Constables in Criminal Cases.—Every
 2 constable shall be entitled to the following fees in crimi-
 3 nal cases:

- 4 1. For an arrest in case of felony..... 3.50
- 5 2. For an arrest in cases other than felony..... 3.00
- 6 3. For serving a subpoena..... .50
- 7 4. For executing a search warrant..... 2.50
- 8 5. For summoning a jury in criminal action
- 9 6. Witness fee constable..... .50
- 10 7. In cases of search warrants and proceedings under
- 11 article one, chapter sixty-two of this code, the fees of the
- 12 constable shall be chargeable to the county, shall be
- 13 audited and paid as other claims of like nature by the
- 14 county court.
- 15 8. In criminal cases, other than felony, such fees shall
- 16 be charged and paid as provided in section fifteen, article
- 17 five, chapter seven of this code, and section eight, article
- 18 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 seven-
 teen, 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.—

2 (1) Every justice shall be entitled to a fee of four dol-
3 lars in each criminal case and proceeding before him,
4 which fee shall constitute his compensation for all official
5 services performed by him in connection with any single
6 case, including affidavit for warrant, search and seizure
7 warrant, warrant for arrest, trial examination, issuing
8 subpoenas and copies thereof, warrant summoning and
9 swearing a jury when required, swearing and certifying
10 attendance of witnesses, entering judgment and taxing
11 costs and all other acts in connection herewith . . . except,
12 that he shall be allowed an additional fee of fifty cents
13 for making and certifying a transcript of his docket in
14 any particular case and transmitting the same to the
15 clerk of the circuit court, the state road commissioner,
16 or any other office in which he may be by law required
17 to certify such transcript, and two dollars for bond or re-
18 cognizance, to be paid by defendant. And no other fees
19 shall be taxed or charged by any justice in such cases
20 and proceedings: *Provided, however,* That under the
21 provisions of this section the justice shall be entitled to
22 such fees theretofore earned, as were authorized by law
23 at the time such fees were earned, and the prosecuting
24 attorneys and county courts may approve and pay such
25 accrued costs in the same manner as was provided by
26 the code of West Virginia, one thousand nine hundred
27 thirty-one, prior to the enactment of chapters thirty-one
28 and thirty-two, acts of the Legislature, regular session,
29 one thousand nine hundred thirty-five.

30 (2) For issuing sheep warrant, appointing and
31 swearing appraisers and docketing same 2.50

32	(3)	Bond or recognizance, if executed after the	
33		hour of eight o'clock p. m. and before the	
34		hour of eight o'clock a. m.	2.50

CHAPTER 87

(Senate Bill No. 75—By Mr. Carson, Mr. President,
and Mr. Carrigan)

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

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.
3. Juvenile compact administrator.
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
2 found and declared: (1) That juveniles who are not under
3 proper supervision and control, or who have absconded,
4 escaped or run away, are likely to endanger their own
5 health, morals and welfare, and the health, morals and
6 welfare of others; (2) that the cooperation of this state
7 with other states is necessary to provide for the welfare
8 and protection of juveniles and of the people of this state.
9 It shall therefore be the policy of this state, in adopting

10 the interstate compact on juveniles, to cooperate fully
11 with other states: (1) In returning juveniles to such
12 other states whenever their return is sought; and (2) in
13 accepting the return of juveniles whenever a juvenile
14 residing in this state is found or apprehended in another
15 state and in taking all measures to initiate proceedings
16 for the return of such juveniles.

Sec. 2. Execution of Compact.—The governor is hereby
2 authorized and directed to execute a compact on behalf
3 of this state with any other state or states legally joining
4 therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

Article I. Findings and Purposes

1 That juveniles who are not under proper supervision and
2 control, or who have absconded, escaped or run away, are
3 likely to endanger their own health, morals and welfare,
4 and the health, morals and welfare of others. The coop-
5 eration of the states party to this compact is therefore
6 necessary to provide for the welfare and protection of
7 juveniles and of the public with respect to (1) coopera-
8 tive supervision of delinquent juveniles on probation or
9 parole; (2) the return, from one state to another, of de-
10 linquent juveniles who have escaped or absconded; (3)
11 the return, from one state to another, of nondelinquent
12 juveniles who have run away from home; and (4) addi-
13 tional measures for the protection of juveniles and of the
14 public, which any two or more of the party states may find
15 desirable to undertake cooperatively. In carrying out the
16 provisions of this compact the party states shall be guided
17 by the noncriminal, reformatory and protective policies
18 which guide their laws concerning delinquent, neglected
19 or dependent juveniles generally. It shall be the policy
20 of the states party to this compact to cooperate and observe
21 their respective responsibilities for the prompt return
22 and acceptance of juveniles and delinquent juveniles who
23 become subject to the provisions of this compact. The
24 provisions of this compact shall be reasonably and liberally
25 construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

1 That all remedies and procedures provided by this com-
2 pact shall be in addition to and not in substitution for
3 other rights, remedies and procedures, and shall not be
4 in derogation of parental rights and responsibilities.

Article III. Definitions

1 That for the purposes of this compact:

2 "Delinquent juvenile" means any juvenile who has been
3 adjudged delinquent and who, at the time the provisions
4 of this compact are invoked, is still subject to the juris-
5 diction of the court that has made such adjudication or
6 to the jurisdiction or supervision of an agency or insti-
7 tution pursuant to an order of such court.

8 "Probation or parole" means any kind of conditional
9 release of juveniles authorized under the laws of the states
10 party hereto.

11 "Court" means any court having jurisdiction over delin-
12 quent, neglected or dependent children.

13 "State" means any state, territory or possession of the
14 United States, the District of Columbia, and the Common-
15 wealth of Puerto Rico.

16 "Residence" or any variant thereof means a place at
17 which a home or regular place of abode is maintained.

Article IV. Return of Runaways

1 (a) That the parent, guardian, person or agency en-
2 titled to legal custody of a juvenile who has not been
3 adjudged delinquent but who has run away without the
4 consent of such parent, guardian, person or agency may
5 petition the appropriate court in the demanding state for
6 the issuance of a requisition for his return. The petition
7 shall state the name and age of the juvenile, the name of
8 the petitioner and the basis of entitlement to the juve-
9 nile's custody, the circumstances of his running away,
10 his location if known at the time application is made,
11 and such other facts as may tend to show that the juve-
12 nile who has run away is endangering his own welfare
13 or the welfare of others and is not an emancipated minor.
14 The petition shall be verified by affidavit, shall be exe-

15 cuted in duplicate, and shall be accompanied by two
16 certified copies of the document or documents on which
17 the petitioner's entitlement to the juvenile's custody is
18 based, such as birth certificates, letters of guardianship,
19 or custody decrees. Such further affidavits and other
20 documents as may be deemed proper may be submitted
21 with such petition. The judge of the court to which this
22 application is made may hold a hearing thereon to de-
23 termine whether for the purposes of this compact the
24 petitioner is entitled to the legal custody of the juvenile,
25 whether or not it appears that the juvenile has in fact
26 run away without consent, whether or not he is an
27 emancipated minor, and whether or not it is in the best
28 interest of the juvenile to compel his return to the state.
29 If the judge determines, either with or without a hearing,
30 that the juvenile should be returned, he shall present to
31 the appropriate court or to the executive authority of the
32 state where the juvenile is alleged to be located a written
33 requisition for the return of such juvenile. Such requis-
34 tion shall set forth the name and age of the juvenile,
35 the determination of the court that the juvenile has run
36 away without the consent of a parent, guardian, person
37 or agency entitled to his legal custody, and that it is in
38 the best interest and for the protection of such juvenile
39 that he be returned. In the event that a proceeding for
40 the adjudication of the juvenile as a delinquent, neglected
41 or dependent juvenile is pending in the court at the time
42 when such juvenile runs away, the court may issue a
43 requisition for the return of such juvenile upon its own
44 motion, regardless of the consent of the parent, guardian,
45 person or agency entitled to legal custody, reciting therein
46 the nature and circumstances of the pending proceeding.
47 The requisition shall in every case be executed in dupli-
48 cate and shall be signed by the judge. One copy of the
49 requisition shall be filed with the compact administrator
50 of the demanding state, there to remain on file subject
51 to the provisions of law governing records of such court.
52 Upon the receipt of a requisition demanding the return
53 of a juvenile who has run away, the court or the execu-
54 tive authority to whom the requisition is addressed shall
55 issue an order to any peace officer or other appropriate

56 person directing him to take into custody and detain such
57 juvenile. Such detention order must substantially recite
58 the facts necessary to the validity of its issuance here-
59 under. No juvenile detained upon such order shall be
60 delivered over to the officer whom the court demanding
61 him shall have appointed to receive him, unless he shall
62 first be taken forthwith before a judge of a court in the
63 state, who shall inform him of the demand made for
64 his return, and who may appoint counsel or guardian
65 ad litem for him. If the judge of such court shall find
66 that the requisition is in order, he shall deliver such juve-
67 nile over to the officer whom the court demanding him
68 shall have appointed to receive him. The judge, how-
69 ever, may fix a reasonable time to be allowed for the
70 purpose of testing the legality of the proceeding.

71 Upon reasonable information that a person is a juvenile
72 who has run away from another state party to this com-
73 pact without the consent of a parent, guardian, person or
74 agency entitled to his legal custody, such juvenile may be
75 taken into custody without a requisition and brought
76 forthwith before a judge of the appropriate court who may
77 appoint counsel or guardian ad litem for such juvenile and
78 who shall determine after a hearing whether sufficient
79 cause exists to hold the person, subject to the order of the
80 court, for his own protection and welfare, for such a time
81 not exceeding ninety days as will enable his return to
82 another state party to this compact pursuant to a requis-
83 ition for his return from a court of that state. If, at the
84 time when a state seeks the return of a juvenile who
85 has run away, there is pending in the state wherein he
86 is found any criminal charge, or any proceeding to have
87 him adjudicated a delinquent juvenile for an act com-
88 mitted in such state, or if he is suspected of having com-
89 mitted within such state a criminal offense or an act of
90 juvenile delinquency, he shall not be returned without
91 the consent of such state until discharged from prosecu-
92 tion or other form of proceeding, imprisonment, detention
93 or supervision for such offense or juvenile delinquency.
94 The duly accredited officers of any state party to this
95 compact, upon the establishment of their authority and
96 the identity of the juvenile being returned, shall be per-

97 mitted to transport such juvenile through any and all
98 states party to this compact, without interference. Upon
99 his return to the state from which he ran away, the juve-
100 nile shall be subject to such further proceedings as may
101 be appropriate under the laws of that state.

102 (b) That the state to which a juvenile is returned
103 under this article shall be responsible for payment of the
104 transportation costs of such return.

105 (c) That "juvenile" as used in this article means any
106 person who is a minor under the law of the state of resi-
107 dence of the parent, guardian, person or agency entitled
108 to the legal custody of such minor.

Article V. Return of Escapees and Absconders

1 (a) That the appropriate person or authority from
2 whose probation or parole supervision a delinquent juve-
3 nile has absconded or from whose institutional custody
4 he has escaped shall present to the appropriate court or
5 to the executive authority of the state where the delin-
6 quent juvenile is alleged to be located a written requis-
7 ition for the return of such delinquent juvenile. Such
8 requisition shall state the name and age of the delinquent
9 juvenile, the particulars of his adjudication as a delin-
10 quent juvenile, the circumstances of the breach of the
11 terms of his probation or parole or of his escape from an
12 institution or agency vested with his legal custody or su-
13 pervision, and the location of such delinquent juvenile, if
14 known, at the time the requisition is made. The requis-
15 ition shall be verified by affidavit, shall be executed in
16 duplicate, and shall be accompanied by two certified
17 copies of the judgment, formal adjudication, or order of
18 commitment which subjects such delinquent juvenile to
19 probation or parole or to the legal custody of the institu-
20 tion or agency concerned. Such further affidavits and
21 other documents as may be deemed proper may be sub-
22 mitted with such requisition. One copy of the requisition
23 shall be filed with the compact administrator of the de-
24 manding state, there to remain on file subject to the pro-
25 visions of law governing records of the appropriate court.
26 Upon the receipt of a requisition demanding the return
27 of a delinquent juvenile who has absconded or escaped,

28 the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer
29 or other appropriate person directing him to take into
30 custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary
31 to the validity of its issuance hereunder. No delinquent
32 juvenile detained upon such order shall be delivered over
33 to the officer whom the appropriate person or authority
34 demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an
35 appropriate court in the state, who shall inform him of
36 the demand made for his return and who may appoint
37 counsel or guardian ad litem for him. If the judge of such
38 court shall find that the requisition is in order, he shall
39 deliver such delinquent juvenile over to the officer whom
40 the appropriate person or authority demanding him shall
41 have appointed to receive him. The judge, however, may
42 fix a reasonable time to be allowed for the purpose of
43 testing the legality of the proceeding.

47 Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or
48 parole, or escaped from an institution or agency vested
49 with his legal custody or supervision in any state party
50 to this compact, such person may be taken into custody
51 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
52 counsel or guardian ad litem for such person and who
53 shall determine, after a hearing, whether sufficient cause
54 exists to hold the person subject to the order of the court
55 for such a time, not exceeding ninety days, as will enable
56 his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state
57 seeks the return of a delinquent juvenile who has either
58 absconded while on probation or parole or escaped from
59 an institution or agency vested with his legal custody or
60 supervision, there is pending in the state wherein he is
61 detained any criminal charge or any proceeding to have
62 him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed
63 within such state a criminal offense or an act of

69 juvenile delinquency, he shall not be returned without
70 the consent of such state until discharged from prosecution
71 or other form of proceeding, imprisonment, detention
72 or supervision for such offense or juvenile delinquency.
73 The duly accredited officers of any state party to this compact,
74 upon the establishment of their authority and the
75 identity of the delinquent juvenile being returned, shall
76 be permitted to transport such delinquent juvenile
77 through any and all states party to this compact, without
78 interference. Upon his return to the state from which he
79 escaped or absconded, the delinquent juvenile shall be
80 subject to such further proceedings as may be appropriate
81 under the laws of that state.

82 (b) That the state to which a delinquent juvenile is
83 returned under this article shall be responsible for the
84 payment of the transportation costs of such return.

Article VI. Voluntary Return Procedure

1 That any delinquent juvenile who has absconded while
2 on probation or parole, or escaped from an institution or
3 agency vested with his legal custody or supervision in any
4 state party to this compact, and any juvenile who has run
5 away from any state party to this compact, who is taken
6 into custody without a requisition in another state party
7 to this compact under the provisions of article IV(a) or
8 of article V(a), may consent to his immediate return to
9 the state from which he absconded, escaped or ran away.
10 Such consent shall be given by the juvenile or delinquent
11 juvenile and his counsel or guardian ad litem if any, by
12 executing or subscribing a writing, in the presence of a
13 judge of the appropriate court, which states that the juvenile
14 or delinquent juvenile and his counsel or guardian ad
15 litem, if any, consent to his return to the demanding state.
16 Before such consent shall be executed or subscribed, however,
17 the judge, in the presence of counsel or guardian ad
18 litem, if any, shall inform the juvenile or delinquent juvenile
19 of his rights under this compact. When the consent
20 has been duly executed, it shall be forwarded to and filed
21 with the compact administrator of the state in which the
22 court is located and the judge shall direct the officer having
23 the juvenile or delinquent juvenile in custody to de-

24 liver him to the duly accredited officer or officers of the
25 state demanding his return, and shall cause to be deliv-
26 ered to such officer or officers a copy of the consent. The
27 court may, however, upon the request of the state to
28 which the juvenile or delinquent juvenile is being re-
29 turned, order him to return unaccompanied to such state
30 and shall provide him with a copy of such court order; in
31 such event a copy of the consent shall be forwarded to
32 the compact administrator of the state to which said juve-
33 nile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

1 (a) That the duly constituted judicial and administra-
2 tive authorities of a state party to this compact (herein
3 called "sending state") may permit any delinquent juve-
4 nile within such state, placed on probation or parole, to
5 reside in any other state party to this compact (herein
6 called "receiving state") while on probation or parole,
7 and the receiving state shall accept such delinquent juve-
8 nile, if the parent, guardian or person entitled to the legal
9 custody of such delinquent juvenile is residing or under-
10 takes to reside within the receiving state. Before granting
11 such permission, opportunity shall be given to the re-
12 ceiving state to make such investigations as it deems neces-
13 sary. The authorities of the sending state shall send to
14 the authorities of the receiving state copies of pertinent
15 court orders, social case studies and all other available
16 information which may be of value to and assist the re-
17 ceiving state in supervising a probationer or parolee under
18 this compact. A receiving state, in its discretion, may agree
19 to accept supervision of a probationer or parolee in cases
20 where the parent, guardian or person entitled to the legal
21 custody of the delinquent juvenile is not a resident of the
22 receiving state, and if so accepted the sending state may
23 transfer supervision accordingly.

24 (b) That each receiving state will assume the duties of
25 visitation and of supervision over any such delinquent
26 juvenile and in the exercise of those duties will be gov-
27 erned by the same standards of visitation and supervision

28 that prevail for its own delinquent juveniles released on
29 probation or parole.

30 (c) That, after consultation between the appropriate
31 authorities of the sending state and of the receiving state
32 as to the desirability and necessity of returning such a
33 delinquent juvenile, the duly accredited officers of a send-
34 ing state may enter a receiving state and there apprehend
35 and retake any such delinquent juvenile on probation or
36 parole. For that purpose, no formalities will be required,
37 other than establishing the authority of the officer and the
38 identity of the delinquent juvenile to be retaken and re-
39 turned. The decision of the sending state to retake a
40 delinquent juvenile on probation or parole shall be con-
41 clusive upon and not reviewable within the receiving state,
42 but if, at the time the sending state seeks to retake a
43 delinquent juvenile on probation or parole, there is pend-
44 ing against him within the receiving state any criminal
45 charge or any proceeding to have him adjudicated a de-
46 linquent juvenile for any act committed in such state or
47 if he is suspected of having committed within such state
48 a criminal offense or an act of juvenile delinquency, he
49 shall not be returned without the consent of the receiv-
50 ing state until discharged from prosecution or other form
51 of proceeding, imprisonment, detention or supervision for
52 such offense or juvenile delinquency. The duly accredited
53 officers of the sending state shall be permitted to transport
54 delinquent juveniles being so returned through any and
55 all states party to this compact, without interference.

56 (d) That the sending state shall be responsible under
57 this article for paying the costs of transporting any de-
58 linquent juvenile to the receiving state or of returning
59 any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

1 (a) That the provisions of articles IV(b), V(b) and
2 VII(d) of this compact shall not be construed to alter or
3 affect any internal relationship among the departments,
4 agencies and officers of and in the government of a party
5 state, or between a party state and its subdivisions, as to
6 the payment of costs, or responsibilities therefor.

7 (b) That nothing in this compact shall be construed to

8 prevent any party state or subdivision thereof from as-
9 serting any right against any person, agency or other
10 entity in regard to costs for which such party state or sub-
11 division thereof may be responsible pursuant to articles
12 IV (b), V (b) or VII (d) of this compact.

Article IX. Detention Practices

1 That, to every extent possible, it shall be the policy of
2 states party to this compact that no juvenile or delinquent
3 juvenile shall be placed or detained in any prison, jail or
4 lockup nor be detained or transported in association with
5 criminal, vicious or dissolute persons.

Article X. Supplementary Agreements

1 That the duly constituted administrative authorities of
2 a state party to this compact may enter into supplemen-
3 tary agreements with any other state or states party here-
4 to for the cooperative care, treatment and rehabilitation
5 of delinquent juveniles whenever they shall find that such
6 agreements will improve the facilities or programs avail-
7 able for such care, treatment and rehabilitation. Such
8 care, treatment and rehabilitation may be provided in an
9 institution located within any state entering into such
10 supplementary agreement. Such supplementary agree-
11 ments shall (1) provide the rates to be paid for the care,
12 treatment and custody of such delinquent juveniles, tak-
13 ing into consideration the character of facilities, services
14 and subsistence furnished; (2) provide that the delinquent
15 juvenile shall be given a court hearing prior to his being
16 sent to another state for care, treatment and custody; (3)
17 provide that the state receiving such a delinquent juve-
18 nile in one of its institutions shall act solely as agent for
19 the state sending such delinquent juvenile; (4) provide
20 that the sending state shall at all times retain jurisdiction
21 over delinquent juveniles sent to an institution in another
22 state; (5) provide for reasonable inspection of such in-
23 stitutions by the sending state; (6) provide that the con-
24 sent of the parent, guardian, person or agency entitled to
25 the legal custody of said delinquent juvenile shall be se-
26 cured prior to his being sent to another state; and (7) make
27 provision for such other matters and details as shall be

- 28 necessary to protect the rights and equities of such delin-
29 quent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

- 1 That any state party to this compact may accept any
2 and all donations, gifts and grants of money, equipment
3 and services from the federal or any local government,
4 or any agency thereof and from any person, firm or cor-
5 poration, for any of the purposes and functions of this
6 compact, and may receive and utilize the same subject
7 to the terms, conditions and regulations governing such
8 donations, gifts and grants.

Article XII. Compact Administrators

- 1 That the governor of each state party to this compact
2 shall designate an officer who, acting jointly with like offi-
3 cers of other party states, shall promulgate rules and regu-
4 lations to carry out more effectively the terms and pro-
5 visions of this compact.

Article XIII. Execution of Compact

- 1 That this compact shall become operative immediately
2 upon its execution by any state as between it and any
3 other state or states so executing. When executed it shall
4 have the full force and effect of law within such state, the
5 form or execution to be in accordance with the laws of
6 the executing state.

Article XIV. Renunciation

- 1 That this compact shall continue in force and remain
2 binding upon each executing state until renounced by it.
3 Renunciation of this compact shall be by the same au-
4 thority which executed it, by sending six months' notice
5 in writing of its intention to withdraw from the compact
6 to the other states party hereto. The duties and obliga-
7 tions of a renouncing state under article VII hereof shall
8 continue as to parolees and probationers residing therein
9 at the time of withdrawal until retaken or finally dis-
10 charged. Supplementary agreements entered into under
11 article X hereof shall be subject to renunciation as pro-
12 vided by such supplementary agreements, and shall not

13 be subject to the six months' renunciation notice of the
14 present article.

Article XV. Severability

1 That the provisions of this compact shall be severable
2 and if any phrase, clause, sentence or provision of this
3 compact is declared to be contrary to the constitution of
4 any participating state or of the United States or the ap-
5 plicability thereof to any government, agency, person or
6 circumstance is held invalid, the validity of the remainder
7 of this compact and the applicability thereof to any gov-
8 ernment, agency, person or circumstances shall not be
9 affected thereby. If this compact shall be held contrary
10 to the constitution of any state participating therein, the
11 compact shall remain in full force and effect as to the
12 remaining states and in full force and effect as to the state
13 affected as to all severable matters.

Sec. 2-a. Execution of Additional Article.—The gov-
2 ernor is further authorized and directed to execute, with
3 any other state or states legally joining in the same, an
4 additional article to said compact in the form substantial-
5 ly as follows:

6 That this article shall provide additional remedies, and
7 shall be binding only as among and between those party
8 states which specifically execute the same.

9 For the purposes of this article, "child," as used herein,
10 means any minor within the jurisdictional age limits of
11 any court in the home state.

12 When any child is brought before a court of a state of
13 which such child is not a resident, and such state is willing
14 to permit such child's return to the home state of such
15 child, such home state, upon being so advised by the state
16 in which such proceeding is pending, shall immediately
17 institute proceedings to determine the residence and juris-
18 dictional facts as to such child in such home state, and
19 upon finding that such child is in fact a resident of said
20 state and subject to the jurisdiction of the court thereof,
21 shall within five days authorize the return of such child
22 to the home state, and to the parent or custodial agency
23 legally authorized to accept such custody in such home
24 state, and at the expense of such home state, to be paid

25 from such funds as such home state may procure, design-
26 nate, or provide, prompt action being of the essence.

Sec. 2-b. Execution of Amendment.—The governor is
2 further authorized and directed to execute, with any other
3 state or states legally joining in the same, an amendment
4 to said compact in the form substantially as follows:

5 (a) This amendment shall provide additional remedies,
6 and shall be binding only as among and between those
7 party states which specifically execute the same.

8 (b) All provisions and procedures of articles V and VI
9 of the interstate compact on juveniles shall be construed
10 to apply to any juvenile charged with being a delinquent
11 by reason of a violation of any criminal law. Any juvenile,
12 charged with being a delinquent by reason of violating
13 any criminal law shall be returned to the requesting
14 state upon a requisition to the state where the juvenile
15 may be found. A petition in such case shall be filed in
16 a court of competent jurisdiction in the requesting state
17 where the violation of criminal law is alleged to have
18 been committed. The petition may be filed regardless of
19 whether the juvenile has left the state before or after
20 the filing of the petition. The requisition described in
21 article V of the compact shall be forwarded by the judge
22 of the court in which the petition has been filed.

Sec. 3. Juvenile Compact Administrator.—Pursuant to
2 said compact, the governor is hereby authorized and em-
3 powered to designate an officer who shall be the compact
4 administrator and who, acting jointly with like officers
5 of other party states, shall promulgate rules and regula-
6 tions to carry out more effectively the terms of the com-
7 pact. Said compact administrator shall serve subject to
8 the will and pleasure of the governor. The compact admin-
9 istrator is hereby authorized, empowered and directed to
10 cooperate with all departments, agencies and officers of
11 and in the government of this state and its subdivisions in
12 facilitating the proper administration of the compact or
13 of any supplementary agreement or agreements entered
14 into by this state hereunder.

Sec. 4. Supplementary Agreements.—The compact ad-
2 ministrator 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:

Article 1. State Department of Labor.

Section

2. Commissioner of labor; qualifications; appointment; term of office; salary.

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

hundred thirty-one, as amended, and to provide for the transfer of any unexpended balance in the bedding division fund of the department of labor, established by said section, to the general revenue fund.

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 nine hundred thirty-one, 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 conveying 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.

—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,

6 and rehabilitation of alcoholics; for research into the
7 causes, prevention, and treatment of alcoholism; for the
8 training of personnel to work with alcoholics; and for the
9 education of the public concerning alcoholism.

10 The department's program for the care, treatment, and
11 rehabilitation of alcoholics may include, when intended
12 for such purposes, the establishment of special clinics or
13 wards within, attached to, or upon the grounds of one
14 or more of the state hospitals under the control of the
15 department of mental health; the acquisition in the name
16 of the department of real and personal property and the
17 construction of buildings and other facilities; the leasing
18 of suitable clinics, hospitals, or other facilities; and the
19 utilization, through contracts or otherwise, of the avail-
20 able services and assistance of any professional or non-
21 professional persons, groups, organizations or institutions
22 in the development, promotion and conduct of the de-
23 partment's program.

24 Neither the department of mental health nor the divi-
25 sion on alcoholism shall be required to accept any alco-
26 holic voluntarily seeking hospitalization for clinical or
27 hospital care, treatment, or rehabilitation; but the de-
28 partment may accept, pursuant to its adopted and pro-
29 mulgated rules and regulations, responsibility for clinical
30 or hospital care, treatment, or rehabilitation of any alco-
31 holic through arrangements made voluntarily with the
32 department by him or some person acting in his behalf:
33 *Provided*, That any such person accepted by the depart-
34 ment on a voluntary basis shall be charged a minimum
35 fee of seven dollars per day, unless he shows, to the satis-
36 faction of the department, that he is unable to pay said fee.

37 The department shall accept all alcoholics committed
38 by a county mental hygiene commission in accordance
39 with the procedure of article six of this chapter; but not-
40 withstanding any provision in said article six which may
41 be to the contrary, the supervisor of the division on alco-
42 holism may, in his discretion, specify the clinic or hos-
43 pital to which the alcoholic shall be committed.

44 The department's program of research into the causes,
45 prevention, and treatment of alcoholism may include the

46 utilization, through contracts or otherwise, of the available
47 services and assistance of any professional or nonprofes-
48 sional persons, groups, organizations or institutions, as well
49 as cooperation with private and public agencies engaged
50 in research in alcoholism or rehabilitation of alcoholics.

51 The department's program on alcoholism shall also pro-
52 vide for the training of personnel to work with alcoholics
53 and the informing of the public as well as interested
54 groups and persons concerning alcoholism and the pre-
55 vention and treatment thereof.

56 The department may employ such medical, psychiatric,
57 psychological, secretarial and other assistance as may be
58 necessary to carry out the provisions of this section.

59 As used in this section,

60 (a) "Alcoholic" shall mean any person who chronically
61 and habitually uses alcoholic beverages to the extent that
62 he has lost the power of self-control as to the use of such
63 beverages, or, while chronically and habitually under the
64 influence of alcoholic beverages, endangers public morals,
65 health, safety or welfare.

66 (b) "Alcoholism" shall mean the condition of abnormal
67 behavior or illness resulting directly or indirectly from
68 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,

28 fire or other emergency at a mine, all members of mine
29 rescue teams assigned to rescue operations shall, during
30 the period of their rescue work, be employees of the
31 operator of the mine where the emergency exists; shall
32 be compensated by said operator at the rate established
33 in the area for such work. In no case shall this rate be
34 less than the prevailing wage rate in the industry for
35 the most skilled class of inside mine labor. During the
36 period of their emergency employment members of mine
37 rescue teams shall be protected by the workmen's com-
38 pensation subscription of such emergency employer.

Article 2. Coal Mines.

Section

5. Ventilation of mines in general.
7. Gassy mines; nongassy mines; examination.
9. Same; duties; ventilation; loose coal, slate or rock; props; drainage of water; man doors.
14. Same; daily inspection of working places; records.
28. Roof support.
29. Authorized explosives; storage or use of unauthorized explosives.
39. Electricity; general provisions.
43. Electric equipment in gassy mines.
46. Welding and cutting; blowtorches; fuel.
57. No act permitted endangering security of mine; search for intoxicants, matches, etc.
58. Fire protection.
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.
78. Penalties.

Section 5. Ventilation of Mines in General.—The oper-
2 ator or mine foreman of every coal mine, whether worked
3 by shaft, slope or drift, shall provide and hereinafter
4 maintain for every such mine adequate ventilation. In
5 all mines the quantity of air passing through the last open
6 crosscut between the intake and return in any set of
7 entries shall be not less than six thousand cubic feet
8 of air per minute, and as much more as is necessary to
9 dilute and render harmless and carry away flammable
10 and harmful gases: *Provided, however,* That the quan-
11 tity of air reaching the last crosscut in pillar sections
12 may be less than six thousand cubic feet per minute if
13 at least six thousand cubic feet of air per minute is being
14 delivered to the intake of the pillar line. The air current
15 shall under any conditions have a sufficient volume and
16 velocity to reduce and carry away smoke from blasting

17 and any flammable or harmful gases. All active under-
18 ground working places in a mine shall be ventilated by a
19 current of air containing not less than nineteen and five-
20 tenths per cent of oxygen, and not more than one per
21 cent of carbon dioxide, and no harmful quantities of
22 other noxious or poisonous gases.

23 As working places advance, crosscuts for air shall be
24 made not to exceed eighty feet apart. Where necessary
25 to render harmless and carry away noxious or flammable
26 gases, line brattice or other approved methods of ven-
27 tilation shall be used so as to properly ventilate the face.
28 All crosscuts between the main intake and return air-
29 ways not required for passage of air and equipment
30 shall be closed with stoppings substantially built with
31 incombustible or fire-resistive material so as to keep
32 working places well ventilated: *Provided, however.* That
33 in mines where it becomes necessary to provide larger
34 pillars for adequate roof support, working places shall
35 not be driven more than two hundred feet without pro-
36 viding a connection that will allow the free flow of air
37 currents. In such cases a minimum of twelve thousand
38 cubic feet of air a minute shall be delivered to the last
39 open crosscut and as much more as is necessary to dilute
40 and render harmless and carry away flammable and
41 noxious gases.

42 In special instances for the construction of sidetracks,
43 haulageways, airways, or openings in shaft bottom or
44 slope bottom layout where the size and strength of pil-
45 lars is important, the director of the department of mines
46 may issue a permit approving greater distances. The
47 permit shall specify the conditions under which such
48 places may be driven.

49 In gassy mines a system of bleeder openings or air
50 courses designed to provide positive movement of air
51 through and/or around abandoned or caved areas, suffi-
52 cient to prevent dangerous accumulation of gas in such
53 areas and to minimize the effect of variations in atmos-
54 pheric pressure, shall be made a part of pillar recovery
55 plans projected after the effective date of this article.

56 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

96 free of accumulations of methane by use of line brattice
97 or other adequate means.

Sec. 7. Gassy Mines; Nongassy Mines; Examination.—

2 In a gassy mine, within four hours immediately preced-
3 ing the beginning of a coal-producing shift, and before
4 any workman in such shift, other than those who may
5 be designated to make the examinations, enters the un-
6 derground areas of such mine, a certified foreman or
7 fireboss, designated by the operator of such mine to do
8 so, shall make an examination of such areas.

9 In a gassy mine, on a noncoal-producing shift, within
10 four hours of the time when noncertified men enter the
11 mine, the areas where they are assigned to work, and
12 the entrances to adjacent areas shall be examined by a
13 certified foreman or fireboss for gas and other dangerous
14 conditions; no uncertified man shall enter any area which
15 has not been properly examined by a certified foreman
16 or fireboss; all energized trolley lines and bare feeder
17 lines along haulageways shall be examined at least once
18 every eight hours by a certified foreman or fireboss. All
19 areas not being so examined shall have an approved
20 danger board posted at the entrance or entrances.

21 In nongassy mines examinations, which shall include
22 tests for explosive gas or oxygen deficiency made with
23 an approved flame safety lamp, shall be made at the
24 same times as are required for a gassy mine. The person
25 delegated to make such examinations shall be certified.
26 Record of such examination shall be made in a book
27 prescribed for that purpose.

**Sec. 9. Same; Duties; Ventilation; Loose Coal, Slate or
2 Rock; Props; Drainage of Water; Man Doors.—**The duties
3 of the mine foreman shall be to keep a careful watch over
4 the ventilating apparatus, the airways, traveling ways,
5 pumps and drainage. He shall see that, as the miners ad-
6 vance their excavations, proper breakthroughs are made
7 so as to properly ventilate the mine; that all loose coal,
8 slate and rock overhead in the working places and along
9 the haulways are removed or carefully secured so as to
10 prevent danger to persons employed in such mines, and
11 that sufficient suitable props, caps, timbers, roof bolts, or

12 other approved methods of roof supports are furnished
13 for the places where they are to be used, and delivered
14 at suitable points. The mine foreman shall have all water
15 drained or hauled out of the working places where prac-
16 ticable, before the miners enter, and such working
17 places shall be kept dry as far as practicable while the
18 miners are at work. It shall be the duty of the mine fore-
19 man to see that proper crosscuts are made, and that the
20 ventilation is conducted by means of such crosscuts
21 through the rooms by means of checks or doors placed
22 on the entries or other suitable places, and he shall not
23 permit any room to be opened in advance of the ven-
24 tilating current. On and after July first, one thousand
25 nine hundred sixty-three, the mine foreman, or other
26 certified persons designated by him, shall measure the
27 air current with an anemometer at least weekly at the
28 inlet and outlet at or near the faces of the advanced
29 headings, and shall keep a record of such measurements
30 in a book or upon a form prescribed by the director of
31 the department of mines. Signs directing the way to
32 outlets or escapeways shall be conspicuously placed
33 throughout the mine.

34 On and after July first, one thousand nine hundred sixty-
35 three, man doors shall be installed between the intake and
36 the return at intervals of three hundred feet when the
37 height of the coal is below forty-eight inches and at inter-
38 vals of five hundred feet when the height of the coal is
39 above forty-eight inches; unless provision is made for
40 entrance into the main returns near the mouth of each
41 set of panel entries.

Sec. 14. Same; Daily Inspection of Working Places;
2 **Records.**—The mine foreman or his assistants shall visit
3 and carefully examine each working place in the mine at
4 least once each shift while the miners of such places are at
5 work, and shall direct that each working place shall be
6 secured by props, timbers, roof bolts, and/or other ap-
7 proved methods of roof support where necessary to the
8 end that the working places shall be made safe. Should
9 the mine foreman or his assistants find a place to be in a
10 dangerous condition, they shall not leave the place until

11 it is made safe, or shall remove the persons working
12 therein until the place is made safe by some competent
13 person designated for that purpose.

14 He shall place his initials and the date at or near each
15 place he examines. He shall also record any dangerous
16 conditions and practices found during his examination in
17 a book provided for that purpose.

Sec. 28. Roof Support.—Minimum timbering or other
2 roof support methods suitable to the roof conditions and
3 mining system of each mine or part of a mine shall be
4 adopted and complied with. A copy of the adopted roof
5 support plan shall be posted at the mine and a copy fur-
6 nished to the district mine inspector. Additional timber-
7 ing or supporting shall be used when and where neces-
8 sary. It shall be the duty of the mine foreman or his sub-
9 ordinate supervisors to instruct all workmen in proper
10 methods of setting timbers or placing roof supports; and,
11 it shall be the duty of the workmen to comply with the
12 instruction in setting timbers and roof supports. The
13 roof in all underground working places, unless self-sup-
14 porting, shall be secured to protect employees from falls.
15 Safety posts, jacks, or temporary crossbars shall be set
16 close to the face when necessary for safety before other
17 operations are begun and as needed thereafter. Where
18 roof supports are required at the working faces, persons
19 shall not advance beyond supported roof, except those
20 who are assigned to install supports. Timbering or roof
21 support materials to be used as required in supporting the
22 roof in underground workings shall be delivered at or
23 near the working faces. In hand loading mines, the miner
24 shall order timbers and roof support materials at least
25 one day in advance in order to have in his working place
26 a sufficient supply for his needs. He shall place his order
27 with his supervisor stating his requirements. Roof bolts
28 shall not be used in lieu of conventional timbering unless
29 a permit has been issued by the state department of
30 mines. Roof bolts shall not be recovered where com-
31 plete extraction of pillars is attempted; nor shall bolts be
32 removed adjacent to clay veins; nor at the location of
33 other irregularities that introduce abnormal hazards.
34 Where roof bolt recovery is practiced, it shall be done

35 only by reasonable methods approved by the director of
36 the department of mines. Recovery of roof supports shall
37 not be done except by experienced persons and only
38 where adequate temporary support is provided.

Sec. 29. Authorized Explosives; Storage or Use of Un-
2 **authorized Explosives.**—Permissible explosives or per-
3 missible blasting devices only shall be used in blasting
4 coal or other material in underground coal mines. It shall
5 be unlawful to have, use or store any nonpermissible
6 explosives or nonpermissible blasting devices in any coal
7 mine or on the premises of the mine, without a permit
8 from the director.

Sec. 39. Electricity; General Provisions.—Operators of
2 coal mines in which electricity is used as a means of
3 power shall comply with the following provisions:

4 All surface transformers, unless of a construction which
5 will eliminate shock hazards, or unless installed at least
6 eight feet above ground, shall be enclosed in a house or
7 surrounded by a fence at least six feet high. If the en-
8 closure is of metal, it shall be grounded effectively. The
9 gate or door to the enclosure shall be kept locked at all
10 times, unless authorized persons are present.

11 Underground transformers purchased after the effective
12 date of this article, shall be air cooled or cooled with non-
13 inflammable liquid or inert gas.

14 Underground stations containing transformers or circuit
15 breakers filled with inflammable oil shall be provided
16 with door sills or their equivalent, which will confine the
17 oil if leakage or explosion occurs, and shall be of fire-
18 proof construction.

19 Transformers shall be provided with adequate overload
20 protection.

21 Portable or semiportable battery charging units shall
22 be operated on a separate split of air: *Provided, however,*
23 *That such units may be operated on intake air if a mini-*
24 *mum of fifteen thousand cubic feet per minute is cir-*
25 *culating for one tray of batteries and five thousand cubic*
26 *feet per minute additional for each tray added. The rate*
27 *of charging by such units shall not be less than four hours*
28 *to fully charge a tray of batteries.*

29 Battery charging stations, motor generator sets, rotary
30 converters and oil filled transformers and switches, used
31 underground shall be housed in fireproof buildings ven-
32 tilated by a separate split of air direct to the main return
33 (rectifiers excepted).

34 All power wires and cables entering a mine shall be
35 provided with lightning arrestors at points of entry.

36 "Danger—high voltage" signs shall be posted conspicu-
37 ously on all transformer enclosures, high-potential switch-
38 boards and other high-potential installations.

39 Circuit breakers or other overload devices shall be
40 provided to protect power circuits.

41 Insulating platforms of wood, rubber, or other suitable
42 nonconductive material shall be kept in place at each
43 switchboard, and at stationary machinery where shock
44 hazards exist.

45 All power wires and cables in hoisting shafts, slopes
46 and power bore holes shall be properly insulated, pro-
47 vided with lightning arrestors, substantially installed
48 and well maintained.

49 All power wires, except trailing cables, especially de-
50 signed cable used as electrical conductors to under-
51 ground-rectifier or transformer stations, portable power
52 cables or bare or insulated ground and return wires, shall
53 be supported on well-installed insulators and shall not
54 contact combustible material, roof or ribs.

55 Trolley and feeder wires shall be installed as follows:
56 Where installed on permanent haulage, after the effective
57 date of this article, they shall be: (1) At least six inches
58 outside the track gauge line; (2) provided with cutout
59 switches at intervals of not more than two thousand feet,
60 and near the beginning of all branch lines; and (3) kept
61 taut and not permitted to touch the roof, rib, or crossbars.
62 Particular care shall be taken where they pass through
63 door openings to preclude bare wires from coming in con-
64 tact with combustible material.

65 Trolley or bare feeder cables shall be guarded ade-
66 quately where it is necessary for men to pass or work
67 under them regularly unless the wires are more than six
68 and one-half feet above the top of the rail. They shall

69 also be guarded adequately on both sides of doors, and
70 at all stations designated for the loading and unloading
71 of man trips, and at sand boxes.

72 After the effective date of this article, in new under-
73 ground installations of electric face equipment in new
74 mines the difference in potential between any two points
75 in the electrical circuits, or between any point in the
76 electrical circuits and the ground, shall not exceed six
77 hundred and fifty volts. No provision of this section shall
78 prohibit the use of higher voltages of alternating current
79 on service lines to rectifiers, converters, transformers or
80 switches connected thereto located in areas out by the
81 immediate face regions.

82 In a gassy mine, trolley and feeder wires shall not ex-
83 tend beyond the last open crosscut and shall be kept at
84 least one hundred and fifty feet from open pillar work-
85 ings. Trolley wires and feeder wires shall be anchored
86 securely, insulated, and properly identified at the ends.
87 Metallic frames, casings, and other enclosures of station-
88 ary electric equipment that can become "alive" through
89 failure of insulation or by contact with energized parts
90 shall be grounded effectively, or equivalent protection
91 shall be provided.

Sec. 43. Electric Equipment in Gassy Mines.—After
2 the effective date of this article all electric face equip-
3 ment acquired for use in a mine classified as gassy shall
4 be permissible: *Provided, however,* That nonpermissible
5 electric equipment may be used in a mine classified as
6 gassy if, before the effective date of this article or the
7 date such mine became a mine classified as gassy, which-
8 ever is later, the operator of such mine, or his successor,
9 owned or leased such equipment or had ordered such
10 equipment.

11 Electric equipment shall not be taken into or operated
12 in any place where methane can be detected with a flame
13 safety lamp at any point not less than eight inches from
14 the roof, face, or rib.

15 In a mine classified as gassy, electric haulage locomo-
16 tives operated from trolley wire and other electrical
17 equipment or devices which may ignite gas shall not be

18 used in return air. For the purpose of this provision, air
19 used to ventilate a section of a mine shall not be consid-
20 ered return air until such time as the air has ventilated
21 all of the workings in the section.

22 No person shall be placed in charge of a coal-cutting
23 machine in any mine classified as gassy, who is not a com-
24 petent person, capable of determining the safety of the
25 roof and sides of the working places and detecting the
26 presence of explosive gas. Machine runners in mines
27 classified as gassy shall be required to undergo examina-
28 tion by a mine foreman to determine their fitness to de-
29 tect explosive gas before they are permitted to have
30 charge of machines in such mines, unless they are accom-
31 panied by a certified or competent person who has passed
32 such an examination.

33 In any mine classified as gassy, a coal-cutting machine
34 shall not be brought in by the last breakthrough next to
35 the working face until the machine man shall have made
36 an inspection for gas in the place where the machine is
37 to work, unless such examination is made by some other
38 competent person authorized and designated for that pur-
39 pose by the mine foreman. If explosive gas in excess of
40 one per cent is found in the place, the machine shall not
41 be taken in until the danger is removed.

42 In working places where explosive gas is likely to be
43 encountered, a safety lamp, or other suitable approved ap-
44 paratus for the detection of explosive gas, shall be pro-
45 vided for use with each mining machine when working,
46 and should any indication of explosive gas in excess of one
47 per cent appear on the flame of the safety lamp, or on
48 other apparatus used for the detection of explosive gas,
49 the person in charge shall immediately stop the machine,
50 cut off the current at the nearest switch and report the
51 condition to the mine foreman or supervisor. The ma-
52 chine shall not again be started in such place until the
53 mine foreman, supervisor, or a person authorized by one
54 of them has examined it and pronounced it safe.

55 No coal-cutting machine, loading machine or electric
56 drills shall be operated in a mine classified as gassy for a
57 longer period than thirty minutes, and no continuous

58 miner for a longer period than twenty minutes, without
59 an examination as above described being made for gas,
60 and if gas is found in excess of one per cent the current
61 shall at once be switched off the machine, and the trail-
62 ing cable shall forthwith be disconnected from the power
63 supply until the place is pronounced safe.

64 Machine runners and helpers shall use care while oper-
65 ating mining machines. They shall not permit any per-
66 son to remain near the machine while it is in operation.
67 They shall examine the roof of the working place and
68 see that it is safe before starting to operate the machine.
69 They shall not move the machine while the cutter chain
70 is in motion.

Sec. 46. Welding and Cutting; Blowtorches; Fuel.—

2 Blowtorches may be used by competent persons in mines,
3 provided (1) suitable precautions are taken against ig-
4 nition of methane, coal dust, or combustible materials,
5 (2) means are provided for prompt extinguishment of
6 fires accidentally started, and (3) fuel is properly con-
7 trolled. Blowtorches must be maintained at all times in
8 good operating condition and leakproof.

9 Fuel for blowtorches, in quantities not exceeding one
10 day's supply, shall be transported from the surface in
11 approved safety cans, leakproof and sturdy. In transfer-
12 ring fuel to the torch, a funnel or flexible nozzle shall be
13 used to avoid spillage, and neither the supply can nor the
14 torch shall be opened within twenty-five feet of any
15 open light or other thing containing or apt to contain fire,
16 arcs, or sparks.

17 Welding and cutting may be done in mines: *Provided,*
18 That all equipment and gauges are maintained in good
19 order and not abused, that suitable precautions are taken
20 against ignition of methane, coal dust, or combustible ma-
21 terials, that means are provided for prompt extinguish-
22 ment of fires accidentally started, and that only persons
23 who have demonstrated competency in welding and
24 cutting are entrusted to do this work. Adequate eye pro-
25 tection shall be used by all persons doing welding or
26 cutting, and precautions shall be taken to prevent other

27 persons from exposure that might be harmful to their
28 eyes.

29 Transportation of oxygen and gas tanks or cylinders
30 shall be permitted on self-propelled machinery or belt
31 conveyors specially equipped for safe holding of the
32 containers in transportation. In no instance, shall such
33 transportation be permitted in conjunction with any man
34 trip.

35 Empty oxygen and gas tanks or cylinders shall be
36 marked "empty" and shall be removed from the mine
37 promptly in safe containers provided for transportation
38 of the same.

39 The valve protection caps shall be placed on all tanks
40 or cylinders for which caps are provided when not in
41 use and when being transported. No oxygen or gas tanks
42 or cylinders shall be transported with the hoses and
43 gauges attached thereto.

44 In mines classed as gassy, a certified person shall ex-
45 amine for gas with permissible flame safety lamps before
46 and during welding or cutting in, at or near working
47 faces. The safety of the equipment and methods used in
48 such cases shall be subject to approval of the director of
49 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 Open lights, smoking, and smokers' articles including
14 matches, are prohibited in all mines. No person shall at
15 any time enter mines with or carry therein any
16 matches, pipes, cigars, cigarettes, or any device for mak-

17 ing lights or fire not authorized or approved. The oper-
18 ator shall at frequent intervals, search, or cause to be
19 searched, any person, including his clothing and material
20 belongings, entering or about to enter the mine, or inside
21 the mine to prevent such person from taking or carrying
22 therein any of the above-mentioned articles.

23 No person shall at any time carry into any mine any
24 intoxicants or enter any mine while under the influence
25 of intoxicants.

Sec. 58. Fire Protection.—Suitable fire protection shall
2 be provided at surface installations of fans, shops, tipples
3 and preparation plants, substations, hoist rooms and com-
4 pressor stations.

5 Underground storage places for lubricating oil and
6 grease in excess of two days' supply shall be of fireproof
7 construction.

8 Lubricating oil and grease kept in face regions or other
9 underground working places in a mine shall be in port-
10 able, closed approved containers.

11 At underground shops and oil storage stations, oily rags,
12 oily waste and waste paper shall be kept in closed metal
13 containers until removed for disposal.

14 Suitable underground fire protection shall be provided
15 at stationary substations and compressor stations, shops,
16 pumps, doors, transformer stations, battery charging sta-
17 tions, where oil and grease is stored, at conveyor loading
18 or discharge points and strategic points along rubber belt
19 lines, stables, and on active working sections.

20 Rock dust in quantities of five hundred pounds or more
21 shall be considered suitable for fire protection at the
22 above-mentioned underground locations, except that a fire
23 extinguisher suitable for the hazards present shall be pro-
24 vided as an additional protection at underground shops,
25 permanent substations, compressor stations, battery
26 charging stations and transformer stations.

27 Mine openings, where there is danger of fire entering
28 the mine, shall have adequate protection against surface
29 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
2 Strip Mining Coal Therefrom.—No land or interest in land
3 owned by the state shall be leased, and no present lease
4 shall be renewed by the state, nor any agency of the
5 state, for the purpose of conducting surface mining opera-
6 tions thereon, unless said lease or renewal shall have been
7 first authorized by an act of the Legislature.

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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-

ment 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
2 this article, means a bore hole drilled or proposed to be
3 drilled for the purpose of producing natural gas and/or
4 petroleum, or through which natural gas and/or petroleum
5 is being produced; the terms “oil and/or gas facility” when
6 used in this article, mean any facility utilized in the oil
7 and gas industry in this state and specifically named or
8 referred to in this article or in articles five or seven of
9 this chapter, other than a well or well site; the term
10 “owner,” when used with reference to any such well,
11 shall include any person or persons, firm, partnership,
12 partnership association or corporation that owns, manages,
13 operates, controls or possesses such well as principals, or
14 as lessee or contractor, employee or agent of such prin-
15 cipal; the term “well operator” shall include any person
16 or persons, firm, partnership, partnership association or
17 corporation that proposes to or does locate, drill, operate
18 or abandon any well as herein defined; the term “coal
19 operator” shall include any person or persons, firm, part-
20 nership, partnership association or corporation that pro-
21 poses to or does operate a coal mine; the term “depart-
22 ment” 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;

27 (5) Prepare report forms to be used by oil and gas
28 inspectors or the supervising inspector in making their
29 findings, orders and notices, upon inspections made in
30 accordance with this chapter;

31 (6) Hear and determine applications made by owners,
32 well operators, and coal operators for the annulment or
33 revision of orders made by oil and gas inspectors or the
34 supervising inspector, and to make inspections, in accord-
35 ance with the provisions of this article and articles five
36 and seven of this chapter;

37 (7) Cause a properly indexed permanent and public
38 record to be kept of all inspections made by himself or by
39 oil and gas inspectors or the supervising inspector;

40 (8) Make annually a full and complete written report
41 to the director of the department of mines in such form
42 and detail as the director may from time to time request,
43 so that the director can complete the preparation of the
44 director's annual report to the governor of the state;

45 (9) Conduct such research and studies as the director
46 shall deem necessary to aid in protecting the health and
47 safety of persons employed within or at potential or
48 existing oil or gas production fields within this state, to
49 improve drilling and production methods and to provide
50 for the more efficient protection and preservation of oil
51 and gas-bearing rock strata and property used in connec-
52 tion therewith;

53 (10) Perform all other duties which are expressly im-
54 posed upon him by the provisions of this chapter, as well
55 as duties assigned to him by the director of the depart-
56 ment of mines.

57 All records of the department shall be open to the pub-
58 lic.

Sec. 1-b. Same; Eligibility; Salary; Expenses; Oath and
2 **Bond.**—The deputy director for oil and gas shall be a
3 citizen of West Virginia, shall be a competent person of
4 good reputation and temperate habits and shall have had
5 at least ten years' practical experience in the oil and gas
6 industry, at least five of which shall have been in this
7 state. A diploma in geology or in mining or petroleum
8 engineering from West Virginia University, or any simi-

9 larly accredited school shall be counted as two years' practical experience. The deputy director for oil and gas shall
10 devote all of his time to the duties of his office, and shall
11 not be directly or indirectly interested financially in any
12 oil and/or gas production or drilling or in any coal mine
13 in this state. The salary of the deputy director for oil
14 and gas shall be not less than seven thousand five hundred
15 dollars nor more than ten thousand dollars per year, and
16 traveling expenses, which shall be paid out of the state
17 treasury upon a requisition upon the state auditor, properly
18 certified by the director of the department of mines.

19
20 The deputy director for oil and gas shall, before entering upon the discharge of his duties, take the oath of
21 office prescribed by section five, article four of the constitution, and shall execute a bond in the penalty of two
22 thousand dollars, with security to be approved by the
23 director of the department of mines, conditioned upon the
24 faithful discharge of his duties, a certificate of which oath
25 and which bond shall be filed in the office of the secretary
26 of state.
27
28

Sec. 1-c. Oil and Gas Inspectors; Supervising Inspectors; Appointment and Tenure; Conflict of Interest; Oath and Bond; Duties Generally.—Notwithstanding any other
2 provisions of law, oil and gas inspectors shall be selected,
3 serve and be removed as in this article provided.
4
5

6 The deputy director for oil and gas shall divide the state
7 into not more than eight oil and gas districts, so as to
8 equalize, as far as practical, the work of each oil and gas
9 inspector. He shall assign inspectors to districts, and
10 designate a supervising inspector and shall designate their
11 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
12 register of certified eligible candidates for appointment
13 prior to the first day of July, one thousand nine hundred
14 sixty-three, the appointment of the supervising inspector
15 and other inspectors shall be deferred until an adequate
16 register is available: *Provided*, That notwithstanding any
17 other provisions contained in this article, those persons
18 serving as oil and gas inspectors on the effective date of
19
20

21 this act may be appointed as oil and gas inspectors with
22 permanent tenure if such persons pass the examinations
23 conducted by the oil and gas inspectors' examining board
24 in accordance with the provisions of sections one-d and
25 one-e.

26 All other oil and gas inspectors, including the super-
27 vising inspector, shall be appointed from the names on
28 such register. Each original appointment shall be made
29 by the deputy director for oil and gas, and shall be ap-
30 proved by the director of the department of mines, for a
31 probationary period of not more than one year.

32 The deputy director for oil and gas shall make each ap-
33 pointment from among the three qualified eligible candi-
34 dates on the register having the highest grades: *Provided,*
35 *however,* That the director of the department of mines or
36 the deputy director for oil and gas may, for good cause, at
37 least thirty days prior to making an appointment, strike
38 any name from the register. Upon striking any name from
39 the register, the director or deputy director, as the case
40 may be, shall immediately notify in writing each member
41 of the oil and gas inspectors' examining board of his ac-
42 tion, together with a detailed statement of the reasons
43 therefor. Thereafter, the oil and gas inspectors' examin-
44 ing board, after hearing, if it finds that the action of strik-
45 ing such name was arbitrary or unreasonable, may order
46 the name of any candidate so stricken from the register
47 to be reinstated thereon. Such reinstatement shall be
48 effective from the date of removal from the register.

49 Any candidate passed over for appointment for three
50 years shall be automatically stricken from the register.

51 After having served for a probationary period of one
52 year to the satisfaction of the deputy director for oil and
53 gas and the director, an oil and gas inspector or super-
54 vising inspector shall have permanent tenure until he be-
55 comes seventy years of age, subject only to dismissal for
56 cause in accordance with the provisions of section one-d
57 of this article. No oil and gas inspector or supervising
58 inspector while in office shall be directly or indirectly in-
59 terested as owner, lessor, operator, stockholder, superin-
60 tendent or engineer of any oil and/or gas drilling or pro-
61 ducing venture or of any coal mine in this state. Before

62 entering upon the discharge of his duties as an oil and gas
63 inspector or supervising inspector, he shall take the oath
64 of office prescribed by the constitution, and shall execute
65 a bond in the penalty of two thousand dollars, with se-
66 curity to be approved by the director of the department
67 of mines, conditioned upon the faithful discharge of his
68 duties, a certificate of which oath and bond shall be filed
69 in the office of the secretary of state.

70 The supervising inspector and oil and gas inspectors
71 shall perform such duties as are imposed upon them by
72 this chapter, and related duties assigned by the deputy
73 director for oil and gas upon approval of the director.

**Sec. 1-d. Same; Eligibility for Appointment; Qualifica-
tions; Salary; Expenses; Removal.**—(a) No person shall
3 be eligible for appointment as an oil and gas inspector
4 or supervising inspector unless, at the time of his pro-
5 bationary appointment he (1) is a citizen of West Vir-
6 ginia, in good health, and of good character, reputation
7 and temperate habits; (2) has had at least ten years'
8 practical experience in the oil and gas industry, at least
9 five years of which, immediately preceding his original
10 appointment shall have been in the oil and gas industry
11 in this state: *Provided*, That a diploma in geology or in
12 mining or petroleum engineering from West Virginia
13 University, or any similarly accredited school shall be
14 considered the equivalent of two years' practical experi-
15 ence; and (3) has good theoretical and practical knowl-
16 edge of oil and gas drilling and production methods, prac-
17 tices and techniques, sound safety practices and applica-
18 ble mining laws.

19 (b) In order to qualify for appointment as an oil and
20 gas inspector or supervising inspector, an eligible applicant
21 shall submit to a written and oral examination by the oil
22 and gas inspectors' examining board and shall furnish
23 such evidence of good health, character and other facts
24 establishing eligibility as such board may require. If
25 such board finds after investigation and examination that
26 an applicant: (1) Is eligible for appointment and (2) has
27 passed all written and oral examinations, the board shall
28 add such applicant's name and grade to the register of

29 qualified eligible candidates and certify its action to the
30 deputy director for oil and gas. No candidate's name
31 shall remain on the register for more than three years
32 without requalifying.

33 (c) The salary of the supervising inspector shall be
34 not less than five thousand four hundred dollars per
35 annum, nor more than eight thousand dollars per annum,
36 and reasonable traveling expenses. Salaries of inspectors
37 shall not be less than five thousand four hundred dollars
38 per annum, nor more than seven thousand dollars per
39 annum, and reasonable traveling expenses. Within the
40 limits provided by law, the salary of each inspector and
41 of the supervising inspector shall be fixed by the deputy
42 director for oil and gas, subject to the approval of the
43 director of the department of mines and oil and gas in-
44 spectors' examining board. In fixing salaries of the oil
45 and gas inspectors and of the supervising inspector, the
46 deputy director for oil and gas shall consider ability, per-
47 formance of duty, and experience. No reimbursement for
48 traveling expenses shall be made except upon an item-
49 ized account of such expenses submitted by the inspector
50 or supervising inspector, as the case may be, who shall
51 verify, upon oath, that such expenses were actually in-
52 curred in the discharge of his official duties.

53 (d) An inspector or the supervising inspector, after
54 having received a permanent appointment, shall be re-
55 moved from office only for physical or mental impair-
56 ment, incompetency, neglect of duty, drunkenness, mal-
57 feasant in office, or other good cause.

58 Proceedings for the removal of an oil and gas inspector
59 or the supervising inspector may be initiated by the
60 deputy director for oil and gas or the director of the de-
61 partment of mines whenever either has reasonable
62 grounds to believe and does believe that adequate cause
63 exists warranting removal. Such a proceeding shall be
64 initiated by a verified petition, filed with the oil and gas
65 inspectors' examining board by the deputy director for
66 oil and gas or the director, setting forth with particu-
67 larity the facts alleged. Not less than twenty reputable
68 citizens engaged in oil and/or gas drilling and produc-

69 tion operations in the state may petition the deputy di-
70 rector for oil and gas or the director of the department of
71 mines for the removal of an inspector or the supervising
72 inspector. If such petition is verified by at least one of
73 the petitioners, based on actual knowledge of the affiant,
74 and alleges facts which, if true, warrant the removal of
75 the inspector or supervising inspector, the deputy direc-
76 tor for oil and gas or the director of the department of
77 mines shall cause an investigation of the facts to be made.
78 If, after such investigation, the deputy director for oil
79 and gas or the director finds that there is substantial evi-
80 dence which, if true, warrants removal of the inspector
81 or supervising inspector, he shall file a petition with the
82 oil and gas inspectors' examining board requesting re-
83 moval of the inspector or supervising inspector.

84 On receipt of a petition by the deputy director for oil
85 and gas or by the director of the department of mines
86 seeking removal of an inspector or the supervising in-
87 spector, the oil and gas inspectors' examining board shall
88 promptly notify the inspector or supervising inspector,
89 as the case may be, to appear before it at a time and place
90 designated in said notice, which time shall be not less
91 than fifteen days nor more than thirty days thereafter.
92 There shall be attached to the copy of the notice served
93 upon the inspector or supervising inspector a copy of the
94 petition filed with such board.

95 At the time and place designated in said notice, the
96 oil and gas inspectors' examining board shall hear all
97 evidence offered in support of the petition and on behalf
98 of the inspector or supervising inspector. Each witness
99 shall be sworn and a transcript shall be made of all
100 evidence taken and proceedings had at any such hearing.
101 No continuance shall be granted except for good cause
102 shown.

103 The chairman of the board, the deputy director for oil
104 and gas, and the director of the department of mines
105 shall have power to administer oaths and subpoena wit-
106 nesses.

107 Any inspector or supervising inspector who shall wil-
108 fully refuse or fail to appear before such board, or having
109 appeared, shall refuse to answer under oath any relevant

110 question on the ground that his testimony or answer
111 might incriminate him, or shall refuse to accept a grant
112 of immunity from prosecution on account of any relevant
113 matter about which he may be asked to testify at such
114 hearing before such board, shall forfeit his position.

115 If, after hearing, the oil and gas inspectors' examining
116 board finds that the inspector or supervising inspector
117 should be removed, it shall enter an order to that effect.
118 The decision of the board shall be final and shall not be
119 subject to judicial review.

Sec. 1-e. Oil and Gas Inspectors' Examining Board;
2 **Creation; Composition; Appointment, Term and Compens-**
3 **sation of Members; Chairman; Oaths of Members; Meet-**
4 **ings; Powers and Duties Generally.**—There is hereby
5 created an oil and gas inspectors' examining board con-
6 sisting of five members who, except for the public repre-
7 sentative on such board, shall be appointed by the gov-
8 ernor, by and with the advice and consent of the senate,
9 Members may be removed only for the same causes and
10 like manner as elective state officers. One member of the
11 board, who shall be the representative of the public, shall
12 be the professor in charge of the petroleum engineering
13 department of the school of mines at West Virginia Uni-
14 versity; two members shall be persons who by reason of
15 previous training and experience may reasonably be said
16 to represent the viewpoint of independent oil and gas oper-
17 ators; and two members shall be persons who by reason of
18 previous training and experience may reasonably be said
19 to represent the viewpoint of major oil and gas producers.

20 The deputy director for oil and gas shall be an "ex
21 officio" member of the board, and shall serve as secretary
22 of the board without additional compensation, but he
23 shall have no right to vote with respect to any matter
24 before the board.

25 The members of the board, except the public represen-
26 tative, shall be appointed for overlapping terms of eight
27 years, except that the original appointments shall be for
28 terms of two, four, six and eight years, respectively. Any
29 member whose term expires may be reappointed by the
30 governor.

31 Each member of the board shall receive forty dollars
32 per diem while actually engaged in the performance of
33 the work of the board; and shall receive mileage at the
34 rate of ten cents for each mile actually traveled going
35 from the home of the member to the place of the meeting
36 of the board and returning therefrom, which shall be paid
37 out of the state treasury upon a requisition upon the state
38 auditor, properly certified by such members of the board.

39 The public member shall serve as chairman of the board.

40 Members of the board, before performing any duty shall
41 take and subscribe to the oath required by article four,
42 section five of the constitution of West Virginia.

43 The board shall meet at such times and places as shall be
44 designated by the chairman. It shall be the duty of the
45 chairman to call a meeting of the board on the written
46 request of two members, or on the written request of the
47 deputy director for oil and gas or the director of the de-
48 partment of mines. Notice of each meeting shall be given
49 in writing to each member by the secretary at least five
50 days in advance of the meeting. Three voting members
51 shall constitute a quorum for the transaction of business.

52 In addition to other powers and duties expressly set
53 forth elsewhere in this article, the board shall:

54 (1) Establish, and from time to time revise, forms of
55 application for employment as an oil and gas inspector
56 and supervising inspector and forms for written exami-
57 nations to test the qualifications of candidates, with such
58 distinctions, if any, in the forms for oil and gas inspector
59 and supervising inspector as the board may from time
60 to time deem necessary or advisable;

61 (2) Adopt and promulgate reasonable rules and regula-
62 tions relating to the examination, qualification and certifi-
63 cation of candidates for appointment, and relating to hear-
64 ings for removal of inspectors or the supervising inspector,
65 required to be held by this article. All of such rules and
66 regulations shall be printed and a copy thereof furnished
67 by the secretary of the board to any person upon request;

68 (3) Conduct, after public notice of the time and place
69 thereof, examinations of candidates for appointment. By

70 unanimous agreement of all members of the board, one
71 or more members of the board or an employee of the
72 department of mines may be designated to give to a can-
73 didate the written portion of the examination;

74 (4) Prepare and certify to the deputy director for oil
75 and gas and the director of the department of mines a
76 register of qualified eligible candidates for appointment
77 as oil and gas inspectors or as supervising inspectors, with
78 such differentiation, if any, between the certification of
79 candidates for oil and gas inspectors and for supervising
80 inspector as the board may from time to time deem neces-
81 sary or advisable. The register shall list all qualified eli-
82 gible candidates in the order of their grades, the candidate
83 with the highest grade appearing at the top of the list.
84 After each meeting of the board held to examine such
85 candidates and at least annually, the board shall prepare
86 and submit to the deputy director for oil and gas and the
87 director of the department of mines a revised and cor-
88 rected register of qualified eligible candidates for appoint-
89 ment, deleting from such revised register all persons (a)
90 who are no longer residents of West Virginia, (b) who
91 have allowed a calendar year to expire without, in writ-
92 ing, indicating their continued availability for such ap-
93 pointment, (c) who have been passed over for appoint-
94 ment for three years, (d) who have become ineligible for
95 appointment since the board originally certified that such
96 persons were qualified and eligible for appointment, or
97 (e) who, in the judgment of at least three members of
98 the board, should be removed from the register for good
99 cause;

100 (5) Cause the secretary of the board to keep and pre-
101 serve the written examination papers, manuscripts, grad-
102 ing sheets and other papers of all applicants for appoint-
103 ment for such period of time as may be established by the
104 board. Specimens of the examinations given, together
105 with the correct solution of each question, shall be pre-
106 served permanently by the secretary of the board;

107 (6) Issue a letter or written notice of qualification to
108 each successful eligible candidate;

109 (7) Hear and determine proceedings for the removal

110 of inspectors or the supervising inspector in accordance
111 with the provisions of this article;

112 (8) Hear and determine appeals of inspectors or the
113 supervising inspector from suspension orders made by the
114 deputy director for oil and gas pursuant to the provisions
115 of section one-a of this article: *Provided*, That in order to
116 appeal from any order of suspension, an aggrieved inspec-
117 tor or supervising inspector shall file such appeal in writ-
118 ing with the oil and gas inspectors' examining board not
119 later than ten days after receipt of the notice of suspen-
120 sion. On such appeal the board shall affirm the action of
121 the deputy director for oil and gas unless it be satisfied
122 from a clear preponderance of the evidence that the
123 deputy director for oil and gas has acted arbitrarily;

124 (9) Make an annual report to the governor concerning
125 the administration of oil and gas inspection personnel in
126 the state service; making such recommendations as the
127 board considers to be in the public interest.

Sec. 1-f. Authority and Duty of Deputy Director and
2 **Inspectors to Visit and Inspect Wells and Facilities; In-**
3 **spectors to Devote Full Time to Duties.**—The deputy di-
4 rector for oil and gas of the department of mines shall
5 have authority to visit and inspect any oil and/or gas
6 well or well site and any other oil and/or gas facility in
7 this state and may call for the assistance of any oil and gas
8 inspector or inspectors or supervising inspector whenever
9 such assistance is necessary in the inspection of any such
10 oil and/or gas well or well site or any other oil and/or gas
11 facility. Similarly, all oil and gas inspectors and the su-
12 pervising inspector shall have authority to visit and in-
13 spect any oil and/or gas well or well site and any other
14 oil and/or gas facility in this state. The operator or owner
15 of every oil and/or gas well or well site or any other oil
16 and/or gas facility shall cooperate with the deputy di-
17 rector for oil and gas, all oil and gas inspectors and the
18 supervising inspector in making inspections or obtaining
19 information.

20 Oil and gas inspectors shall devote their full time and
21 undivided attention to the performance of their duties,
22 and they shall be responsible for the inspection of all oil

23 and/or gas wells or well sites or other oil and/or gas fa-
24 cilities in their respective districts as often as may be re-
25 quired in the performance of their duties.

Sec. 1-g. Findings and Orders of Inspectors Concerning

2 **Violations; Determination of Reasonable Time for Abate-**
3 **ment; Extensions of Time for Abatement; Special Inspec-**
4 **tions; Notice of Findings and Orders.**—(a) If an oil and
5 gas inspector, upon making an inspection of an oil and/or
6 gas well or well site or any other oil and/or gas facility,
7 as authorized by this article, finds that any provision of
8 this article is being violated, he shall determine what
9 would be a reasonable period of time within which such
10 violation should be totally abated. Such findings shall
11 contain reference to the provisions of this article which he
12 finds are being violated, and a detailed description of the
13 conditions which cause and constitute such violation.

14 (b) The period of time so found by such oil and gas in-
15 spector to be a reasonable period of time may be extended
16 by such inspector, or by any other oil and gas inspector
17 duly authorized by the deputy director for oil and gas,
18 from time to time, but on not more than three occasions,
19 upon the making of a special inspection to ascertain
20 whether or not such violation has been totally abated. The
21 deputy director for oil and gas shall cause a special inspec-
22 tion to be made: (A) Whenever an operator of an oil
23 and/or gas well or well site or any other oil and/or gas
24 facility, prior to the expiration of any such period of time,
25 requests him to cause a special inspection to be made at
26 such oil and/or gas well or well site or any other oil
27 and/or gas facility; and (B) upon expiration of such pe-
28 riod of time as originally fixed or as extended, unless the
29 deputy director for oil and gas is satisfied that the viola-
30 tion has been abated. Upon making such special inspec-
31 tion, such oil and gas inspector shall determine whether or
32 not such violation has been totally abated. If he deter-
33 mines that such violation has not been totally abated, he
34 shall determine whether or not such period of time as
35 originally fixed, or as so fixed and extended, should be
36 extended. If he determines that such period of time
37 should be extended, he shall determine what a reasonable
38 extension would be. If he determines that such violation

39 has not been totally abated, and if such period of time as
40 originally fixed, or as so fixed and extended, has then ex-
41 pired, and if he also determines that such period of time
42 should not be further extended, he shall thereupon make
43 an order requiring the operator of such oil and/or gas well
44 or well site or other oil and/or gas facility to cease fur-
45 ther operations of such well, well site or facility, as the
46 case may be. Such findings and order shall contain refer-
47 ence to the specific provisions of this article which are
48 being violated.

49 (c) Notice of each finding and order made under this
50 section shall promptly be given to the operator of the oil
51 and/or gas well or well site or other oil and/or gas fa-
52 cility to which it pertains, by the person making such
53 finding or order.

54 (d) No order shall be issued under the authority of
55 this section which is not expressly authorized herein.

Sec. 1-h. Review of Findings and Orders by Deputy
2 **Director for Oil and Gas; Special Inspectors; Annulment,**
3 **Revision, etc., of Order; Notice.**—Any operator of an oil
4 and/or gas well or well site or other oil and/or gas facility
5 notified of findings or an order made by an oil and gas in-
6 spector pursuant to section one-g of this article, may ap-
7 ply to the deputy director for oil and gas for annulment
8 or revision of such order. Upon receipt of such applica-
9 tion the deputy director for oil and gas shall make a
10 special inspection of the oil and/or gas well, well site or
11 other oil and/or gas facility affected by such order, or
12 cause two duly authorized oil and gas inspectors, other
13 than the oil and gas inspector who made such order or
14 the supervising inspector and one duly authorized oil and
15 gas inspector other than the oil and gas inspector who
16 made such order, to make such inspection of such oil
17 and/or gas well, or well site or other oil and/or gas
18 facility and to report thereon to him. Upon making such
19 special inspection himself, or upon receiving the report
20 of such special inspection, as the case may be, the deputy
21 director for oil and gas shall make an order which shall
22 include his findings and shall annul, revise or affirm the
23 order of the oil and gas inspector.

24 The deputy director for oil and gas shall cause notice
25 of each finding and order made under this section to be
26 given promptly to the operator of the oil and/or gas well,
27 well site or other oil and/or gas facility to which such
28 findings and order pertain.

29 At any time while an order made pursuant to section
30 one-g of this article is in effect, the operator of the oil
31 and/or gas well, well site or other oil and/or gas facility
32 affected by such order may apply to the deputy director
33 for oil and gas for annulment or revision of such order.
34 The deputy director for oil and gas shall thereupon pro-
35 ceed to act upon such application in the manner provided
36 in this section.

37 In view of the urgent need for prompt decision of
38 matters submitted to the deputy director for oil and gas
39 under this article, all actions which he, or oil and gas
40 inspectors, or the supervising inspector, is required to
41 take under this article, shall be taken as rapidly as prac-
42 ticable, consistent with adequate consideration of the
43 issues involved.

Sec. 1-i. Requirements for Findings, Orders and Notices;

2 **Posting of Findings and Orders.**—(a) All findings and
3 orders made pursuant to sections one-g or one-h of this
4 article, and all notices required to be given of the making
5 of such findings and orders, shall be in writing. All such
6 findings and orders shall be signed by the person making
7 them, and all such notices shall be signed by the person
8 charged with the duty of giving the notice. All such
9 notices shall contain a copy of the findings and orders
10 referred to therein.

11 (b) Notice of any finding or order required by sec-
12 tions one-g or one-h of this article to be given to an
13 operator shall be given by causing such notice, addressed
14 to the operator of the oil and/or gas well, well site or
15 other oil and/or gas facility to which such finding or order
16 pertains, to be delivered to such operator by causing a
17 copy thereof to be sent by registered mail to the perma-
18 nent address of such operator as filed with the depart-
19 ment of mines and by causing a copy thereof to be posted
20 upon the drilling rig or other equipment at the oil and/or

21 gas well, well site or other oil and/or gas facility, as the
22 case may be. The requirement of this article that a
23 notice shall be "addressed to the operator of the oil and/or
24 gas well, well site or other oil and/or gas facility to which
25 such finding or order pertains," shall not require that
26 the name of the operator for whom it is intended shall be
27 specifically set out in such address. Addressing such
28 notice to "Operator of", specifying the
29 oil and/or gas well, well site or other oil and/or gas
30 facility sufficiently to identify it, shall satisfy such re-
31 quirement.

**Sec. 1-j. Judicial Review of Final Orders of the Deputy
2 Director for Oil and Gas.—**(a) Any final order issued by
3 the deputy director for oil and gas under section one-h
4 of this article shall be subject to judicial review by the
5 circuit court of the county in which the oil and/or gas
6 well, well site or other oil and/or gas facility affected is
7 located or the circuit court of Kanawha county upon the
8 filing in such court, or with the judge thereof in vacation,
9 of a petition for appeal by the operator aggrieved by
10 such final order, within thirty days from the date of the
11 making of such final order.

12 (b) The operator making such appeal shall forthwith
13 send a copy of such petition for appeal, by registered
14 mail, to the deputy director for oil and gas. Upon receipt
15 of such copy of such petition for appeal the deputy di-
16 rector for oil and gas shall promptly certify and file in
17 such court a complete transcript of the record upon which
18 the order complained of was made. The costs of such
19 transcriptions shall be paid by the party making the
20 appeal.

21 (c) The court sitting in lieu of a jury, or judge thereof
22 in vacation, shall, after due notice, conduct a hearing on
23 the issues presented by such appeal and shall permit
24 argument, oral or written or both, by the parties. The
25 court shall permit such pleadings, in addition to the
26 pleadings before the deputy director for oil and gas, as
27 it deems to be required. Evidence relating to the making
28 of the order complained of and relating to the questions
29 raised by the allegations of the pleadings or other ques-

30 tions pertinent in the proceeding may be offered by the
31 parties to the proceeding.

32 (d) Upon such conditions as may be required and to
33 the extent necessary to prevent irreparable injury, any
34 circuit court to which an appeal has been made as pro-
35 vided in this section, may, after due notice to and hear-
36 ing of the parties to the appeal, issue all necessary and
37 appropriate process to postpone the effective date of the
38 final order of the deputy director for oil and gas or to
39 grant such other relief as may be appropriate pending
40 final determination.

41 (e) A circuit court to which an appeal has been made
42 as provided in this section, may affirm, annul or revise
43 the final order of the deputy director for oil and gas, or it
44 may remand the proceeding to the deputy director for oil
45 and gas for such further action as it directs.

46 (f) The decision of a circuit court on an appeal from
47 the deputy director for oil and gas shall be final, subject
48 only to review by the supreme court of appeals of West
49 Virginia upon a petition for certiorari filed in such court
50 within sixty days from the entry of the order and decision
51 of the circuit court upon such appeal from the deputy di-
52 rector for oil and gas.

**Sec. 2. Plats Prerequisite to Drilling or Fracturing
2 Wells; Preparation and Contents; Notice and Information
3 Furnished to Coal Operators; Issuance of Permits; Per-
4 formance Bonds or Securities in Lieu Thereof.**—Before
5 drilling for oil or gas, or before fracturing an oil and/or
6 gas well originally drilled before the fifth day of June,
7 one thousand nine hundred twenty-nine, on any tract
8 of land, the well operator shall have a plat prepared
9 by a competent engineer showing the district and county
10 in which the tract of land is located, the name and acre-
11 age of the same, the names of the owners of adjacent
12 tracts, the proposed or actual location of the well deter-
13 mined by survey, the courses and distances of such loca-
14 tion from two permanent points or landmarks on said
15 tract and the number to be given the well (and the date
16 of drilling completion of a well originally drilled before

17 the fifth day of June, one thousand nine hundred twenty-
18 nine, when it is proposed that such a well be fractured),
19 and shall forward by registered mail a copy of the plat
20 to the department of mines. In the event the tract of land
21 on which the said well proposed to be drilled or fractured
22 is located is known to be underlaid with one or more work-
23 able beds of coal, copies of the plat shall be forwarded by
24 registered mail to each and every coal operator, if any,
25 operating said beds of coal beneath said tract of land, or
26 within five hundred feet of the boundaries of the same,
27 who has mapped the same and filed his maps as required
28 by law. With each of such plats there shall be enclosed
29 a notice (form for which shall be furnished on request
30 by the department of mines) addressed to the department
31 of mines and to each such coal operator, if any, at their
32 respective addresses, informing them that such plat and
33 notice are being mailed to them respectively by registered
34 mail, pursuant to the requirements of this article. If no
35 objections are made, or are found by the department, to
36 such proposed location or proposed fracturing within ten
37 days from receipt of such plat and notice by the depart-
38 ment of mines, the same shall be filed and become a perma-
39 nent record of such location or fracturing subject to
40 inspection at any time by any interested person, and the
41 department shall forthwith issue to the well operator a
42 permit reciting the filing of such plat, that no objections
43 have been made by the coal operators, if any, or found
44 thereto by the department, and authorizing the well
45 operator to drill at such location, or to fracture the well
46 originally drilled before the fifth day of June, one thou-
47 sand nine hundred twenty-nine: *Provided*, That unless
48 the department has objections to such proposed location
49 or proposed fracturing, such permit shall be issued prior
50 to the expiration of such ten-day period upon the obtain-
51 ing by the well operator of the consent in writing of the
52 coal operator or operators to whom copies of the plat and
53 notice shall have been mailed as herein required, and
54 upon presentation of such written consent to the depart-
55 ment. The notice above provided for may be given to the
56 coal operator by delivering or mailing it as above to any
57 agent or superintendent in actual charge of mines.

58 A permit to drill, or to fracture an oil and/or gas well
59 originally drilled before the fifth day of June, one thou-
60 sand nine hundred twenty-nine, shall not be issued unless
61 the application therefor is accompanied by a bond of the
62 operator in the sum of one thousand dollars, payable to
63 the state of West Virginia, with a corporate bonding and/
64 or surety company authorized to do business in this state
65 as surety thereon, conditioned on full compliance with all
66 laws, rules and regulations relating to the drilling, re-
67 drilling, deepening, casing, plugging and abandonment of
68 wells and for furnishing such reports and information as
69 may be required by the department: *Provided, however,*
70 That when such operator makes or has made application
71 for permits to drill a number of wells and/or fracture a
72 well or wells originally drilled before the fifth day of
73 June, one thousand nine hundred twenty-nine, the oper-
74 ator may in lieu of furnishing a separate bond furnish a
75 blanket bond in the sum of ten thousand dollars, payable
76 to the state of West Virginia, with a corporate bonding
77 and/or surety company authorized to do business in this
78 state as surety thereon, and conditioned as aforesaid:
79 *Provided further,* That in lieu of corporate surety on a
80 separate or blanket bond, as the case may be, the operator
81 may elect to deposit with the deputy director for oil and
82 gas cash and/or the following collateral securities or any
83 combination thereof: (1) Bonds of the United States or
84 agency thereof, or those guaranteed by, or for which the
85 credit of the United States or agency thereof is pledged for
86 the payment of the principal and interest thereof; (2) di-
87 rect general obligation bonds of this state, or any other
88 state, or territory of the United States, or the District of
89 Columbia, unconditionally guaranteed as to the principal
90 and interest by such other state or territory of the United
91 States, or the District of Columbia if such other state, ter-
92 ritory, or the District of Columbia has the power to levy
93 taxes for the payment of the principal and interest of such
94 securities, and if at the time of the deposit such other state,
95 territory, or the District of Columbia is not in default in
96 the payment of any part of the principal or interest owing
97 by it upon any part of its funded indebtedness; (3) direct
98 general obligation bonds of any county, district, city, town,

99 village, school district or other political subdivision of
100 this state issued pursuant to law and payable from ad
101 valorem taxes levied on all the taxable property located
102 therein, provided that the total indebtedness after de-
103 ducting sinking funds and all debts incurred for self-sus-
104 taining public works does not exceed five per cent of the
105 assessed value of all taxable property therein at the time
106 of the last assessment made before the date of such de-
107 posit, and provided that the issuer has not, within five
108 years prior to the making thereof, been in default for more
109 than ninety days in the payment of any part of the prin-
110 cipal or interest on any debt evidenced by its bonds; (4)
111 revenue bonds issued by this state or any agency of this
112 state when such bonds are payable from revenues or earn-
113 ings specifically pledged for the payment of principal and
114 interest, and a lawful sinking fund or reserve fund has
115 been established and is being maintained for the payment
116 of such bonds; (5) revenue bonds issued by a municipality
117 in this state for the acquisition, construction, improve-
118 ment, or extension of a waterworks system, or a sewer-
119 age system, or a combined waterworks and sewerage sys-
120 tem, when such bonds are payable from revenue or earn-
121 ings specifically pledged for the payment of principal and
122 interest, and a lawful sinking fund or reserve fund has
123 been established and is being maintained for the payment
124 of such bonds; (6) revenue bonds issued by a public serv-
125 ice board of a public service district in this state for the
126 acquisition, construction, improvement or extension of
127 any public service properties, or for the reimbursement
128 or payment of the costs and expenses of creating the
129 district, when such bonds are payable from revenue or
130 earnings specifically pledged for the payment of principal
131 and interest, and a lawful sinking fund or reserve fund
132 has been established and is being maintained for the pay-
133 ment of such bonds; (7) revenue bonds issued by a board
134 of trustees of a sanitary district in this state for the cor-
135 porate purposes of such district, when such bonds are
136 payable from revenue or earnings specifically pledged
137 for the payment of principal and interest, and a lawful
138 sinking fund or reserve fund has been established and is
139 being maintained for the payment of such bonds; and (8)

140 bonds issued by a federal land bank or home owners' loan
141 corporation. The cash deposit and/or market value of
142 the collateral securities shall be equal to or greater than
143 the penalty of the separate or blanket bond, as the case
144 may be. Upon receipt of any such deposit of cash and/or
145 collateral securities, the deputy director for oil and gas
146 shall immediately deliver the same to the treasurer of
147 the state of West Virginia. The treasurer shall determine
148 whether any such securities satisfy the requirements of
149 this section. If the securities are approved they shall be
150 accepted by the treasurer. If the securities are not ap-
151 proved, they shall be rejected and returned to the oper-
152 ator and no permit shall be issued until a corporate surety
153 bond is filed or cash and/or proper collateral securities are
154 filed in lieu of such surety. The treasurer shall hold any
155 cash and/or securities in the name of the state in trust
156 for the purposes for which the deposit was made. The
157 operator shall be entitled to all interest and income earned
158 on the collateral securities filed by such operator so long
159 as the operator is in full compliance with all laws, rules
160 and regulations relating to the drilling, redrilling, deep-
161 ening, casing, plugging and abandonment of wells and for
162 furnishing such reports and information as may be re-
163 quired by the department. The operator making the de-
164 posit shall be entitled from time to time to receive from
165 the treasurer, upon the written order of the deputy di-
166 rector for oil and gas, the whole or any portion of such
167 securities upon depositing with the treasurer in lieu there-
168 of cash equal to or greater than the penalty of the bond,
169 and/or other approved securities of the classes herein
170 specified having a market value equal to or greater than
171 the penalty of the bond, or a corporate surety bond.

172 Any such bond shall remain in force until released by
173 the department and the department shall release the same
174 when it is satisfied the conditions thereof have been fully
175 performed. Upon the release of any such bond, any cash
176 and/or collateral securities deposited shall be returned
177 by the deputy director for oil and gas to the operator
178 who deposited same.

Sec. 2-a. Notice to Coal Operators and Department of

2 **Mines of Intention to Fracture Certain Other Wells; Con-**
3 **tents of Such Notice; Permit Required.**—Before fracturing
4 any oil and/or gas well originally drilled on and after
5 the fifth day of June, one thousand nine hundred twenty-
6 nine, and before the effective date of this act, and which
7 is located on any tract of land known to be underlaid
8 with one or more workable beds of coal, the well operator
9 shall, by registered mail, forward a notice of intention
10 to fracture such well to the department of mines and to
11 each and every coal operator operating said beds of coal
12 beneath said tract of land, or within five hundred feet of
13 the boundaries of the same, who has mapped the same
14 and filed his maps as required by law: *Provided*, That
15 nothing contained in this article shall under any circum-
16 stances be construed to require any well operator to give
17 a notice of intention to fracture, or to obtain a permit to
18 fracture, a well drilled on and after the effective date
19 of this act. The notice shall be addressed to the de-
20 partment of mines and to each such coal operator at their
21 respective addresses, shall contain the number of the
22 drilling permit for such well and/or such other informa-
23 tion as may be required by the department to enable the
24 department and the coal operators to locate and identify
25 such well and shall inform them that such notice is
26 being mailed to them respectively by registered mail,
27 pursuant to the requirements of this article. (The
28 form for such notice of intention shall be furnished on
29 request by the department of mines.) If no objections
30 are made, or are found by the department, to such pro-
31 posed fracturing within ten days from receipt of such
32 notice by the department of mines, the same shall be filed
33 and become a permanent record of such fracturing,
34 subject to inspection at any time by any interested per-
35 son, and the department shall forthwith issue to the well
36 operator a permit reciting the filing of such notice, that
37 no objections have been made by the coal operators, or
38 found thereto by the department, and authorizing the
39 well operator to fracture such well: *Provided, however*,
40 That unless the department has objections to such pro-
41 posed fracturing, such permit shall be issued prior to the
42 expiration of such ten-day period upon the obtaining by

43 the well operator of the consent in writing of the coal
44 operator or operators to whom notice of intention to frac-
45 ture shall have been mailed as herein required, and upon
46 presentation of such written consent to the department.
47 The notice above provided for may be given to the coal
48 operator by delivering or mailing it as above to any agent
49 or superintendent in actual charge of mines.

Sec. 3. Objections to Proposed Drilling or Fracturing;
2 **Notices and Hearings; Agreed Location or Conditions;**
3 **Location or Conditions Fixed by Department of Mines;**
4 **Indication of Changes on Plats, etc.; Issuance of Permits;**
5 **Docket of Proceedings.**—In any case where the pro-
6 posed drilling or fracturing site is above or in close
7 proximity to any mine opening or shaft, entry, travel-
8 ing, air, haulage, drainage or othe passageway, or to any
9 proposed extension thereof, in any operated or aban-
10 doned or operating coal mine, or coal mine already sur-
11 veyed and platted, but not yet being operated, so that
12 the well or the pillar of coal about the well necessary
13 to the protection of the mine and of the well itself when
14 drilled or fractured will interfere with or endanger the
15 use of such mine opening, entries or ways, then the coal
16 operator or operators affected may, and shall, if the
17 drilling or fracturing of a well at such location will cause
18 a dangerous condition in their mine or mines, within
19 ten days from the receipt by the department of mines
20 of the plat and notice required by section two, or within
21 ten days from receipt by the department of mines of the
22 notice required by section two-a, file objections in writing
23 (forms for which will be furnished by the department
24 on request) to such proposed drilling or fracturing with
25 the department of mines, setting out therein as definitely
26 as is reasonably possible the ground or grounds on which
27 such objections are based and in the case of proposed
28 drilling, indicating the direction and distance from the
29 location shown the proposed well should be drilled to
30 overcome such objections, and in the case of proposed
31 fracturing, indicating the conditions for the protection of
32 life and property under which the well should be frac-
33 tured to overcome such objections.
34 If any objection or objections are so filed by any coal

35 operator or are made by the department of mines, the de-
36 partment shall notify the well operator of the character
37 of the objections and by whom made and fix a time and
38 place, not less than ten days from the end of said ten-day
39 period, at which such objections will be considered, of
40 which time and place the well operator and all coal oper-
41 ators to whom a copy of the plat and notice required by
42 section two was mailed, or to whom the notice required
43 by section two-a was mailed, as the case may be, whether
44 objecting or not objecting to the proposed drilling or
45 fracturing, shall be given at least five days' written notice
46 by the department, by registered mail, and summoned
47 to appear, bringing with them their maps and plans show-
48 ing their mines and mine workings and in the case of pro-
49 posed drilling, being prepared to approve or to except to
50 such location or locations as the department may, after
51 hearing, approve or itself fix in case no agreement is
52 reached, and in the case of proposed fracturing being pre-
53 pared to approve or to except to any conditions under
54 which the fracturing is to take place as the department
55 may, for the protection of life and property, after hearing,
56 approve or itself fix in case no agreement is reached. At
57 the time and place so fixed the well operator and the in-
58 terested coal operators, or such of them as are present or
59 represented, shall proceed to consider the objections, and
60 in the case of proposed drilling to agree upon either the
61 location as made or so moved as to satisfy all objections
62 and meet the approval of the department, and any change
63 in the original location so agreed upon and approved by
64 the department shall be indicated on said plat on file with
65 the department, and the distance and direction of the new
66 location from the original location shall be shown, and,
67 as so altered, the plat shall be filed and become a perma-
68 nent record, and in the case of proposed fracturing to
69 agree upon conditions under which the well is to be frac-
70 tured which will protect life and property and which will
71 satisfy all objections and meet the approval of the de-
72 partment, at which time the plat and notice required by
73 section two, or the notice required by section two-a, as
74 the case may be, shall be filed and become a permanent
75 record. Whereupon the department shall forthwith issue

76 to the well operator a drilling or fracturing permit, as
77 the case may be, reciting the filing of the plat and notice
78 required by said section two, or the notice required by
79 said section two-a, as the case may be, that at a hearing
80 duly held a location as shown on the plat or the conditions
81 under which the fracturing is to take place for the pro-
82 tection of life and property were agreed upon and ap-
83 proved, and that the well operator is authorized to drill
84 at such location or to fracture at the site shown on such
85 plat, or to fracture the well identified in the notice re-
86 quired by section two-a, as the case may be.

87 In case the well operator and the coal operator or such
88 of the coal operators as are present or represented at such
89 hearing are unable to agree upon a drilling location, or
90 upon a drilling location that meets the approval of the
91 department of mines, then the department shall fix a
92 drilling location on such tract of land as near to the orig-
93 inal location as possible in a pillar of suitable size, through
94 which the well can be drilled safely, taking into consider-
95 ation the dangers from creep, squeeze, or other disturb-
96 ance, due to the extraction of coal. Should no such pillar
97 exist, however, the well may be located and drilled
98 through open workings where, in the judgment of the
99 department of mines, it is practicable and safe so to do,
100 taking into consideration the dangers from creeps,
101 squeezes, or other disturbances. In case the well operator
102 and the coal operator or such of the coal operators as are
103 present or represented at such hearing are unable to
104 agree upon the conditions under which the well is to be
105 fractured so as to protect life and property, or upon con-
106 ditions of fracturing that meet the approval of the de-
107 partment of mines, then the department shall fix the con-
108 ditions under which the well is to be fractured, provided
109 the well can be fractured safely, taking into consideration
110 the dangers from creeps, squeezes, or other disturbances.
111 Such new drilling location shall be indicated on the plat
112 on file with the department as provided in the next pre-
113 ceding paragraph of this section, and the department
114 shall forthwith tender to the well operator a permit to
115 drill at such location, or to fracture at the site shown on
116 plat, or to fracture the well identified in the notice re-

117 quired by section two-a, as the case may be, which permit
118 the well operator may accept or refuse to accept, and if
119 it accepts such permit, the coal operator or operators hav-
120 ing filed objections and appearing or being represented at
121 such hearing, may except to such location or fracturing
122 and to the issuance of such drilling or fracturing permit;
123 and the well operator accepting the same may require the
124 record of the hearing to show that it accepts such drilling
125 permit at the location made by the department as a new
126 or additional location and not in lieu of its original loca-
127 tion, or that it accepts such fracturing permit as to the
128 conditions under which the well is to be fractured as
129 fixed by the department as new conditions and not in lieu
130 of the conditions preferred by it, and that it reserves the
131 right to appeal to the circuit court of the county in which
132 its original drilling location, or its fracturing site, lies for
133 relief, and that it excepts to the refusal of the department
134 to approve such original location substantially as made
135 or to approve the conditions of fracturing preferred.

136 The department of mines shall number and keep an
137 index of and docket each plat and notice mailed to it as
138 provided in section two of this article, and each notice
139 mailed to it as provided in section two-a of this article,
140 entering in such docket the name of the well operator,
141 names of the coal operators notified and their addresses,
142 the date of receipt of any such plat and notice required
143 by said section two or notice required by said section
144 two-a and of all objections filed, dates of hearings and all
145 actions taken by the department, permits issued or re-
146 fused, which docket shall be open to inspection by the
147 public, and, together with the papers filed, shall consti-
148 tute the record of each such proceeding before the de-
149 partment.

**Sec. 4. Appeal by Coal Operator or Well Operator from
2 Drilling Location Fixed or Approved, or from the Condi-
3 tions of Fracturing Fixed or Approved, by Department
4 of Mines or from Issuance of Permit to Drill or Fracture;
5 Procedure.**—Any coal operator excepting to any drilling
6 location fixed or approved by the department of mines or
7 to the issuance of any drilling permit, or to the conditions
8 under which the well is to be fractured as fixed or ap-

9 proved by the department of mines for the protection of
10 life and property or to the issuance of any fracturing
11 permit, and any well operator excepting to the refusal of
12 the department to grant a drilling permit at the location
13 shown in the plat mailed to the department as provided
14 in section two of this article, or such location so shifted
15 as to be still substantially the same or the equivalent
16 thereof, or to the refusal of the department to grant a
17 fracturing permit in accordance with the conditions of
18 fracturing preferred by the well operator, may at any
19 time within ten days of the taking of such action by the
20 department of mines appeal to the circuit court of the
21 county in which the proposed drilling location or frac-
22 turing site involved lies. The procedure shall be by peti-
23 tion and answer, duly verified, and naming the depart-
24 ment as one of the respondents. The petition shall briefly
25 set forth the matter in controversy, the ruling of the de-
26 partment and the relief sought. The operator making
27 such appeal shall forthwith send a copy of such petition
28 for appeal, by registered mail, to the deputy director for
29 oil and gas. Upon receipt of such copy of such petition
30 for appeal the deputy director for oil and gas shall
31 promptly certify and file in such court a complete tran-
32 script of the record upon which the ruling complained of
33 was made, as well as copies of all papers filed with the
34 department. The costs of such transcriptions shall be paid
35 by the party making the appeal. The respondents shall
36 be required to answer under oath within ten days after
37 service of copies of the petition upon them, and the pro-
38 cedure shall be expedited, as far as is reasonably possible,
39 having regard to possible drainage or loss of title by the
40 well operator through its failure to complete or fracture
41 a well within the period fixed by the terms of the lease
42 under which it holds. The court may, by preliminary
43 order, upon proper proof of the necessity therefor and the
44 giving of proper security, stay the drilling or fracturing
45 of any well until a final decision on the appeal, and after
46 a final hearing, at which any competent and relevant evi-
47 dence may be introduced, may set aside any action or
48 order of the department and enter such final order and
49 decree as in its judgment is just and right and will best

50 carry out the provisions of this article. From such final
51 orders and decrees of the circuit court an appeal may be
52 taken to the supreme court of appeals. During vacation
53 periods or when for any reason the circuit court is not in
54 session, such proceedings shall be before the judge of such
55 court in vacation, or, in his absence, before the judge of
56 an adjoining circuit, who may act until the return of the
57 regular judge to his circuit, whereupon all further pro-
58 ceedings shall be had before the regular judge or circuit
59 court having initial jurisdiction therein, and all proceed-
60 ings in vacation shall be of like force and effect as if be-
61 fore the court in session.

Sec. 9. Plugging and Abandonment of Well; Notice of
2 **Intention; Performance Bond or Securities in Lieu There-**
3 **of; Affidavit Showing Time and Manner.**—Prior to the
4 abandonment of any well, the well operator shall notify,
5 by registered mail, the department of mines and the coal
6 operator or operators, if any, to whom notices are required
7 to be given by section two of this article and the coal oper-
8 ator or operators to whom notices are required to be given
9 by section two-a of this article of its intention to plug and
10 abandon any such well (using such form of notice as the
11 department may provide), giving the number of the well
12 and its location and fixing the time at which the work of
13 plugging and filling will be commenced, which time shall
14 be not less than five days after the day on which such
15 notice so mailed is received or in due course should be
16 received by the department of mines, in order that a
17 representative or representatives of the department and
18 the coal operator or operators, if any, or of both, may be
19 present at the plugging and filling of the well. Whether
20 such representatives appear or do not appear, the well
21 operator may proceed at the time fixed to plug and fill
22 the well in the manner hereinafter described. Notwith-
23 standing the foregoing, a well operator may proceed to
24 plug and fill a well at any time without giving the afore-
25 said notice of intention if such operator has first obtained
26 in writing the approval of the department of mines and
27 the coal operator or operators, if any, to whom notices
28 are required to be given by section two of this article
29 and the coal operator or operators to whom notices are

30 required to be given by section two-a of this article. No
31 well shall be plugged or abandoned unless the depart-
32 ment is furnished a bond of the operator in the sum of
33 one thousand dollars, payable to the state of West Vir-
34 ginia, with a corporate bonding and/or surety company
35 authorized to do business in this state as surety thereon,
36 conditioned on full compliance with all laws, rules and
37 regulations relating to the casing, plugging and abandon-
38 ment of wells and for furnishing such reports and in-
39 formation as may be required by the department: *Pro-*
40 *vided*, That when a number of wells are involved, the
41 operator may in lieu of furnishing a separate bond furnish
42 a blanket bond in the sum of ten thousand dollars, pay-
43 able to the state of West Virginia, with a corporate bond-
44 ing and/or surety company authorized to do business in
45 this state as surety thereon, and conditioned as aforesaid:
46 *Provided, however*, That in lieu of corporate surety on a
47 separate or blanket bond, as the case may be, the operator
48 may elect to deposit with the deputy director for oil and
49 gas cash and/or collateral securities as specified in sec-
50 tion two of this article. All of the provisions of section
51 two dealing with cash and/or collateral securities in lieu
52 of corporate surety shall be fully applicable hereto except
53 for the condition of the bond with respect to which the
54 operator must be in full compliance in order to be entitled
55 to the interest and income earned on such securities. The
56 operator shall be entitled to such interest and income
57 under this section so long as the operator is in full com-
58 pliance with all laws, rules and regulations relating to
59 the casing, plugging and abandonment of wells and for
60 furnishing such reports and information as may be re-
61 quired by the department. Any such bond shall remain
62 in force until released by the department and the depart-
63 ment shall release the same when it is satisfied the condi-
64 tions thereof have been fully performed. Notwithstand-
65 ing the foregoing provisions, any operator who, in ac-
66 cordance with section two of this article, has furnished
67 a separate bond, which has not been released by the de-
68 partment, for the drilling or fracturing of the well it is
69 now proposed be plugged and abandoned, or who, in
70 accordance with the provisions of said section two of this

71 article, has furnished a blanket bond which has not been
72 released by the department shall not be required by this
73 section to furnish any other bond. When the plugging
74 and filling of a well have been completed, an affidavit,
75 in triplicate, shall be made (on a form to be furnished
76 by the department) by two experienced men who par-
77 ticipated in the work, in which affidavit shall be set forth
78 the time and manner in which the well was plugged and
79 filled. One copy of this affidavit shall be retained by the
80 well operator, another (or true copies of same) shall be
81 mailed to the coal operator or operators, if any, and the
82 third to the department of mines.

Sec. 14. Preventing Waste of Gas; Plans of Operation
2 **Required for Wasting Gas in Process of Producing Oil;**
3 **Rejection Thereof.**—Natural gas shall not be permitted to
4 waste or escape from any well or pipe line, when it is rea-
5 sonably possible to prevent such waste, after the owner or
6 operator of such gas, or well, or pipe line, has had a reason-
7 able length of time to shut in such gas in the well, or make
8 the necessary repairs to such well or pipe line to prevent
9 such waste: *Provided*, That (a) if, in the process of drill-
10 ing a well for oil or gas, or both, gas is found in such well,
11 and the owner or operator thereof desires to continue to
12 search for oil or gas, or both, by drilling deeper in search
13 of lower oil or gas-bearing strata, or (b) if it becomes
14 necessary to make repairs to any well producing gas, com-
15 monly known as "cleaning out," and if in either event it is
16 necessary for the gas in such well to escape therefrom dur-
17 ing the process of drilling or making repairs, as the case
18 may be, then the owner or operator of such well shall
19 prosecute such drilling or repairs with reasonable dili-
20 gence, so that the waste of gas from the well shall not con-
21 tinue longer than reasonably necessary, and if, during the
22 progress of such deeper drilling or repairs, any temporary
23 suspension thereof becomes necessary, the owner or oper-
24 ator of such well shall use all reasonable means to shut in
25 the gas and prevent its waste during such temporary sus-
26 pension: *Provided, however*, That in all cases where both
27 oil and gas are found and produced from the same oil and
28 gas-bearing stratum, and where it is necessary for the gas
29 therefrom to waste in the process of producing the oil,

30 the owner or operator shall use all reasonable diligence
31 to conserve and save from waste so much of such gas as
32 it is reasonably possible to save, but in no case shall
33 such gas from any well be wasted in the process of pro-
34 ducing oil therefrom until the owner or operator of such
35 well shall have filed with the department a plan of opera-
36 tion for said well showing, among other things, the gas-
37 oil production ratio involved in such operation, which
38 plan shall govern the operation of said well unless the
39 department shall, within ten days from the date on which
40 such plan is submitted to the department, make a finding
41 that such plan fails, under all the facts and circumstances,
42 to propose the exercise of all reasonable diligence to con-
43 serve and save from waste so much of such gas as it is
44 reasonably possible to save, in which event production of
45 oil at such well by the wasting of gas shall cease and
46 determine until a plan of operation is approved by the
47 department. Successive plans of operation may be filed
48 by the owner or operator of any such well with the de-
49 partment.

Sec. 18. Injunctive Relief.—In addition to all other
2 remedies, and aside from various penalties provided by
3 law, if any person, firm or corporation is violating or
4 threatening to violate any provision of this article, or any
5 lawful rule or regulation promulgated thereunder, the
6 department may maintain a civil action in the circuit
7 court of the county wherein such violation has occurred
8 or is threatened, or wherein such person, firm or corpo-
9 ration may be found, to enjoin, restrain or prevent such
10 actual or threatened violation. No injunction bond shall
11 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.

Article 1. Words and Phrases Defined.

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-

19 tion of children to or from school or privately owned and
20 operated for compensation for the transportation of chil-
21 dren to or from school.

22 (e) *Bus*. Every motor vehicle designed for carrying
23 more than seven passengers and used for the transporta-
24 tion of persons; and every motor vehicle, other than a
25 taxicab, designed and used for the transportation of per-
26 sons for compensation.

27 (f) *Truck Tractor*. Every motor vehicle designed and
28 used primarily for drawing other vehicles and not so con-
29 structed as to carry a load other than a part of the weight
30 of the vehicle and load so drawn.

31 (g) *Farm Tractor*. Every motor vehicle designed and
32 used primarily as a farm implement for drawing plows,
33 mowing machines, and other implements of husbandry.

34 (h) *Road Tractor*. Every motor vehicle designed and
35 used for drawing other vehicles and not so constructed as
36 to carry any load thereon either independently or any
37 part of the weight of a vehicle or load so drawn.

38 (i) *Truck*. Every motor vehicle designed, used, or
39 maintained primarily for the transportation of property.

40 (j) *Trailer*. Every vehicle with or without motive
41 power designed for carrying persons or property and for
42 being drawn by a motor vehicle and so constructed that
43 no part of its weight rests upon the towing vehicle.

44 (k) *Semitrailer*. Every vehicle with or without motive
45 power designed for carrying persons or property and for
46 being drawn by a motor vehicle and so constructed that
47 some part of its weight and that of its load rests upon or
48 is carried by another vehicle.

49 (l) *Pole Trailer*. Every vehicle without motive power
50 designed to be drawn by another vehicle and attached to
51 the towing vehicle by means of a reach, or pole, or by
52 being boomed or otherwise secured to the towing vehicle,
53 and ordinarily used for transporting long or irregularly
54 shaped loads such as poles, pipes, or structural members
55 capable, generally, of sustaining themselves as beams be-
56 tween the supporting connections.

57 (m) *Specially Constructed Vehicles*. Every vehicle of

58 a type required to be registered hereunder not originally
59 constructed under a distinctive name, make, model, or
60 type by a generally recognized manufacturer of vehicles
61 and not materially altered from its original construction.

62 (n) *Reconstructed Vehicle*. Every vehicle of a type
63 required to be registered hereunder materially altered
64 from its original construction by the removal, addition,
65 or substitution of essential parts, new or used.

66 (o) *Essential Parts*. All integral and body parts of a
67 vehicle of a type required to be registered hereunder, the
68 removal, alteration, or substitution of which would tend
69 to conceal the identity of the vehicle or substantially alter
70 its appearance, model, type, or mode of operation.

71 (p) *Foreign Vehicles*. Every vehicle of a type required
72 to be registered hereunder brought into this state from
73 another state, territory, or country other than in the ordi-
74 nary course of business by or through a manufacturer or
75 dealer and not registered in this state.

76 (q) *Implement of Husbandry*. Every vehicle which is
77 designed for agricultural purposes and used by the owner
78 thereof primarily in the conduct of his agricultural oper-
79 ations.

80 (r) *Special Mobile Equipment*. Every vehicle not de-
81 signed or used for the transportation of persons or prop-
82 erty and incidentally operated or moved over the high-
83 ways, including road construction or maintenance ma-
84 chinery, ditch-digging apparatus, well-boring apparatus,
85 concrete mixers, and farm tractors, when farm tractors
86 cannot be classified as an implement of husbandry as de-
87 fined in subparagraph (q) of this section. The foregoing
88 enumeration shall be deemed partial and shall not operate
89 to exclude other such vehicles which are within the gen-
90 eral terms of this subparagraph.

91 (s) *Pneumatic Tire*. Every tire in which compressed
92 air is designed to support the load.

93 (t) *Solid Tire*. Every tire of rubber or other resilient
94 material which does not depend upon compressed air for
95 the support of the load.

96 (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 occu-
126 pation 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

137 other person coming into possession of a vehicle as an in-
138 cident to such person's regular business who shall sell
139 such vehicle, or who shall sell such vehicle under any
140 contractual rights such persons may have with respect
141 thereto, shall not be a dealer hereunder: *Provided*, That a
142 person who engages exclusively in the wrecking or dis-
143 mantling of vehicles for junk or for resale of the parts of
144 such vehicles and who comes into possession of a vehicle
145 for the purpose of wrecking or dismantling same as here-
146 inabove stated shall not be a dealer hereunder.

147 (cc) *Transporter*. Every person engaged in the busi-
148 ness of delivering vehicles of a type required to be regis-
149 tered hereunder from a manufacturing, assembling, or
150 distributing plant to dealers or sales agents of a manu-
151 facturer.

152 (dd) *Manufacturer*. Every person engaged in the busi-
153 ness of constructing or assembling vehicles of a type re-
154 quired to be registered hereunder at an established place
155 of business in this state.

156 (ee) *Established Place of Business*. The place actually
157 occupied either continuously or at regular periods by a
158 dealer or manufacturer where his books and records are
159 kept and a large share of his business is transacted.

160 (ff) *Street or Highway*. The entire width between
161 boundary lines of every way publicly maintained when
162 any part thereof is open to the use of the public for pur-
163 poses 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.—Registra-
2 tion plates issued for vehicles required to be registered
3 hereunder shall be attached to the rear thereof.

4 Every registration plate shall at all times be securely
5 fastened in a horizontal position to the vehicle for which
6 it is issued so as to prevent the plate from swinging and
7 at a height of not less than twelve inches from the ground,

8 measuring from the bottom of such plate, in a place and
9 position to be clearly visible and shall be maintained free
10 from foreign materials and in a condition to be clearly
11 legible.

*CHAPTER 97

(House Bill No. 532—Originating in the House
Committee on Roads)

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

AN ACT to amend and reenact section nineteen, article one,
chapter seventeen-a of the code of West Virginia, one thou-
sand 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:

Article 1. Words and Phrases Defined.

Section

19. Special mobile equipment.

Section 19. Special Mobile Equipment.—Every vehicle
2 not designed or used for the transportation of persons or
3 property and incidentally operated or moved over the
4 highways, including road construction or maintenance
5 machinery, ditch-digging apparatus, well-boring appar-
6 atus, concrete mixers, and farm tractors, when farm tract-
7 ors cannot be classified as an implement of husbandry as
8 defined in section eighteen, article one of this chapter.
9 The foregoing enumeration shall be deemed partial and
10 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.

11 are within the general terms of this section: *Provided*,
12 *however*, That any motor vehicle operated more than once
13 each week on said highways shall be considered more than
14 incidental operation and shall not constitute a piece of
15 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
2 of the department, other than those declared by law to
3 be confidential for the use of the department, shall be
4 open to public inspection during office hours.

5 (b) The commissioner may destroy any records of
6 the department which have been maintained on file for
7 three years which he may deem obsolete and of no fur-
8 ther service in carrying out the powers and duties of the
9 department: *Provided*, That where it is shown that both
10 parties to an accident have filed valid evidence of insur-
11 ance, the records relating thereto may be destroyed after
12 a period of six months.

CHAPTER 99

(Senate Bill No. 211—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 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.

Section 16. Cancellation, Suspension, Seizure, etc., of

2 Documents and Plates.—The department is hereby au-
3 thorized to take possession of any certificate of title, regis-
4 tration card, permit, license, or registration plate issued
5 by it upon expiration, revocation, cancellation, or suspen-
6 sion thereof, or which is fictitious, or which has been un-
7 lawfully or erroneously issued.

8 When the department determines that the required fee
9 for the issuance by the department of any registration
10 card, permit, license or registration plate, or the required
11 tax imposed by section four of article three of this chap-
12 ter, has not been paid and shall not be paid upon reason-
13 able notice and demand, the commissioner is authorized
14 and empowered to cancel or suspend or revoke, as he
15 shall deem appropriate, any and all registration cards,
16 permits, operator's and chauffeur's licenses, and regis-
17 tration plate or plates, issued to the person, firm or cor-
18 poration by whom or on whose account any such fee or
19 tax shall have been so determined to remain unpaid
20 after such reasonable notice and demand.

CHAPTER 100

(Senate Bill No. 203—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 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.

Section 4. Application for Certificate of Title; Tax.—

2 Certificates of registration of any vehicle or registration
3 plates therefor, whether original issues or duplicates,
4 shall not be issued or furnished by the department of
5 motor vehicles or any other officer charged with such
6 duty, unless the applicant therefor already has received,
7 or shall at the same time make application for and be
8 granted, an official certificate of title of such vehicle. Such
9 application shall be upon a blank form to be furnished by
10 the department of motor vehicles and shall contain a full
11 description of the vehicle, which description shall con-
12 tain the manufacturer's serial or identification number or
13 other number as determined by the commissioner and any
14 distinguishing marks, together with a statement of the
15 applicant's title and of any liens or encumbrances upon
16 such vehicle, the names and addresses of the holders of
17 such liens and such other information as the department
18 of motor vehicles may require. The application shall be

19 signed and sworn to by the applicant. A tax is hereby
20 imposed upon the privilege of effecting the certification of
21 title of each vehicle in the amount equal to three per cent
22 of the value of said motor vehicle at the time of such cer-
23 tification. If the vehicle is new, the actual purchase price
24 or consideration to the purchaser thereof shall be the
25 value of said vehicle; if the vehicle is a used or second-
26 hand vehicle, the present market value at time of transfer
27 or purchase shall be deemed the value thereof for the pur-
28 pose of this section: *Provided*, That if said motor vehicle
29 is purchased in the state of West Virginia, so much of the
30 purchase price or consideration as is represented by the
31 exchange of other vehicles on which the tax herein im-
32 posed has been paid by the purchaser shall be deducted
33 from the total actual price or consideration paid for said
34 vehicle, whether the same be new or second-hand; if the
35 vehicle be acquired through gift, or by any manner what-
36 soever, unless specifically exempted in this section, the
37 present market value of the vehicle at the time of the gift
38 or transfer shall be deemed the value thereof for purposes
39 of this section. No certificate of title for any vehicle shall
40 be issued to any applicant unless such applicant shall
41 have paid to the department of motor vehicles the tax im-
42 posed by this section which shall be three per cent of the
43 true and actual value of said vehicle whether the ve-
44 hicle be acquired through purchase, by gift, or by any
45 other manner whatsoever except gifts between husband
46 and wife or between parents and children; but the tax
47 imposed by this section shall not apply to vehicles to be
48 registered as Class H vehicles, as defined in section one,
49 article ten of this chapter, which are used or to be used
50 in interstate commerce, nor shall the tax imposed by this
51 section apply to titling of vehicles by a registered dealer of
52 this state for resale only, nor shall the tax imposed by this
53 section apply to titling of vehicles by this state or any
54 political subdivision thereof, or by any volunteer fire de-
55 partment organized and incorporated under the laws of
56 the state of West Virginia for protection of life or prop-
57 erty. The total amount of revenue collected by reason of
58 this tax shall be paid into the state road fund and ex-
59 pended by the state road commissioner for matching fed-

60 eral aid funds allocated for West Virginia. In addition to
61 said tax, there shall be a charge of one dollar for each
62 original certificate of title so issued: *Provided, however,*
63 That this state or any political subdivision thereof, or any
64 such volunteer fire department, shall be exempted from
65 payment of such charge.

66 Notwithstanding the provisions of this section, the own-
67 ers of trailers, semitrailers and other vehicles not subject
68 to the certificate of title tax prior to enactment of this
69 chapter shall not be required to pay the above-mentioned
70 tax upon making application for a certificate of title for
71 such vehicle, but shall be required to pay a fee of one
72 dollar for the issuance of each such certificate of title.

73 Such certificate shall be good for the life of the vehicle,
74 so long as the same is owned or held by the original hold-
75 er of such certificate, and need not be renewed annually,
76 or any other time, except as herein provided.

77 If, by will or direct inheritance, a person becomes the
78 owner of a motor vehicle upon which the tax herein im-
79 posed has been paid, he shall not be required to pay such
80 tax.

81 A person who has paid the tax imposed by this section
82 shall not be required to pay the tax a second time for the
83 same motor vehicle, but he shall be required to pay a
84 charge of one dollar for the certificate of retitling of that
85 motor vehicle, except that such tax shall be paid by such
86 person when the title to such vehicle has been transferred
87 either in this or another state from such person to another
88 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

2 Department; Special Registration Plates; Permanent
3 Registration Plates.—The department upon registering a
4 vehicle shall issue to the owner one registration plate for
5 a motorcycle, trailer, semitrailer or other motor vehicle.

6 Every registration plate shall have displayed upon it the
7 registration number assigned to the vehicle for which it
8 is issued, also the name of this state, which may be ab-
9 breviated, and the year number for which it is issued or
10 the date of expiration thereof.

11 Such registration plate and the required letters and
12 numerals thereon, except the year number for which is-
13 sued or the date of expiration, shall be of sufficient size
14 to be plainly readable from a distance of one hundred feet
15 during daylight, said registration numbering to begin with
16 number two.

17 The color of the registration plates shall be blue and
18 gold of reflectorized material. Colors shall be reversed
19 each year.

20 The department shall not issue, permit to be issued, or
21 distribute any special numbers except as follows:

22 (a) The governor shall be issued registration plates, on
23 one of which shall be imprinted the numeral one and on
24 the other the word one.

25 (b) Upon appropriate application, there shall be issued
26 to the secretary of state, state superintendent of free
27 schools, auditor, treasurer, commissioner of agriculture,

28 and the attorney general, the members of both houses of
29 the Legislature, including the clerks thereof, the judges of
30 the supreme court of appeals of West Virginia, the rep-
31 resentatives and senators of the state in the Congress of
32 the United States, the judges of the United States district
33 courts for the state of West Virginia and the judges of
34 the United States court of appeals for the fourth circuit,
35 if any of said judges shall be residents of West Virginia,
36 a special registration plate for a motor vehicle owned by
37 him or his wife, but not to exceed one plate for each such
38 official, which plate shall bear the initials of the individ-
39 ual, or any combination of letters not to exceed three,
40 which combination of letters shall be limited to a con-
41 traction of the proper name or names of such individual
42 or a familiar form applicable to such names or a name
43 by which the individual is generally known, and shall
44 not include any name that might be construed as a slogan
45 or advertisement which has no relation to the name or
46 names of such individual or to a reasonable name by
47 which he is generally known, together with a designation
48 of his office and which plate shall supersede, during his
49 term of office and while such motor vehicle is owned by
50 him or his wife, the regular numbered plate assigned to
51 him.

52 (c) Upon appropriate application, any owner of a motor
53 vehicle subject to registration under the provisions of this
54 article may request that the department issue to said
55 owner a registration plate bearing a particular number.
56 The department shall attempt to comply with such re-
57 quest wherever possible.

58 (d) In addition to the regular registration fees set forth
59 in section three, article ten of this chapter, a fee of five
60 dollars shall be paid to the department in each case in
61 which an application for a special registration plate is
62 made as hereinabove provided in subparagraphs (b)
63 and (c).

64 Notwithstanding the provisions of this section, or of any
65 other provision of this chapter, the commissioner may,
66 in his discretion, issue a type of registration plate suitable
67 for permanent use on motor vehicles, trailers and semi-

68 trailers, together with appropriate devices to be attached
69 thereto to indicate the year for which such vehicles have
70 been properly registered or the date of expiration of such
71 registration. The design of such plates shall be determined
72 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, re-
lating 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 govern-
mental vehicles.

**Section 23. Registration Plates for State, County, Mu-
nicipal 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, bu-
reaus, commissions or institutions, except vehicles used by
the governor, vehicles operated by the department of pub-
lic 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-

13 tration plate, with white lettering on a green background
14 bearing the words "West Virginia" in one line and the
15 words "State Car" in another line, and the lettering for the
16 words "State Car" shall be of sufficient size to be plainly
17 readable from a distance of one hundred feet during
18 daylight.

19 Such vehicle shall also have attached to the rear a plate
20 bearing a number and said other words and figures as the
21 commissioner of motor vehicles shall prescribe. The rear
22 plate shall also be green with the number in white.

23 On registration plates issued to vehicles owned by
24 counties, the color shall be white on red with the word
25 "County" on top of the plate and the words "West Vir-
26 ginia" on the bottom. On any registration plates issued
27 to a city or municipality, the color shall be white on blue
28 with the word "City" on top, and the words "West Vir-
29 ginia" on the bottom. The colors may not be reversed and
30 shall be of reflectorized material. The commissioner is
31 hereby authorized to designate the colors and design of
32 any other registration plates that are issued without
33 charge to any other agency in accordance with the motor
34 vehicle laws. The registration plates issued to counties,
35 municipalities and other governmental agencies author-
36 ized to receive colored plates hereunder shall be affixed
37 to both the front and rear of such vehicles.

38 No other registration plate shall be issued for, or at-
39 tached to, any such state-owned vehicle.

40 The commissioner of motor vehicles shall have a suf-
41 ficient number of both front and rear plates produced to
42 attach to all state-owned cars. The numbered registration
43 plates for such vehicles shall start with the number "five
44 hundred" and the commissioner shall issue consecutive
45 numbers for all state-owned cars.

46 It shall be the duty of each office, department, bureau,
47 commission or institution furnished any such vehicle to
48 have such plates affixed thereto prior to the operation of
49 such vehicle by any official or employee.

50 Any person violating the provisions of this section shall
51 be guilty of a misdemeanor, and, upon conviction thereof,
52 shall be fined not less than fifty dollars or more than one
53 hundred dollars.

54 Justices of the peace shall have concurrent jurisdiction
55 with circuit and criminal courts for the enforcement of
56 this section.

CHAPTER 103

(House Bill No. 65—By Miss Tsapis)

[Passed February 19, 1963; in effect ninety days from passage. Approved by the Governor.]

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.

Section 12. Transfer of Abandoned Motor Vehicle.—

2 The department, upon receipt of an application for a
3 title accompanied by a properly executed affidavit aver-
4 ring that a motor vehicle has been abandoned by the
5 owner and stored by the applicant for a period of ninety
6 days or more, the name of the owner of the motor
7 vehicle, if known, and that the value of said motor
8 vehicle on the date of the application is less than one
9 hundred dollars, shall issue a certificate of title for said
10 motor vehicle to the applicant for the usual fee: *Pro-*
11 *vided, however,* That notice of the filing of such appli-
12 cation shall be given by the department to the regis-
13 tered owner of such motor vehicle, if known, and to
14 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-

4 **current or Seasonal Residence in State.**—(a) A nonresi-
5 dent owner, except as otherwise provided in this section,
6 owning any vehicle registered in a foreign state or country
7 of a type otherwise subject to registration hereunder may
8 operate or permit the operation of such vehicle within this
9 state for a period of thirty days without registering such
10 vehicle in, or paying any fees to, this state subject to the
11 condition that such vehicle at all times when operated in
12 this state is duly registered in and displays upon it a valid
13 registration card and registration plate or plates issued for
14 such vehicle in the place of residence of such owner.

15 (b) Every nonresident, including any foreign corpora-
16 tion, carrying on business within this state and owning
17 and regularly operating in such business any motor ve-
18 hicle, trailer, or semitrailer within this state, shall be re-
19 quired to register each such vehicle and pay the same fee
20 therefor as is required with reference to like vehicles
21 owned by residents of this state, except as otherwise pro-
22 vided by reciprocal agreements with other states accom-
23 plished pursuant to section ten, article two of this chapter.

24 (c) Any nonresident who accepts or engages in tempo-
25 rary and recurrent or seasonal employment, business, pro-
26 fession or occupation in this state and maintains tempo-
27 rary and recurrent or seasonal residence in this state in
28 connection with such employment, business, profession,
29 or occupation, and any nonresident, including any corpo-
30 ration carrying on business of a temporary and recurrent
31 or seasonal nature in this state and owning and tempo-
32 rarily and recurrently or seasonally operating in such
33 business any motor vehicle, trailer or semitrailer within
34 this state, may operate or permit the operation of such
35 vehicle within this state without causing said vehicle to
36 be registered as otherwise required by article three of
37 this chapter: *Provided*, That such nonresident, in lieu
38 of registration of such vehicle, shall make application to
39 the department and receive a special permit for such
40 vehicle which shall be evidenced by a metal identification
41 plate and certificate in writing, which special permit plate
42 and certificate shall together identify the vehicle for
43 which such special permit and plate shall issue and such
44 certificate shall bear the name and address of the owner

45 of such vehicle. Such special permit shall be issued with-
46 out previous certification of title to such vehicle as other-
47 wise required by article three of this chapter.

48 Every owner of a vehicle for which such special permit
49 is desired shall make a verified application to the depart-
50 ment for such special permit upon the appropriate form
51 or forms furnished by the department and shall bear the
52 signature of the owner written with pen and ink and shall
53 contain the character of information called for by section
54 three, article three of this chapter, a description of the
55 employment, residence, business and location of such
56 business set forth in such manner as to show the tempo-
57 rary and recurrent or seasonal nature of such residence,
58 employment, business, profession or occupation, and that
59 such vehicle is duly registered in the state of residence
60 of such owner. There shall be an application for each
61 vehicle for which a special permit is desired.

62 Any special permit or plate issued by the department
63 under this section shall be effective and valid for a period
64 of sixty consecutive days from and including the date of
65 issuance and, upon similar application by the owner, the
66 commissioner may renew any such special permit for im-
67 mediately ensuing similar period or periods of sixty days
68 in any fiscal year. The department shall charge a fee of
69 ten dollars for each special permit issued under this sec-
70 tion. A special permit shall be issued for one vehicle only
71 and no combination of two or more vehicles shall be
72 operated under fewer special permits than the number of
73 vehicles in such combination. A special permit shall not
74 be issued for any vehicle which is not duly registered in
75 the state of residence of the owner thereof. The regis-
76 tration plate issued for such vehicle by the state of resi-
77 dence of the owner shall not be displayed on such vehicle
78 while being operated over any highway during any period
79 for which a special permit shall have been issued for such
80 vehicle under this section, but there shall be carried in
81 such vehicle the certificate of registration issued for such
82 vehicle by the state of residence of such owner.

83 The commissioner shall prescribe the substance, form,
84 color and context of the certificate or special permit and
85 the special permit plate, each of which shall be visually

86 distinguishable from the certificates of registration and
87 registration plates issued under article three of this chap-
88 ter.

89 It is a misdemeanor for any person to drive or move or
90 knowingly to permit to be moved or driven upon any
91 highway any vehicle for which a special permit shall have
92 been issued under this section unless such vehicle shall
93 bear the special plate called for by the certificate evi-
94 dencing such special permit.

95 When the employment, business, profession, occupation
96 or residence of the owner of a vehicle for which such spe-
97 cial permit shall have been issued shall cease to be tem-
98 porary and recurrent or seasonal, any special permit
99 issued for such vehicle pursuant to this section shall im-
100 mediately terminate and become void and such vehicle
101 shall thereupon become subject to registration under
102 article three of this chapter.

103 Any special permit issued pursuant to this section shall
104 be valid and effective on and after the first day of a month;
105 that is, such special permit issued between the first and
106 fifteenth days of a month shall be effective during sixty
107 consecutive days from and including the first day of the
108 month in which the permit shall issue; and a special
109 permit issued after the fifteenth day of any month shall
110 be effective during sixty consecutive days commencing
111 with and including the first day of the month next fol-
112 lowing the month in which such special permit shall be
113 issued.

CHAPTER 105

(House Bill No. 221—By Mr. Myles and Mr. Anderson)

[Passed March 9, 1963; 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.
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

13 period, shall be guilty of a misdemeanor, and, upon con-
14 viction, may be confined in jail for a period of not more
15 than one year or be fined not more than five hundred
16 dollars or both. The notice hereinabove provided for
17 may be served in the same manner that any other notice
18 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 classification 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.

Section 1. Classification of Vehicles for Purpose of

- 2 **Registration.**—Vehicles subject to registration under the
3 provisions of this chapter shall be placed in the following
4 classes for the purpose of registration:

- 5 Class A. Motor vehicles of passenger type, other than
6 those operated for compensation;

- 7 Class B. Motor vehicles designated as trucks, truck trac-
8 tors, or road tractors other than those operated for com-
9 pensation;

- 10 Class C. All trailers and semitrailers, except those op-
11 erated for compensation, and except house trailers and
12 trailers or semitrailers designed to be drawn by Class A

13 motor vehicles and having a gross weight of less than two
14 thousand pounds;

15 Class E. Motor vehicles designated as trucks, truck trac-
16 tors, or road tractors operated for transportation of prop-
17 erty for compensation, but being exempt from the oper-
18 ating jurisdiction of the public service commission, and
19 for which a statement of exemption has been received
20 from the public service commission;

21 Class G. Motorcycles;

22 Class H. Motor vehicles operated regularly for the trans-
23 portation of persons for compensation under a certificate
24 of convenience and necessity or contract carrier permit
25 issued by the public service commission;

26 Class J. Motor vehicles operated for transportation of
27 persons for compensation by common carriers, not running
28 over a regular route or between fixed termini;

29 Class K. Motor vehicles designated as trucks, truck trac-
30 tors, or road tractors operated for transportation of prop-
31 erty for compensation under a certificate of convenience
32 and necessity or a contract carrier permit issued by the
33 public service commission;

34 Class L. All trailers and semitrailers used for trans-
35 portation of property for compensation;

36 Class R. House trailers;

37 Class S. Special mobile equipment as defined in subdivi-
38 sion (r), section nineteen, article one of this chapter;

39 Class T. Trailers or semitrailers of a type designed to
40 be drawn by Class A vehicles and having a gross weight
41 of less than two thousand pounds.

42 Class U. Passenger motor vehicles rented for compen-
43 sation without a driver.

44 Class Farm Truck. Motor vehicles designated as trucks
45 having a minimum gross weight of more than eight thou-
46 sand pounds and a maximum gross weight of twenty-two
47 thousand pounds, used exclusively in the conduct of a
48 farming business, engaged in the production of agricul-
49 tural products by means of (a) the planting, cultivation
50 and harvesting of agricultural, horticultural, vegetable

51 or other products of the soil, (b) the raising, feeding and
52 care of livestock, poultry, bees, and dairy cattle. Such
53 farm truck shall be used only for the transportation of
54 agricultural products so produced by the owner thereof,
55 or for the transportation of agricultural supplies used in
56 such production, or for private passenger use.

CHAPTER 107

(Senate Bill No. 202—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 three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration 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

2 **Pneumatic Tires.**—The following registration fees for the
3 classes indicated shall be paid annually to the department
4 for the registration of vehicles subject to registration here-
5 under when equipped with pneumatic tires:

6 Class A. The registration fee for all motor vehicles of
7 this class shall be as follows:

8 (1) For motor vehicles of a weight of three thousand
9 pounds or less—twenty dollars.

10 (2) For motor vehicles of a weight of three thousand
11 and one pounds to four thousand pounds—twenty-four
12 dollars.

13 (3) For motor vehicles of a weight in excess of four
14 thousand pounds—thirty dollars.

15 For the purpose of determining the weight the actual
16 weight of the vehicle shall be taken: *Provided*, That for
17 vehicles owned by churches, or by trustees for churches,
18 which vehicles are regularly used for transporting parish-
19 ioners to and from church services, no license fee shall be
20 charged, but notwithstanding such exemption; the cer-
21 tificate of registration and license plates shall be obtained
22 the same as other cards and plates under this article.

23 Class B, Class E and Class K. The registration fee for
24 all motor vehicles of these three classes shall be as follows:

25 (1) For declared gross weights of four thousand pounds
26 or less— twenty dollars.

27 (2) For declared gross weights of four thousand and one
28 pounds to eight thousand pounds—twenty-two dollars and
29 fifty cents.

30 (3) For declared gross weights of eight thousand and
31 one pounds to sixteen thousand pounds—twenty-two dol-
32 lars and fifty cents plus forty-five cents for each hundred
33 pounds or fraction thereof that gross weight of such ve-
34 hicle or combination of vehicles exceeds eight thousand
35 pounds.

36 (4) For declared gross weights greater than sixteen
37 thousand pounds—sixty-eight dollars and fifty cents plus
38 ninety cents for each one hundred pounds or fraction
39 thereof that the gross weight of such vehicle or combina-
40 tion of vehicles exceeds sixteen thousand pounds.

41 If the declared gross weight of a Class B, Class E or
42 Class K motor vehicle includes the gross weight of a Class
43 C or Class L vehicle used in combination with such Class
44 B, Class E or Class K motor vehicle and the declared gross
45 weight of the vehicles constituting such combination ex-
46 ceeds sixteen thousand pounds and the registration fee
47 prescribed hereunder for such Class C or Class L vehicle
48 has been paid, there shall be deducted from the registra-
49 tion fee for such Class B, Class E or Class K motor vehicle
50 the amount of seventeen dollars and fifty cents; but, there
51 shall be no such deduction where the declared gross weight

52 of the vehicles constituting such combination is less than
53 sixteen thousand and one pounds.

54 Class C and Class L. The registration fee for all vehicles
55 of these two classes shall be seventeen dollars and fifty
56 cents.

57 Class G. The registration fee for each motorcycle hav-
58 ing two wheels shall be six dollars. The registration fee
59 for each motorcycle having three wheels shall be seven
60 dollars and fifty cents.

61 Class H. The registration fee for all vehicles for this
62 class operating entirely within the state shall be five dol-
63 lars; and for vehicles engaged in interstate transportation
64 of persons, the registration fee shall be the fees provided
65 by this section for Class B, Class E and Class K reduced
66 by the amount that the mileage of such vehicles operated
67 in states other than West Virginia bears to the total mile-
68 age operated by such vehicles in all states under a formula
69 to be established by the department of motor vehicles.

70 Class J. The registration fee for all motor vehicles of
71 this class shall be eighty-five dollars. Ambulances and
72 hearses used exclusively as such shall be exempted from
73 the above special fees.

74 Class R. The registration fee for all vehicles of this class
75 shall be ten dollars.

76 Class S. The registration fee for all vehicles of this class
77 shall be seventeen dollars and fifty cents.

78 Class T. The registration fee for all vehicles of this
79 class shall be six dollars.

80 Class U. The registration fee for all vehicles of this
81 class shall be fifty-seven dollars and fifty cents.

82 Class Farm Truck. The registration fee for all motor
83 vehicles of this class shall be as follows: (1) For farm
84 trucks of declared gross weights of eight thousand and one
85 pounds to sixteen thousand pounds—thirty dollars; and
86 (2) for farm trucks of declared gross weights of sixteen
87 thousand and one pounds to twenty-two thousand pounds
88 —eighty dollars.

CHAPTER 108

(Senate Bill No. 207—By Mr. Carson, Mr. President,
and Mr. Smith)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the
Governor.]

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
2 Be Paid before Vehicle Registered; Suspension of Regis-
3 tration Cards and Plates Issued to Motor Carriers; Privi-
4 lege to Exchange Suspended Registration Cards and
5 Plates.**—The commissioner shall not register any Class H,
6 Class J, Class K or Class L vehicle unless the assessment
7 for such vehicle provided for in section six, article six,
8 chapter twenty-four-a of this code shall have been paid
9 and notice of such payment shall have been received by
10 the commissioner in the manner provided by said section.
11 The commissioner shall suspend any registration card
12 and registration plate issued by the department under

13 authority of this section for any Class H, Class J, Class K
14 or Class L vehicle upon receiving certification in writing
15 from the public service commission that said commission
16 has cancelled, suspended or revoked the certificate of con-
17 venience and necessity, permit or other operating author-
18 ity of the motor carrier to whom or to which such regis-
19 tration card and registration plate were issued under the
20 authority provided by the first paragraph of this section:
21 *Provided, That the motor carrier to whom or to which*
22 *said registration card and registration plate were issued*
23 *shall have the privilege of receiving in exchange for any*
24 *such suspended registration card and registration plate a*
25 *registration card and registration plate for a vehicle of a*
26 *different class as provided by section one of article four*
27 *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:

Article 1. Words and Phrases Defined.

Section

1. Definitions.

Section 1. Definitions.—The following words and
2 phrases when used in this chapter shall, for the purpose

3 of this chapter, have the meanings respectively ascribed
4 to them in this article:

5 (a) *Vehicle*. Every device in, upon, or by which any
6 person or property is or may be transported or drawn upon
7 a public highway, excepting devices moved by human
8 power or used exclusively upon stationary rails or tracks;

9 (b) *Motor Vehicle*. Every vehicle which is self-pro-
10 pelled and every vehicle which is propelled by electric
11 power obtained from overhead trolley wires, but not
12 operated upon rails;

13 (c) *Farm Tractor*. Every motor vehicle designed and
14 used primarily as a farm implement for drawing plows,
15 mowing machines, and other implements of husbandry;

16 (d) *School Bus*. Every motor vehicle owned by a public
17 governmental agency and operated for the transportation
18 of children to or from school or privately owned and
19 operated for compensation for the transportation of chil-
20 dren to or from school;

21 (e) *Person*. Every natural person, firm, copartnership,
22 association, or corporation;

23 (f) *Operator*. Every person, other than a chauffeur,
24 who drives or is in actual physical control of a motor
25 vehicle upon a highway or who is exercising control over
26 or steering a vehicle being towed by a motor vehicle;

27 (g) *Chauffeur*. Every person who is employed by
28 another for the principal purpose of driving a motor
29 vehicle and every person who drives a school bus trans-
30 porting school children or any motor vehicle when in use
31 for the transportation of persons or property for com-
32 pensation;

33 (h) *Owner*. A person who holds the legal title of a
34 vehicle or in the event a vehicle is the subject of an agree-
35 ment for the conditional sale or lease thereof with the
36 right of purchase upon performance of the conditions
37 stated in the agreement and with an immediate right of
38 possession vested in the conditional vendee or lessee, or
39 in the event a mortgagor of a vehicle is entitled to pos-
40 session, then such conditional vendee or lessee or mort-
41 gator shall be deemed the owner for the purpose of this
42 chapter;

43 (i) *Nonresident*. Every person who is not a resident of
44 this state;

45 (j) *Street or Highway*. The entire width between the
46 boundary lines of every way publicly maintained when
47 any part thereof is open to the use of the public for pur-
48 poses of vehicular travel;

49 (k) *Commissioner*. The commissioner of motor vehicles
50 of this state;

51 (l) *Department*. The department of motor vehicles of
52 this state acting directly or through its duly authorized
53 officers or agents;

54 (m) *Suspension*. Suspension means that the driver's
55 license and privilege to drive a motor vehicle on the pub-
56 lic highways are temporarily withdrawn but only during
57 the period of such suspension;

58 (n) *Revocation*. Revocation means that the driver's li-
59 cense and privilege to drive a motor vehicle on the public
60 highways are terminated and shall not be renewed or
61 restored, except that an application for a new license may
62 be presented and acted upon by the department after the
63 expiration of at least one year after the date of revocation,
64 except as otherwise provided in section two, article five,
65 chapter seventeen-c of this code;

66 (o) *Cancellation*. Cancellation means that a driver's
67 license is annulled and terminated because of some error
68 or defect or because the licensee is no longer entitled to
69 such license, but the cancellation of a license is without
70 prejudice and application for a new license may be made
71 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.—

2 The following persons are exempt from license hereunder:

3 (1) Any person while operating a motor vehicle in the
4 service of the army, air force, navy, or marine corps of
5 the United States;

6 (2) A nonresident who is at least sixteen years of age
7 and who has in his immediate possession a valid oper-
8 ator's license issued to him in his home state or country
9 may operate a motor vehicle in this state only as an oper-
10 ator for a period not to exceed ninety days in any one cal-
11 endar year;

12 (3) A nonresident who is at least eighteen years of
13 age and who has in his immediate possession a valid
14 chauffeur's license issued to him in his home state or
15 country may operate a motor vehicle in this state either
16 as an operator or chauffeur subject to the age limits ap-
17 plicable to chauffeurs in this state except that any such
18 person must be licensed as a chauffeur hereunder before
19 accepting employment as chauffeur from a resident of
20 this state or from a person or persons having a place of
21 business in this state;

22 (4) Any person who is a student, properly enrolled
23 and registered in an accredited school, college or uni-
24 versity in this state and who is legally licensed to operate
25 a motor vehicle in his residence state: *Provided*, That the
26 state of which he is a resident shall extend the same
27 privileges to residents of this state. This exemption shall
28 be cancelled immediately when such student is graduated

29 from school, college or university or is expelled or ceases
30 to be a student.

*CHAPTER 111

(Senate Bill No. 342—By Mr. Martin)

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

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.

Section 2. What Persons Are Exempt from License.—

2 The following persons are exempt from license here-
3 under:

4 (1) Any person while operating a motor vehicle in
5 the service of the army, air force, navy, or marine corps
6 of the United States;

7 (2) A nonresident who is at least sixteen years of age
8 and who has in his immediate possession a valid oper-
9 ator's license issued to him in his home state or country
10 may operate a motor vehicle in this state only as an oper-
11 ator for a period not to exceed ninety days in any one
12 calendar year;

13 (3) A nonresident who is at least eighteen years of
14 age and who has in his immediate possession a valid

* See note to Chapter 110.

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 seven-
44 teen-a of this code: *Provided, however*, That such person
45 shall be employed by the owner of such vehicle to operate
46 such vehicle and shall have also in his immediate posses-
47 sion the certificate of registration issued to such owner
48 for such vehicle by the state of residence of such owner
49 and also the certificate of special permit issued by the
50 department to the owner of said vehicle pursuant to sub-
51 section (c) of section one, article five of said chapter
52 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.

Section 1. Authority of Department to Cancel License.

- 2 —The department is hereby authorized to cancel any
- 3 operator's or chauffeur's license in any of the following
- 4 events:
 - 5 (1) When the department determines that the licensee
 - 6 was not entitled to the issuance thereof hereunder; or,
 - 7 (2) When said licensee failed to give the required or
 - 8 correct information in his application; or,
 - 9 (3) When said licensee committed any fraud in mak-
 - 10 ing such application; or,
 - 11 (4) When the department determines that the required
 - 12 fee has not been paid and the same is not paid upon rea-
 - 13 sonable notice or demand.
- 14 Upon such cancellation the licensee must surrender the
- 15 license so cancelled to the department.

CHAPTER 113

(Senate Bill No. 209—By Mr. Carson, Mr. President,
and Mr. Smith)

[Passed March 6, 1963; in effect ninety days from passage. Approved by the Governor.]

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:

Article 4. Violation of License Provisions.

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

20 sentence, shall be fined not less than one hundred fifty
21 dollars nor more than five hundred dollars.

22 The department upon receiving a record of the conviction
23 of any person under this section upon a charge of
24 driving a vehicle while the license of such person was
25 suspended lawfully shall extend the period of such suspension
26 for an additional like period and if the conviction
27 was upon a charge of driving while a license was revoked
28 lawfully the department shall not issue a new license for
29 an additional period of one year from and after the date
30 such person would otherwise have been entitled to apply
31 for a new license.

CHAPTER 114

(Com. Sub. for Senate Bill No. 11—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 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, article 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 section 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.
10. Pedestrians' Rights and Duties.
13. Stopping, Standing and Parking.

Article 1. Words and Phrases Defined.

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.
13. Bus.
14. Trackless trolley coach.
15. Traller.
16. Semitrailer.
17. Pole trailer.
18. Pneumatic tire.
19. Solid tire.
20. Metal tire.
21. Railroad.
22. Railroad train.
23. Streetcar.
24. Explosives.
25. Flammable liquid.
26. Gross weight.
27. Commissioner.
28. Department.
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.
- 48. Traffic-control signal.
- 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-

5 ice corporations as are designated or authorized by the
6 commissioner or the chief of police of an incorporated
7 city, and such privately owned ambulances and emer-
8 gency vehicles as are designated by the commissioner.

Sec. 7. School Bus.—"School bus" means every motor
2 vehicle owned by a public or governmental agency and
3 operated for the transportation of children to or from
4 school or privately owned and operated for compensation
5 for the transportation of children to or from school.

Sec. 8. Bicycle.—"Bicycle" means every device pro-
2 pelled by human power upon which any person may ride,
3 having two tandem wheels either of which is more than
4 twenty inches in diameter.

Sec. 9. Truck Tractor.—"Truck tractor" means every
2 motor vehicle designed and used primarily for drawing
3 other vehicles and not so constructed as to carry a load
4 other than a part of the weight of the vehicle and load
5 so drawn.

Sec. 10. Farm Tractor.—"Farm tractor" means every
2 motor vehicle designed and used primarily as a farm
3 implement for drawing plows, mowing machines, and
4 other implements of husbandry.

Sec. 11. Road Tractor.—"Road tractor" means every
2 motor vehicle designed and used for drawing other ve-
3 hicles and not so constructed as to carry any load thereon
4 either independently or any part of the weight of a
5 vehicle or load so drawn.

Sec. 12. Truck.—"Truck" means every motor vehicle
2 designed, used or maintained primarily for the trans-
3 portation of property.

Sec. 13. Bus.—"Bus" means every motor vehicle de-
2 signed for carrying more than seven passengers and used
3 for the transportation of persons; and every motor ve-
4 hicle, other than a taxicab, designed and used for the
5 transportation of persons for compensation.

Sec. 14. Trackless Trolley Coach.—"Trackless trolley
2 coach" means every motor vehicle which is propelled by

3 electric power obtained from overhead trolley wires but
4 not operated upon rails.

Sec. 15. Trailer.—"Trailer" means every vehicle with
2 or without motive power, other than a pole trailer, de-
3 signed for carrying persons or property and for being
4 drawn by a motor vehicle and so constructed that no part
5 of its weight rests upon the towing vehicle.

Sec. 16. Semitrailer.—"Semitrailer" means every ve-
2 hicle with or without motive power, other than a pole
3 trailer, designed for carrying persons or property and
4 for being drawn by a motor vehicle and so constructed
5 that some part of its weight and that of its load rests
6 upon or is carried by another vehicle.

Sec. 17. Pole Trailer.—"Pole trailer" means every ve-
2 hicle without motive power designed to be drawn by an-
3 other vehicle and attached to the towing vehicle by
4 means of a reach, or pole, or by being boomed or other-
5 wise secured to the towing vehicle, and ordinarily used
6 for transporting long or irregularly shaped loads such
7 as poles, pipes, or structural members capable, generally,
8 of sustaining themselves as beams between the support-
9 ing connections.

Sec. 18. Pneumatic Tire.—"Pneumatic tire" means
2 every tire in which compressed air is designed to support
3 the load.

Sec. 19. Solid Tire.—"Solid tire" means every tire of
2 rubber or other resilient material which does not depend
3 upon compressed air for the support of the load.

Sec. 20. Metal Tire.—"Metal tire" means every tire
2 the surface of which in contact with the highway is
3 wholly or partly of metal or other hard nonresilient
4 material.

Sec. 21. Railroad.--"Railroad" means a carrier of per-
2 sons or property upon cars, other than streetcars, operated
3 upon stationary rails.

Sec. 22. Railroad Train.—"Railroad train" means a
2 steam engine, electric or other motor, with or without

3 cars coupled thereto, operated upon rails, except street-
4 cars.

2 **Sec. 23. Streetcar.**—"Streetcar" means a car other than
2 a railroad train for transporting persons or property and
3 operated upon rails principally within a municipality.

2 **Sec. 24. Explosives.**—"Explosives" means any chemical
2 compound or mechanical mixture that is commonly used
3 or intended for the purpose of producing an explosive
4 and which contains any oxidizing and combustive units
5 or other ingredients in such proportions, quantities, or
6 packing that an ignition by fire, by friction, by concus-
7 sion, by percussion, or by detonator of any part of the
8 compound or mixture may cause such a sudden gener-
9 ation of highly heated gases that the resultant gaseous
10 pressures are capable of producing destructive effects on
11 contiguous objects or of destroying life or limb.

2 **Sec. 25. Flammable Liquid.**—"Flammable liquid" means
2 any liquid which has a flash point of seventy degrees
3 Fahrenheit, or less, as determined by a tagliabue or
4 equivalent closed-cup test device.

2 **Sec. 26. Gross Weight.**—"Gross weight" means the
2 weight of a vehicle without load plus the weight of any
3 load thereon.

2 **Sec. 27. Commissioner.**—"Commissioner" means the
2 commissioner of motor vehicles of this state.

2 **Sec. 28. Department.**—"Department" means the depart-
2 ment of motor vehicles of this state acting directly or
3 through its duly authorized officers and agents.

2 **Sec. 29. Person.**—"Person" means every natural person,
2 firm, copartnership, association, or corporation.

2 **Sec. 30. Pedestrian.**—"Pedestrian" means any person
2 afoot.

2 **Sec. 31. Driver.**—"Driver" means every person who
2 drives or is in actual physical control of a vehicle.

2 **Sec. 32. Owner.**—"Owner" means a person who holds
2 the legal title of a vehicle or in the event a vehicle is the

3 subject of an agreement for the conditional sale or lease
4 thereof with the right of purchase upon performance of
5 the conditions stated in the agreement and with an im-
6 mediate right of possession vested in the conditional
7 vendee or lessee, or in the event a mortgagor of a vehicle
8 is entitled to possession, then such conditional vendee or
9 lessee or mortgagor shall be deemed the owner for the
10 purpose of this chapter.

Sec. 33. Police Officer.—"Police officer" means every
2 officer authorized to direct or regulate traffic or to make
3 arrests for violations of traffic regulations.

Sec. 34. Local Authorities.—"Local authorities" means
2 every county, municipal, and other local board or body
3 having authority to enact laws relating to traffic under
4 the constitution and laws of this state.

Sec. 35. Street or Highway.—"Street" or "highway"
2 means the entire width between the boundary lines of
3 every way publicly maintained when any part thereof
4 is open to the use of the public for purposes of vehicular
5 travel.

Sec. 36. Private Road or Driveway.—"Private road" or
2 "driveway" means every way or place in private owner-
3 ship and used for vehicular travel by the owner and those
4 having express or implied permission from the owner,
5 but not by other persons.

Sec. 37. Roadway.—"Roadway" means that portion of
2 a highway improved, designed, or ordinarily used for
3 vehicular travel, exclusive of the berm or shoulder. In
4 the event a highway includes two or more separate road-
5 ways, the term "roadway" as used herein shall refer to
6 any such roadway separately but not to all such roadways
7 collectively.

Sec. 38. Sidewalk.—"Sidewalk" means that portion of
2 a street between the curb lines, or the lateral lines of a
3 roadway, and the adjacent property lines, intended for
4 the use of pedestrians.

Sec. 39. Laned Roadway.—"Laned roadway" means a

2 roadway which is divided into two or more clearly
3 marked lanes for vehicular traffic.

Sec. 40. Through Highway.—"Through highway"
2 means every highway or portion thereof at the entrances
3 to which vehicular traffic from intersecting highways is
4 required by law to stop before entering or crossing the
5 same and when stop signs are erected as provided in this
6 chapter.

Sec. 41. Controlled-Access Highway.—"Controlled-
2 access highway" means every highway, street, or road-
3 way in respect to which owners or occupants of abutting
4 lands and other persons have no legal right of access to
5 or from the same except at such points only and in such
6 manner as may be determined by the public authority
7 having jurisdiction over such highway, street, or road-
8 way.

Sec. 42. Intersection.—"Intersection" includes: (a) The
2 area embraced within the prolongation or connection of
3 the lateral curb lines, or, if none, then the lateral bound-
4 ary lines of the roadways of two highways which join
5 one another at, or approximately at, right angles, or the
6 area within which vehicles traveling upon different high-
7 ways joining at any other angle may come in conflict; and
8 (b) Where a highway includes two roadways thirty feet
9 or more apart, then every crossing of each roadway of
10 such divided highway by an intersecting highway shall
11 be regarded as a separate intersection. In the event such
12 intersecting highway also includes two roadways thirty
13 feet or more apart, then every crossing of two roadways
14 of such highways shall be regarded as a separate inter-
15 section.

Sec. 43. Cross Walk.—"Cross walk" includes: (a)
2 That part of a roadway at an intersection included within
3 the connections of the lateral lines of the sidewalks on
4 opposite sides of the highway measured from the curbs
5 or, in the absence of curbs, from the edges of the traversa-
6 ble roadway; and
7 (b) Any portion of a roadway at an intersection or

8 elsewhere distinctly indicated for pedestrian crossing by
9 lines or other markings on the surface.

Sec. 44. Safety Zone.—"Safety zone" means the area
2 or space officially set apart within a roadway for the
3 exclusive use of pedestrians and which is protected or is
4 so marked or indicated by adequate signs as to be plainly
5 visible at all times while set apart as a safety zone.

Sec. 45. Business District.—"Business district" means
2 the territory contiguous to and including a highway when
3 within any six hundred feet along such highway there
4 are buildings in use for business or industrial purposes,
5 including but not limited to hotels, banks, or office build-
6 ings, railroad stations, and public buildings which occupy
7 at least three hundred feet of frontage on one side or
8 three hundred feet collectively on both sides of the
9 highway.

Sec. 46. Residence District.—"Residence district" means
2 the territory contiguous to and including a highway not
3 comprising a business district when the property on such
4 highway for a distance of three hundred feet or more is
5 in the main improved with residences or residences and
6 buildings in use for business.

Sec. 47. Traffic-Control Devices.—"Traffic-control de-
2 vices" means all signs, signals, markings, and devices not
3 inconsistent with this chapter placed or erected by au-
4 thority of a public body or official having jurisdiction, for
5 the purpose of regulating, warning, or guiding traffic.

Sec. 48. Traffic-Control Signal.—"Traffic-control signal"
2 means any device, whether manually, electrically, or me-
3 chanically operated, by which traffic is alternately di-
4 rected to stop and to proceed.

Sec. 49. Railroad Sign or Signal.—"Railroad sign" or
2 "signal" means any sign, signal, or device erected by au-
3 thority of a public body or official or by a railroad and
4 intended to give notice of the presence of railroad tracks
5 or the approach of a railroad train.

Sec. 50. Traffic.—"Traffic" means pedestrians, ridden or
2 herded animals, vehicles, streetcars, and other convey-

3 ances either singly or together while using any highway
4 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.

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:

- 6 (1) Regulating the standing or parking of vehicles;
- 7 (2) Regulating traffic by means of police officers or
8 traffic-control devices;
- 9 (3) Regulating or prohibiting processions or assem-
10 blages on the highways;
- 11 (4) Designating particular highways as one-way high-
12 ways and requiring that all vehicles thereon be moved in
13 one specific direction;
- 14 (5) Regulating the speed of vehicles in public parks;

15 (6) Designating any highway as a through highway
16 and requiring that all vehicles stop before entering or
17 crossing the same or designating any intersection as a stop
18 intersection and requiring all vehicles to stop at one or
19 more entrances at such intersection;

20 (7) Restricting the use of highways as authorized in
21 section twelve, article seventeen of this chapter;

22 (8) Regulating the operation of bicycles and requir-
23 ing the registration and licensing of same, including the
24 requirement of a registration fee;

25 (9) Regulating or prohibiting the turning of vehicles
26 or specified types of vehicles at intersections;

27 (10) Altering the speed limits as authorized herein;

28 (11) Adopting such other traffic regulations as are spe-
29 cifically authorized by this chapter.

30 (b) No local authority shall permit any parking on
31 any state highway, or erect or maintain any stop sign or
32 traffic-control device at any location so as to require the
33 traffic on any state highway to stop before entering or
34 crossing any intersecting highway unless approval in
35 writing has first been obtained from the state road com-
36 missioner. Any such approval may be withdrawn by a
37 notice in writing from the state road commissioner.

38 (c) No ordinance or regulation enacted under subdi-
39 visions (4), (5), (6), (7), or (10), of subsection (a) of
40 this section shall be effective until signs giving notice of
41 such local traffic regulations are posted upon or at the
42 entrance to the highway or part thereof affected as may
43 be most appropriate.

Article 3. Traffic Signs, Signals and Markings.

Section

4-a. Obedience to traffic-control instructions at site of street or high-
way construction or maintenance.

8. Display of unauthorized devices, signals, signs, or markings.

Section 4-a. Obedience to Traffic-Control Instructions at

2 Site of Street or Highway Construction or Maintenance.—

3 The driver of any vehicle shall obey the traffic-control
4 instructions of persons authorized by the state road com-
5 missioner or by proper local authorities to operate traffic-
6 control devices, act as flagmen, or operate follow-vehicles

7 at or near the site of street or highway construction or
8 maintenance work, for the purpose of regulating, warn-
9 ing or guiding traffic, subject to the exceptions granted
10 the driver of an authorized emergency vehicle in this
11 chapter. Any person failing to comply with the require-
12 ments of this section shall be guilty of a misdemeanor.

**Sec. 8. Display of Unauthorized Devices, Signals, Signs,
2 or Markings.**—(a) No local authority or person shall
3 place, maintain, or display upon or in view of any high-
4 way any unauthorized traffic-control device or traffic-con-
5 trol signal, or any unauthorized sign, signal, marking, or
6 device which purports to be or is an imitation of or re-
7 sembles an official traffic-control device or railroad sign
8 or signal, or which attempts to direct the movement of
9 traffic, or which hides from view or interferes with the
10 effectiveness of any official traffic-control device or any
11 railroad sign or signal, and no person shall place or main-
12 tain nor shall any public authority permit upon any high-
13 way any traffic-control device bearing thereon any com-
14 mercial advertising. This shall not be deemed to prohibit
15 the erection upon private property adjacent to highways
16 of signs giving useful directional information and of a
17 type that cannot be mistaken for official signs.

18 (b) Every such prohibited device, signal, sign or mark-
19 ing is hereby declared to be a public nuisance and the
20 state road commissioner or other authority having juris-
21 diction over the highway is hereby empowered to remove
22 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
2 drive a vehicle on a highway at a speed greater than is
3 reasonable and prudent under the conditions and having
4 regard to the actual and potential hazards, then existing.
5 In every event speed shall be so controlled as may be
6 necessary to avoid colliding with any person, vehicle, or
7 other conveyance on or entering the highways in com-

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

3 basis of an engineering and traffic investigation that any
4 speed limit set forth in this article is greater or less than
5 is reasonable or safe under the conditions found to exist
6 at any intersection or other place or upon any part of a
7 highway, said commissioner may determine and declare
8 a reasonable and safe speed limit thereat which shall be
9 effective at all times or during hours of daylight or dark-
10 ness or at such other times as may be determined when
11 appropriate signs giving notice thereof are erected at such
12 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.—

2 The driver of a vehicle shall yield the right-of-way to
3 persons engaged in maintenance or construction work on
4 a street or highway whenever he is notified of their pres-
5 ence by an official traffic-control device or flagman.

Article 13. Stopping, Standing and Parking.

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

2 **in Specified Places.—**(a) No person shall stop, stand, or
3 park a vehicle, except when necessary to avoid conflict
4 with other traffic or in compliance with law or the direc-
5 tions of a police officer or traffic-control device, in any of
6 the following places:

- 7 (1) On a sidewalk;
- 8 (2) In front of a public or private driveway;
- 9 (3) Within an intersection;
- 10 (4) Within fifteen feet of a fire hydrant;
- 11 (5) On a cross walk;
- 12 (6) Within twenty feet of a cross walk at an intersec-
- 13 tion;
- 14 (7) Within thirty feet upon the approach to any flash-
- 15 ing beacon, stop sign, or traffic-control signal located at
- 16 the side of a roadway;

17 (8) Between a safety zone and the adjacent curb or
18 within thirty feet of points on the curb immediately op-
19 posite the ends of a safety zone, unless a different length
20 is indicated by signs or markings;

21 (9) Within fifty feet of the nearest rail of a railroad
22 crossing;

23 (10) Within twenty feet of the driveway entrance to
24 any fire station and on the side of a street opposite the en-
25 trance to any fire station within seventy-five feet of said
26 entrance (when properly signposted);

27 (11) Alongside or opposite any street excavation or
28 obstruction when stopping, standing, or parking would
29 obstruct traffic;

30 (12) On the roadway side of any vehicle stopped or
31 parked at the edge or curb of a street;

32 (13) Upon any bridge or other elevated structure
33 upon a highway or within a highway tunnel;

34 (14) At any place where official signs prohibit stop-
35 ping;

36 (15) Within twenty feet of any mail receptacle served
37 regularly by a carrier using a motor vehicle for daily de-
38 liveries, if such parking interferes with or causes delay
39 in the carrier's schedule;

40 (16) Upon any controlled-access highway;

41 (17) At any place on any highway where the safety
42 and convenience of the traveling public is thereby en-
43 dangered.

44 (b) No person shall move a vehicle not lawfully under
45 his control into any such prohibited area or away from
46 a curb such distance as is unlawful.

**Sec. 5. Removal of Vehicles Parked, etc., on Controlled-
2 Access Highway; Liability for Costs of Removal and Stor-
3 age; Liens for Towing and Storage.**—Whenever a vehicle
4 has been stopped, parked or left standing upon any part of
5 a controlled-access highway any police officer or employee
6 of the state road commission, duly authorized by the com-
7 missioner, shall have the authority to remove or order the
8 removal of the vehicle, by towing or otherwise, to the
9 nearest available established garage or parking lot for

10 storage until called for by the owner or his agent. The
11 owner shall be liable for the reasonable cost of such re-
12 moval and storage, and until payment of such cost the
13 garage or parking lot operator may retain possession of
14 the vehicle subject to a lien for the amount due. The
15 garage or parking lot operator may enforce his lien for
16 towing and storage in the manner provided in section
17 fourteen, article eleven, chapter thirty-eight of this code
18 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, chapter 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
2 a motor vehicle shall not follow another vehicle more
3 closely than is reasonable and prudent having due regard
4 for the speed of such vehicles and the traffic upon and
5 the condition of the highway.

6 (b) It shall be unlawful for the operator of any motor
7 truck, registered for a gross weight of more than eight
8 thousand pounds, bus, special mobile equipment or any

9 motor vehicle drawing another vehicle operating upon
10 any roadway outside of a business or residence district,
11 to follow within two hundred feet of another motor
12 truck, bus, special mobile equipment or any motor ve-
13 hicle drawing another vehicle: *Provided*, That this pro-
14 vision shall not be construed to (1) prevent overtaking
15 and passing, (2) apply upon any lane specially desig-
16 nated for the use of motor trucks or combinations of ve-
17 hicles, or within any section of a roadway posted or
18 marked as a "no passing zone," (3) apply to any convoy
19 of vehicles of the military service of the United States
20 or of this state and (4) apply to funeral processions.

21 (c) Motor vehicles being driven upon any roadway
22 outside of a business or residence district in a caravan or
23 motorcade whether or not towing other vehicles shall be
24 so operated as to allow sufficient space between each such
25 vehicle or combination of vehicles so as to enable any
26 other vehicle to enter and occupy such space without
27 danger. This provision shall not apply to (1) funeral pro-
28 ceSSIONS; or (2) any convoy of vehicles of the military
29 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.
8. Special lighting equipment on school buses.

Section 7. Overtaking and Passing School Bus.—(a)

2 The driver of a vehicle on any street or highway upon
3 meeting or overtaking from either direction any school
4 bus which has stopped on the highway for the purpose of
5 receiving or discharging any school children shall stop
6 the vehicle before reaching such school bus and said
7 driver shall not proceed until such school bus resumes
8 motion, or until signaled by the driver or other authorized
9 person or persons to proceed.

10 (b) Every bus used for the transportation of school
11 children shall bear upon the front and rear thereof a
12 plainly visible sign containing the words "school bus" in
13 letters not less than six inches in height. When a con-
14 tract school bus is being operated upon a highway for pur-
15 poses other than the actual transportation of children
16 either to or from school all markings thereon indicating
17 "school bus" shall be covered or concealed. Any school
18 bus sold or transferred to another owner by a county
19 board of education, agency, or individual shall have all
20 lettering removed or permanently obscured before sale or
21 transfer is made.

22 (c) The driver of a vehicle upon a highway with sepa-
23 rate roadways need not stop upon meeting or passing a
24 school bus which is on a different roadway or when upon
25 a controlled-access highway and the school bus is stopped
26 in a loading zone which is a part of or adjacent to such
27 highway and where pedestrians are not permitted to cross
28 the roadway.

Sec. 8. Special Lighting Equipment on School Buses.

2 —(a) The commissioner of motor vehicles is authorized
3 to adopt standards and specifications applicable to light-
4 ing equipment on and special warning devices to be car-
5 ried by school buses consistent with the provisions of this
6 chapter, but supplemental thereto, and except that such
7 standards and specifications may designate and permit the
8 use of flashing warning signal lights on school buses for

9 the purpose of indicating when children are boarding or
10 alighting from any said bus. Such standards and speci-
11 fications shall correlate with and, so far as possible, con-
12 form to the specifications then current as approved by the
13 Society of Automotive Engineers.

14 (b) It shall be unlawful to operate any flashing warn-
15 ing signal light on any school bus except when any said
16 school bus is stopped or is slowing down to stop on any
17 street or highway for the purpose of permitting school
18 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:

Article 1. Words and Phrases Defined.

Section

1. Definitions.

Section 1. Definitions.—The following words and
2 phrases when used in this chapter shall, for the purpose
3 of this chapter, have the meanings respectively ascribed
4 to them in this section:

5 (a) *Commissioner.* The commissioner of motor vehicles
6 of this state;

7 (b) *Person*. Every natural person, firm, copartnership,
8 association or corporation;

9 (c) *Driver*. Every person who drives or is in actual
10 physical control of a vehicle;

11 (d) *Operator*. Every person, other than a chauffeur,
12 who drives or is in actual physical control of a motor
13 vehicle upon a highway or who is exercising control over
14 or steering a vehicle being towed by a motor vehicle;

15 (e) *Chauffeur*. Every person who is employed by
16 another for the principal purpose of driving a motor ve-
17 hicle and every person who drives a school bus transport-
18 ing school children or any other motor vehicle when in
19 use for the transportation of persons or property for com-
20 pensation;

21 (f) *Owner*. A person who holds the legal title of a ve-
22 hicle, or in the event a vehicle is the subject of an agree-
23 ment for the conditional sale or lease thereof with the right
24 of purchase upon performance of the conditions stated in
25 the agreement and with an immediate right of possession
26 vested in the conditional vendee or lessee, or in the event a
27 mortgagor of a vehicle is entitled to possession, then such
28 conditional vendee or lessee or mortgagor shall be deemed
29 the owner for the purposes of this chapter;

30 (g) *Nonresident*. Every person who is not a resident
31 of this state;

32 (h) *Vehicle*. Every device in, upon, or by which any
33 person or property is or may be transported or drawn upon
34 a highway, except devices moved by human power or used
35 exclusively upon stationary rails or tracks;

36 (i) *Motor Vehicle*. Every vehicle which is self-pro-
37 pelled and every vehicle which is propelled by electric
38 power obtained from overhead trolley wires, but not oper-
39 ated upon rails;

40 (j) *Trailer*. Every vehicle with or without motive
41 power designed for carrying persons or property and for
42 being drawn by a motor vehicle and so constructed that
43 no part of its weight rests upon the towing vehicle;

44 (k) *Semitrailer*. Every vehicle with or without motive
45 power designed for carrying persons or property and for

- 46 being drawn by a motor vehicle and so constructed that
47 some part of its weight and that of its load rests upon or
48 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:

Article 3. Security Following Accident.

Section

10. Authority of commissioner to decrease or increase amount of security.

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 inadequate. In case the security originally 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 originally ordered is inadequate, the commissioner may give

12 written notice to every such person required by his pre-
13 vious order to deposit security under this article that he
14 is required to deposit additional security in an amount
15 and within the time specified in such notice, which time
16 shall not be less than ten days after the giving of such
17 notice, or that upon the expiration of said time an order
18 of suspension as stated therein will become effective un-
19 less the person receiving said notice deposits such addi-
20 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, chapter 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:

Article 1. Application of Chapter to Municipal Corporations.

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
2 authorized and empowered to become a member of an
3 association or league of municipalities having for its
4 general purpose the exchange and dissemination of infor-
5 mation and ideas designed for the more efficient admini-
6 stration and conduct of municipal government and affairs.
7 In order to finance the maintenance of such organization,
8 each municipality is hereby authorized to pay into such
9 association or league annually, dues or membership fee
10

11 or fees in an amount to be fixed by the members thereof
12 at the annual meeting of such association or league of
13 municipalities. Such dues or membership fee or fees
14 may be appropriated by the council as a current expense
15 item and included in the annual budget.

— C —

CHAPTER 120

(Senate Bill No. 254—By Mr. Martin)

[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:

Article 2. Creation, Alteration, Dissolution and Powers of Municipal Corporations.

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

13 the costs of such election if a majority of the votes cast
14 are against the proposed change in boundary, shall there-
15 upon order a vote of the qualified voters residing in such
16 city, town or village to be taken upon the proposed change
17 at a time and place therein to be named in the order, not
18 less than twenty nor more than thirty days from the date
19 thereof, and if it be proposed to include any additional
20 territory within such corporate limits, the council shall, at
21 the same time, order a vote of all the qualified voters resid-
22 ing in such additional territory, and of all persons, firms
23 or corporations owning any part of such territory, whether
24 they reside therein or not, to be taken upon the question
25 on the same day, at some convenient place on or near such
26 additional territory: *Provided*, That the additional terri-
27 tory to be included shall conform to the requirements of
28 section one of this article, and the determination that the
29 additional territory does so conform shall be reviewable
30 by the circuit court on certiorari to the council. The elec-
31 tion shall be held, superintended and conducted, and the
32 result thereof ascertained, certified and returned, in the
33 same manner and by the same persons as elections for
34 city, town or village officers. The ballots cast on such
35 question shall have written or printed on them the words:

36 ☐ For Change of Corporate Limits

37 ☐ Against Change of Corporate Limits

38 If a majority of all the votes so cast within such corpora-
39 tion be in favor of the proposed change, and no additional
40 territory is proposed to be included therein, the corporate
41 limits of such city, town or village shall thereafter be as
42 proposed by such petition. But, if additional territory is
43 proposed to be included in such corporate limits, such
44 change shall not take effect unless a majority of all the
45 votes cast by persons eligible to vote in such additional
46 territory shall also be cast in favor of such change. Any
47 firm or corporation may vote by its manager, president, or
48 executive officer duly designated in writing by such firm
49 or corporation.

50 When an election is held in any city, town or village
51 respecting a change in the boundary thereof, another such
52 election relating to the same territory or any part thereof
53 shall not be held for a period of one year.

54 The provisions of this and the following section shall
55 provide the exclusive procedure for effecting a change in
56 the boundary of every city, town or village except mu-
57 nicipalities which have adopted a home rule charter under
58 the provisions of chapter eight-a of the code: *Provided,*
59 *however,* That any city, town or village, otherwise author-
60 ized by said chapter eight-a or by special charter, may
61 utilize the procedures respecting minor boundary adjust-
62 ments set forth in section twenty-five, article six of said
63 chapter eight-a: *Provided further,* That any such minor
64 boundary adjustment shall not exceed thirty acres.

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.

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,

15 and as well the place or places within the city where
16 such ordinance may be inspected by the public;

17 (3) An ordinance shall not be finally passed until
18 after three days from the date of the publication and
19 until all interested parties have been given an oppor-
20 tunity to attend a meeting of the council and be heard
21 with respect to such ordinance.

22 A home rule charter may prescribe a procedure for the
23 enactment of ordinances in greater detail than prescribed
24 by this section, but the provisions of this section shall be
25 required. A governing body may enact an ordinance un-
26 der suspension of the rules prescribed by this section
27 only in the case of a pressing public emergency making
28 a procedure in accordance with the section dangerous
29 to the public health, safety, or morals, and by the affirma-
30 tive vote of two thirds of the members elected to the
31 governing body. The nature of the emergency shall be
32 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.

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.
47. Same; considered as amendments to comprehensive plan; procedure.

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

5 through twenty-two, except that publication of notice of
6 the time and place of hearing upon amendment of the
7 zoning ordinance shall be not less than fifteen days prior
8 to the date set for such hearing, and except that, if the
9 governing body of a city or the county court desires an
10 amendment, it may direct the planning commission to
11 prepare an amendment and submit it to public hearing
12 within sixty days after formal written request by the
13 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 adoption 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 fifteen days prior to the date set for such hearing.

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.

Section 19. Inconsistent Acts Repealed; Purpose of
2 **Article.**—All acts and parts of acts of the Legislature of
3 the state of West Virginia, general, special, local or
4 municipal charters, or parts thereof, in relation to any
5 civil service measure affecting the paid police departments
6 of any city or municipality inconsistent with this article
7 shall be, and the same are hereby, repealed insofar as such
8 inconsistencies shall exist. It is understood and intended
9 by this article to furnish a complete and exclusive system
10 for the appointment, promotion, reduction, removal and
11 reinstatement of all officers and policemen of said police
12 departments in all cities and municipalities of five thou-
13 sand population or more, wherein the members of the
14 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.

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

32 of such municipality; and such levies shall supersede and
33 if necessary exclude levies for other purposes if such
34 priority or exclusion is necessary under limitations upon
35 taxes or tax levies imposed by law.

36 Such corporations are authorized to take by gift, grant,
37 devise or bequest, any money or real or personal property,
38 upon such terms as to the investment and expenditure
39 thereof as may be fixed by the grantor or determined by
40 said trustees.

41 In addition to all other sums provided for pensions in
42 this section, it shall be the duty of every municipal cor-
43 poration to assess and collect from each member of such
44 fire department and police department each month, the
45 sum of four per cent of the actual salary or compensation
46 of such member; and the amount so collected shall be-
47 come a regular part of the firemen's pension fund, if
48 collected from a fireman, and of the policemen's pension
49 fund, if collected from a policeman.

50 Any member of a municipal fire or police department
51 who is released or who before retirement on any pension
52 severs his connection with said department, provided he
53 has served two full years or more, shall, upon request,
54 be refunded all deductions made from his salary, but
55 without interest. In event such refund is made and such
56 member subsequently reenters the department no credit
57 shall be allowed him for any former service, unless any
58 such member of a municipal fire or police department
59 repays to the pension fund all sums refunded to him
60 within one year from the date he reenters the department
61 with interest at the rate of six per cent per annum, and
62 provided further that any member who, at the time this
63 amendment becomes effective, has already reentered the
64 department, shall be allowed credit for any former service
65 upon repaying all sums withdrawn or refunded to him
66 within one year from the date this amendment becomes
67 effective with interest at the rate of six per cent per
68 annum, but in no case shall interest be charged for more
69 than three years.

CHAPTER 128

(Senate Bill No. 196—By Mr. Miller)

[Passed February 22, 1963; in effect from passage. Approved by the Governor.]

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

19 name of any municipal officer authorized to sign such
20 order by the use of any such mechanical or electrical
21 device upon any warrant, order or check, such municipal
22 officer or officers shall be personally liable, jointly and
23 severally, for the amount of any loss resulting to the
24 municipality.

25 If any person other than the persons authorized so to
26 do shall sign the name of any municipal officer authorized
27 to sign such order by the use of any such mechanical or
28 electrical device, or otherwise, upon any warrant, order
29 or check, he shall be guilty of forgery; and if any person
30 shall utter or attempt to employ as true such forged war-
31 rant, order or check, knowing the same to be forged, he
32 shall be guilty of a felony, and, upon conviction, shall be
33 confined in the penitentiary not less than two nor more
34 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
2 the context clearly requires a different meaning:

3 "Agency" means any branch, department or unit of the
4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United
6 States.

7 "Bag limit" or "creel limit" means the maximum num-
8 ber of wildlife which may be taken, caught, killed or pos-
9 sessed by any licensee.

10 "Board" means the water resources board of the de-
11 partment of natural resources.

12 "Citizen" means any native born citizen of the United
13 States, and foreign born persons who have procured their
14 final naturalization papers.

15 "Closed season" means the time or period during which
16 it shall be unlawful to take any wildlife as specified and
17 limited by the provisions of this chapter.

18 "Commission" means the natural resources commission.

19 "Commissioner" means a member of the advisory com-
20 mission of the natural resources commission.

21 "Director" means the director of the department of nat-
22 ural resources.

23 "Fishing" or "to fish" means the taking, by any means,
24 of fish, minnows, frogs, or other amphibians, aquatic tur-
25 tles, and other forms of aquatic life used as fish bait.

26 "Fur-bearing animals" shall include (a) the mink, (b)
27 the weasel, (c) the muskrat, (d) the beaver, (e) the
28 opossum, (f) the skunk, and civet cat, commonly called
29 polecat, (g) the otter, (h) the red fox, (i) the gray fox,
30 (j) the wildcat, bobcat or bay lynx, and (k) the raccoon.

31 "Game" means game animals, game birds and game fish
32 as herein defined.

33 "Game animals" shall include (a) the elk, (b) the
34 deer, (c) the cottontail rabbits and hares, (d) the fox
35 squirrels, commonly called red squirrels, and gray
36 squirrels, and all their color phases—red, gray, black or
37 albino, and (e) the raccoon.

38 "Game birds" shall include (a) the Anatidae, commonly
39 known as swans, geese, brants and river and sea ducks,
40 (b) the Rallidae, commonly known as rails, sora, coots,
41 mudhens, and gallinales, (c) the Limicolae, commonly

42 known as shorebirds, plover, snipe, woodcock, sandpipers,
43 yellowlegs, and curlews, (d) the Galli, commonly known
44 as wild turkey, grouse, pheasants, quails and partridges
45 (both native and foreign species), and (e) the Columbi-
46 dae, commonly known as doves and the Icteridae, com-
47 monly known as blackbirds, redwings and grackle.

48 "Game fish" shall include (a) brook trout, (b) brown
49 trout, (c) rainbow trout, (d) Kokanee salmon, (e) large-
50 mouth bass, (f) small-mouth bass, (g) Kentucky or
51 spotted bass, (h) pickerel, (i) muskellunge, (j) walleyed
52 pike, or pike perch, (k) rock bass, (l) white bass, (m)
53 white and black crappie, (n) blue-gill sunfish and (o)
54 other bream.

55 "Hunt" means to pursue, chase, catch or take any wild
56 birds or wild animals.

57 "Lands" means land, waters, and all other appurte-
58 nances connected therewith.

59 "Migratory birds" means any migratory game or non-
60 game birds included in the terms of conventions between
61 the United States and Great Britain and between the
62 United States and United Mexican States, known as the
63 "Migratory Bird Treaty Act", for the protection of migra-
64 tory birds and game mammals concluded, respectively,
65 August sixteen, one thousand nine hundred sixteen, and
66 February seven, one thousand nine hundred thirty-six.

67 "Nonresident" means any person who is a citizen of the
68 United States and who has not resided continuously in
69 the state of West Virginia for a period of six months im-
70 mediately prior to the date of his application for a license
71 or permit.

72 "Open season" means the time during which the various
73 species of wildlife may be legally caught, taken, killed or
74 chased in a specified manner, and shall include both the
75 first and the last day of the season or period designated by
76 the director.

77 "Person", except as otherwise defined elsewhere in this
78 chapter, means the plural "persons", and shall include in-
79 dividuals, partnerships, corporations, or other legal entity.

80 "Preserve" means all duly licensed private game farm

81 lands, or private plants, ponds or areas, where hunting or
82 fishing is permitted under special licenses or seasons other
83 than the regular public hunting or fishing seasons.

84 "Protected birds" means all wild birds not included
85 within the definition of "game birds" and "unprotected
86 birds".

87 "Resident" means any person who is a citizen of the
88 United States and who has resided continuously in the
89 state of West Virginia for a period of six months or more
90 immediately prior to the date of his application for a li-
91 cense or permit: *Provided*, That a member of the armed
92 forces of the United States who is stationed beyond
93 the territorial limits of this state, but who was a resi-
94 dent of this state at the time of his entry into such service,
95 shall be considered a resident under the provisions of this
96 chapter.

97 "Roadside menagerie" means any place of business,
98 other than a commercial game farm, commercial fish pre-
99 serve, place or pond, where any wild bird, game bird, un-
100 protected bird, game animal, or fur-bearing animal is kept
101 in confinement for the attraction and amusement of the
102 people for commercial purposes.

103 "Take" means to hunt, shoot, pursue, lure, kill, destroy,
104 catch, capture, keep in captivity, gig, spear, trap, ensnare,
105 wound or injure any wildlife, or attempt to do so.

106 "Unprotected birds" shall include (a) the English spar-
107 row, (b) the European starling, (c) the sharp-shinned
108 hawk, (d) the Cooper's hawk, (e) the goshawk, (f) the
109 cowbird, and (g) the crow.

110 "Wild animals" means all mammals native to the state
111 of West Virginia occurring either in a natural state or in
112 captivity, except house mice and rats.

113 "Wild birds" shall include all birds other than (a) do-
114 mestic poultry—chickens, ducks, geese, guinea fowl, pea-
115 fowls and turkeys, (b) Psittacidae, commonly called par-
116rots and paraquets, and (c) other foreign cage birds such
117 as the common canary, exotic finches and ring dove. All
118 wild birds, either (a) those occurring in a natural state in
119 West Virginia or (b) those imported foreign game birds,
120 such as waterfowl, pheasants, partridges, quail and grouse,

121 regardless of how long raised or held in captivity, shall
122 remain wild birds under the meaning of this chapter.

123 "Wildlife" means wild birds, wild animals, game and
124 fur-bearing animals, fish (including minnows), frogs and
125 other amphibians, aquatic turtles and all forms of aquatic
126 life used as fish bait, whether dead or alive.

127 "Wildlife refuge" means any land set aside by action of
128 the director as an inviolate refuge or sanctuary for the
129 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.

18-b. Cooperation with federal government in fish restoration and management.

Section 18-a. Cooperation with Federal Government in

2 **Wildlife Restoration and Management.**—The state of West
3 Virginia hereby assents to the provisions of the act of Con-
4 gress entitled, "An act to provide that the United States
5 shall aid the states in wildlife restoration projects and for

6 other purposes," approved September second, one thou-
7 sand nine hundred thirty-seven (Public Law number four
8 hundred fifteen, Seventy-fifth Congress), and the director
9 is hereby authorized, empowered and directed to perform
10 such acts as may be necessary to the conduct and establish-
11 ment of cooperative wildlife restoration projects, as de-
12 fined in said act of Congress, in compliance with said act
13 and with rules and regulations promulgated by the secre-
14 tary of the interior thereunder. Funds accruing to the
15 state from license fees paid by hunters shall not be di-
16 verted for any other purposes than those stated in section
17 thirty-four, article two of this chapter.

Sec. 18-b. Cooperation with Federal Government in
2 **Fish Restoration and Management.**—The state of West
3 Virginia hereby assents to the provisions of the act of
4 Congress entitled, "An act to provide that the United
5 States shall aid the states in fish restoration and manage-
6 ment projects and for other purposes," (Public Law num-
7 ber six hundred eighty-one, Eighty-first Congress), and
8 the director is hereby authorized, empowered and directed
9 to perform such acts as may be necessary to the conduct
10 and establishment of fish restoration and management
11 projects as defined in said act of Congress, in compliance
12 with said act and with rules and regulations promulgated
13 by the secretary of the interior thereunder. Funds accru-
14 ing to the state from license fees paid by fishermen shall
15 not be diverted for any purposes other than those stated
16 in section thirty-four, article two of this chapter.

C

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.

Section 5. Unlawful Methods of Hunting and Fishing.

2 —Except as authorized by the director, it shall be unlawful at any time for any person to:

4 (1) Shoot at or to shoot any wild bird or animal unless
5 it is plainly visible to him;

6 (2) Dig out, cut out or smoke out, or in any manner
7 take or attempt to take any live wild animal or wild bird
8 out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or
9 by law;
10

11 (3) Make use of, or take advantage of, any artificial
12 light in hunting for, or taking any wild animals or wild
13 birds, except that artificial lights such as are ordinarily
14 carried in the hand or on the person may be used for the
15 purpose of taking raccoon, opossum or skunk; or to throw
16 or cast the rays of a spotlight, headlight, or other artificial
17 light, from any vehicle, on any animal or game bird, or
18 attempt to do so, while having in his or their possession
19 or under their control, or in any vehicle or conveyance
20 in which they may be traveling, a cased or uncased firearm or other implement whereby any wild animal or
21 wild bird could be killed, even though such animal be
22 not shot at, injured or killed. The provisions of this subdivision shall not apply if it shall be proven that the
23 headlights of a motor vehicle while traveling on a highway in the usual way, cast a light upon such animal, on
24 or adjacent to such highway, and there was no attempt
25 or intent to locate such animal;
26
27
28

29 (4) Hunt for, take, kill, wound or shoot at wild animals
30 or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from
31 a motor-driven water conveyance, except as may be
32 authorized by regulations promulgated by the director;
33

34 (5) Take any beaver or muskrat by any means other
35 than by trap;

36 (6) Catch, capture, take or kill by seine, net, bait, trap
37 or snare or like device of any kind, any wild turkey,
38 ruffed grouse, pheasant or quail;

39 (7) Destroy or attempt to destroy needlessly or wil-
40 fully the nest or eggs of any wild bird or have in his
41 possession such nest or eggs unless authorized to do so
42 under regulations or under a permit by the director;

43 (8) Except as provided in section six of this article,
44 carry an uncased or loaded gun in any of the woods of
45 this state except during the open firearms hunting season
46 for game animals and nonmigratory game birds within
47 any county of the state, unless he has in his possession a
48 permit in writing issued to him by the director: *Provided*,
49 That this section shall not prohibit hunting or taking
50 of unprotected species of wild animals and wild birds
51 and migratory game birds, during the open season, in
52 the open fields, open waters and open marshes of the
53 state;

54 (9) Except as provided in section six of this article,
55 carry an uncased or loaded gun on Sunday in any woods
56 or on any highway, railroad right of way, public road,
57 field or stream of this state, except at a regularly used
58 rifle, pistol, skeet, target or trap shooting ground or range;

59 (10) To have in his possession a loaded firearm or a
60 firearm from the magazine of which all shells and
61 cartridges have not been removed, in or on any vehicle
62 or conveyance, or its attachments, within the state, except
63 as may otherwise be provided by law or regulation.
64 Except as hereinafter provided, between five o'clock post-
65 meridian of one day and seven o'clock antemeridian,
66 eastern standard time, of the day following, any unloaded
67 firearm, being lawfully carried in accordance with the
68 foregoing provisions, shall be so carried only when in a
69 case or taken apart and securely wrapped. During the
70 period from July first to September thirtieth, inclusive,
71 of each year, the foregoing requirements relative to carry-
72 ing certain unloaded firearms shall be permissible only

73 from eight-thirty o'clock postmeridian to five o'clock ante-
74 meridian, eastern standard time;

75 (11) Hunt, catch, take, kill, trap, injure or pursue
76 with firearms or other implement by which wildlife may
77 be taken, on Sunday, any wild animals or wild birds:
78 *Provided, however,* That traps previously and legally set
79 may be tended on Sunday, if the person so doing shall
80 not have firearms or long bow of any description in his
81 possession;

82 (12) Hunt with firearms or long bow while under the
83 influence of intoxicating liquor;

84 (13) Possess a ferret;

85 (14) Buy raw furs, pelts or skins of fur-bearing ani-
86 mals unless licensed to do so;

87 (15) Have in his possession or about his premises,
88 without the written permission of the director, any hunt-
89 ing or fishing paraphernalia which cannot be used law-
90 fully in this state for hunting or fishing, and any con-
91 servation officer shall remove and destroy such hunting
92 and fishing paraphernalia, whenever found in this state,
93 and the person or persons claiming ownership shall have
94 no recourse at law against such confiscation and destruc-
95 tion;

96 (16) Catch, take, kill, or attempt to catch, take or kill
97 any fish at any time by any means other than by rod,
98 line and hooks with natural or artificial lures unless
99 otherwise authorized by law or regulation issued by the
100 director: *Provided further,* That snaring of any species
101 of suckers, carp, fallfish and creek chubs through the ice
102 shall at all times be lawful;

103 (17) Employ or hire, or induce or persuade, by the
104 use of money or other things of value, or by any means,
105 any person to hunt, take, catch or kill, any wild animal
106 or wild bird except those species on which there is no
107 closed season, or to fish for, catch, take or kill any fish,
108 amphibian or aquatic life which is protected by the pro-
109 visions of this chapter or regulations of the director, or
110 the sale of which is prohibited;

111 (18) Hunt, catch, take, kill, capture, pursue, transport,
112 possess or use any migratory game or nongame birds in-

113 cluded in the terms of conventions between the United
114 States and Great Britain and between the United States
115 and United Mexican States for the protection of migratory
116 birds and game mammals concluded, respectively, August
117 sixteen, one thousand nine hundred sixteen, and Febru-
118 ary seven, one thousand nine hundred thirty-six, except
119 during the time and in the manner and numbers pre-
120 scribed by the Federal Migratory Bird Treaty Act and
121 regulations made thereunder;

122 (19) Kill, take, catch or have in his possession living or
123 dead, any wild bird, other than a game bird; or expose
124 for sale, or transport within or without the state any bird,
125 except as aforesaid. No part of the plumage, skin or body
126 of any protected bird shall be sold or had in possession
127 for sale, except mounted or stuffed plumage, skin, bodies
128 or heads of such birds legally taken and stuffed or
129 mounted, irrespective of whether such bird was captured
130 within or without this state, except the English or Euro-
131 pean sparrow (*Passer domesticus*), starling (*Sturnus*
132 *vulgaris*), sharpshinned hawk (*Accipiter striatus*),
133 Cooper's hawk (*Accipiter cooperii*), goshawk (*Accipiter*
134 *gentilis*), crow (*Corvus brachyrhynchos*) and cowbird
135 (*Molothrus ater*), which shall not be protected and the
136 killing thereof at any time is lawful;

137 (20) Use dynamite or any like explosives or poison-
138 ous mixture placed in any waters of the state for the
139 purpose of killing or taking fish. Any person violating
140 the provisions of this subdivision shall be guilty of a
141 felony, and, upon conviction thereof, shall be imprisoned
142 for not less than six months nor more than three years,
143 and, in the discretion of the court, may be fined not more
144 than five hundred dollars;

145 (21) Have both a bow and a gun in the fields or woods
146 at the same time;

147 (22) Have a crossbow in the woods or fields or use a
148 crossbow to hunt for, take or attempt to take any wild-
149 life;

150 (23) Take or attempt to take turkey, bear, elk or deer
151 with any arrow unless the same is equipped with a point

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

nine hundred thirty-one, as amended, relating to importation and liberation of wildlife and imposing penalties.

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.

—o—

CHAPTER 133

(Senate Bill No. 130—By Mr. Gainer)

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

AN ACT to repeal section twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine

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-

27 moving or transporting such animal in any manner, or
28 failure to deliver the carcass to a conservation officer or
29 an official checking station for checking, as herein pro-
30 vided, shall subject the person so neglecting to the penal-
31 ties provided in this article.

32 Any deer, bear or wild turkey found and not tagged as
33 herein provided shall be forfeited to the state of West
34 Virginia to be disposed of as hereinafter provided and
35 may be seized by any officer whose duty it is to enforce
36 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 resources 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

2 to Issue Licenses; Bonds; Fees.—The director shall have
3 authority to appoint within any county as many persons
4 as his agents, with authority to issue licenses under the
5 provisions of this article, as may, in his opinion, be neces-
6 sary, in addition to the clerk of the county court of the
7 county, to serve the convenience of the public in pro-

8 curing such licenses. Each person so appointed as such
9 agent and license issuing authority shall, before issuing
10 any license, file with the director a bond payable to the
11 state of West Virginia, in the amount to be fixed by the
12 director at not less than one thousand dollars, conditioned
13 upon the faithful performance of his obligation to issue
14 licenses only in conformity with the provisions of this ar-
15 ticle and to account for all license fees received by him.
16 The form of such bond shall be prescribed by the attorney
17 general. No person, other than those designated as is-
18 suing agents by the director, shall sell licenses or buy
19 the same for purposes of resale.

20 Every person making application for any license shall
21 pay, in addition to the license fee prescribed therefor in
22 the later sections of this article, an additional fee of twen-
23 ty-five cents as compensation for the person issuing the
24 license, except when such license is purchased from a
25 state official, and the revenue from such fees collected
26 by county officials shall be paid into the general county
27 fund: *Provided*, That only one fee of twenty-five cents
28 shall be collected for issuing combination resident state-
29 wide hunting and fishing Class AB licenses, and no such
30 fee shall be collected for issuing a Class I or a Class J
31 license when either license is purchased in conjunction
32 with another license to which the stamp is to be affixed
33 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 revocation of hunting licenses by the director of natural resources.

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 Per-

mit.—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
39 for reinstatement of all hunting license privileges and
40 if the director upon a hearing and full investigation finds
41 that the applicant has paid and satisfied all claims against
42 him, if any, and the circumstances at the time and the
43 nature of the offense indicate that he is not likely again
44 to commit a like or similar offense and that the public
45 good does not require that the applicant's hunting privi-
46 leges remain revoked or suspended, the director may
47 enter an order restoring full hunting privileges to the
48 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

7 therefor shall be one dollar. The revenue derived from
8 the sale of this license shall be used only for management
9 and propagation of game and fish on national forest land
10 and for no other purpose. The department of natural re-
11 sources of West Virginia shall enter into a cooperative
12 agreement with the United States forest service, such
13 agreement to define the means and methods to be taken
14 to improve the wildlife and fish resources and to program
15 the expenditure of all funds derived from this license.

CHAPTER 137

(Senate Bill No. 129—By Mr. Gainer)

[Passed February 27, 1963; in effect July 1, 1963. Approved by the Governor.]

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

2 **Shooting Preserves.**—1. The director may issue a license
3 for privately-owned commercial shooting preserves to any
4 person who meets the following requirements:

5 (a) Each commercial shooting preserve shall contain
6 a minimum of three hundred acres in one tract of leased
7 or owned land (including water area, if any) and shall
8 be restricted to no more than three thousand contiguous
9 acres (including water area, if any), except that pre-
10 serves confined to the releasing of ducks only shall be

11 authorized to operate with a minimum of fifty contiguous
12 acres (including water area); and

13 (b) The exterior boundaries of each commercial shoot-
14 ing preserve shall be clearly defined and posted with
15 signs erected around the extremity at intervals of one
16 hundred fifty yards or less.

17 2. The director shall designate the game which may be
18 hunted under this section on which a more liberal season
19 may be allowed.

20 3. The operating licenses or permits issued by the di-
21 rector shall entitle holders thereof, and their guests or
22 customers, to recover not more than eighty per cent of
23 the total number of each species of game-bird released
24 on the premises each year, except mallard, black duck,
25 ringnecked pheasant, chukar partridge, and other non-
26 native game species upon which a one hundred percent
27 recovery may be allowed.

28 4. Except for the required compliance with the re-
29 striction on the maximum number of released birds that
30 may be recovered from each preserve each year, as pro-
31 vided in subsections three and eight, shooting preserve
32 operators may establish their own shooting limitations and
33 restrictions on the age, sex and number of birds that may
34 be taken by each person.

35 5. In order to give a reasonable opportunity for a fair
36 return on a sizeable investment, a liberal season shall be
37 designated by the director during the six-month period,
38 beginning October first and ending March thirty-first.

39 6. All harvested game shall be tagged prior to being
40 either consumed on the premises or removed therefrom,
41 such tags to remain affixed until the game actually is
42 delivered to the point of consumption. The director shall
43 furnish numbered tags at nominal cost to shooting pre-
44 serve operators.

45 7. Each shooting preserve operator shall maintain a
46 registration book listing all names, addresses, and hunt-
47 ing license numbers of all shooters; the date on which they
48 hunted; the amount of game and the species taken; and
49 the tag numbers affixed to each carcass. An accurate rec-
50 ord likewise must be maintained of the total number, by

51 species, of game birds and ducks raised and/or purchased,
52 and the date and number of all species released. These
53 records shall be open to inspection by a delegated repre-
54 sentative of the director at any reasonable time, and shall
55 be the basis upon which the game recovery limits in sub-
56 section three hereof shall be determined.

57 8. Any wild game found on commercial shooting pre-
58 serves may be harvested in accordance with applicable
59 game and hunting laws pertaining to open seasons, bag
60 and possession limits, and so forth, as are established
61 regularly by the director and the United States fish and
62 wildlife service.

63 9. State hunting licenses shall be required of all per-
64 sons, except nonresidents, hunting or shooting on shooting
65 preserves.

66 10. The fee for such commercial shooting preserve li-
67 cense shall be fifty dollars per fiscal year for the first
68 three hundred acres of the shooting preserve area, plus
69 twenty-five dollars per fiscal year for each additional
70 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.
9. Rules and regulations.
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

16 shore areas subject to soil erosion and waste. The juris-
17 diction and supervision exercised by the division shall
18 be consistent with other provisions of this chapter, shall
19 be in cooperation with other offices and divisions of the
20 department, and shall not interfere with or encroach
21 upon powers, functions and services lawfully within the
22 jurisdiction of the government of the United States.

23 The chief of the division shall organize and staff his
24 division for the orderly, efficient and economical execu-
25 tion and administration of the provisions of this article
26 as an integral part of the department's natural resources
27 program.

28 The director of the West Virginia agricultural experi-
29 ment station at West Virginia University shall select and
30 designate a competent and qualified person and a mem-
31 ber of his staff to be state land reclamation specialist
32 who will study mining procedures and methods and their
33 relation to subsequent land reclamation of disturbed
34 areas. He shall also serve in a liaison and advisory ca-
35 pacity between the experiment station and agencies
36 with responsibilities or interests in reclamation programs
37 and projects. The director of the experiment station shall
38 fix the state land reclamation specialist's salary, which
39 shall be paid from university funds, and shall arrange
40 on the university campus for adequate office facilities,
41 stenographic and clerical assistance, and such other
42 supplies and materials as needed by the state land rec-
43 lamation specialist. When performing services for such
44 agencies, his travel expenses may be paid from the
45 agency's funds. The state land reclamation specialist
46 shall study and develop reclamation programs and proj-
47 ects consistent with the provisions of this chapter and be
48 under the supervision and direction of the director of the
49 experiment station.

Sec. 2. Legislative Purpose; Apportionment of Respon-
2 **sibility.**—The Legislature finds and declares that the de-
3 partment of natural resources shall have jurisdiction and
4 control over land and soil aspects of surface mining op-
5 erations, and the restoration and reclamation of lands
6 surface mined and areas affected thereby, but that sur-

7 face mining as an industrial enterprise and occupation
8 shall be under the jurisdiction and control and subject
9 to the regulations of the state department of mines.

10 The director of the department of mines and the direc-
11 tor of the department of natural resources shall correlate
12 and coordinate their respective departmental programs
13 and records so as to effect an orderly and harmonious
14 administration of the provisions of this article.

Sec. 3. Definitions.—For the purpose of this article,
2 the term “surface mining” shall include all industrial
3 activity for the recovery of minerals except those sub-
4 ject to the provisions of articles one, two, four, five and
5 seven of chapter twenty-two of the code of West Virginia,
6 one thousand nine hundred thirty-one, as amended, and,
7 subject to such exception, shall include plant and equip-
8 ment used in processing said minerals.

9 For the purpose of this article, a “surface mine” shall
10 include all areas surface mined or being surface mined
11 as well as adjacent areas ancillary to the operation to-
12 gether with preparation and processing plants, storage
13 areas and haulageways: *Provided*, That such areas are
14 sufficiently concentrated that they can be adequately
15 supervised by one foreman: *And provided further*, That
16 mines subject to the provisions of articles one, two, four,
17 five and seven of chapter twenty-two of the code of West
18 Virginia, as amended, are not “surface mines” within this
19 definition.

20 For the purpose of this article, “disturbed land” shall
21 include the area from which the overburden has been
22 removed in surface mining operations, plus the area
23 covered by the spoil, and any areas used in surface min-
24 ing operations which by virtue of their use are susceptible
25 to excessive erosion.

26 For the purpose of this article, “operator” shall mean
27 any individual, a corporation, a partnership, an associa-
28 tion or a trust which is granted a permit to engage in
29 any activity covered by this article.

Sec. 4. Duties of Operators; Requirements; Procedures.

2 —It shall be the duty of each operator to:

3 (1) Remove metal, lumber and other debris resulting
4 from mining operations.

5 (2) Regrade in a manner to be established by rules
6 and regulations of the director, in accordance with, but
7 not limited to, the following principles of reclamation:

8 (a) Wherever practicable, and wherever spoil banks
9 form adjoining ridges or peaks above the level of the coal
10 seam from which such spoil banks have been removed,
11 grade the surface of such spoil banks so as to reduce the
12 depressions between the peaks of such spoil banks to a
13 surface which will be a rolling topography. Such grading
14 shall be done in such a way as will minimize erosion due
15 to rainfall and will also eliminate steep grades between
16 peaks and make the surface more suitable for tree cutting
17 or logging operations or for cattle grazing. Such grading
18 shall be done in a manner which will minimize, as far as
19 practicable, the presence of large rocks, or materials
20 which would be toxic to plant life, on the surface of the
21 graded area. Where spoil banks consist of single isolated
22 peaks, and where such peaks extend above the level of
23 the coal seam from which such spoil banks have been
24 removed, such peaks shall be graded to an approximately
25 level surface having a width of not less than fifteen feet.

26 (b) Wherever the final cut of an operation is not to be
27 used for water impoundment as provided for in subsec-
28 tion (5), and wherever such final cut is within a reason-
29 able grading distance of overburden deposits, and wher-
30 ever such overburden deposits are composed of materials
31 which are suitable for the support of tree growth, or the
32 growth of grasses or other reclamation vegetation, or
33 where such material reasonably can be expected to be-
34 come suitable by natural leaching and weathering pro-
35 cesses, such overburden material shall be graded so as
36 to cover the bottom of such final cut.

37 In planning and executing surface mining operations
38 the operator shall at all times have proper regard for the
39 duties imposed by paragraphs (a) and (b) of this sub-
40 section and shall exercise all reasonable and practical
41 measures required so as not unnecessarily to lose or make

42 unavailable overburden material for the grading required
43 by paragraphs (a) and (b).

44 (3) Where the outside spoil deposit is made on a steep
45 hillside, rocks that have rolled down into a cleared valley
46 shall be placed back at the toe of the hillside or deposited
47 at some equally suitable location.

48 (4) Seal off with a fill all openings from underground
49 mining operations at the base of the final cut. Such seal-
50 ing off with a fill shall be done in such a way as to avoid
51 creating danger from the impoundment of large quan-
52 tities of water.

53 (5) Where the operator elects to impound water to
54 provide lakes or ponds for wildlife, recreational or water
55 supply purposes, such operator shall file formal request
56 with the department of natural resources and receive
57 approval before such ponds or lakes can be created in
58 impounding such water. In making such improvements
59 such operator must avoid the creation of conditions that
60 might encourage slides, acid formation or flood hazard.

61 (6) Plant in a manner so as to establish a satisfactory
62 cover of trees, shrubs, grasses or vines upon the part of
63 the area of land affected where such revegetation is prac-
64 ticable, within a reasonable length of time, or offer to
65 deposit with the soil conservation district, in which the
66 operation covered by such permit is located, a sufficient
67 amount of money to reclaim, insofar as planting, the area
68 of land affected, as estimated by the district. If the dis-
69 trict assumes responsibility for the planting, the director
70 shall release the bond and return the security given in
71 lieu of bond.

72 The intent of this section is to, insofar as reasonably
73 practical, restore the land to a desirable purpose and use.
74 The director may, in the exercise of his sound discretion,
75 when not in conflict with the intent of this section, modify
76 such requirements to bring about a more desirable land
77 use, including but not limited to industrial sites, sanitary
78 landfills, recreational areas, building sites, etc.: *Provided,*
79 *however,* That the person, firm, corporation, or agency
80 making such modifications will execute contracts, post
81 bond or otherwise insure full compliance with this sec-

82 tion in the event such modified program is not carried
83 to completion within a reasonable length of time.

84 For failure to complete the duties of the operator
85 within a reasonable length of time, as prescribed by the
86 director, and after receipt of a thirty-day notice in writ-
87 ing from the director, which notice may be sent by reg-
88 istered or certified mail to the operator, at his last known
89 address, that any one or more of such things have not
90 been done, the permit covering the particular operation
91 shall be revoked by the director and the performance
92 bond shall be forfeited, and any other permits that may
93 have been issued to the operator involved shall be sus-
94 pended, unless the operator shall submit a plan of
95 reclamation suitable to the director and accepted by him
96 within said thirty-day period. Unless the operator car-
97 ries out the plan of reclamation accepted by the director,
98 within the time limits prescribed in such plan, the direc-
99 tor shall revoke the permit covering the particular
100 operation, and forfeit the performance bond, and any
101 and all other permits that may have been issued to the
102 operator involved shall be revoked and any and all per-
103 formance bonds shall be forfeited.

104 Any operator whose mining permit has been revoked
105 shall not be eligible to receive another such permit or to
106 have suspended permits reinstated until he shall have
107 complied with the requirements of all the laws in respect
108 to former permits issued him.

**Sec. 5. Performance Bond; Forfeiture; Procedure;
2 Funds and Uses.**—Upon default in the performance of the
3 conditions of the performance bond, the director shall
4 give notice to the attorney general and it shall be his
5 duty to collect the forfeiture without delay.

6 All such forfeitures hereafter collected, as provided
7 in this article, shall be deposited with the state treasurer
8 in a special fund to be designated "Surface Mining Recla-
9 mation Fund," to the credit of the department and shall
10 be expended to reclaim and rehabilitate land disturbed
11 in accordance with the provisions of this article.

12 It shall be the duty of the director to cause to be pre-
13 pared a plan for the reclamation and rehabilitation of

14 land affected in accordance with the provisions of section
15 four of this article and said director shall reclaim and
16 rehabilitate said lands in accordance with said plan and in
17 so doing the director shall comply with the provisions of
18 article three, chapter five-a of the code of West Virginia
19 in obtaining supplies, materials, equipment and contrac-
20 tual services deemed necessary by the director for the
21 proper reclamation and rehabilitation of said land. The
22 moneys in the fund shall be expended upon the lands upon
23 which the permit was issued and for which the bond was
24 posted. The director may expend any moneys remaining,
25 over and above that required to reclaim the area for
26 which the bond was posted, to reclaim any area covered
27 under the provisions of this article. The department may,
28 when deemed necessary, avail itself of any services which
29 may be provided by the state or federal governments.

Sec. 6. Validity of Existing Permits and Bonds.—The
2 provisions of chapter eighty-four of the acts of the Legis-
3 lature of West Virginia, regular session, one thousand nine
4 hundred thirty-nine; the provisions of chapter eighty-five
5 of the acts of the Legislature of West Virginia, regular
6 session, one thousand nine hundred forty-five; the pro-
7 visions of chapter ninety-nine of the acts of the Legislature
8 of West Virginia, regular session, one thousand nine hun-
9 dred fifty-nine; the provisions of chapter one hundred
10 thirty-three of the acts of the Legislature of West Virginia,
11 regular session, one thousand nine hundred sixty-one,
12 shall continue to be in full force and govern in all re-
13 spects every existing right for surface mining operations,
14 every outstanding permit for surface mining operations
15 and every existing cash or other bond posted in connec-
16 tion therewith, and the enactment of this article shall
17 not affect any offenses or act committed or done, or any
18 penalty or forfeiture incurred, or any right established,
19 accrued, or accruing before the day this law takes effect.
20 Any money received from the forfeiture of bonds given
21 under the provisions of said acts shall be deposited in
22 the same fund and used in the same manner as forfeitures
23 under this article. Every operator under an existing per-
24 mit, under which actual mining operations have not been
25 commenced prior to the effective date of this article,

26 shall nevertheless be required to perform all duties speci-
27 fied in section four of this article, and for failure to do so,
28 his bond shall be forfeited and he shall be subject to all
29 other penalties provided by the above mentioned former
30 acts. Every such operator shall be required to comply
31 with the provisions of section four of this article under
32 which actual mining operations have not been com-
33 menced prior to the effective date of this article.

Sec. 7. When Bond Released and Discharged.—Upon
2 satisfactory completion of all requirements of law under
3 the permit granted to any operator pursuant to the pro-
4 visions hereof, the director of the department of natural
5 resources shall issue to the operator a certificate releas-
6 ing and discharging the bond and surety thereon, or
7 shall cause to be returned to the operator any securities
8 given under section five, article two-a, chapter twenty-
9 two of the code.

Sec. 8. Special Reclamation Fund; Purposes and Uses.
2 —The Legislature finds and declares that lands within
3 this state have been subjected to surface mining oper-
4 ations and have not been reclaimed in accordance with
5 modern standards and which are not now covered by
6 bond to guarantee such reclamation. This Legislature
7 further finds and declares that the cost of reclaiming
8 these lands will be nine hundred thousand dollars. The
9 Legislature has devised a method of collecting special
10 fees, as set forth in section three-a, article two-a, chapter
11 twenty-two of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, for the reclamation
13 and rehabilitation of the above referred to lands and
14 accordingly there is hereby created a special fund desig-
15 nated "Special Reclamation Fund." The purpose of this
16 fund shall be solely that of a depository for special
17 reclamation fees collected, pursuant to sections three and
18 three-a, article two-a, chapter twenty-two, as amended,
19 which said special fees shall be used only for the purpose
20 of reclaiming and rehabilitating the lands above referred
21 to. The special reclamation fund shall be administered
22 by the director of the department of natural resources.
23 Said director shall cause to be prepared plans for the

24 reclamation and rehabilitation of lands herein above re-
25 ferred to and shall prepare specifications for reclamation
26 of said lands, and said director, as funds become avail-
27 able in the special reclamation fund, shall reclaim and
28 rehabilitate said lands in accordance with said plans
29 and specifications, and in so doing the director shall
30 comply with the provisions of article three, chapter five-
31 a, of the code of West Virginia, one thousand nine hun-
32 dred thirty-one, as amended, in obtaining supplies, mate-
33 rials, equipment and contractual services deemed neces-
34 sary by the director for the purposes of reclamation and
35 rehabilitation of said lands.

36 The special reclamation fund shall remain in existence
37 until such time as special reclamation fees have been
38 collected and expended in the net amount of nine hun-
39 dred thousand dollars, after refunds provided for in sec-
40 tion three-a, article two-a, chapter twenty-two of the
41 code of West Virginia, one thousand nine hundred thirty-
42 one, as amended.

Sec. 9. Rules and Regulations.—The director shall
2 promulgate rules and regulations for the effective adminis-
3 tration of this article.

**Sec. 10. Adjudications, Findings, etc., to Be by Written
2 Order; Contents; Notice.**—Every adjudication, determina-
3 tion or finding by the director affecting the rights, duties
4 or privileges of any person subject to this article shall be
5 made by written order and shall contain a written finding
6 of fact by the director of the facts upon which the adjudi-
7 cation, determination or finding is based. Notice of the
8 making of such order shall be given to the person whose
9 rights, duties or privileges are affected thereby by mail-
10 ing a true copy thereof to such person by registered mail.

Sec. 11. Reclamation Board of Review.—There is
2 hereby created a reclamation board of review consisting
3 of five members appointed by the governor with the ad-
4 vice and consent of the senate for terms of five years,
5 except that the terms of the first five members of said
6 board shall be for one, two, three, four and five years,
7 respectively, as designated by the governor at the time

8 of the appointment, except that any vacancy in the
9 office of member of said board shall be filled by appoint-
10 ment by the governor for the unexpired term of the
11 member whose office shall be vacant. Each vacancy
12 occurring on said board shall be filled by appointment
13 within sixty days after such vacancy occurs. One of the
14 appointees to such board shall be a person who, by rea-
15 son of his previous vocation, employment, or affiliations,
16 can be classed as a representative of coal surface mine
17 operators. One of the appointees to such board shall be
18 a person who, by reason of his previous training and
19 experience, can be classed as one learned and experienced
20 in modern forestry practices. One of the appointees to
21 such board shall be a person who, by reason of his
22 previous training and experience, can be classed as one
23 capable and experienced in the practice of agriculture.
24 One of the appointees to such board shall be a person
25 who, by reason of his previous training and experience,
26 can be classed as one capable and experienced in earth-
27 grading problems. One of the appointees to such board
28 shall be a person who, by reason of his previous train-
29 ing and experience, can be classed as one capable and
30 experienced in water conservation problems. Not more
31 than three members shall be members of the same poli-
32 tical party.

33 The board may designate an employee of the reclama-
34 tion division to act as its secretary. Such secretary shall
35 perform such duties as the board prescribes.

36 Three members constitute a quorum and no action of
37 the board shall be valid unless it has the concurrence
38 of at least three members. The board shall keep a record
39 of its proceedings.

40 Each member shall be paid as compensation for his
41 work as such member twenty dollars per day when
42 actually engaged in the performance of his work as a
43 member and when engaged in travel necessary in con-
44 nection with such work from funds appropriated for
45 such purpose. In addition to such compensation each
46 member shall be reimbursed for all traveling, hotel and
47 other expenses necessarily incurred in the performance
48 of his work as a member.

49 Annually, one member shall be elected as chairman
50 and another member shall be elected as vice chairman.
51 Such officers shall serve for terms of one year.

52 The governor may remove any member of the board
53 from office for inefficiency, neglect of duty, malfeasance,
54 misfeasance or nonfeasance, after delivering to such
55 member the charges against him in writing, together
56 with at least ten days' written notice of the time and
57 place at which the governor will publicly hear such mem-
58 ber, either in person or by counsel, in defense of the
59 charges against him. If such member is removed from
60 office, the governor shall file in the office of the secretary
61 of state a complete statement of the charges made against
62 such member and a complete report of the proceedings
63 thereon. In such case the action of the governor re-
64 moving such member from office is final.

Sec. 12. Appeals to Board; Hearing, Record, Findings
2 **and Orders of Board.**—Any person claiming to be ag-
3 grieved or adversely affected by any order of the director
4 or by his failure to enter an order may appeal to the
5 reclamation board of review for an order vacating or
6 modifying such order, or for such order as the director
7 should have entered.

8 The person so appealing to the board shall be known
9 as appellant and the director shall be known as appellee.
10 Appellant and appellee shall be deemed to be parties to
11 the appeal.

12 Such appeal shall be in writing and shall set forth the
13 order or omission complained of and the grounds upon
14 which the appeal is based. Where appellant claims to be
15 adversely affected by an order, such appeal shall be filed
16 with the board within thirty days after the date upon
17 which appellant received notice by registered mail of the
18 making of the order complained of. Notice of the filing
19 of such appeal shall be filed with the director within three
20 days after the appeal is filed with the board.

21 Within seven days after receipt of such notice of appeal,
22 the director shall prepare and certify to the board at the
23 expense of appellant a complete record of the proceedings
24 out of which the appeal arises, including all documents

25 and correspondence in the director's file relating to the
26 matter.

27 Upon the filing of such appeal, the board shall fix the
28 time and place at which the hearing on the appeal will
29 be held, which hearing shall be held within twenty days
30 after notice of appeal is filed, and shall give appellant and
31 the director at least ten days' written notice thereof by
32 mail. The board may postpone or continue any hearing
33 upon its own motion or upon application of appellant or
34 of the director.

35 The filing of an appeal provided for in this section shall
36 stay execution of the order appealed from.

37 The board shall hear the appeal *de novo*, and either
38 party to the appeal may submit evidence.

39 For the purpose of conducting a hearing on an appeal,
40 the board may require the attendance of witnesses and the
41 production books, records and papers, and it may, and at
42 the request of any party it shall, issue subpoenas for wit-
43 nesses or *subpoenas duces tecum* to compel the production
44 of any books, records or papers directed to the sheriff of
45 the county where such witnesses are found, which sub-
46 poena shall be served and returned in the same manner as
47 subpoenas in civil litigation are served and returned. The
48 fees and mileage of sheriffs and witnesses shall be the
49 same as those allowed in litigation in trial courts. Such
50 fees and mileage expenses incurred at the request of ap-
51 pellant shall be paid in advance by appellant, and the re-
52 mainder of such expenses shall be paid out of funds appro-
53 priated for the expenses of the division of reclamation.

54 In case of disobedience or neglect of any subpoena
55 served on any person, or the refusal of any witnesses to
56 testify to any matter regarding which he may be law-
57 fully interrogated, the circuit court of the county in
58 which such disobedience, neglect or refusal occurs, or
59 any judge thereof, on application of the board or any
60 member thereof, shall compel obedience by attachment
61 proceedings for contempt as in the case of disobedience
62 of the requirements of a subpoena issued from such court
63 or a refusal to testify therein. Witnesses at such hearings
64 shall testify under oath, and any member of the board

65 may administer oaths or affirmations to persons who so
66 testify.

67 At the request of any party to the appeal, a stenographic
68 record of the testimony and other evidence submitted
69 shall be taken by an official court shorthand reporter at
70 the expense of the party making the request therefor.
71 Such record shall include all of the testimony and other
72 evidence and the rulings on the admissibility thereof
73 presented at the hearing. The board shall pass upon the
74 admissibility of evidence, but any party may at the time
75 object to the admission of any evidence and except to the
76 rulings of the board thereon, and if the board refuses to
77 admit evidence the party offering same may make a proffer
78 thereof, and such proffer shall be made a part of the
79 record of such hearing.

80 If upon completion of the hearing the board finds that
81 the order appealed from was lawful and reasonable, it
82 shall make a written order affirming the order appealed
83 from; if the board finds that such order was unreasonable
84 or unlawful, it shall make a written order vacating the
85 order appealed from and making the order which it finds
86 the director should have made; and if the board finds that
87 the director has unreasonably or unlawfully failed to act
88 or enter an order, it shall enter such order as it finds the
89 director should have made. Every order made by the
90 board shall contain a written finding by the board of the
91 facts upon which the order is based. Notice of the making
92 of such order shall be given forthwith to each party to
93 the appeal by mailing a certified copy thereof to each
94 such party by registered mail.

95 The order of the board shall be final unless vacated
96 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

9 fact. A copy of such notice shall also be filed by appellant
10 with the court and shall be mailed or otherwise delivered
11 to appellee. Such notices shall be filed and mailed or
12 otherwise delivered within thirty days after the date upon
13 which appellant received notice from the board by regis-
14 tered mail of the making of the order appealed from. No
15 appeal bond shall be required to make either an appeal
16 on questions of law or an appeal on questions of law and
17 fact effective.

18 The filing of a notice of appeal shall not automatically
19 operate as a suspension of the order of the board. If it
20 appears to the court that an unjust hardship to the appel-
21 lant will result from the execution of the board's order
22 pending determination of the appeal, the court may grant
23 a suspension of such order and fix its terms.

24 Within fifteen days after receipt of the notice of appeal,
25 the board shall prepare and file in the court the complete
26 record of proceedings out of which the appeal arises,
27 including a transcript of the testimony and other evidence
28 which has been submitted before the board. The expense
29 of preparing and transcribing such record shall be taxed
30 as a part of the costs of the appeal. Appellant shall pro-
31 vide security for costs satisfactory to the court. Upon
32 demand by a party, the board shall furnish, at the cost of
33 the party requesting the same, a copy of such record. In
34 the event such complete record is not filed in the court
35 within the time provided for in this section either party
36 may apply to the court to have the case docketed, and the
37 court shall order such record filed.

38 Appeals taken on questions of law, fact or both, shall
39 be heard upon assignments of error filed in the cause or
40 set out in the briefs of the appellant. Errors not
41 argued by brief may be disregarded, but the court may
42 consider and decide errors which are not assigned or
43 argued.

44 The hearing before the court shall be upon the record
45 made before the reclamation board of review. The court
46 may set aside any findings of fact of the reclamation
47 board of review which are clearly erroneous in view of
48 the reliable, probative and substantial evidence on the

49 whole record, or which are determined by the court to
50 involve a clearly unwarranted exercise of discretion. The
51 judgment of the court shall be final unless reversed,
52 vacated or modified on appeal to the supreme court of
53 appeals of West Virginia, and jurisdiction is hereby con-
54 ferred upon such court to hear and entertain such appeals
55 upon application made therefor in the manner and within
56 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.
6. Existing permits and performance bonds.
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.
11. Monthly report by operator.
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

4 those subject to the provisions of articles one, two,
5 four, five and seven of chapter twenty-two of the
6 code of West Virginia, one thousand nine hundred
7 thirty-one, as amended, and subject to such excep-
8 tion, shall include plant and equipment used in process-
9 ing said minerals.

10 For the purpose of this article, a "surface mine" shall
11 include all areas surface mined or being surface mined,
12 as well as adjacent areas ancillary to the operation, to-
13 gether with preparation and processing plants, storage
14 areas and haulageways: *Provided*, That such areas are
15 sufficiently concentrated that they can be adequately
16 supervised by one foreman: *And provided further*, That
17 mines subject to the provisions of articles one, two, four,
18 five and seven of chapter twenty-two of the code of West
19 Virginia, one thousand nine hundred thirty-one, as
20 amended, are not "surface mines" within this definition.

21 For the purpose of this article, "disturbed land" shall
22 include the area from which the overburden has been
23 removed in surface mining operations, plus the area
24 covered by the spoil, plus any areas used in surface mining
25 operations which by virtue of their use are susceptible
26 to excessive erosion.

27 For the purpose of this article, "operator" shall mean
28 any individual, a corporation, a partnership, an associ-
29 ation or a trust which is granted a permit to engage in
30 any activity covered by this article.

**Sec. 3. Permit Required; Applications; Issuance and Re-
newals; Fees and Use of Proceeds.**—It shall hereafter be
3 unlawful for any person, firm, partnership, association,
4 trust or corporation, to engage in surface mining without
5 having first obtained from the department of mines a per-
6 mit therefor as provided in this section. Application for a
7 surface mining permit shall be made in writing on forms
8 prescribed by the director and shall be signed and verified
9 by the applicant, its principal executive officer or officers
10 and a majority of its board of directors or persons per-
11 forming similar functions (or, if there is no board of direc-
12 tors or persons performing similar functions, by the ma-
13 jority of the persons having the power of control over the

14 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.

43 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

55 other security if, after such revocation or forfeiture the
56 lands disturbed have been properly reclaimed without
57 cost to the state or there has been paid into the surface
58 mining reclamation fund such sum as the director of
59 the department of natural resources finds is adequate to
60 reclaim such lands.

61 The permit shall be valid for one year from its date
62 of issue. Upon verified application, containing such in-
63 formation as the director may reasonably require, accom-
64 panied by such additional fees, bond or other security
65 as is required by this article, the director shall from year
66 to year renew the permit.

67 Except as otherwise herein provided, a registration
68 fee of ten dollars shall be paid to the department of
69 mines for each surface mine, and said registration fee
70 shall be paid upon application for the permit for such
71 surface mine. Registration fees for surface mine permits
72 other than permits for surface mining of coal shall be
73 deposited with the state treasurer to the credit of the
74 general revenue fund.

75 The registration fee for permits for surface mining of
76 coal whether by open cut, auger method or by highwall
77 mechanical mining shall be one hundred dollars. The
78 annual renewal fee for permits for surface mining of
79 coal shall be fifty dollars payable on the anniversary
80 date of said permit upon renewal.

81 Any operator who shall fail to request an annual re-
82 newal of any permit issued in accordance with this sec-
83 tion and any operator who fails to pay any fees provided
84 for in this article shall, in the discretion of the director,
85 have his permit revoked by said director.

86 An operator who has been issued a surface mining per-
87 mit may use any of the usual methods of mining, in-
88 cluding the auger method or highwall mechanical min-
89 ing or a combination of mining methods described in
90 section two, surface mining.

91 All registration and renewal fees for surface mining
92 of coal shall be collected by the director and shall be
93 deposited with the treasurer of the state of West Vir-
94 ginia to the credit of the special reclamation fund created

95 in section eight, article six, chapter twenty of the code
96 of West Virginia, one thousand nine hundred thirty-one,
97 as amended.

Sec. 3-a. Special Reclamation Fees.—In addition to
2 the fees required in section three of this article, every
3 applicant for a permit to surface mine coal shall, before
4 said permit be issued, pay to the director a special rec-
5 lamation fee of thirty dollars for each acre of land affected
6 in the mining operation.

7 For the purpose of this article, the area of land affected
8 shall consist of the area from which the coal is actually
9 produced after removal of the overburden, plus the
10 acreage on which the overburden from the production
11 area is deposited, delimited by lines perpendicular to the
12 highwall; except that in highwall mechanical mining,
13 the area of land affected shall consist of the area of sur-
14 face disturbed immediately adjacent to the highwall,
15 plus the acreage on which excavated material is deposited.
16 The initial payment shall be based on the same number
17 of acres for which bond is posted. Every operator who
18 shall amend his permit to surface mine coal to include
19 additional acreage as provided in section five hereof shall
20 at the same time as additional bond is furnished as pro-
21 vided in said section five, pay to the director a special
22 reclamation fee of thirty dollars for each additional acre
23 of land to be included in said operator's permit. Maps
24 which are submitted as required in section eight shall
25 indicate any affected areas from which coal has not been
26 loaded. The director shall determine if special reclama-
27 tion fees for each acre of land affected have been paid by
28 such operator. In the event that all said fees have not
29 been paid, then, said operator shall pay said fee or fees, as
30 above set forth. In the event that said operator shall have
31 paid a fee or fees for more acres than actually affected,
32 the director shall certify said overpayment to the direc-
33 tor of natural resources who shall have refunded out of
34 the special reclamation fund such overpayment.

35 The director shall deposit with the treasurer of the
36 state of West Virginia to the credit of the special recla-
37 mation fund all special reclamation fees collected. All

38 refunds made by authority of this section shall be made
39 from said fund, which said fund was created in section
40 eight, article six, chapter twenty of the code of West
41 Virginia, one thousand nine hundred thirty-one, as
42 amended. Said fees shall be collected only until such
43 time as the special reclamation fund shall expire as pro-
44 vided in said section.

Sec. 4. Inactive Permits.—The director, in his discre-
2 tion, may issue an inactive status permit to any operator
3 who has discontinued the production of coal on the area
4 covered by surface mining permit or permits. The di-
5 rector shall, prior to the granting of such inactive status,
6 ascertain from the director of natural resources that
7 sufficient reclamation work on lands disturbed shall
8 have been completed: *Provided, however,* That access
9 roads constructed in a manner approved by the director
10 of natural resources shall not be reclaimed: *And provided*
11 *further,* That the operator shall maintain his right of en-
12 try. The annual renewal fee for inactive status permits
13 shall be ten dollars.

Sec. 5. Performance Bond or Deposits.—Each operator
2 who shall make application for a permit under section
3 three of this article shall, at the time such permit is re-
4 quested, furnish bond on a form to be prescribed and fur-
5 nished by the director payable to the state of West Vir-
6 ginia and conditioned that the operator shall faithfully
7 perform all of the requirements of this article and the pro-
8 visions of article six, chapter twenty of the code of West
9 Virginia, one thousand nine hundred thirty-one, as amend-
10 ed. The amount of bond shall be one hundred fifty dollars
11 per acre of land based upon the number of acres of land
12 which the operator estimates will be disturbed by sur-
13 face mining during the next ensuing one and one-half
14 years. The minimum amount of bond furnished shall
15 be one thousand dollars. Such bond shall be executed
16 by the operator and a corporate surety licensed to do
17 business in the state of West Virginia: *Provided, however,*
18 That in lieu of corporate surety, the operator may elect
19 to deposit with the director cash or collateral securities
20 as follows: Bonds of the United States and its possessions;

21 of the federal land banks; of the home owners' loan cor-
22 poration; full faith and credit general obligation bonds
23 of the state of West Virginia, or other states; and of any
24 county, district or municipality of the state of West Vir-
25 ginia or other states. The cash deposit or market value
26 of such securities shall be equal to or greater than the
27 sum of the bond. The director shall, upon receipt of any
28 such deposit of cash or securities, immediately place the
29 same with the treasurer of the state of West Virginia
30 whose duty it shall be to receive and hold the same in the
31 name of the state in trust for the purposes for which
32 such deposit is made. The operator making the deposit
33 shall be entitled from time to time to receive from the
34 state treasurer, upon the written order of the director,
35 the whole or any portion of any securities so deposited,
36 upon depositing with him, in lieu thereof, cash or other
37 securities of the classes herein specified having value
38 equal to or greater than the sum of the bond.

39 The director shall deliver to the director of the depart-
40 ment of natural resources the corporate surety or a copy
41 of the treasurer's receipt for collateral securities or cash
42 deposited, together with a copy of the permit, the permit
43 application and a copy of the map for which the bond is
44 posted.

45 Within sixty days following the anniversary date of
46 the permit, the operator shall post additional bond in
47 the amount of one hundred fifty dollars per acre for each
48 additional acre estimated to be disturbed during the next
49 year following the anniversary date of the permit. At
50 this time bond previously posted may be released for any
51 areas upon which reclamation work has been completed
52 as provided for in section seven, article six, chapter
53 twenty of the code of West Virginia, one thousand nine
54 hundred thirty-one, as amended.

55 In the event that the operator's estimate of land to be
56 disturbed is less than the actual area disturbed, the op-
57 erator shall file additional bond sufficient to cover an
58 amended estimate of lands to be disturbed by surface
59 mining operations. No filing fee shall be required in the
60 filing of additional bond.

61 It shall be unlawful for any owner or owners of surface
62 rights or the owner or owners of mineral rights to inter-
63 fere with the operator in the discharge of his obligations
64 to the state for the reclamation of lands disturbed by
65 him. If the owner or owners of surface rights or the
66 owner or owners of mineral rights desire other operators
67 to conduct mining operations on lands disturbed by the
68 operator furnishing bond hereunder, it shall be the duty
69 of said owner or owners to require that the other operator
70 or operators have secured the necessary mining permit
71 and furnished suitable bond as provided herein in the
72 amount of one hundred fifty dollars an acre for that por-
73 tion of the disturbed area required for such operations.
74 The director shall certify to the director of the depart-
75 ment of natural resources that such bond has been posted
76 and permit issued. The director of the department of
77 natural resources shall then release an equivalent amount
78 of bonds of the operator originally furnishing bond on
79 the disturbed area.

Sec. 6. Existing Permits and Performance Bonds.—Any
2 operator holding a valid surface mining permit upon
3 which tonnage has been produced within one year pre-
4 ceding the effective date of this article or any operator
5 holding a valid surface mining permit upon which mining
6 operations have not been commenced prior to the effec-
7 tive date of this article shall have the option of converting
8 such permit, and the bonds posted therefor, to comply
9 with the provisions of sections three and five of this
10 article.

Sec. 7. Applicability of Laws Safeguarding Life and
2 **Property; Rules and Regulations; Supervision of Opera-**
3 **tions.—**All provisions of the mining laws of this state in-
4 tended to safeguard life and property shall extend to all
5 surface mining operations insofar as such laws are appli-
6 cable thereto. The director of the department of mines
7 shall have the power and authority to promulgate reason-
8 able rules and regulations to effectuate the purpose of this
9 article and to protect the safety of those employed in and
10 around surface mines.

11 For the administration of mining laws and regulations,

12 all surface mining operations shall be supervised by the
13 surface mining inspection force as provided in section
14 eight hereof. All underground mining operations of what-
15 ever character shall be supervised by the mine inspectors
16 as provided in section four, article one, chapter twenty-
17 two of the code of West Virginia, one thousand nine hun-
18 dred thirty-one, as amended. Oil and gas wells shall be
19 supervised by the oil and gas division of the department
20 of mines.

Sec. 8. Maps, Plans and Locations.—Except as other-
2 wise provided in the code of West Virginia, one thou-
3 sand nine hundred thirty-one, as amended, applications
4 shall be accompanied by a United States geological sur-
5 vey topographic map on which the operator has indi-
6 cated the location of the operation. A monument as pre-
7 scribed by the department of mines shall be placed in an
8 approved location near the operation. If operations under
9 a single permit are not geographically continuous, the
10 operator shall locate additional monuments and submit
11 additional location maps before mining on other areas.
12 Within sixty days following the anniversary date of the
13 permit, the operator shall furnish the department of mines
14 five copies of a map, prepared by a registered professional
15 civil engineer, mining engineer or land surveyor, showing
16 the area disturbed by operations. Such map shall be
17 furnished no later than sixty days following the anniver-
18 sary date of the permit. Such map shall also show com-
19 pleted reclamation work. Maps shall include a geologic
20 survey sketch showing the location of the operation and
21 be properly referenced to a permanent landmark, and
22 all work shall have an accuracy of not less than one in
23 three hundred. If no land has been disturbed by oper-
24 ations during the preceding year, the operator shall
25 notify the department of mines of this fact. A final map
26 shall be submitted within three months after completion
27 of mining operations. Failure to submit maps or notices
28 at specified times shall cause the permit to be suspended.

**Sec. 9. Surface Mining Supervisor and Inspectors;
2 Appointment and Qualifications; Compensation and Ex-
3 penses.**—Not more than six surface mining inspectors and

4 a state surface mining supervisor shall be appointed by
5 the director of the department of mines. All such ap-
6 pointees shall be citizens of West Virginia in good health,
7 not less than thirty nor more than fifty-five years of age,
8 of good character and reputation, and temperate in
9 habits. Each of them shall have had at least five
10 years' practical experience in surface mining in West
11 Virginia. The surface mining supervisor shall be paid not
12 less than six thousand six hundred dollars and not more
13 than seven thousand five hundred dollars per annum, and
14 the surface mining inspectors shall be paid not less than
15 six thousand dollars and not more than six thousand
16 four hundred dollars per annum. Each shall be allowed
17 reasonable traveling expenses when itemized by the
18 claimant who shall verify upon oath that such expenses
19 were actually incurred in the discharge of his official
20 duties for the department of mines. Within the limits
21 provided in this section, the salary of the supervisor and
22 of each inspector shall be fixed by the director of the de-
23 partment of mines, and in fixing such salaries the director
24 shall consider ability, performance of duty, responsibility
25 and experience of each. All such salaries and expenses
26 shall be paid from the department of mines funds.

Sec. 10. Duties of Surface Mining Supervisor and In-
2 **spectors Generally; Eligibility for Permanent Appoint-**
3 **ment; Tenure; Interest in Mining Operation; Oath and**
4 **Bond.**—The surface mining supervisor and surface mining
5 inspectors shall make all necessary surveys and inspec-
6 tions of surface mining operations, shall effect practical
7 and effective administration and enforcement of all min-
8 ing laws and rules of the state applicable to surface min-
9 ing, and shall perform such other duties and services as
10 may be prescribed by the director of the department of
11 mines.

12 No person shall be eligible for permanent appointment
13 as surface mining supervisor or surface mining inspector
14 until he has served in a probationary status for a period
15 of one year to the satisfaction of the director of the de-
16 partment of mines. The surface mining supervisor and
17 the surface mining inspectors serving as such on the ef-
18 fective date of this section shall retain such rights as they

19 have accrued. Any person receiving permanent appoint-
20 ment as surface mining supervisor or surface mining in-
21 spector shall have permanent tenure until he becomes
22 sixty-five years of age, subject to removal only for phys-
23 ical or mental impairment, neglect of duty, drunkenness,
24 malfeasance in office, or official misconduct. No person
25 serving as surface mining supervisor or surface mining
26 inspector shall be interested, directly or indirectly, as
27 owner, operator, or stockholder of any mining operation
28 in the state of West Virginia, and the existence or ac-
29 quisition of such interest on the part of any such inspec-
30 tor shall immediately vacate his position.

31 Before any such supervisor or inspector shall enter
32 upon the discharge of his duties, he shall take and sub-
33 scribe to the public official's oath as prescribed by the
34 constitution of West Virginia, and shall execute a bond
35 in the penal sum of two thousand dollars with surety
36 approved by the director of the department of mines and
37 conditioned upon the faithful discharge of his duties.
38 Premiums on such bonds shall be paid from department
39 of mines funds, and all such executed bonds and oaths
40 shall be filed in the office of the secretary of state.

Sec. 11. Monthly Report by Operator.—The operator
2 of every surface mine shall, on or before the end of each
3 calendar month, file with the director a report covering
4 the preceding calendar month on forms furnished by the
5 director. Such reports shall state the number of acci-
6 dents which have occurred, the number of persons em-
7 ployed, the days worked and the actual tonnage mined.

Sec. 12. Offenses; Penalties; Prosecutions.—Any per-
2 son, partnership, association, member of such partner-
3 ship or association, corporation, or trust, who shall con-
4 duct or allow to be conducted any surface mining oper-
5 ation, or any part thereof, without a permit or without
6 having furnished the required bond, or who shall carry
7 on such operation or be a party thereto on land not
8 covered by a permit; or who shall fail to submit a
9 monthly report as required in section eleven hereof, or
10 who shall falsely represent any material fact in an appli-
11 cation for a permit or in an application for a renewal

12 of a permit, and any owner or owners of surface or sur-
13 face rights or any owner or owners of minerals or mineral
14 rights who shall violate any provision of section five
15 hereof shall be guilty of a misdemeanor, and, upon con-
16 viction thereof, shall be fined an amount not exceeding
17 one thousand dollars for each such offense. It shall
18 be the duty of the director to institute prosecutions
19 for the violations of the provisions hereof. Any person
20 aforesaid, convicted under the provisions of this section,
21 shall, in addition to any fine imposed, pay to the director
22 for deposit in the surface mining reclamation fund an
23 amount sufficient to reclaim the area upon which such
24 conviction was based in accordance with the provisions
25 of section four, article six, chapter twenty of the code
26 of West Virginia, one thousand nine hundred thirty-one,
27 as amended. The director may institute any suit or other
28 legal action necessary for the effective administration of
29 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

2 **and Disposition.**—Any officer, when he arrests or other-
3 wise takes a person into custody for violating any pro-
4 vision or provisions of this chapter, is hereby also author-
5 ized and empowered to take and impound any property
6 found in the possession of the accused and susceptible
7 of use in committing the offense of which the person is
8 accused. Such property shall include firearms, fishing
9 equipment, traps, boats, or any other device, appliance
10 or conveyance, but shall not include dogs.

11 If the accused is acquitted the property seized shall be
12 returned. If the accused is convicted and pays the fine,
13 costs and other penalties, the property shall be returned,
14 but if the accused fails to pay the fine and costs, the
15 property shall be sold at public auction in such manner
16 as the director may prescribe. The proceeds of the sale
17 shall be applied toward the payment of the fine and
18 costs. The remainder, if any, shall be paid to the owner
19 of the seized property.

20 Whenever a person is convicted of a violation of this
21 chapter a second time, the property seized at the time
22 of arrest shall in any case be declared forfeited to the state
23 and shall be sold in the manner provided by this section.

24 Property seized, the use of which is forbidden by this
25 chapter, or which is unfit or unsafe for further use, shall
26 be declared forfeited to the state and shall be disposed
27 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-

14 sponsible supervision of any forestry activities when such
15 professional service requires the application of forestry
16 principles and techniques; and

17 (4) The term "board" means the state board of regis-
18 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 member 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 Chapter, Society of American Foresters, and having the qualifications 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 necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

Sec. 4. Same; Qualifications of Members.—Each member of the initial board shall be a citizen of the United States and a resident of this state, possessing the qualifications 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
2 governor may remove any member of the board for of-
3 ficial misconduct or habitual or wilful neglect of duty.
4 Vacancies in the membership of the board shall be filled
5 for the unexpired term in the same manner as for an
6 appointment for a full term.

Sec. 6. General Requirements for Registration.—The
2 following shall be considered as minimum evidence satis-
3 factory to the board that the applicant is qualified for
4 registration as a registered forester: (1) Graduation from
5 a curriculum in forestry approved by the board from a
6 university or college approved by the board. Evidence of
7 college graduation and completion of required courses
8 shall be presented by means of an official college trans-
9 cript which shall be filed permanently with the board;
10 or (2) successfully passing a written examination de-
11 signed to show knowledge approximating that obtained
12 through graduation from a curriculum in forestry ap-
13 proved by the board from a university or college approved
14 by the board, and a record of eight years or more of active
15 practice in forestry work of a character satisfactory to
16 the board, and indicating that the applicant is competent
17 to practice professional forestry: *Provided*, That any citi-
18 zen of this state who has engaged in the practice of pro-
19 fessional forestry for eight years preceding the effective
20 date of this section shall not be required to take an
21 examination for registration. Upon filing with the board
22 an application for registration, in such form as the board
23 shall prescribe, and submitting therewith satisfactory
24 information as to good character, such person shall be
25 issued a certificate of registration: *And provided further*,
26 That after eight years from the effective date of this
27 article no person shall qualify as a registered forester un-
28 less such person shall have graduated from a curriculum
29 in forestry approved by the board from a university or
30 college approved by the board.

31 Applicants who have not graduated from a college or
32 university may make the following substitution: The com-
33 pletion of the junior year in a forestry curriculum ap-
34 proved by the board in a university or college approved

35 by the board shall be considered as equivalent to two
36 years of the practice of professional forestry; the com-
37 pletion of the senior year without graduation in a forestry
38 curriculum approved by the board in a university or
39 college approved by the board shall be considered as
40 equivalent to three years of the practice of professional
41 forestry.

Sec. 7. Expiration and Renewal of License; Fee.—Li-
2 censes shall expire on the last day of the month of June
3 following their issuance or renewal and shall become in-
4 valid on that date unless renewed. It shall be the duty of
5 the secretary of the board to notify every person regis-
6 tered under this article, at his last registered address, of
7 the date of the expiration of his license and the amount of
8 the fee that shall be required for its renewal for one year;
9 such notice shall be mailed at least sixty days in advance
10 of the date of the expiration of said license. The fee for
11 the renewal of licenses shall be two dollars per year.

Sec. 8. Determination of Qualifications for Registration;
2 **Firms, Partnerships, etc., Not to Be Registered.**—Registra-
3 tion shall be determined upon the basis of individual per-
4 sonal qualifications. No firm, company, partnership, cor-
5 poration or public agency shall be licensed as a registered
6 forester.

Sec. 9. Reciprocity.—A person not a resident of and
2 having no established place of business in West Virginia
3 may use the title of registered forester in West Virginia
4 provided: (1) Such person is legally licensed as a regis-
5 tered forester in his own state or county and has submit-
6 ted evidence to the board that he is so licensed and that
7 the requirements for registration therein are equivalent
8 to the requirements of this article; and (2) the state or
9 county in which he is so licensed observes these same
10 rules of reciprocity in regard to persons originally licensed
11 under the provisions of this article.

Sec. 10. Violations; Penalties; Enforcement of Article;
2 **Attorney General as Legal Advisor of Board.**—Any per-
3 son who shall practice or offer to practice the profession of
4 forestry as a registered forester in this state without being

5 registered in accordance with the provisions of this ar-
6 ticle, or any person who shall use in connection with his
7 name or otherwise assume, use or advertise any title or
8 description tending to convey the impression that he is a
9 registered forester, without being registered in accord-
10 ance with the provisions of this article, or any person who
11 shall present or attempt to use as his own the license of
12 another, or any person who shall give any false or forged
13 evidence of any kind to the board or any member thereof
14 in obtaining a license, or any person who shall attempt to
15 use an expired or revoked license, or any person, firm,
16 partnership or corporation who shall violate any of the
17 provisions of this article, shall be guilty of a misdemeanor,
18 and, upon conviction thereof, shall be fined not more than
19 one hundred dollars. It shall be the duty of all duly con-
20 stituted officers of the law of this state to enforce the pro-
21 visions of this article and to prosecute any person, firm,
22 partnership or corporation violating same. The at-
23 torney general of the state shall act as legal advisor of the
24 board and render such assistance as may be necessary in
25 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, qualification 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 nor 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

7 in this state under any other article from engaging in
8 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.—

4 There is hereby created the state board of examiners and
5 registration of physical therapists to administer the li-
6 censing of physical therapists as defined in and set out in
7 this article. The board shall consist of three members who
8 shall be physical therapists. Immediately after the effec-
9 tive date of this article, the members of the board shall be
10 appointed by the governor, by and with the advice and
11 consent of the senate. Each member shall be appointed
12 from a list of persons submitted by the West Virginia
13 chapter of the American physical therapy association.
14 Each physical therapist member shall be qualified under
15 the provisions of this article, have at least three years'
16 experience and be actively practicing in this state during
17 the period of his incumbency. The term of appointments
18 shall be one member for one year, one for two years, one
19 for three years and thereafter each appointment shall be
20 for a term of three years. The board shall designate one
21 of its members as president and one as secretary-treasurer.
22 Members of the board shall each receive ten dollars for
23 every day actually spent in the performance of their
24 duties and in addition thereto shall be reimbursed for
25 their reasonable and necessary expenses in the perform-
26 ance of the same.

27 The board shall keep a record of its proceedings under
28 this article and a register of all persons licensed under
29 it. The register shall show the name of every living
30 registrant, his last known place of business and last
31 known place of residence, and the date and number of
32 his registration and certificate as a licensed physical
33 therapist. The board shall during the month of January
34 of every year compile a list of physical therapists author-
35 ized to practice physical therapy and on request shall mail
36 a copy of the list to the superintendent or administrator
37 of every known hospital and every licensed doctor or
38 surgeon in the state. Any other interested person in the

39 state is entitled to obtain a copy of that list on appli-
40 cation to the board and payment of such amount as may
41 be fixed by the board.

42 The board or its authorized representative shall in-
43 vestigate every alleged violation of this article coming
44 to its notice and shall report to the prosecuting attorney
45 all cases that in the judgment of the board warrant
46 prosecution.

**Sec. 4. Qualifications of Applicants for License; Appli-
2 cations; Fee.**—To be eligible for license by the board as a
3 physical therapist, each applicant must:

- 4 a. Be at least twenty-one years old.
- 5 b. Be of good moral character.
- 6 c. Not be addicted to the intemperate use of alcohol
7 or narcotic drugs.
- 8 d. Be a citizen of the United States or have obtained
9 a declaration of intention of becoming a citizen.
- 10 e. Present evidence that he is a graduate of a school
11 of physical therapy approved by the American physical
12 therapy association and the board: *Provided, however,*
13 That any person who received his education in physical
14 therapy outside of the United States may qualify for a
15 license by fulfilling those requirements of the American
16 physical therapy association and the medical board, in-
17 cluding successful completion of a period of supervised
18 clinical experience and a written examination provided
19 by the board: *Provided further,* That on or before the
20 thirtieth day of June, one thousand nine hundred sixty-
21 six, any person who has practiced physical therapy in
22 this state for five continuous years prior to the effective
23 date of this article under the prescription and direction
24 of a licensed physician or surgeon may qualify for a
25 license by successful completion of a written examina-
26 tion provided by the board.
- 27 f. Either (1) pass to the satisfaction of the board an
28 examination conducted by it to determine his fitness for
29 practice as a physical therapist; or (2) be entitled to be
30 licensed without examination as provided in section seven
31 of this article.

32 Unless entitled to be licensed under section seven of
33 this article, a person who desires to be licensed as a
34 physical therapist shall apply to the board, in writing,
35 on a blank furnished by the board. He shall embody
36 in that application evidence under oath, satisfactory to
37 the board, of his possessing the qualifications preliminary
38 to examination required by this section. He shall pay to
39 the board a fee of twenty-five dollars at the time of filing
40 his application, no part of which shall be refunded.

Sec. 5. Examination of Applicants.—The board shall
2 examine applicants for registration as physical therapists
3 at such times and places as it may determine: *Provided,*
4 That the board shall meet at least once each year for this
5 purpose. The examination shall include a written ex-
6 amination which shall test the applicant's knowledge of
7 basic sciences, clinical science, physical therapy pro-
8 cedures and theory and such other subjects as the board
9 may deem useful to test the applicant's fitness to practice
10 physical therapy as defined in this article.

Sec. 6. Issuance of Certificate of Registration; Temporary Permit; Fee.—The board shall register as a physical
2 therapist each applicant who proves to the satisfaction of
3 the board his fitness for a license under the terms of this
4 article. It shall issue to each person licensed a certificate
5 of registration, which shall be prima facie evidence of
6 the right of the person to whom it is issued to represent
7 himself as a physical therapist, subject to the conditions
8 and limitations of this article.
9

10 The board may, upon request, issue to each properly
11 qualified applicant for registration a temporary permit
12 which shall authorize each applicant to practice physical
13 therapy until the next meeting of the board. The applicant
14 shall pay a fee of ten dollars for this privilege, none of
15 which shall be refunded, nor shall it be applied to the
16 fee for regular registration.

Sec. 7. Registration without Examination; Reciprocity;
2 **Fees.**—The board shall register as a physical therapist
3 any person who (1) applies for such registration after
4 the effective date of this article, and (2) at the time of

5 the effective date of this article is a member of or is
6 eligible for membership in the American physical therapy
7 association or the American registry of physical ther-
8 apists; and (3) is residing in the state at the time of the
9 effective date of this article. At the time of making such
10 application, such applicant shall pay the board a fee of
11 twenty dollars.

12 The board shall license as a physical therapist, without
13 examination, on the payment of a fee of twenty-five
14 dollars, any applicant for registration who is a physical
15 therapist registered or licensed under the laws of another
16 state, territory, or the District of Columbia, if the require-
17 ments for registration or license of physical therapists
18 in the state, territory, or the District of Columbia, in
19 which the applicant was registered or licensed, were at
20 the date of his registration substantially equal to the
21 requirements in this article and if he meets all existing
22 rules and regulations set by the board.

Sec. 8. Renewal of Registration; Fee; Inactive List.—

2 Every physical therapist shall renew his license on or be-
3 fore January one of each year by payment of a fee of five
4 dollars. Any license that is not so renewed shall auto-
5 matically lapse. The board may in its discretion renew a
6 lapsed license on the payment of all unpaid fees.

7 A person licensed under the provisions of this article,
8 desiring to retire from practice temporarily, shall send
9 a written notice to the board. Upon receipt of such
10 notice, the board shall place the name of such person
11 upon the inactive list. While remaining on this list the
12 person shall not be subject to the payment of any fee
13 and shall not practice physical therapy in the state.
14 When such person desires to resume practice, application
15 for renewal of license and payment of renewal fee for
16 the current year shall be made to the board.

Sec. 9. Denial, Revocation and Suspension of License.

2 —The board, after due notice and hearing, may refuse to
3 license any applicant and may refuse to renew the license
4 of any person, and may suspend or revoke the license of
5 any person:

- 6 (a) Who uses narcotic drugs or alcohol to the extent
7 that it affects his professional competency;
- 8 (b) Who has been convicted of violating any state or
9 federal narcotic law;
- 10 (c) Who is, in the judgment of the board, guilty of
11 immoral or unprofessional conduct;
- 12 (d) Who has been convicted of a felony or a crime
13 involving moral turpitude;
- 14 (e) Who is guilty, in the judgment of the board, of
15 gross negligence in his practice as a physical therapist;
- 16 (f) Who has obtained or attempted to obtain license
17 by fraud or wilful misrepresentation;
- 18 (g) Who has been declared mentally incompetent by
19 a court of competent jurisdiction; or
- 20 (h) Who has treated or undertaken to treat human
21 beings otherwise than by physical therapy and as au-
22 thorized by this article, or who has undertaken to prac-
23 tice independent of the prescription or direction of a li-
24 censed doctor of medicine or surgery without limitation.

Sec. 10. Practice of Physical Therapy without License;

2 **Penalty.**—Any person who is not licensed under this
3 article as a physical therapist or whose license has been
4 suspended or revoked, or whose license has lapsed and
5 has not been renewed, who uses in connection with his
6 name the words “physical therapy technician”, “registered
7 physical therapist”, “physical therapist”, or “physio-
8 therapist” or uses the initials R.P.T., P.T.T., P.T., or any other
9 letters, words or insignia indicating or implying that he
10 is a licensed physical therapist, or who in any other way,
11 orally or in writing or in print or by sign directly or by
12 implication, represents himself as a licensed physical
13 therapist, shall be guilty of a misdemeanor and for each
14 offense upon conviction by any court of competent juris-
15 diction, shall be fined not less than one hundred dollars
16 nor more than five hundred dollars, or imprisoned in the
17 county jail for a period of not less than thirty nor more
18 than ninety days, or both, at the discretion of the court,
19 and each day of such violation shall constitute a separate
20 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-

4 vided by law and shall be credited to the board in a
5 special fund to be known as "Board of Physical Ther-
6 apists Special Fund." All money in such fund shall be
7 expended only for the administration and enforcement
8 of the provisions of this article, except that at the end of
9 each fiscal year there shall be transferred from this fund
10 to the general revenue fund of the state ten per cent of
11 all money collected by the committee during the year.

CHAPTER 143

(Senate Bill No. 351—By Mr. Jackson)

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

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
2 is vested with authority to regulate parking of motor ve-
3 hicles in accordance with the provisions of this section
4 with regard to the following state-owned property in the
5 city of Charleston, Kanawha county:

6 (a) The east side of Duffy Street between Kanawha
7 Boulevard and Washington Street, East;

8 (b) The west side of California Avenue between Ka-
9 nawha Boulevard and Washington Street, East;

10 (c) In the circle between the east and west wings of
11 the state capitol;

12 (d) Upon the state-owned grounds upon which State
13 Office Building No. 3, 1800 Washington Street, East, is lo-
14 cated;

15 (e) Upon the state-owned grounds upon which State
16 Office Building No. 4, 112 California Avenue, is located;

17 (f) In the state-owned parking garage at 212 California
18 Avenue and upon the state-owned grounds upon which
19 such parking garage is located;

20 (g) Upon the state-owned property at Michigan Ave-
21 nue and Virginia Terrace;

22 (h) Upon any other property now or hereafter owned
23 by the state and used for parking purposes in conjunction
24 with the state capitol or State Office Buildings Nos. 3 and 4.

25 The commissioner is authorized to promulgate rules and
26 regulations respecting parking and to allocate parking
27 spaces to public officers and employees of the state upon
28 all of the afore-mentioned property of the state: *Provided*,
29 That all parking spaces in the circle between the east and
30 west wings of the state capitol shall at all times be kept
31 available for parking by visitors at the capitol: *Provided*,
32 *however*, That during sessions of the Legislature parking
33 on the east side of Duffy Street between Kanawha Boule-
34 vard and Washington Street, East, and in the circle be-
35 tween the east and west wings of the capitol shall be sub-
36 ject to rules and regulations promulgated jointly by the
37 speaker of the house of delegates and the president of
38 the senate. Any person parking any vehicle contrary to
39 the rules and regulations promulgated under authority of
40 this section shall be subject to a fine of not less than one
41 dollar nor more than twenty-five dollars for each offense.
42 Justices of the peace in Kanawha county shall have juris-
43 diction of all such offenses.

44 The commissioner is authorized to employ such persons
45 as may be necessary to enforce the parking rules and regu-
46 lations 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:

Article 4. Seat of Government of Political Subdivisions.

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-

15 ment where all, or any part, of the public business may
16 be transacted and conducted during the emergency situ-
17 ation. Such sites or places may be within or without the
18 territorial limits of such political subdivisions and may
19 be within or without this state.

**Sec. 2. Conduct of Public Business and Exercise of Gov-
2 ernmental Functions at Temporary Location; Validity of
3 Acts.**—During the period when the public business is be-
4 ing conducted at the emergency temporary location, or
5 locations, the governing body and other officers of a politi-
6 cal subdivision of this state shall have and possess and
7 shall exercise, at such location, or locations, all of the
8 executive, legislative and judicial powers and functions
9 conferred upon such body and officers by or under the
10 laws of this state. Such powers and functions may be
11 exercised in the light of the exigencies of the emergency
12 situation without regard to or compliance with time con-
13 suming procedures and formalities prescribed by law and
14 pertaining thereto, and all acts of such body and officers
15 shall be as valid and binding as if performed within the
16 territorial limits of their political subdivision.

**Sec. 3. Provisions of Article to Control and Supersede
2 Statutory and Charter Law.**—The provisions of this article
3 shall control and be supreme in the event it shall be
4 employed notwithstanding any statutory, charter or ordi-
5 nance 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
2 shall provide adequate office space and equipment within
3 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:

Article 4. County Public Assistance Council.

Section

10. Assistants and employees.

Section 10. Assistants and Employees.—The county
2 council, upon the recommendation of the county director
3 and with the approval of the state department, shall ap-
4 point or employ, from a register of persons certified by
5 the state department as qualified to perform the duties
6 of the position to be filled, such assistants and employees
7 as may be required.

8 The compensation of appointees and employees of the
9 county council shall be fixed by the county council in

10 accordance with the compensation plan established by
11 the state director. In addition to their regular compensa-
12 tion, the county director and his subordinates shall be al-
13 lowed their necessary traveling expenses. Requisitions for
14 traveling expenses shall be accompanied by a sworn and
15 itemized statement which shall be filed with the county
16 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 condition 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)
26. Release of liens.
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

10 such lien and deliver the same to the recipient of public
11 assistance, his heirs or assigns, as the case may be, for
12 recordation.

Sec. 27. Exemptions.—This section is hereby repealed.

Sec. 28. Reimbursement to Federal Government.—
2 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.

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.

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
28 annual 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

56 hundred twenty dollars per year to be effective during
57 his next five years of service, which increases shall be
58 successive and cumulative until a total of five such in-
59 creases shall be received.

60 In applying the foregoing salary schedule where salary
61 increases are provided for length of service, members of
62 the department in service at the time this article becomes
63 effective shall be given credit for prior service and shall
64 be paid such salaries as the same length of service will
65 entitle them to receive under the provisions hereof.

66 Each member of the department of public safety, ex-
67 cept the superintendent and civilian employees, shall, be-
68 fore entering upon the discharge of his duties, execute a
69 bond with security in the sum of three thousand five hun-
70 dred dollars payable to the state of West Virginia, con-
71 ditioned for the faithful performance of his duties as such,
72 and such bond shall be approved as to form by the attor-
73 ney general, and as to sufficiency by the board of public
74 works, and the same shall be filed with the secretary of
75 state and preserved in his office.

— C —

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 defense agency and other organizations for civil defense within this state, and granting certain immunity and exemption 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.**

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

38 pursuant to a request of, the state government or any
39 political subdivision thereof;

40 (2) Duly qualified instructors and properly super-
41 vised students in recognized educational programs
42 where civil defense services are taught. A recognized
43 educational program shall be deemed to include pro-
44 grams in educational institutions duly existing under
45 the laws of this state and such other educational pro-
46 grams as shall be established by the civil defense agency
47 or otherwise under this article.

48 (d) Any civil defense worker, as defined in this sec-
49 tion, performing civil defense services at any place in
50 this state pursuant to agreements, compacts or arrange-
51 ments for mutual aid and assistance, to which the state
52 or a political subdivision thereof is a party, shall possess
53 the same powers, duties, immunities and privileges he
54 would ordinarily possess if performing his duties in the
55 state, province or political subdivision thereof in which
56 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, chap-
ter twenty-four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to appoint-
ment, 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:

Article 1. General Provisions.

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.

42 For the administration of this chapter each commis-
43 sioner shall receive a salary of ten thousand dollars per
44 annum to be paid in monthly installments from the special
45 fund collected from public utilities under the provisions
46 of section six-a, article three, chapter twenty-four of the
47 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.

Section 6. Special License Fee.—(a) All public utilities
2 subject to the provisions of this chapter shall pay a spe-
3 cial license fee in addition to those now required by law.
4 The amount of such fees shall be fixed by the auditor and
5 levied by him upon each of such public utilities according
6 to the value of its property as ascertained by the last
7 assessment, and shall be apportioned among such public
8 utilities upon the basis of such valuation, so as to produce
9 a revenue of one hundred fifty thousand dollars per an-
10 num, which fees shall be paid on or before the twentieth
11 day of January in each year. Such sum of one hundred
12 fifty thousand dollars, together with that provided in

13 subsection (b) hereof shall be paid into the state treasury
14 and kept as a special fund, designated "Public Service
15 Commission Fund," to be appropriated as provided by
16 law for the purpose of paying the salaries of the commis-
17 sion, as fixed by this chapter, its expenses and salaries,
18 compensations, costs and expenses of its employees.

19 (b) All public utilities subject to the provisions of this
20 chapter shall pay a special license fee in addition to any
21 and all fees now required by law. The amount of such
22 fees shall be fixed by the auditor and levied by him upon
23 each of such public utilities, in the proportion which the
24 total gross revenue derived from intrastate business done
25 by each of such public utilities in the calendar year next
26 preceding bears to the total gross revenue derived from
27 intrastate business done in such year by all public utili-
28 ties subject to regulation by the public service commis-
29 sion, so as to produce a revenue of three hundred thou-
30 sand dollars per annum, in addition to such fees as may
31 be fixed by the auditor under the provisions of subsection

32 (a) hereof and which fees shall be paid on or before the
33 first day of July in each year. Such sum of three hundred
34 thousand dollars shall be paid into the state treasury and
35 be kept, appropriated and used as provided in subsection
36 (a) hereof.

37 (c) Any balance in said fund at the end of any fiscal
38 year shall not revert to the treasury but shall remain in
39 said fund and may be appropriated and used as provided
40 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

1. Preliminary Provisions.
2. General Provisions.
3. Administrative 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.

Article 1. Preliminary Provisions.

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

10 for any other lawful purpose or for any combination of
11 such uses.

12 (b) "Code of regulations" means such governing regu-
13 lations as are adopted pursuant to this chapter for the
14 regulation and management of the property, including
15 such amendments thereof as may be adopted from time
16 to time.

17 (c) "Common elements" means and includes:

18 (i) The land on which the building is located and por-
19 tions of the building which are not included in a unit;

20 (ii) The foundations, structural parts, supports, main
21 walls, roofs, basements, halls, corridors, lobbies, stair-
22 ways and entrances and exits of the building;

23 (iii) The yards, parking areas and driveways;

24 (iv) Portions of the land and building used exclusively
25 for the management, operation or maintenance of the com-
26 mon elements;

27 (v) Installations of all central services and utilities;

28 (vi) All apparatus and installations existing for com-
29 mon use;

30 (vii) All other elements of the building necessary or
31 convenient to its existence, management, operation, main-
32 tenance and safety or normally in common use; and

33 (viii) Such facilities as are designated in the declara-
34 tion as common elements.

35 (d) "Common expenses" means and includes:

36 (i) Expenses of administration, maintenance, repair
37 and replacement of the common elements;

38 (ii) Expenses agreed upon as common by all the unit
39 owners; and

40 (iii) Expenses declared common by provisions of this
41 chapter, or by the declaration or the code of regulations.

42 (e) "Council" means a board of natural individuals of
43 the number stated in the code of regulations who are resi-
44 dents of this state, who need not be unit owners and who
45 shall manage the business, operation and affairs of the
46 property on behalf of the unit owners and in compliance
47 with and subject to the provisions of this chapter.

48 (f) "Declaration" means the instrument by which the
49 owner of property submits it to the provisions of this
50 chapter as hereinafter provided, and all amendments
51 thereof.

52 (g) "Declaration plan" means a survey of the prop-
53 erty prepared in accordance with section two, article four,
54 of this chapter.

55 (h) "Majority" or "majority of the unit owners" means
56 the owners of more than fifty per cent in the aggregate in
57 interest of the undivided ownership of the common ele-
58 ments as specified in the declaration.

59 (i) "Person" means a natural individual, corporation,
60 partnership, association, trustee or other legal entity.

61 (j) "Property" means and includes the land, the build-
62 ing, all improvements thereon, all owned in fee simple,
63 and all easements, rights and appurtenances belonging
64 thereto, which have been or are intended to be sub-
65 mitted to the provisions of this chapter.

66 (k) "Recorded" means that an instrument has been
67 duly entered of record in the office of the clerk of the
68 county court of the county in which the property is
69 situate.

70 (l) "Clerk" means the clerk of the county court of the
71 county in which the property is situate.

72 (m) "Revocation" means an instrument signed by all
73 of the unit owners and by all holders of liens against the
74 units by which the property is removed from the pro-
75 visions of this chapter.

76 (n) "Unit" means a part of the property designed or
77 intended for any type of independent use, which has a
78 direct exit to a public street or way, or to a common ele-
79 ment or common elements leading to a public street or
80 way, or to an easement or right of way leading to a pub-
81 lic street or way, and includes the proportionate undivided
82 interest in the common elements which is assigned thereto
83 in the declaration, or any amendments thereof.

84 (o) "Unit designation" means the number, letter or
85 combination thereof designating a unit in the declaration
86 plan.

87 (p) "Unit owner" means the person or persons owning
88 a unit in fee simple.

89 (q) "Mortgage" means either mortgage or deed of
90 trust.

Sec. 3. Application of Chapter.—The provisions of this
2 chapter shall be applicable only to real property, the
3 sole owner or all the owners of which submit the same
4 to the provisions hereof by a duly recorded declaration.

Article 2. General Provisions.

Section

1. Status of units; ownership.
2. Common elements.
3. Invalidity of contrary agreements.

Section 1. Status of Units; Ownership.—Each unit,
2 together with its proportionate undivided interest in
3 the common elements, is for all purposes real property
4 and the ownership of each unit, together with its pro-
5 portionate undivided interest in the common elements,
6 is for all purposes the ownership of real property.

Sec. 2. Common Elements.—The percentage of un-
2 divided interest in the common elements assigned to each
3 unit shall be set forth in the declaration and such per-
4 centage shall not be altered except by recording an
5 amended declaration duly executed by all of the unit
6 owners affected thereby. The undivided interest in the
7 common elements may not be separated from the unit
8 to which such interest pertains and shall be deemed
9 to be conveyed, leased or encumbered with the unit even
10 though such interest is not expressly referred to or de-
11 scribed in the deed, lease, mortgage or other instrument.
12 The common elements shall remain undivided and no
13 owner may exempt himself from liability with respect to
14 the common expenses by waiver of the enjoyment of the
15 right to use any of the common elements or by the aban-
16 donment of his unit or otherwise, and no action for par-
17 tition or division of any part of the common elements
18 shall be permitted, except as provided in section two,
19 article eight of this chapter. Each unit owner or lessee
20 thereof may use the common elements in accordance with
21 the purpose for which they are intended. The mainte-
22 nance and repair of the common elements and the making

- 23 of any additions or improvements thereto shall be carried
24 out only as provided in the code of regulations.

Sec. 3. Invalidity of Contrary Agreements.—Any
2 agreement contrary to the provisions of this chapter shall
3 be void and of no effect.

Article 3. Administrative Provisions.

Section

1. Administration governed by code of regulations.
2. Adoption, amendment or repeal of code of regulations.
3. Contents of the code of regulations.
4. Compliance by owners with code of regulations, administrative provisions, etc.
5. Remedy for noncompliance with code of regulations, administrative provisions, etc.
6. Duties of council.
7. Powers of council.
8. Work on common elements.
9. Certain work prohibited.
10. Easements for work.
11. Common profits and expenses.
12. Voting by unit owners.
13. Records of receipts and expenditures; examination; records of assessments.

Section 1. Administration Governed by Code of Regulations.—The administration of every property shall be
2 governed by a code of regulations, a true and correct copy
3 of which, and all duly adopted amendments of which,
4 shall be duly recorded.
5

Sec. 2. Adoption, Amendment or Repeal of Code of Regulations.—The council has authority to make, alter,
2 amend and repeal the code of regulations, subject to the
3 right of a majority of the unit owners to change any such
4 actions.
5

Sec. 3. Contents of the Code of Regulations.—The code
2 of regulations shall provide for at least the following and
3 may include other lawful provisions:
4 (a) Identification of the property by reference to the
5 place of record of the declaration and the declaration
6 plan;
7 (b) The method of calling meetings of unit owners
8 and meetings of the council;
9 (c) The number of unit owners and the number of
10 members of council which shall constitute a quorum for
11 the transaction of business;
12 (d) The number and qualification of members of

13 council, the duration of the term of such members and
14 the method of filling vacancies;

15 (e) The annual election by the council of a president,
16 secretary and treasurer and any other officers which the
17 code of regulations may specify;

18 (f) The duties of each officer, the compensation and
19 removal of officers and the method of filling vacancies;

20 (g) Maintenance, repair and replacement of the com-
21 mon elements and payment of the cost thereof;

22 (h) The manner of collecting common expenses from
23 unit owners; and

24 (i) The method of adopting and of amending rules
25 governing the details of the use and operation of the
26 property and the use of the common elements.

Sec. 4. Compliance by Owners with Code of Regula-
2 **tions, Administrative Provisions, etc.**—Each unit owner
3 shall comply with the code of regulations and with such
4 rules governing the details of the use and operation of
5 the property and the use of the common elements as may
6 be in effect from time to time, and with the covenants,
7 conditions and restrictions set forth in the declaration or
8 in the deed to his unit or in the declaration plan.

Sec. 5. Remedy for Noncompliance with Code of Regu-
2 **lations, Administrative Provisions, etc.**—Failure to com-
3 ply with the code of regulations and with such rules gov-
4 erning the details of the use and operation of the property
5 and the use of the common elements as may be in effect
6 from time to time and with the covenants, conditions and
7 restrictions set forth in the declaration or in deeds of
8 units or in the declaration plan shall be grounds for an
9 action for the recovery of damages or for injunctive re-
10 lief, or both, maintainable by any member of the council
11 on behalf of the council or the unit owners or, in a proper
12 case, by an aggrieved unit owner or by any person who
13 holds a mortgage lien upon a unit and is aggrieved by
14 any such noncompliance.

Sec. 6. Duties of Council.—The duties of the council
2 shall include the following:

- 3 (a) The maintenance, repair and replacement of the
4 common elements;
- 5 (b) The assessment and collection of funds from unit
6 owners for common expenses and the payment of such
7 common expenses;
- 8 (c) The adoption and amendment of the code of reg-
9 ulations and the promulgation, distribution and enforce-
10 ment of rules governing the details of the use and opera-
11 tion of the property and the use of the common elements,
12 subject to the right of a majority of the unit owners to
13 change any such actions; and
- 14 (d) Any other duties which may be set forth in the
15 declaration or code of regulations.

Sec. 7. Powers of Council.—Subject to the limitations
2 and restrictions contained in this chapter, the council shall
3 on behalf of the unit owners:

- 4 (a) Have power to manage the business, operation
5 and affairs of the property and for such purposes to en-
6 gage employees and appoint agents and to define their
7 duties and fix their compensation, enter into contracts
8 and other written instruments or documents and to au-
9 thorize the execution thereof by officers elected by the
10 council; and
- 11 (b) Have such incidental powers as may be appro-
12 priate to the performance of their duties.

Sec. 8. Work on Common Elements.—The mainte-
2 nance, repair and replacement of the common elements
3 and the making of improvements or additions thereto
4 shall be carried on only as provided in the code of regu-
5 lations.

Sec. 9. Certain Work Prohibited.—No unit owner shall
2 do any work on his unit or the common elements which
3 would jeopardize the soundness or safety of the property
4 or impair any easement or hereditament without the
5 unanimous consent of the unit owners affected thereby.

Sec. 10. Easements for Work.—The council shall have
2 an easement to enter any unit to maintain, repair or re-
3 place the common elements, as well as to make repairs

4 to units if such repairs are reasonably necessary for pub-
5 lic safety or to prevent damage to other units or to the
6 common elements.

Sec. 11. Common Profits and Expenses.—The common
2 profits of the property shall be distributed among, and
3 the common expenses shall be charged to, the unit own-
4 ers according to the percentage of the undivided interest
5 of each in the common elements as set forth in the
6 declaration and any amendments thereto.

Sec. 12. Voting by Unit Owners.—At any meeting of
2 unit owners, each unit owner shall be entitled to the
3 same number of votes as the percentage of ownership
4 in the common elements assigned to his unit in the
5 declaration and any amendments thereto.

**Sec. 13. Records of Receipts and Expenditures; Exami-
2 nation; Records of Assessments.**—The treasurer shall keep
3 detailed records of all receipts and expenditures, includ-
4 ing expenditures affecting the common elements, specify-
5 ing and itemizing the maintenance, repair and replace-
6 ment expenses of the common elements and any other
7 expenses incurred. Such records shall be available for
8 examination by the unit owners during regular business
9 hours. In accordance with the actions of the council as-
10 sessing common expenses against the units and unit own-
11 ers, he shall keep an accurate record of such assessments
12 and of the payment thereof by each unit owner.

Article 4. Declarations, Conveyances, Mortgages and Leases.

Section

1. Contents of declaration.
2. Declaration plan.
3. Contents of deeds of units.
4. Mortgages and other liens of record affecting property at time of
the first conveyance of each unit.
5. Sales, conveyances or leases of or liens upon separate units.

Section 1. Contents of Declaration.—The declaration
2 shall contain the following:

3 (a) A reference to this chapter and an expression of
4 the intention to submit the property to the provisions
5 of this chapter;

6 (b) A description of the land and building;

- 7 (c) The name by which the property will be known;
8 (d) A statement that the property is to consist of
9 units and common elements as shown in a declaration
10 plan;
11 (e) A description of the common elements and the pro-
12 portionate undivided interest, expressed as a percentage,
13 assigned to each unit therein, which percentages shall
14 aggregate one hundred per cent;
15 (f) A statement that the proportionate undivided in-
16 terest in the common elements may be altered by the
17 recording of an amendment duly executed by all unit
18 owners affected thereby;
19 (g) A statement of the purposes or uses for which
20 each unit is intended and restrictions, if any, as to use;
21 (h) The names of the first members of council;
22 (i) Any further details in connection with the prop-
23 erty which the party or parties executing the declara-
24 tion may deem appropriate.

Sec. 2. Declaration Plan.—The declaration plan shall
2 bear the verified statement of a registered architect or
3 licensed professional engineer certifying that the declara-
4 tion plan fully and accurately (i) shows the property,
5 the location of the building thereon, the building and
6 the layout of the floors of the building, including the
7 units and the common elements and (ii) sets forth the
8 name by which the property will be known, and the
9 unit designation for each unit therein.

- Sec. 3. Contents of Deeds of Units.**—Deeds of units
2 shall include the following:
3 (a) The name by which the property is identified in
4 the declaration plan and the name of the political sub-
5 division and the ward, if any, and the name of the county
6 in which the building is situate, together with a refer-
7 ence to the declaration and the declaration plan, in-
8 cluding reference to the place where both instruments
9 and any amendments thereof are recorded;
10 (b) The unit designation of the unit in the declara-
11 tion plan and any other data necessary for its proper
12 identification;

13 (c) A reference to the last unit deed if the unit was
14 previously conveyed;

15 (d) The proportionate undivided interest, expressed
16 as a percentage, in the common elements which is
17 assigned to the unit in the declaration and any amend-
18 ments thereof;

19 (e) In addition to the foregoing, the first deed con-
20 veying each unit shall contain the following specific
21 provision:

22 "The grantee, for and on behalf of the grantee and the
23 grantee's heirs, personal representatives, successors and
24 assigns, by the acceptance of this deed covenants and
25 agrees to pay such charges for the maintenance of, re-
26 pairs to, replacement of and expenses in connection with
27 the common elements as may be assessed from time to
28 time by the council in accordance with the Unit Prop-
29 erty Act of West Virginia, and further covenants and
30 agrees that the unit conveyed by this deed shall be sub-
31 ject to a charge for all amounts so assessed and that,
32 except insofar as section five, article seven of said Unit
33 Property Act may relieve a subsequent unit owner of
34 liability for prior unpaid assessments, this covenant shall
35 run with and bind the land or unit hereby conveyed and
36 all subsequent owners thereof"; and

37 (f) Any further details which the grantor and grantee
38 may deem appropriate.

**Sec. 4. Mortgages and Other Liens of Record Affecting
2 Property at Time of the First Conveyance of Each Unit.—**
3 At the time of the first conveyance of each unit following
4 the recording of the original declaration, every mortgage
5 and other lien of record affecting the entire building or
6 property or a greater portion thereof than the unit being
7 conveyed shall be paid and satisfied of record, or the unit
8 being conveyed shall be released therefrom by partial
9 release duly recorded.

**Sec. 5. Sales, Conveyances or Leases of or Liens upon
2 Separate Units.—**Units may be sold, conveyed, mortgaged,
3 leased or otherwise dealt with in the same manner as
4 like dealings are conducted with respect to real property

5 and interests therein. Every written instrument dealing
6 with a unit shall specifically set forth the name by which
7 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
2 relating to the property or any unit, including the instruments provided for in this chapter, shall be entitled
3 to be recorded, provided that they are acknowledged or
4 proved in the manner provided by law.

Sec. 2. Recording a Prerequisite to Effectiveness of Certain Instruments.—No declaration, declaration plan
2 or code of regulations, or any amendments thereto, shall
3 be effective until the same have been duly recorded.

Sec. 3. Place of Recording.—The clerk shall record
2 declarations, deeds of units, codes of regulations, and
3 revocations in the same records as are maintained for
4 the recording of deeds of real property. Mortgages relating to units shall be recorded in the same records as
5 are maintained by the clerk for the recording of real
6 estate mortgages. Declaration plans, and any and all
7 amendments thereto, shall be recorded in the same records
8 as are maintained for the recording of subdivision plans.

Sec. 4. Indexing by Recording Officer.—The clerk
2 shall index each declaration against the maker thereof
3 as the grantor and the name by which the property is
4 identified therein as the grantee. The clerk shall index each declaration plan and code of regulations and
5 any revocation in the name by which the property is
6 identified therein in both the grantor index and the
7 grantee index. The clerk shall index each unit deed
8 and mortgage and lease covering a unit in the same
9 manner as like instruments are indexed.

Sec. 5. Recording Fees.—The clerk shall be entitled

- 2 to charge the same fees for recording instruments which
- 3 are recordable under this chapter as the clerk is en-
- 4 titled to charge for like services with respect to the re-
- 5 cording of various similar instruments under the general
- 6 law.

Article 6. Removal of Property from the Provisions of Chapter; Resubmission.

Section

1. Removal.
2. Effect of removal.
3. Resubmission.

Section 1. Removal.—Property may be removed from
2 the provisions of this chapter by a revocation expressing
3 the intention to so remove property previously made sub-
4 ject to the provisions of this chapter. No such revocation
5 shall be effective unless the same is executed by all of the
6 unit owners and by the holders of all mortgages, judg-
7 ments or other liens affecting the units and is duly re-
8 corded.

Sec. 2. Effect of Removal.—When property subject
2 to the provisions of this chapter has been removed as pro-
3 vided in section one of this article, the former unit
4 owners shall, at the time such removal becomes effective,
5 become tenants in common of the property. The un-
6 divided interest in the property owned in common which
7 shall appertain to each unit owner at the time of removal
8 shall be the percentage of undivided interest previously
9 owned by such person in the common elements.

Sec. 3. Resubmission.—The removal of property from
2 the provisions of this chapter shall not preclude such
3 property from being resubmitted to the provisions of the
4 chapter in the manner herein provided.

Article 7. Assessments, Taxation and Liens.

Section

1. Assessments and taxes.
2. Assessment of charges.
3. Method of enforcing charges.
4. Mechanics' liens against units.
5. Unpaid assessments at time of voluntary sale of a unit.

Section 1. Assessments and Taxes.—Each unit and its
2 proportionate undivided interest in the common elements
3 as determined by the declaration and any amendments

4 thereof shall be assessed and taxed for all purposes as a
5 separate parcel of real estate entirely independent of the
6 building or property of which the unit is a part. Neither
7 the building, the property nor any of the common elements
8 shall be assessed or taxed separately after the declaration
9 and declaration plan are recorded, nor shall the same
10 be subject to assessment or taxation, except as the units
11 and their proportionate undivided interests in the common
12 elements are assessed and taxed pursuant to the pro-
13 visions of this section.

Sec. 2. Assessment of Charges.—All sums assessed by
2 resolutions duly adopted by the council against any unit
3 for the share of common expenses chargeable to that unit
4 shall constitute the personal liability of the owner of the
5 unit so assessed and shall, until fully paid, together with
6 interest thereon at the rate of six per cent per annum from
7 the thirtieth day following the adoption of such resolu-
8 tions, constitute a charge against such unit which shall be
9 enforceable as provided in section three of this article.

Sec. 3. Method of Enforcing Charges.—Any charge
2 assessed against a unit may be enforced by a civil action
3 by the council acting on behalf of the unit owners, pro-
4 vided that each suit when filed shall refer to this chapter
5 and to the unit against which the assessment is made and
6 the owner thereof and shall be indexed by the clerk of the
7 county court of the county in which the unit is situate as
8 lis pendens. Any judgment against a unit and its owner
9 shall be enforceable in the same manner as is otherwise
10 provided by law.

Sec. 4. Mechanics' Liens Against Units.—Any mechan-
2 ics' liens arising as a result of repairs to or improvements
3 of a unit by a unit owner shall be liens only against such
4 unit. Any mechanics' liens arising as a result of repairs
5 to or improvements of the common elements, if author-
6 ized in writing pursuant to a duly adopted resolution
7 of the council, shall be paid by the council as a common
8 expense and until so paid shall be liens against each unit
9 in a percentage equal to the proportionate share of the
10 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.
2. Repair or reconstruction.
3. Severability.

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

4 the property shall be promptly repaired and restored by
5 the council using the proceeds of insurance held by the
6 council, if any, for that purpose, and the unit owners
7 directly affected thereby shall be liable for assessment
8 for any deficiency in proportion to their respective un-
9 divided ownership of the common elements: *Provided,*
10 *however,* That if there is substantially total destruction
11 of the building or of one or more of several buildings
12 which comprise the property, or if seventy-five per cent
13 of the unit owners directly affected thereby duly resolve
14 not to proceed with repair or restoration, then, and in
15 that event, the salvage value of the property or of the
16 substantially destroyed building or buildings shall be
17 subject to partition at the suit of any unit owner directly
18 affected thereby, in which event the net proceeds of sale,
19 together with the net proceeds of insurance policies held
20 by the council, if any, shall be considered as one fund
21 and shall be divided among all the unit owners directly
22 affected thereby in proportion to their respective un-
23 divided ownership of the common elements, after dis-
24 charging, out of the respective shares of unit owners
25 directly affected thereby, to the extent sufficient for the
26 purpose, all liens against the units of such unit owners.

Sec. 3. Severability.—If any provision of this chapter,
2 or any section, sentence, clause, phrase or word, or the
3 application thereof in any circumstance is held invalid,
4 the validity of the remainder of the chapter and of the
5 application of any such provision, section, sentence,
6 clause, phrase or word in any other circumstances, shall
7 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-

teen, relating to the removal, transfer and disposition of remains in graves located upon privately-owned lands.

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:

Article 13. Removal, Transfer and Disposition of Remains in Graves Located Upon Privately-Owned Lands.

Section

1. Jurisdiction to permit and order removal, etc.
2. Action; contents of petition.
3. Parties; notice.
4. Hearing; discretion in granting or refusing relief; order.
5. Procedure upon removal.
6. Costs.
7. Remedy herein provided cumulative.

Section 1. Jurisdiction to Permit and Order Removal, etc.—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 herein after 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

9 why removal is sought, and the proposed disposition of
10 such remains. The petition shall further show that plain-
11 tiffs have made reasonable and diligent effort to ascertain
12 the identity of each deceased and each deceased's sur-
13 viving next-of-kin, heirs-at-law, administrator, executor
14 or personal representative. The court may, if deemed
15 necessary, appoint a guardian ad litem to protect the
16 interests of known or unknown persons in interest,
17 whether living or dead.

Sec. 3. Parties; Notice.—All owners, lessees and other
2 persons having an interest in such lands, other than plain-
3 tiffs, and also the surviving next-of-kin, heirs-at-law, ad-
4 ministrator, executor or personal representative of each
5 deceased, so far as can be determined through reasonable
6 and diligent effort, shall be made defendants in such ac-
7 tion. Insofar as possible all defendants shall be served
8 with notice of the institution of the action and the date of
9 the first hearing upon the same, such service to be made
10 in the same manner provided by law for the service of
11 process in other civil actions. If the address of any de-
12 fendant be unknown, or, if there be any unknown next-
13 of-kin, heirs-at-law, administrator, executor or personal
14 representative of any known or unknown person whose
15 remains may be interred within any such grave, then, in
16 such event, a copy of said notice shall be published once
17 a week for three consecutive weeks in a newspaper of
18 general circulation in the county prior to the hearing
19 upon the same.

**Sec. 4. Hearing; Discretion in Granting or Refusing Re-
2 lief; Order.**—No sooner than three weeks from the filing
3 of such petition the court shall take evidence upon relief
4 sought, together with any evidence presented in opposi-
5 tion thereto. In granting or denying such relief the court
6 shall consider, as well as other evidence adduced, evi-
7 dence as to the wishes of all persons concerned, whether
8 living or deceased, and shall exercise a sound discretion
9 in granting or refusing, in whole or in part, the relief
10 sought. If the court is satisfied with the propriety of the
11 relief sought by plaintiffs it shall enter an order granting
12 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

34 service of the United States (or of.....,
35 an auxiliary to the military forces of the United States),
36 and/or....., husband (or wife) of
37, a member of the military service
38 of the United States (or of....., an
39 auxiliary to the military forces of the United States),
40 whose name(s) is (are) signed to the foregoing writing
41 bearing date on the..... day of
42, 19....., has (have) this day
43 acknowledged the same before me; and I further certify
44 that I am a.....
45 (state rank)
46 in the..... of the United States and
47 my identification number is.....
48 Given under my hand this..... day of
49, 19.....
50
51 (Signature of Officer)
52
53 (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

28 for recordation any instrument printed on both sides of
29 the paper or printed in whole or part in smaller than ten
30 point type with at least two points separating each line.
31 Any failure of such instrument to be so accepted by the
32 clerk of the county court shall not affect the validity
33 thereof as to the parties thereto: *Provided, however,*
34 That any such instrument shall be accepted by the clerk
35 for recording at one and one-half times the legal fee
36 therefor.

37 Financing, continuation and termination statements and
38 other statements and writings permitted to be filed under
39 chapter forty-six of the code shall be filed in a proper file
40 by the clerk of the county court or the secretary of state,
41 as the case may be, as specified in said chapter forty-six.
42 Such statements and writings filed in the office of the
43 clerk of the county court and such statements and writ-
44 ings filed in the office of the secretary of state shall be
45 indexed according to the name of the debtor and shall
46 disclose the assigned file number and the address of the
47 debtor given in the respective statement or writing. The
48 date and hour of filing and the file number shall be noted
49 on the statement or writing involved. A financing, con-
50 tinuation or termination statement or other statement or
51 writing permitted to be filed under chapter forty-six of
52 the code may, after the same ceases to be effective or
53 lapses, as specified in said chapter forty-six, be removed
54 from the files in the office of the clerk of the county court
55 or the secretary of state, as the case may be, and de-
56 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
3 in his office the following fees to be paid by the person
4 to whom the service is rendered at the same time it is
5 done:

6 For each certificate of incorporation or copy

7	thereof, including certificates issued on new agree-	
8	ments, or authorizing a foreign corporation to do	
9	business within this state	\$10.00
10	For each certified copy of certificate of incor-	
11	poration, not to exceed ten pages	10.00
12	If such copy contains in excess of ten pages, for	
13	each additional page .....	.20
14	For filing and recording a trade-mark	5.00
15	For each certificate of change of name, of in-	
16	crease or decrease of authorized capital stock, of	
17	change of principal office, or of amendment to cer-	
18	tificate of incorporation	5.00
19	For recording a power of attorney and certificate	
20	thereof	3.00
21	For any other certificate, whether required by	
22	law or made at the request of any person	5.00
23	The foregoing fees shall include the tax on the	
24	great seal or the less seal impressed on any such	
25	document, as well as the filing, recording and in-	
26	dexing of the same.	
27	For indorsing and filing reports of corporations,	
28	and all other papers, which shall include the in-	
29	dexing of the same, for each report or paper filed	1.00
30	For any search, not less than	1.00
31	For searches of more than one hour, for each	
32	hour or fraction thereof consumed in making such	
33	search	1.00
34	The cost of the search shall be in addition to the	
35	cost of any certificate issued pursuant thereto or	
36	based thereon.	
37	For entering statement of satisfaction of condi-	
38	tional sale contract	1.00
40	nation statement or other statement or writing	
39	For filing each financing, continuation or termi-	
41	permitted to be filed under chapter forty-six of the	
42	code	1.00
43	For recording any paper for which no specific	
44	fee is prescribed	1.00

45	Or at the rate, for each one hundred words re-	
46	corded, of .....	.20
47	For issuing commission to a notary public, or to	
48	a commissioner of deeds, which shall include the	
49	tax on the state seal thereon and other charges	5.00
50	For a testimonial	1.50
51	For a copy of any paper, if one sheet	1.00
52	For each sheet of copy after the first .....	.75
53	For issuing a commission to a commissioner in	
54	any other state	5.00
55	For making out a requisition for a fugitive from	
56	justice demanded of the executive authority of an-	
57	other state	2.00
58	For issuing a warrant for the arrest of a fugitive	
59	from justice demanded by the executive authority	
60	of another state	2.00
61	When the work or service is performed for the	
62	benefit of any corporation which is exempted from	
63	the payment of license tax on its charter, one half	
64	only of the foregoing rates shall be charged.	
65	For any other work or service not herein enum-	
66	erated, 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:

7	When a writing is admitted to record, for re-	
8	ceiving proof of acknowledgment thereof, entering	
9	an order in connection therewith, endorsing clerk’s	
10	certificate of recordation thereon and indexing in	
11	in a proper index, where the writing is a deed of	
12	conveyance, trust deed, lease, or power of attorney	
13	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

18	such writing contains more than one thousand	
19	words, three cents for each additional twenty words.	
20	For recording a plat accompanying a deed or	
21	other writing	1.00
22	If such plat contains more than one hundred	
23	twenty square inches, for each additional square	
24	inch .....	.007
25	For recording and indexing a map to be placed	
26	in map book	2.00
27	If such map contains more than one hundred	
28	twenty square inches, for each additional square	
29	inch .....	.007
30	For recording and indexing assignment	1.25
31	If such assignment contains more than one ref-	
32	erence to the record of property assigned, for each	
33	reference .....	.50
34	If such assignment does not give the reference	
35	to the record of property assigned, for search of	
36	record to determine such book and page .....	.25
37	If such assignment contains more than two pages,	
38	for each additional page .....	.50
39	For recording and indexing and noting release	
40	of lien	1.00
41	If such release contains more than one reference	
42	to lien released, for each lien released thereby	1.00
43	If book and page reference to lien released is	
44	omitted, for search of record to determine such book	
45	and page .....	.25
46	For filing or refiling and entering conditional	
47	sales contract	1.00
48	For recording and indexing a satisfaction of a	
49	conditional sales contract	1.00
50	For filing each financing, continuation or termina-	
51	tion statement or other statement or writing per-	
52	mitted to be filed under chapter forty-six of the	
53	code	1.00
54	For recording and indexing a certificate of in-	
55	corporation	1.25

56	If such certificate contains more than two pages,	
57	for each additional page .....	.50
58	For filing and indexing a certificate showing the	
59	name or names of a person or persons conducting	
60	business under an assumed name	1.00
61	For certifying to the assessor a transfer of real	
62	estate under section eight, article four, chapter	
63	eleven of the code .....	.50
64	For swearing the witnesses and entering in the	
65	order or minute book, all orders in relation to the	
66	proof of a will which is admitted to record without	
67	contest, and copying such order on the will or on a	
68	paper annexed thereto, when fully proved and but	
69	one order	2.00
70	If the will be but partially proved on one day,	
71	for the order and entering the same on the will or	
72	paper annexed thereto .....	.50
73	For each subsequent order and entering the same	
74	on the will or paper annexed thereto .....	.50
75	For the same services where there is a contest	5.00
76	For preparing notices in connection with contest,	
77	or any hearing, each notice .....	.50
78	For recording a will and the matter recorded	
79	therewith in the will book	1.00
80	If will and matter recorded therewith contains	
81	more than two pages, for each additional page ....	.50
82	For entering orders and transmitting papers in	
83	case of appeal	2.50
84	If such order and transmittal contains more than	
85	five pages, for each additional page .....	.50
86	If any personal representative or guardian qual-	
87	ify for administering necessary oaths, notating the	
88	bond, entering and copying on the will, order grant-	
89	ing probate or administration, making out copy of	
90	such order for personal representative or guardian,	
91	entering and copying orders of appraisement	1.50
92	For each additional copy of qualification order	.50
93	If several personal representatives qualify on	

94	the same estate at the same time or term the same	
95	fee shall be charged as if one had qualified, to-wit	1.50
96	For entering and copying an order granting a	
97	license under provisions of article twelve, chapter	
98	eleven of the code .....	.50
99	For certificate for a license or endorsing assign-	
100	ment thereof .....	.50
101	For issuance of marriage license, for preparing the	
102	application and administering the oath, for regis-	
103	tering and recording the license, for mailing ac-	
104	knowledgment of minister's return to one of li-	
105	cencees, for notifying one of licensees after sixty	
106	days of the non-receipt of the minister's return	2.00
107	One half of the latter fee shall be paid by the	
108	county clerk into the state treasury as a state reg-	
109	istration fee, in the same manner that license taxes	
110	are paid into the treasury under article twelve,	
111	chapter eleven of the code.	
112	For search of anything in his office of over a year's	
113	standing, unless otherwise required by statute .....	.25
114	For recording certificates and posting a copy	
115	thereof under the provisions of section two, article	
116	one, chapter thirty-four of the code	1.25
117	For docketing or redocketing under article three,	
118	chapter thirty-eight of the code, a judgment, de-	
119	cree, bond or recognizance .....	.50
120	If such writing contains more than one page, for	
121	each additional page .....	.50
122	For recording and indexing an execution and not-	
123	ing the date of issuance and the date of filing of	
124	same upon the judgment record	1.00
125	For making out a transcript of the record and	
126	proceedings in any case in due form so that the	
127	same may be used in appellate court, such fee shall	
128	be the same as specified herein for recording.	
129	For making out, in any other manner than copy-	
130	ing, any paper to go out of the office which is not	
131	otherwise provided for	1.00

132	If such paper contains more than two pages, for	
133	each additional page .....	.50
134	For any copy, if it be not otherwise provided for	1.00
135	If such copy contains more than two pages, for	
136	each additional page .....	.50
137	For annexing the seal of the court to any paper,	
138	writing certificates of clerk accompanying it .....	.50
139	For writing a certificate of the president of the	
140	court or judge, when the clerk be required to do so	.50
141	For recording and indexing an inventory or sale	
142	bill	1.00
143	If such writing contains more than two pages,	
144	for each additional page .....	.50
145	For entering an order confirming the report of	
146	a fiduciary .....	.50
147	For recording and indexing such report and mat-	
148	ter recorded therewith	2.00
149	If such report contains more than four pages, for	
150	each additional page .....	.50
151	For recording and indexing any bond required	
152	by law to be recorded, including the certificate or	
153	other evidence of its execution	1.00
154	If such bond and certificate contains more than	
155	two pages, for each additional page .....	.50
156	For recording and indexing a notice of mechanic's	
157	lien	1.00
158	If such notice contains more than two pages, for	
159	each additional page .....	.50
160	For recording contract limiting liability of owner	
161	and bond of contractor to be filed therewith, as	
162	prescribed in article two, chapter thirty-eight of	
163	the code	1.25
164	If such contract and bond contains more than two	
165	pages, for each additional page .....	.50
166	For recording and indexing a notice of lis	
167	pendens	1.25
168	If such notice contains more than two pages, for	
169	each additional page .....	.50

170	For recording a certificate of real estate claimed	
171	as a homestead .....	.50
172	For administering an oath not herein provided	
173	for, and writing a certificate thereof where the case	
174	requires one .....	.50
175	For recording a writing containing pages in ex-	
176	cess of legal size, 8½" x 13", additional fee for each	
177	page, where recording is by photograph .....	.25
178	For recording and indexing instruments not	
179	specifically provided for herein	1.25
180	If such instrument contains more than two pages,	
181	for each additional page .....	.50
182	For recording anew any will, deed or other paper, the	
183	same fees herein provided for the original recording.	
184	For any service other than recording and indexing	
185	not specifically provided for, the same fee as a clerk of	
186	the circuit court for similar services.	
187	All acts or parts of acts in conflict herewith are hereby	
188	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 thereto 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

2 **Facilities; Planning; Coordinating.**—The department of
3 commerce shall have the authority and, within the limits
4 of available funds, it shall be its duty to:

5 (1) Investigate, study and undertake ways and means
6 of promoting and encouraging the development of recre-
7 ational facilities on the local, county, regional and state
8 level.

9 (2) Publish information as an aid for the development
10 of recreational facilities on the local, county, regional or
11 state level, and to initiate, promote and conduct, or cause
12 to be conducted, research designed to develop new and
13 existing recreational facilities on the local, county, re-
14 gional or state level.

15 (3) Enter into agreements with federal and state de-
16 partments or agencies, including those of other states,
17 and any other groups which are in harmony with the pur-
18 poses of this article, as well as with counties or munici-
19 palities of this state, for the rendering of consultative serv-
20 ice with respect to the planning and establishment of recre-
21 ational facilities in counties or municipalities of this state.

22 The agreement shall provide that the county or munici-
23 pality may pay part or all the expense of such services,
24 except that no part of the cost of the acquisition of land,
25 buildings, equipment or other property, real or personal,
26 necessary for the development, expansion or completion
27 of a recreational facility shall be paid out of any moneys
28 of the treasury of the state of West Virginia.

29 The department of commerce is hereby expressly au-
30 thorized to participate in any federal program which
31 will promote and encourage the proper and orderly de-
32 velopment of recreational facilities on the local, county,
33 regional or state level in West Virginia.

CHAPTER 158

(Com. Sub. for House Bill No. 6—Originating in the
House Committee on Redistricting)

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

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
2 of seventeen senatorial districts as follows:

3 The counties of Brooke, Hancock and Ohio shall con-
4 stitute the first senatorial district;

5 The counties of Doddridge, Marshall, Tyler and Wetzel
6 shall constitute the second senatorial district;

7 The counties of Calhoun, Pleasants, Ritchie, Wirt and
8 Wood shall constitute the third senatorial district;

9 The counties of Clay, Jackson, Mason, Putnam and
10 Roane shall constitute the fourth senatorial dis-
11 trict;

12 The counties of Cabell and Wayne shall constitute the
13 fifth senatorial district;

14 The counties of McDowell and Mingo shall constitute
15 the sixth senatorial district;

16 The counties of Boone, Lincoln and Logan shall consti-
17 tute the seventh senatorial district;

18 The county of Kanawha shall constitute the eighth
19 senatorial district;

20 The counties of Raleigh and Wyoming shall constitute
21 the ninth senatorial district;

22 The counties of Mercer, Monroe and Summers shall
23 constitute the tenth senatorial district;

24 The counties of Fayette and Greenbrier shall consti-
25 tute the eleventh senatorial district;

26 The counties of Braxton, Nicholas, Pendleton, Poca-
27 hontas, Randolph and Webster shall constitute the twelfth
28 senatorial district;

29 The counties of Gilmer, Harrison and Lewis shall con-
30 stitute the thirteenth senatorial district;

31 The counties of Marion and Monongalia shall consti-
32 tute the fourteenth senatorial district;

33 The counties of Barbour, Grant, Preston, Taylor, Tucker
34 and Upshur shall constitute the fifteenth senatorial
35 district;

36 The counties of Berkeley, Hampshire, Hardy, Jefferson,
37 Mineral and Morgan shall constitute the sixteenth sena-
38 torial district; and

39 The county of Kanawha shall constitute the seventeenth
40 senatorial district.

41 Each of the said districts shall have two senators, and,
42 regardless of the changes in district lines made by this
43 act, the senators elected at the general election of one
44 thousand nine hundred sixty and at the general
45 election of one thousand nine hundred sixty-two
46 shall continue to hold their seats as members
47 of the senate for the term, and as representa-
48 tives of the senatorial districts, for which each thereof,
49 respectively, was elected.

50 One senator shall be nominated and elected at the
51 general election of one thousand nine hundred sixty-four
52 from each of the senatorial districts hereinabove described
53 for a term of four years, and one shall be nominated and
54 elected from each of the said senatorial districts biennially

55 thereafter for a term of four years: *Provided*, That at
56 the general election to be held in the year one thousand
57 nine hundred sixty-four there shall be two senators
58 elected in the seventeenth senatorial district, as herein
59 designated, one of whom shall be nominated and elected
60 for a term of two years and one of whom shall be nomi-
61 nated and elected for a term of four years, and biennially
62 thereafter one senator shall be elected in said seventeenth
63 senatorial district for a term of four years.

Sec. 2. Apportionment of Membership of House of
2 **Delegates.**—The house of delegates shall consist of one
3 hundred six members, who shall be apportioned as fol-
4 lows:

5 The counties of Barbour, Boone, Braxton, Brooke, Cal-
6 houn, Clay, Doddridge, Gilmer, Grant, Hampshire, Hardy,
7 Jackson, Jefferson, Lewis, Lincoln, Mason, Mineral, Mon-
8 roe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas,
9 Preston, Putnam, Randolph, Ritchie, Roane, Summers,
10 Taylor, Tucker, Tyler, Upshur, Webster, Wetzel and Wirt
11 shall have one delegate each;

12 The counties of Berkeley, Greenbrier, Hancock, Mar-
13 shall, Mingo, Wayne and Wyoming shall have two dele-
14 gates each;

15 The counties of Fayette, Logan, Marion and Monongalia
16 shall have three delegates each;

17 The counties of Harrison, McDowell, Mercer, Ohio,
18 Raleigh and Wood shall have four delegates each;

19 The county of Cabell shall have six delegates; and

20 The county of Kanawha shall have fourteen delegates.

Sec. 3. Congressional Districts.—The number of mem-
2 bers to which the state is entitled in the house of repre-
3 sentatives of the Congress of the United States shall be
4 apportioned among the several counties of the state,
5 arranged into five congressional districts, numbered as
6 follows, that is to say:

7 First District: Braxton, Brooke, Calhoun, Doddridge,
8 Gilmer, Hancock, Harrison, Lewis, Marion, Marshall,
9 Ohio, Taylor and Wetzel.

10 Second District: Barbour, Berkeley, Grant, Green-

- 11 brier, Hampshire, Hardy, Jefferson, Mineral, Monongalia,
12 Morgan, Pendleton, Pocahontas, Preston, Randolph,
13 Tucker, Upshur and Webster.
- 14 Third District: Boone, Clay, Kanawha, Nicholas and
15 Raleigh.
- 16 Fourth District: Cabell, Jackson, Lincoln, Logan,
17 Mason, Pleasants, Putnam, Ritchie, Roane, Tyler, Wayne,
18 Wirt and Wood.
- 19 Fifth District: Fayette, Mercer, Mingo, Monroe, Mc-
20 Dowell, Summers and Wyoming.

CHAPTER 159

(Com. Sub. for Senate Bill No. 174—Originating in the
Senate Committee on the Judiciary)

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

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.
14. Service credit.
17. Retirement system membership.
20. Voluntary retirement.
21. Deferred retirement.
22. Retirement annuity.
25. Disability retirement.
27. Nonduty death annuities.
30. Refund of accumulated contributions.
31. Employers accumulation fund.
33. Contributions by other participating public employers.
48. Reemployment after retirement.
49. Removal from office.
50. Validity.

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

29 cover its employees, as defined in this article, under the
30 West Virginia public employees retirement system;

31 (6) "Employee" means any person who serves regu-
32 larly as an officer or employee, full time, on a salary basis,
33 whose tenure is not restricted as to temporary or pro-
34 visional appointment, in the service of, and whose com-
35 pensation is payable in whole or in part by any political
36 subdivision, or an officer or employee whose compensa-
37 tion is calculated on a daily basis and paid monthly or on
38 completion of assignment, including technicians and other
39 personnel employed by the West Virginia national guard
40 whose compensation in whole or in part is paid by the
41 federal government: *Provided*, That members of the
42 state Legislature, the clerk of the house of delegates, the
43 clerk of the state senate and members of the legislative
44 body of any political subdivision shall be considered to be
45 employees, anything contained herein to the contrary
46 notwithstanding. In any case of doubt as to who is an
47 employee within the meaning of this article the board of
48 trustees shall decide the question;

49 (7) "Member" means any person who is included in the
50 membership of the retirement system;

51 (8) "Retirant" means any member who retires with
52 an annuity payable by the retirement system;

53 (9) "Beneficiary" means any person, except a retirant,
54 who is entitled to, or will be entitled to, an annuity or
55 other benefit payable by the retirement system;

56 (10) "Service" means personal service rendered to a
57 participating public employer by an employee, as defined
58 in this article, of a participating public employer;

59 (11) "Prior service" means service rendered prior to
60 July one, one thousand nine hundred sixty-one, to the
61 extent credited a member as provided in this article;

62 (12) "Contributing service" means service rendered
63 by a member from and after the date of his entrance in
64 the retirement system, to the extent credited him as pro-
65 vided in this article;

66 (13) "Credited service" means the sum of a member's
67 prior service credit and contributing service credit stand-
68 ing to his credit as provided in this article;

69 (14) "Compensation" means the remuneration paid a
70 member by a participating public employer for personal
71 services rendered by him to the participating public em-
72 ployer. In the event a member's remuneration is not all
73 paid in money, his participating public employer shall fix
74 the value of the portion of his remuneration which is not
75 paid in money;

76 (15) "Final average salary" means the average of the
77 highest annual compensations received by a member dur-
78 ing any period of five consecutive years of his credited
79 service contained within his ten years of credited service
80 immediately preceding the date his employment with a
81 participating public employer last terminated. If he has
82 less than five years of credited service, his final average
83 salary shall be the average of the annual rate of compen-
84 sations received by him during his total years of credited
85 service;

86 (16) "Accumulated contributions" means the sum of all
87 amounts deducted from the compensations of a member
88 and credited to his individual account in the members de-
89 posit fund, together with regular interest thereon;

90 (17) "Regular interest" means such rate or rates of in-
91 terest per annum, compounded annually, as the board of
92 trustees shall from time to time adopt;

93 (18) "Annuity" means an annual amount payable by
94 the retirement system throughout the life of a person. All
95 annuities shall be paid in equal monthly installments, us-
96 ing the upper cent for any fraction of a cent;

97 (19) "Annuity reserve" means the present value of all
98 payments to be made to a retirant or beneficiary of a re-
99 tirant on account of any annuity, computed upon the basis
100 of such mortality and other tables of experience, and reg-
101 ular interest, as the board of trustees shall from time to
102 time adopt;

103 (20) "Retirement" means a member's withdrawal from
104 the employ of a participating public employer with an
105 annuity payable by the retirement system;

106 (21) "Actuarial equivalent" means a benefit of equal
107 value computed upon the basis of such mortality table and

108 regular interest as the board of trustees shall from time to
109 time adopt;

110 (22) The masculine gender shall include the feminine
111 gender, and words of the singular number with respect to
112 persons shall include the plural number, and vice versa.

Sec. 14. Service Credit.—(a) The board of trustees
2 shall credit each member with the prior service and con-
3 tributing service to which he is entitled based upon such
4 rules and regulations as the board of trustees shall from
5 time to time adopt: *Provided*, That in no case shall less
6 than ten days of service rendered by a member in any
7 calendar month be credited as a month of service; nor
8 shall less than ten months of service rendered in any
9 calendar year be credited as a year of service; nor shall
10 more than one year of service be credited any member for
11 all service rendered by him in any calendar year; nor shall
12 any member who was not in the employ of a political sub-
13 division within a period of five years immediately preced-
14 ing the date the political subdivision became a participat-
15 ing public employer be credited with prior service.

16 (b) The board of trustees may grant service credit
17 to employees of boards of health, the clerk of the house
18 of delegates and the clerk of the state senate who are
19 participating members, for service previously credited by
20 the state teachers' retirement system, and may require
21 a transfer of the members' contributions to the retirement
22 system, and may also require a deposit, with interest,
23 of any withdrawals of contributions.

Sec. 17. Retirement System Membership.—The mem-
2 bership of the retirement system shall consist of the fol-
3 lowing persons:

4 (a) All employees, as defined in section two hereof,
5 who are in the employ of a political subdivision the day
6 preceding the date it becomes a participating public em-
7 ployer and who continue in the employ of the said partici-
8 pating public employer on or after the said date shall be-
9 come members of the retirement system; and all persons
10 who become employees of a participating public employer
11 on or after the said date shall thereupon become members

12 of the system; except as provided in paragraphs (b) and
13 (c) of this section.

14 (b) The membership of the retirement system shall not
15 include any person who is a member of, or who has been
16 retired by, the state teachers' retirement system, the
17 judges' retirement system, the retirement system of the
18 department of public safety, or any municipal retirement
19 system for either, or both, policemen or firemen; and the
20 West Virginia department of employment security, by the
21 director of such department, may elect whether its em-
22 ployees will accept coverage under this article or be cov-
23 ered under the authorization of a separate enactment:
24 *Provided*, That such exclusions of membership shall not
25 apply to any member of the state Legislature, the clerk of
26 the house of delegates, the clerk of the state senate or to
27 any member of the legislative body of any political sub-
28 division provided he once becomes a contributing member
29 of the retirement system.

30 (c) Any member of the state Legislature, the clerk of
31 the house of delegates, the clerk of the state senate or any
32 member of the legislative body of any other political sub-
33 division shall become a member of the retirement system
34 provided he notifies the retirement system in writing of
35 his intention to be a member of the system and files a
36 membership enrollment form as the board of trustees shall
37 prescribe, and each person, upon filing his written notice
38 to participate in the retirement system, shall by said act
39 authorize the clerk of the house of delegates or the clerk
40 of the state senate or such person as the legislative body of
41 any other political subdivision shall designate to deduct
42 said member's contribution, as provided in section twenty-
43 nine-b hereof, and after said deductions have been made
44 from said member's compensation, such deductions shall
45 be forwarded to the retirement system.

46 (d) Should any question arise regarding the member-
47 ship status of any employee, the board of trustees has the
48 final power to decide the question.

Sec. 20. Voluntary Retirement.—Any member who has
2 attained or attains age sixty years and has ten or more
3 years of credited service in force, at least one year of

4 which he was a contributing member of the retirement
5 system, may retire upon his written application filed with
6 the board of trustees setting forth at what time, not less
7 than thirty days nor more than ninety days subsequent to
8 the execution and filing thereof he desires to be retired.
9 Upon his retirement he shall receive an annuity provided
10 for in section twenty-two hereof.

Sec. 21. Deferred Retirement.—(a) Except as provided
2 in subsection (b) of this section, if any member, who
3 has twenty or more years of credited service in force, of
4 which at least three years are contributing service, leave
5 the employ of a participating public employer prior to his
6 attainment of age sixty years, for any reason except his
7 disability retirement or death, he shall be entitled to an
8 annuity computed according to section twenty-two here-
9 of, as the said section was in force as of the date of his said
10 separation from the employ of a participating public em-
11 ployer: *Provided*, That he does not withdraw his accum-
12 ulated contributions from the members deposit fund. His
13 said annuity shall begin the first day of the calendar
14 month next following the month in which his application
15 for same is filed with the board of trustees on or after his
16 attainment of age sixty-two years.

17 (b) Any member who is an elected executive official of
18 the state government, or who is an elected judge of a court
19 of record, or who is a member of the Legislature, and who
20 has eight or more years of credited service in force, of
21 which at least three years are contributing service, and
22 who leaves his office for any reason except his disability
23 retirement or death, shall be entitled to an annuity com-
24 puted according to section twenty-two hereof, as the said
25 section was in force as of the date of his said separation
26 from the employ of a participating public employer, not-
27 withstanding that he might not have ten years of credited
28 service: *Provided*, That he does not withdraw his ac-
29 cumulated contributions from the members deposit fund.
30 His said annuity shall begin the first day of the calendar
31 month next following the month in which his application
32 for same is filed with the board of trustees on or after his
33 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

27 to be the natural and proximate result of a personal injury
28 or disease arising out of and in the course of his actual
29 performance of duty in the employ of a participating
30 public employer, and (2) he is in receipt of workmen's
31 compensation on account of such physical or mental
32 disability.

33 (c) Upon a member's retirement, as provided in this
34 section, he shall receive a straight life annuity computed
35 according to section twenty-two hereof and he shall have
36 the right to elect an option provided for in section twenty-
37 four hereof: *Provided, however,* That his straight life
38 annuity payable to his attainment of age sixty-five years
39 shall not be less than twenty-five per cent of his final
40 average salary; and his said straight life annuity payable
41 from and after his attainment of age sixty-five years shall
42 not be less than ten per cent of his final average salary:
43 *Provided further,* That his said annuity shall be subject
44 to section twenty-six hereof.

Sec. 27. Nonduty Death Annuities.—(a) Any member
2 who continues in the employ of a participating public
3 employer on or after the date he either (1) acquires
4 twenty-five years of credited service, or (2) attains age
5 sixty years and has ten or more years of credited service,
6 may at any time prior to the effective date of his retire-
7 ment, by written declaration duly executed and filed
8 with the board of trustees, in the same manner as if he
9 were then retiring from the employ of a participating
10 public employer, elect option A provided for in section
11 twenty-four hereof, and nominate a beneficiary whom the
12 board finds to have been dependent upon the said mem-
13 ber for at least fifty per cent of his financial support.
14 Prior to the effective date of his retirement a member
15 may revoke his said election of option A and nomination
16 of beneficiary and he may again prior to his retirement
17 elect the said option A and nominate a beneficiary as pro-
18 vided in this subsection. Upon the death of a member
19 who has an option A election in force, his beneficiary,
20 if living, shall immediately receive an annuity computed
21 in the same manner in all respects as if the said member
22 had retired the day preceding the date of his death, not-

23 withstanding that he might not have attained age sixty
24 years, and elected the said option A. If at the time of his
25 retirement a member has an option A election in force,
26 his said election of option A and nomination of beneficiary
27 shall thereafter continue in force.

28 (b) In the event any member continues in the employ
29 of a participating public employer on or after the date
30 he either acquires twenty-five years of credited service,
31 or attains age sixty years and has ten or more years of
32 credited service, and does not have an option A election
33 in force as provided in subsection (a) of this section, and
34 (1) dies while in the employ of a participating public
35 employer, and (2) leaves a widow, or in the case of a
36 female member leaves a widower whom the board of
37 trustees finds to be totally and permanently disabled and
38 to have been dependent upon the said female member
39 for at least fifty per cent of his financial support, the said
40 widow or widower, as the case may be, shall immediately
41 receive an annuity computed in the same manner in all
42 respects as if the said member had (1) retired the day
43 preceding the date of his death, notwithstanding that he
44 might not have attained age sixty years, (2) elected
45 option A provided for in section twenty-four hereof, and
46 (3) nominated his said widow or widower, as the case may
47 be, as beneficiary.

48 (c) In the event any member continues in the employ
49 of a participating public employer on or after the date
50 he either (1) acquires twenty-five years of credited serv-
51 ice, or (2) attains age sixty years and has ten or more
52 years of credited service, and (3) dies without leaving
53 surviving him a spouse, but (4) leaves surviving him an
54 infant child or children, and (5) does not have a bene-
55 ficiary nominated as provided in subsection (a) of this
56 section, said infant child or children shall be entitled to
57 an annuity to be calculated as follows: The annuity re-
58 serve shall be calculated as though said member had
59 retired as of the date of his decease and elected a straight
60 life annuity, and the amount of said annuity reserve shall
61 be paid in equal monthly installments to said member's
62 infant child or children until said child or children attain

63 age twenty-one or sooner marry or become emancipated;
64 however, in no event shall any child or children receive
65 more than two hundred fifty dollars per month each.
66 The said annuity payments shall be computed as of the
67 date of the death of the said member and the amount of
68 said annuity shall remain constant during the period of
69 payment. The annual amount of the annuities payable by
70 this section shall not exceed sixty per cent of said de-
71 ceased member's final average salary.

Sec. 30. Refund of Accumulated Contributions.—(a) In
2 the event a member leaves the employ of a participating
3 public employer prior to the date he becomes entitled to
4 retire with an annuity payable by the retirement system
5 he shall be paid, upon his written application filed with
6 the board of trustees, his accumulated contributions stand-
7 ing to his credit in the members deposit fund, if his sepa-
8 ration from the employ of a participating public employer
9 occurs subsequent to a period of five years from and after
10 the date he last became a member of the system. If his
11 said separation from the employ of a participating public
12 employer occurs within a period of five years from and
13 after the date he last became a member of the system,
14 he shall be paid his accumulated contribution standing
15 to his credit in the members deposit fund less the total
16 interest credited to his individual account therein; and
17 the said total interest credit shall be transferred to the
18 income fund.

19 (b) In the event a member dies and does not leave a
20 beneficiary entitled to an annuity payable by the retire-
21 ment system, his accumulated contributions standing to
22 his credit in the members deposit fund at the time of his
23 death shall be paid to such person or persons as he shall
24 have nominated by written designation duly executed and
25 filed with the board of trustees. If there be no such
26 designated person or persons surviving the said member,
27 his said accumulated contributions shall be paid to his
28 estate.

29 (c) Refunds of a member's contributions or accumu-
30 lated contributions, as the case may be, may be made in
31 equal installments according to such rules and regula-

32 tions as the board of trustees may from time to time
33 adopt.

34 (d) In the event a member dies and a refund of his
35 contributions is due to be made to an infant child or
36 children by reason of being the person or persons nomi-
37 nated by written designation duly executed and filed
38 with the retirement system, and the amount of said refund
39 is less than one thousand dollars, then, and in said event,
40 the board of trustees may make said refund, upon written
41 application, to the closest relative or natural guardian
42 for the use of said infant child or children. The board
43 of trustees may, at its discretion, require that said rela-
44 tive or natural guardian post bond with the retirement
45 system to insure that said money will be used for the
46 benefit of said infant child or children. In any event,
47 before said refund is made to said relative or natural
48 guardian of the said infant or infants, said relative or
49 natural guardian shall give the retirement system an
50 indemnifying release of said sums so paid over.

Sec. 31. Employers Accumulation Fund.—(a) The em-
2 ployers accumulation fund is hereby created. It shall be
3 the fund in which shall be accumulated the contributions
4 made by the participating public employers to the re-
5 tirement system, and from which transfers shall be made
6 as provided in this section.

7 (b) Based upon the provisions of section thirteen of
8 this article, the participating public employers' contribu-
9 tions to the retirement system shall be determined, ac-
10 cording to paragraphs (1), (2), (3) and (4) below, for
11 the state as the state division, and for the other partici-
12 pating public employers as the public employer division.

13 (1) The participating public employers' contributions
14 for members' current service shall be a per cent of the
15 members' annual compensation which will equal an
16 amount which if paid annually by the participating public
17 employers during the members' future service will be
18 sufficient to provide, at the time annuities will become
19 payable on their account, the difference between the an-
20 nuity reserves for the future service portions of the an-

21 nnuities to be paid and the present value of the members'
22 future net contributions.

23 (2) The participating public employers' contributions
24 for members' accrued service shall be a per cent of the
25 members' annual compensation which will equal an
26 amount which if paid annually by the participating public
27 employers over a period of years, to be determined by
28 the board of trustees, will amortize, at regular interest,
29 the unfunded annuity reserves for the accrued portions
30 of the annuities to be paid on account of members.

31 (3) The participating public employers' contribu-
32 tions for annuities being paid retirants and beneficiaries
33 shall be a per cent of the members' annual compensations
34 which will equal an amount which if paid annually by
35 the participating public employers over a period of years,
36 to be determined by the board of trustees, will amortize,
37 at regular interest, the unfunded annuity reserves for
38 annuities being paid retirants and beneficiaries.

39 (4) In no year shall the total of the contributions, pro-
40 vided for in paragraphs (1), (2) and (3) above, to be
41 paid by any participating public employer exceed six
42 per cent of the total payroll for the members in the
43 employ of such participating public employer for the
44 preceding fiscal year.

Sec. 33. Contributions by Other Participating Public

2 **Employers.**—(a) The board of trustees shall annually
3 certify to each participating public employer, other than
4 the state, the employer contribution rate, determined in
5 section thirty-one hereof, for the public employer divi-
6 sion. Each participating public employer shall pay to the
7 state treasurer, for credit to the retirement system, the
8 contributions equal to the said contribution rate applied
9 to each and every payroll of the participating public em-
10 ployer. The said payments shall be made in such manner
11 and form, and in such frequency, and shall be accom-
12 panied by such supporting data, as the board shall from
13 time to time prescribe. When paid, the said contributions
14 shall be credited to the employers accumulation fund.

15 (b) If any participating public employer, other than
16 the state, fails to make any payment due the retirement

17 system for a period of sixty days after the payment is
18 due, the participating public employer shall become de-
19 linquent, and such delinquency shall be certified to the
20 state auditor by the board of trustees. If any participat-
21 ing public employer becomes delinquent, as provided
22 herein, the state auditor is authorized and directed to
23 withhold any money due such participating public
24 employer by the state until such delinquency, together
25 with regular interest thereon, from the date due, is satis-
26 fied. Such money so withheld by the state auditor shall
27 be paid to the retirement system.

Sec. 48. Re-employment after Retirement.—In the
2 event a retirant becomes employed by a participating
3 public employer, payment of his annuity shall be sus-
4 pended during the period of his re-employment. Upon
5 termination of such re-employment, payment of his an-
6 nuity will be resumed without increase or decrease due
7 to such re-employment.

Sec. 49. Removal from Office.—Any member of the re-
2 tirement system who has been removed from office or his
3 office shall have been vacated for official misconduct, in-
4 competence, neglect of duty, gross immorality, malfea-
5 sance, or misfeasance shall immediately have his mem-
6 bership in the retirement system terminated permanently
7 by the board of trustees and shall never become eligible
8 for an annuity; however, any such member so terminated
9 by virtue of this section shall be entitled to a refund of
10 his contributions with regular interest as provided in sec-
11 tion thirty hereof.

Sec. 50. Validity.—If any part of this article is declared
2 unconstitutional by a court of competent jurisdiction, such
3 decision shall not affect the validity of the remaining pro-
4 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, 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 to read as follows:

Article

1. **Definitions.**
- 2-a. **State Road Commissioner.**
3. **State Road Fund.**
4. **State Road System.**

Article 1. Definitions.

Section

3. **Road; public road; highway.**

Section 3. Road; Public Road; Highway.—The words or
2 terms “road,” “public road,” or “highway” shall be
3 deemed to include, but shall not be limited to, the right of
4 way, roadbed and all necessary culverts, sluices, drains,
5 ditches, waterways, embankments, slopes, retaining walls,
6 bridges, tunnels and viaducts necessary for the mainte-
7 nance of travel, dispatch of freight and communication
8 between individuals and communities; and such public
9 road or highway shall be taken to include any road to
10 which the public has access and which it is not denied
11 the right to use, or any road or way leading from any
12 other public road over the land of another person, and
13 which shall have been established pursuant to law. Any
14 road shall be conclusively presumed to have been estab-
15 lished when it has been used by the public for a period
16 of ten years or more, and public moneys or labor have
17 been expended thereon, whether there be any record of
18 its conveyance, dedication or appropriation to public use
19 or not. In the absence of any other mark or record, the
20 center of the traveled way shall be taken as the center of
21 the road and the right of way shall be designated there-
22 from an equal distance on each side, but a road may be
23 constructed on any part of the located right of way when
24 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.
- 4-b. Scholarships for training highway personnel; notes for money advanced; payment or cancellation of notes.
- 7. Legal services.
- 8-a. Authority to employ expert witnesses in eminent domain proceedings; compensation.
- 8-b. Authority to provide emergency road service.
- 13. Purchase of materials, supplies and equipment.
- 15. Other laws not controlling.
- 17. Acquisition of property for state road purposes; "state road purposes" defined.
- 18. Acquisition of real property not needed for road purposes.
- 19. Sale, exchange, or lease of real property; rules and regulations.
- 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.

Sec. 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-

17 missioner not in excess of four thousand dollars in the
18 aggregate, such sum to be paid to the recipient in equal
19 installments at the beginning of each quarter or semester
20 for which the recipient has agreed to pursue his course of
21 study. The necessary expenditures for such scholarships
22 shall be made from the funds available to the state road
23 commission. The recipient of a scholarship shall execute
24 notes and shall deliver said notes to the state road com-
25 missioner. Each such note shall be in the amount of the
26 sum received from the state road fund and shall be pay-
27 able on demand to the state treasurer. The state road
28 commissioner shall hold said notes and if, for any reason,
29 except death or physical or mental disability, or being
30 drafted into the armed services, the recipient of a scholar-
31 ship fails successfully to complete the course of study
32 for which the scholarship was granted or if after the
33 completion of the prescribed course of study does not
34 continue or become an employee of the state road com-
35 mission, or ceases to be an employee before all such notes
36 have been paid or cancelled, the state road commissioner
37 shall make demand for payment of all of said unpaid and
38 uncanceled notes and shall transmit all such notes
39 promptly to the state treasurer who shall enforce collec-
40 tion thereon and shall deposit such sums so collected
41 thereon in the state road fund. The state road commis-
42 sioner is authorized to credit the oldest outstanding note
43 in the sum of four hundred dollars every six months that
44 the recipient of the scholarship is employed by the state
45 road commission after having completed the course of
46 study for which the scholarship was granted. The state
47 road commissioner shall have the power and authority
48 to make all necessary rules and regulations to carry this
49 section into effect.

2 **Sec. 7. Legal Services.**—Notwithstanding any law to
the contrary, the commissioner:

3 (1) Shall select and employ a competent legal staff ade-
4 quate for the ordinary legal services required by him
5 and shall provide therefor such quarters, equipment,
6 facilities, services and stenographic and other personnel
7 as may be necessary;

8 (2) May call upon the attorney general and the prose-
9 cuting attorneys of the several counties, within their re-
10 spective jurisdictions, for legal assistance and services as
11 provided by law;

12 (3) May employ such additional legal counsel as he
13 deems necessary upon a reasonable fee basis to perform
14 legal services in acquiring, by right of eminent domain
15 or otherwise, property, or an estate, right or interest
16 therein.

Sec. 8-a. Authority to Employ Expert Witnesses in
2 **Eminent Domain Proceedings; Compensation.**—Notwith-
3 standing any law to the contrary, the commissioner may
4 employ as witnesses to testify in eminent domain proceed-
5 ings such persons who are qualified to give competent
6 testimony as to the value of the property, or estate, right
7 or interest therein, being condemned in an eminent
8 domain proceeding, as he deems necessary. Each such
9 person so employed shall receive for his services the sum
10 agreed upon in a written contract signed by the commis-
11 sioner and such person. The sum contracted to be paid,
12 however, shall not be made contingent upon the outcome
13 of the action or hearing in which the competent testimony
14 is to be given.

Sec. 8-b. Authority to Provide Emergency Road Serv-
2 **ice.**—In addition to the other powers given and assigned
3 to him in this chapter, where an emergency exists, the
4 commissioner may authorize the use of state road com-
5 mission vehicles to provide towing service to vehicles
6 stranded on any highway in this state, or may provide a
7 sufficient quantity of gasoline or other fuel for the vehicle
8 to propel it to a point where such fuel may be purchased.

Sec. 13. Purchase of Materials, Supplies and Equip-
2 **ment.**—All materials, supplies and equipment required
3 for the state road program and system shall be purchased
4 and acquired by the commissioner through the depart-
5 ment of purchases, except as otherwise provided by law.
6 The director of purchases shall adopt rules and regula-
7 tions governing and controlling acquisitions and pur-
8 chases in accordance with accepted business practices so
9 that no persons shall be precluded from participating and

10 making sales thereof to the commission; shall establish
11 and prescribe specifications, in all proper cases, for ma-
12 terials, supplies and equipment to be purchased; shall
13 adopt and prescribe such purchase order, requisition or
14 other forms as may be required; shall negotiate for and
15 make purchases and acquisitions in such quantities, at
16 such times and under contract, in the open market or
17 through other accepted business methods and practices,
18 as may be practicable in accordance with general law;
19 shall determine whether to advertise for bids, to purchase
20 by means of sealed bids and competitive bidding or to
21 effect advantageous purchases through other accepted
22 methods and practices; and shall post in a public place in
23 the offices of the commission and the department of pur-
24 chases, available to the public during all business hours,
25 notices of all acquisitions and purchases to be made, at
26 least two weeks prior to making such purchases.

27 All purchases and acquisitions shall be made in con-
28 sideration and within limits of available appropriations
29 and funds and in accordance with applicable provisions of
30 article two, chapter five-a of this code, relating to ex-
31 penditure schedules and quarterly allotments of funds.

32 The director of purchases shall make available the
33 facilities and services of his department to the commis-
34 sioner in the purchase and acquisition of materials, sup-
35 plies and equipment and shall cooperate with the com-
36 missioner in all such purchases and acquisitions upon
37 request of the commissioner. The actual expenses in-
38 curred by the director of purchases in all such cases shall
39 be paid by the commissioner.

Sec. 15. Other Laws Not Controlling.—The provisions
2 of article three, chapter five-a of this code shall not con-
3 trol or govern the purchase, acquisition or disposition of
4 any equipment, materials or supplies by the commis-
5 sioner, except as provided in sections thirteen and four-
6 teen of this article. The commissioner may, in his discre-
7 tion, resort to applicable provisions of said chapter five-a
8 and to rules, regulations and practices of the director of
9 purchases in purchasing, acquiring or disposing of equip-
10 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

41 yards, snow fences, and road maintenance or construction
42 sites;

43 (f) Road-building material storage sites, quarry sites,
44 gravel pits, sites for the acquisition or manufacture of
45 road building materials including borrow pits, stock pile
46 sites, waste-material sites and access roads to any such
47 sites or places;

48 (g) The culture and support of trees which benefit any
49 state road by aiding in the maintenance and preservation
50 of the road;

51 (h) Preservation of scenic places and other objects of
52 attraction or scenic value adjacent to or near any state
53 road, or which may be conveniently reached from or by
54 a state road;

55 (i) Development and maintenance of parking places,
56 auto camps, camp sites, roadside parks, forest or timbered
57 areas or other places of attraction and scenic value which
58 are adjacent to or near any state road and which in the
59 judgment of the commissioner are necessary for the con-
60 venience of the public and will contribute to the general
61 welfare and pleasure of the motoring public or road
62 users;

63 (j) Maintenance of an unobstructed view of any por-
64 tion of any state road in order to provide for the safety
65 of the traveling public;

66 (k) Erection and maintenance of markers, warning
67 signs and traffic signals;

68 (l) Construction and maintenance on state roads of
69 sidewalks and highway illumination;

70 (m) Elimination or prevention of hazardous or un-
71 desirable points of entry to state roads from adjacent
72 property;

73 (n) Acquisition of property, or any interest or right
74 therein, for the purpose of exchanging it for other prop-
75 erty, or any interest or right therein, which the commis-
76 sion is authorized to acquire by the other provisions of
77 this section: *Provided*, That such substitute property, or
78 any interest or right therein, may be acquired by the
79 commissioner by condemnation only if the following con-

ditions are satisfied: (1) Money compensation would be substantially inadequate for the property, or interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section, and (2) the commission has entered into a written agreement to exchange the substitute property, or the right or interest therein, for the property, or right or interest therein, which is needed for state road purposes, regardless of whether the person who has agreed to accept the exchange has the right to condemn the substitute property, or the right or interest therein;

(o) Acquisition of real property, not needed as such for a state road, for the purpose of moving and relocating thereon a building or other structure or appurtenance which is situated on a lot or tract of land all or a portion of which is needed for a state road and which, after relocation, will be suitable for the purpose for which it was used prior to its being relocated: *Provided, however,* That such additional real property may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) The building or other structure or appurtenance is of substantial value, (2) the real property on which it is to be relocated is not substantially improved and is adjacent to or near the location from which it is to be removed, (3) the owner of the real property needed for the state road has entered into a written agreement with the commission to accept in exchange the additional property with the relocated building or structure or appurtenance thereon, (4) substantial savings in expenditure of state road funds will result from condemning the additional property and relocating the building or structure or appurtenance rather than condemning the lot or tract, or the portion thereof, on which the building or other structure or appurtenance may be located, and (5) the real property with the relocated building or structure or appurtenance thereon will be relatively equal in value to the real property needed for the state road.

Sec. 18. Acquisition of Real Property Not Needed for Road Purposes.—In connection with the acquisition of

3 real property, or any interest or right therein, for state
4 road purposes, the commissioner may acquire, by any
5 lawful means other than by eminent domain or condemna-
6 tion, an entire lot, block, or tract of real property, or any
7 portion thereof, even though it is not needed for present
8 or presently foreseeable future state road purposes, if
9 uneconomic remnants would be left the owner or if sev-
10 erance or consequential damages to the remainder make
11 acquisition of the additional property more economical to
12 the state.

Sec. 19. Sale, Exchange, or Lease of Real Property;

2 **Rules and Regulations.**—The state road commission, sub-
3 ject to the conditions herein, may sell, exchange, or lease
4 real property, or any interest or right therein, held by
5 the state road commission.

6 When the real property, or any interest or right therein,
7 is being held for future road purposes, it may be leased.
8 When the real property, or any part thereof, or any in-
9 terest or right therein, is deemed by the commissioner
10 not necessary, or desirable for present or presently fore-
11 seeable future state road purposes, it may be exchanged
12 for other real property, or any interest or right therein,
13 deemed by the commissioner to be necessary or desirable
14 for present or presently foreseeable future state road pur-
15 poses, or it may be sold. In addition the commission may
16 exchange real property, or any part thereof, or any in-
17 terest or right therein, even though it may be necessary
18 or desirable for present or presently foreseeable future
19 state road purposes, if the exchange is made for other real
20 property, or any interest or right therein, in close prox-
21 imity thereto which the commissioner deems of equal or
22 superior useful value for present or presently foreseeable
23 future state road purposes. In making exchanges the com-
24 mission may make allowances for differences in the value
25 of the properties being exchanged and may move or pay
26 the cost of moving buildings, structures, or appurtenances
27 in connection with the exchange.

28 Every such sale of real property, or any interest or right
29 therein or structure thereon, shall be at public auction in
30 the county in which the real property, or the greater part

31 thereof in value, is located, and the commission shall ad-
32 vertise, by publication or otherwise, the time, place, and
33 terms of such sale at least twenty days prior thereto. The
34 property shall be sold in the manner which will bring the
35 highest and best price therefor. The commission may
36 reject any or all bids received at the sale. The commis-
37 sioner shall keep a record, open to public inspection, indi-
38 cating the manner in which such real property, or any in-
39 terest or right therein or structure thereon, was publicly
40 advertised for sale, the highest bid received therefor and
41 from whom, the person to whom sold, and payment re-
42 ceived therefor. Such record shall be kept for a period
43 of five years and may thereafter be destroyed.

44 The commissioner shall adopt and promulgate rules and
45 regulations governing and controlling the making of any
46 leases or sales pursuant to the provisions of this section,
47 which rules and regulations may provide for the giving
48 of preferential treatment in making leases to the persons
49 from whom the properties or rights or interests therein
50 were acquired, or their heirs or assigns.

51 The commissioner may insert in any deed or convey-
52 ance, whether it involves an exchange, lease, or sale, such
53 conditions as are in the public interest and have been ap-
54 proved in advance by the governor.

55 All moneys received from the exchange, sale, or lease
56 of real property, or any right or interest therein, shall
57 be paid into the state treasury and credited to the state
58 road fund.

Sec. 20. Relocation Assistance; Limits on Payments;
2 **Rules and Regulations.**—The payment of relocation costs
3 to persons dislocated by highway construction is hereby
4 declared to be a cost of highway construction and may be
5 paid from the state road fund, subject to the provisions
6 of this section. The state road commissioner shall make
7 the payments authorized by this section to reduce hard-
8 ships to persons so dislocated. In addition, the commis-
9 sioner shall render advisory assistance to persons affected
10 and shall call upon and coordinate the services of such
11 other agencies of state and local government as may be
12 capable of rendering such assistance to reduce hardships

13 to persons affected and to reduce delays in highway con-
14 struction. In rendering such advisory assistance, the com-
15 missioner may accumulate and maintain lists of various
16 kinds of properties available to which persons affected
17 may be relocated, and acquire and file such other infor-
18 mation and take such other action as may be necessary
19 to render such advisory assistance.

20 Any individual, family, business concern (including the
21 operation of a farm) or nonprofit organization to be dis-
22 placed by a highway construction project shall be com-
23 pensated consistent with the provisions and limitations of
24 this section for reasonable and necessary costs to be in-
25 curred in consequence of being so displaced. When a
26 family is displaced, no additional payments shall be made
27 to individuals who are members of such family; but, if two
28 or more displaced families occupy the same dwelling or
29 comprise a single household, each family within such
30 dwelling or household may receive relocation costs as pro-
31 vided in this section. Payments under this section are
32 subject to the following limitations and to any rules and
33 regulations made by the commissioner as herein author-
34 ized:

35 (1) Payments shall not exceed two hundred dollars in
36 the case of a family or an individual, or three thousand
37 dollars in the case of a business concern (including the
38 operation of a farm) or nonprofit organization;

39 (2) In the case of a business concern (including the
40 operation of a farm) and in the case of a nonprofit or-
41 ganization, the allowable expense for transportation under
42 this section shall not exceed the reasonable and necessary
43 cost of moving fifty miles from the point from which such
44 business or organization is being displaced and no expenses
45 shall be allowed if a substantial portion of such business
46 or organization is to be relocated outside the state.

47 The commissioner shall establish by rules and regula-
48 tions a procedure for the payment of relocation costs with-
49 in the limits of and consistent with the policies of this
50 section. Such rules and regulations may authorize lump
51 sum payments to individuals or families, in lieu of their
52 respective provable costs (not to exceed two hundred

53 dollars in any case), based upon the size of the dwelling
54 being vacated or the number of persons being affected
55 or any other reasonable basis. The commissioner may
56 authorize the obligation of or payment of relocation costs
57 in advance of expenditure for relocation by any person,
58 firm or organization eligible to receive such payment
59 where such advance obligation or payment would speed
60 the clearance of highway construction sites or reduce
61 hardships.

Article 3. State Road Fund.

Section

4. Method of disbursing road fund.

4-a. Advancement of compensation for property immediately needed.

Section 4. Method of Disbursing Road Fund.—The com-
2 missioner shall certify monthly to the state auditor the
3 amount due to each member of the commission, himself
4 and each employee of the commission for services ren-
5 dered as such members, commissioner and employees and
6 the auditor shall issue his warrant therefor on the state
7 treasurer, payable out of the state road fund appropriated
8 for such purpose.

9 Any claim of a contractor or others, not otherwise pro-
10 vided for, for labor done or for materials, services or sup-
11 plies furnished to the state road commission, pursuant to
12 the provisions of any article of this chapter, shall be
13 audited by the commissioner, and, if found correct, the
14 commissioner shall issue the commission's requisition upon
15 the auditor of the state therefor, showing the nature of
16 such claim and whether it is for labor done or materials,
17 services or supplies furnished for construction of state
18 roads, or for other purposes, and the auditor shall issue
19 his warrant upon the state treasurer therefor, and the
20 treasurer shall pay the same to the person, firm or cor-
21 poration entitled thereto, out of the funds in the treasury
22 provided for that purpose.

Sec. 4-a. Advancement of Compensation for Property
2 **Immediately Needed.**—When the state road commissioner
3 has commenced an action for condemnation of any real
4 or personal property, or estate, right, or interest therein,
5 and immediate entry upon, possession of, appropriation

6 or use thereof, is deemed necessary by the commissioner,
7 he may certify to the state auditor such facts, and issue
8 the commission's requisition upon the auditor for ad-
9 vancement of the sum the commissioner estimates to be
10 the fair value of the property, or estate, right, or interest
11 therein, sought to be condemned, and the damages, if any,
12 to the residue beyond the benefits, if any, to such residue,
13 by reason of the taking. Upon receipt of such certificate
14 and requisition, the auditor shall issue his warrant upon
15 the state treasurer in favor of the clerk of the court where-
16 in the action was commenced, for the sum requisitioned
17 by the commission, to the use of the defendants in that
18 action, and the treasurer shall pay the same to the clerk
19 of that court out of the funds in the treasury provided for
20 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

2 **Railway-Highway Crossing at Grade.**—Whenever in his
3 judgment it is necessary for the safety of the traveling
4 public or to comply with the safety, design or construc-
5 tion standards for a federal-aid highway project, the state
6 road commissioner may require any railroad company,
7 owning, controlling or operating a railroad in this state,
8 to eliminate railway-highway crossings at grade on exist-
9 ing highways and to avoid railway-highway crossings at
10 grade on new highways, relocated highways and exten-
11 sions of existing highways by separating the grades or by
12 relocating an existing highway. The commissioner may
13 determine the location, design and grade for any project
14 or structure for the elimination or avoidance of railway-

15 highway crossings at grade, and may determine whether a
16 new, relocated or extended highway shall pass over or
17 under the railroad right of way or tracks. The railroad
18 company shall not be required to bear any part of the
19 cost of construction or maintenance of such grade separation,
20 except where the separation structure eliminates an
21 existing grade crossing.

Sec. 10. Order Eliminating or Avoiding Railway-Highway Crossings at Grade; Amendment to Order.—(a)

2 Whenever, in the judgment of the state road commissioner,
3 it is necessary for the safety of the traveling public,
4 or to comply with the safety, design or construction
5 standards for a federal-aid highway project, that a railway-highway
6 crossing at grade be eliminated on an existing highway or avoided on a new highway,
7 relocated highway or extension of an existing highway by separating the grades or
8 relocating an existing highway, the state road commissioner shall make an order to that effect
9 and furnish a copy thereof by registered mail to the state auditor or attorney of record of the railroad affected by the order.

15 (b) The commissioner's order shall include at least
16 the following:

17 (1) A statement describing and locating the railway-highway crossing at grade to be eliminated or avoided;
18 and

20 (2) A statement of the general plan to be followed in
21 effecting the elimination or avoidance of the specified railway-highway crossing at grade, including general details concerning the following matters:

24 (A) Whether a new, relocated or extended highway
25 shall pass over or under the railroad right of way or tracks; and

27 (B) The location, grade and width of the grade separation structure or crossing to be constructed and the
28 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.

32 (c) Whenever a railroad company affected by the or-

33 der specified in subsection (a) refuses to enter into a
34 written agreement with the state road commissioner re-
35 specting a federal-aid railway-highway project for elimi-
36 nation or avoidance of railway-highway crossings at
37 grade, the commissioner may amend the order made un-
38 der subsection (a) to incorporate therein insofar as prac-
39 ticable all the details required by the regulations, policies
40 and procedures of the Bureau of Public Roads, United
41 States Department of Commerce, to be included in writ-
42 ten agreements between a railroad and a state respecting
43 federal-aid railway-highway projects. The amended or-
44 der shall be furnished by registered mail to the state
45 auditor or attorney of record of the railroad affected
46 thereby.

Sec. 11. Protest against Order; Hearing; Judicial Re-
2 **view.**—Any railroad company dissatisfied with the order
3 of the state road commissioner directing the separation
4 or elimination of grades at any point, may, within thirty
5 days after the receipt by the state auditor or attorney of
6 record of such railroad company of a copy of the order
7 directing the separation or elimination at such grades,
8 file with the state road commissioner a protest giving the
9 reasons of said railroad why such order should not be en-
10 forced. On the filing of such protest, the state road com-
11 missioner shall set down for hearing the matter in issue.
12 On the hearing of the protest the state road commissioner
13 shall hear all evidence which may be offered by any party
14 upon the reasonableness of the separation or elimination
15 of the grades, and if the commissioner, from the evidence,
16 shall find that the construction of the work is necessary,
17 he shall enter an order to that effect, and direct that the
18 work shall be proceeded with in accordance with this
19 article.

20 Any order entered by the state road commissioner pur-
21 suant to the provisions of this section shall be subject to
22 judicial review by the circuit court of the county in which
23 the grades to be separated or eliminated are located, or
24 the circuit court of Kanawha county, upon the filing in
25 such court or with the judge thereof in vacation, of a pe-
26 tition for appeal by the party or parties aggrieved by

27 such order, within thirty days from the date of the giving
28 of written notice of such order to the state road commis-
29 sioner to the party or parties to the hearing of the pro-
30 test by certified or registered mail.

31 The party or parties making such appeal shall forth-
32 with send a copy of such petition for appeal, by certified
33 or registered mail, to the state road commissioner. Upon
34 receipt of such copy of such petition for appeal the state
35 road commissioner shall promptly certify and file in such
36 court a complete transcript of the record upon which the
37 order complained of was entered. The costs of such
38 transcript shall be recovered by the party substantially
39 prevailing on appeal.

40 The court sitting in lieu of the jury, or judge thereof in
41 vacation, shall, after due notice, conduct a hearing on the
42 issues presented by such appeal and shall permit argu-
43 ment, oral or written or both, by the parties. The court
44 shall permit such pleadings, in addition to the pleadings
45 before the state road commissioner, as it deems to be re-
46 quired. Evidence relating to the making of the order
47 complained of and relating to the questions raised by the
48 allegations of the pleadings or other questions pertinent
49 in the proceeding may be offered by the parties to the
50 proceeding.

51 Upon such conditions as may be required and to the
52 extent necessary to prevent irreparable injury, any cir-
53 cuit court to which an appeal has been made as provided
54 in this section, may, after due notice to and hearing of
55 the parties to the appeal, issue all necessary and appropri-
56 ate process to postpone the effective date of order of the
57 state road commissioner complained of or to grant such
58 other relief as may be appropriate pending final determi-
59 nation.

60 A circuit court to which an appeal has been made as
61 provided in this section, may affirm, annul or revise the
62 order of the state road commissioner complained of, or it
63 may remand the proceeding to the state road commis-
64 sioner for such further action as it directs.

65 The decision of the circuit court on an appeal from the
66 state road commissioner shall be final, subject only to re-

67 view by the supreme court of appeals of West Virginia
68 upon a petition for certiorari filed in such court within
69 sixty days from the entry of the order and decision of the
70 circuit court upon such appeal from the state road com-
71 missioner.

Sec. 21. Form of Deeds and Contracts; Signing.—Every
2 deed and contract made by the state road commissioner
3 shall be made in the name of the state road commission
4 and shall be signed by the commissioner, and every con-
5 tract shall also be signed by the contractor.

**Sec. 26. Designation of Streets or Bridges as Connecting
2 Parts of State Road System; Bridges as Part of State Road
3 System; Maintenance by State.**—The state road commis-
4 sioner may, at any time, after due consultation with and
5 notice to the governing body of the municipal corporation,
6 locate and designate or relocate and redesignate, as a con-
7 necting part of the state road system, any bridge or street
8 within a municipal corporation. The commissioner may
9 construct, reconstruct, improve and maintain the desig-
10 nated or redesignated connecting part at the cost and
11 expense of the state.

12 Any existing free bridge forming a connecting link
13 between two counties or two state routes is hereby
14 adopted as part of the state road system and shall here-
15 after be maintained by the state, and any existing free
16 bridge forming a connecting link between this and another
17 state is hereby adopted as part of such system, and shall,
18 as to that part of the bridge within the boundary of this
19 state, be maintained by the state.

Sec. 29. Taking Over Streets Not to Affect Franchise.—
2 The taking over of streets as provided in section twenty-
3 six shall not affect the rights owned or held by any per-
4 son under any franchise now existing or hereafter granted.

**Sec. 30. Taking Over Streets Not to Affect Existing Con-
2 tracts.**—The taking over of any street as a connecting
3 part of the state road system shall not affect any existing
4 contract for construction, reconstruction or improvement.

**Sec. 31. Rules and Regulations of Commissioner to
2 Govern Streets Taken as Connecting Parts of the State**

3 **Road System.**—The state road commissioner may, by
4 reasonable rules and regulations, govern the widths and
5 grades of streets designated as connecting parts of the
6 state road system. He may regulate the opening of pave-
7 ment for the construction or repair of service lines or sub-
8 structures, and may require adequate bond to secure the
9 proper replacement of the pavement. He may also make
10 other reasonable regulations concerning the construction
11 and maintenance of the streets.

12 In the absence of regulations by the commissioner, the
13 municipal authorities may continue to exercise the same
14 authority that they have over other streets within their
15 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 highway projects.

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 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 accomodate federal-aid highway projects.

Section 17-b. Relocation of Public Utility Lines to Accommodate Federal-Aid Highway Projects.—When-
2 ever the state road commissioner shall determine that
3 any public utility line or facility located upon, across
4

5 or under any portion of a state highway shall be relocated
6 in order to accommodate a federal-aid interstate highway
7 project, and upon such determination and due notice
8 thereof, the public utility owning or operating such fa-
9 cility shall relocate the same in accordance with the order
10 of the commissioner: *Provided, however,* That the cost
11 of such relocation shall be paid out of the state road fund
12 in all cases involving the interstate system where pro-
13 portionate reimbursement of such cost shall be obtained
14 by the state road commissioner from the United States
15 pursuant to the "Federal-Aid Highway Act of 1956" and
16 all acts amendatory or supplementary thereto: *And pro-*
17 *vided further,* That the cost of any relocation of mu-
18 nicipally-owned utility facilities and water or sanitary
19 districts or authorities shall be paid out of state road funds
20 in any case involving any federal-aid system where pro-
21 portionate reimbursement of such cost shall be obtained
22 by the state road commissioner from the United States.

23 For the purposes of this section, the term, "cost of re-
24 location," shall include the entire amount paid by such
25 utility, exclusive of any right-of-way costs incurred by
26 such utility, properly attributable to such relocation after
27 deducting therefrom any increase in the value of the new
28 facility and salvage value derived from the old facility.

29 The cost of relocating utility facilities, as defined herein,
30 in connection with any federal-aid interstate highway
31 project is hereby declared to be a cost of highway con-
32 struction.

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, desig-
nated sections forty-seven, forty-eight, forty-nine, fifty,

fifty-one, fifty-two and fifty-three, relating to the control and regulation of access from commercial, industrial and mercantile real property and from real property subdivided into lots to state highways.

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.
48. Same; regulations by commissioner.
49. Same; points of commercial, etc., access to comply; plans, objections and procedures for new points; review of and changes in existing points.
50. Same; subdivision control for access regulation; notice and filing of plans; approval or disapproval by commissioner; effect of disapproval.
51. Same; amendment or withdrawal of objections or preliminary determinations by commissioner; delegation of authority.
52. Same; Requirements for objections, preliminary determinations and notices.
53. Same; judicial review of determinations and final orders of commissioner.

Section 47. Access from Commercial, etc., Property and

2 Subdivisions to Highways; Purpose and Policies of Regu-
3 lations; Removal of Unauthorized Access.—(a) Access to
4 and from state highways from and to real property used
5 or to be used for commercial, industrial or mercantile
6 purposes or from and to real property that is subdivided
7 into lots is a matter of public concern and shall be regu-
8 lated by the state road commissioner to achieve the fol-
9 lowing purposes:

- 10 (1) To provide for maximum safety of persons travel-
11 ing upon, entering or leaving state highways;
- 12 (2) To provide for efficient and rapid movement of
13 traffic upon state highways;
- 14 (3) To permit proper maintenance, repair and drain-
15 age of state highways; and
- 16 (4) To facilitate appropriate public use of state high-
17 ways.

18 (b) Except where the right of access has been limited
19 by or pursuant to law, every owner or occupant of real
20 property abutting upon any existing state highway has
21 a right of reasonable means of ingress to and egress from
22 such state highway consistent with those policies ex-
23 pressed in subsection (a) of this section and any regula-
24 tions issued by the commissioner under section forty-
25 eight of this article.

26 (c) If the construction, relocation, or reconstruction of
27 any state highway, to be paid for in whole or in part
28 with federal or state road funds, results in the abutment
29 of real property as defined in subsection (a) of this sec-
30 tion on such state highway that did not previously abut
31 on it, no rights of direct access shall accrue because of
32 such abutment, but the commissioner may authorize and
33 limit access, if any, from such property compatible with
34 the policies stated in subsection (a) of this section and
35 any regulations issued by the commissioner under section
36 forty-eight of this article.

37 (d) The policies expressed in this section are appli-
38 cable to state highways generally and shall in no way
39 limit the authority of the state road commissioner to
40 establish controlled-access facilities under the provisions
41 of sections thirty-nine through forty-six of this article.

42 (e) Any unauthorized access to a state highway may
43 be removed, blocked, barricaded or closed in any manner
44 deemed necessary by the commissioner to protect the
45 public and enforce the policies of this section and sections
46 forty-eight, forty-nine and fifty of this article.

Sec. 48. Same; Regulations by Commissioner.—The
2 state road commissioner is hereby authorized to issue
3 reasonable regulations specifying standards for the loca-
4 tion, design and construction of access facilities to state
5 highways and any other regulations necessary to carry
6 out the policies stated in section forty-seven of this article.
7 Such regulations may be based upon any or all of the fol-
8 lowing:

- 9 (a) Standards suggested by any public organization
10 or body concerned with highway or traffic safety; or
11 (b) Studies, surveys or reports made for the commis-
12 sioner or for any other governmental agency; or

13 (c) Any other data deemed relevant by the commis-
14 sioner. Regulations affecting access previously issued by
15 the commissioner or the state road commission shall con-
16 tinue in effect until altered or withdrawn by the com-
17 missioner.

Sec. 49. Same; Points of Commercial, etc., Access to
2 **Comply; Plans, Objections and Procedures for New Points;**
3 **Review of and Changes in Existing Points.**—(a) No new
4 points of access to and from state highways from and to
5 real property used or to be used for commercial, industrial
6 or mercantile purposes shall be opened, constructed or
7 maintained without first complying with the provisions of
8 this section and sections forty-seven and forty-eight of
9 this article. Access points opened, constructed or main-
10 tained without such compliance are deemed unauthorized.

11 (b) Plans of any such new point of access shall be
12 submitted to the state road commissioner directly, and
13 the following rules shall apply:

14 (1) Notice of the proposed new point of access shall
15 be filed with the commissioner, along with a plan of the
16 proposed new point of access.

17 (2) The commissioner shall review the plan to insure
18 compliance with the policies stated in section forty-seven
19 of this article and with any regulations issued by the
20 commissioner under section forty-eight of this article.

21 (3) The commissioner shall reduce his objections to
22 the proposed new point of access, if any, to writing and
23 promptly furnish notice of such objection to the owner
24 or owners of the real property affected and of their
25 right to demand a hearing thereon. A plan not so ob-
26 jected to within six weeks from the time it is filed with
27 the commissioner shall be deemed to have been approved
28 by the commissioner.

29 (4) In any case where the commissioner so objects
30 to the proposed new point of access, the owner or owners
31 of the real property affected shall have reasonable oppor-
32 tunity for a hearing on such objections.

33 (c) (1) Existing points of access to and from state
34 highways from and to real property used for commercial,
35 industrial or mercantile purposes may be reviewed by

36 the commissioner to determine whether such points of
37 access comply with the policies stated in section forty-
38 seven of this article and with any regulations issued
39 by the commissioner under section forty-eight of this
40 article. The commissioner may direct reasonable changes
41 in existing points of access to and from state highways
42 from and to property used for commercial, industrial or
43 mercantile purposes if he determines from accident re-
44 ports or traffic surveys that the public safety is seriously
45 affected by such points of access and that such reasonable
46 changes would substantially reduce the hazard to public
47 safety. When such changes require construction, recon-
48 struction or repair, such work shall be done at state ex-
49 pense as any other construction, reconstruction or repair.

50 (2) If the commissioner makes a preliminary deter-
51 mination that any such changes should be made, the fol-
52 lowing rules shall apply:

53 (a) The commissioner shall reduce his preliminary de-
54 termination to writing and promptly furnish notice of
55 such preliminary determination to the owner or owners
56 of the real property affected and of their right to demand
57 a hearing thereon. Such notice shall include a descrip-
58 tion of suggested changes deemed by the commissioner
59 suitable to reduce the hazard to the public safety.

60 (b) In any case where the commissioner makes a
61 preliminary determination that any such changes should
62 be made, the owner or owners of the real property affected
63 shall have reasonable opportunity for a hearing on such
64 preliminary determination.

**Sec. 50. Same; Subdivision Control for Access Regula-
2 tion; Notice and Filing of Plans; Approval or Disapproval
3 by Commissioner; Effect of Disapproval.—**(a) In addition
4 to other authority granted the commissioner to control
5 access to state highways, the commissioner shall have au-
6 thority in regard to the subdividing of land, any part of
7 which abuts upon a state highway, as provided in this
8 section.

9 (b) For purposes of this section, the following terms
10 have the following meanings:

11 (1) "Lot" means an identified area of land one acre
12 or less in size.

13 (2) "Subdividing" means the dividing, laying out or
14 separating of five or more lots from or within a parcel of
15 land or a successive dividing, laying out or separating of
16 lots resulting in the creation of five or more lots within
17 a parcel of land within five years.

18 (3) "Subdivision plan" means a graphic representation
19 of a parcel of land showing the lots therein and any other
20 relevant natural or man-made topographical feature.

21 (4) "Parcel" means an identified area of land owned
22 by a person or owned by a combination of persons jointly
23 or in common; or more than one identified area of land
24 where such areas are contiguous and the owners act in
25 concert in relation to such land.

26 (c) Subdividing occurs and a subdivision results
27 within the meaning of this section whenever:

28 (1) A person subdivides five or more lots from a parcel
29 at one time; or

30 (2) A successive division of lots out of a parcel results
31 in the separation of the fifth or subsequent lot within a
32 five-year period; or

33 (3) A person divides a parcel into tracts of land larger
34 than a lot knowing, or having reason to know, that such
35 parcels will in turn be divided or separated into a total
36 of five or more lots.

37 (d) The remedies provided by this section shall not
38 apply to lots which became such prior to the effective
39 date of this section, but such lots may be considered in
40 determining when an act of subdividing occurs after the
41 effective date of this section, and in reviewing subdivision
42 plans and applying remedies to lots which became such
43 after the effective date of this section.

44 (e) The subdivision plans of the subdividing of any
45 land, a part of which abuts on a state highway, shall be
46 submitted to the state road commissioner directly, and
47 the following rules shall apply:

48 (1) Notice of the proposal to subdivide shall be filed
49 with the commissioner, along with a plan of the proposed
50 subdivision.

51 (2) The commissioner shall review the plan to insure

52 compliance with the policies stated in section forty-seven
53 of this article and with any regulations issued by the
54 commissioner under section forty-eight of this article.

55 (3) The commissioner shall reduce his objections to
56 the proposed point of access to and from the state high-
57 way from and to the real property that is to be sub-
58 divided into lots, if any, to writing and promptly furnish
59 notice of such objections to the person proposing such
60 subdivision and of his right to demand a hearing thereon.
61 A subdivision plan not so objected to within six weeks
62 from the time it is filed with the commissioner shall be
63 deemed to have been approved by the commissioner.

64 (4) In any case where the commissioner so objects to
65 the proposed access to and from a new subdivision plan,
66 the person submitting such plan shall have reasonable
67 opportunity for a hearing on such objections.

68 (f) A subdivision is deemed disapproved if it was not
69 submitted to the commissioner for review under the pro-
70 visions of this section or if the commissioner has made
71 timely objection to such plan and such objections have
72 not been withdrawn. Disapproval shall have the follow-
73 ing effect:

74 (1) The commissioner may post signs upon the ad-
75 jacent highway right of way stating that the subdivision
76 is disapproved, that access to and from lots in such sub-
77 division from and to the state highway is not allowed,
78 and any other relevant information deemed by the com-
79 missioner necessary to warn the public of such disapproval
80 and its effect; and

81 (2) The commissioner shall have authority to limit
82 access to and from such subdivision as a whole from and
83 to the state highway to such access as would have been
84 reasonable before the land was subdivided and to prevent
85 and prohibit any other access to and from the state high-
86 way from and to such subdivision.

Sec. 51. Same; Amendment or Withdrawal of Objec-
2 **tions or Preliminary Determinations by Commissioner;**
3 **Delegation of Authority.**—(a) The state road commis-
4 sioner may revise, amend or withdraw any objections

5 issued by him and any preliminary determinations made
6 by him under sections forty-seven, forty-eight, forty-
7 nine or fifty of this article upon reasonable notice to the
8 owner or owners of the property affected or to the person
9 submitting a subdivision plan.

10 (b) The commissioner may delegate the authority to
11 make, revise, amend and withdraw objections and pre-
12 liminary determinations and hold hearings required or
13 authorized under this section and sections forty-seven,
14 forty-eight, forty-nine and fifty of this article.

Sec. 52. Same; Requirements for Objections, Preliminary Determinations and Notices.—(a) All objections and
2 preliminary determinations made pursuant to sections
3 forty-seven, forty-eight, forty-nine and fifty of this article,
4 and all notices required to be given pursuant to sections
5 forty-seven, forty-eight, forty-nine, fifty and fifty-one of
6 this article, shall be in writing. All such objections and
7 preliminary determinations shall be signed by the person
8 making them, and all such notices shall be signed by the
9 person charged with the duty of giving the notice.
10

11 (b) Notice of any preliminary determination or ob-
12 jection required or authorized by sections forty-seven,
13 forty-eight, forty-nine or fifty of this article shall be
14 given by causing such notice to be delivered to the owner
15 or owners of the real property affected or by causing a
16 copy thereof to be sent by certified or registered mail
17 to such owner or owners at his or their last-known place
18 of business or residence.

Sec. 53. Same; Judicial Review of Determinations and Final Orders of Commissioner.—(a) Any objection or
2 preliminary determination issued by the state road com-
3 missioner under sections forty-seven, forty-eight, forty-
4 nine or fifty of this article shall be subject to judicial
5 review by the circuit court of the county in which the real
6 property affected is located, or the circuit court of Kana-
7 wha county, upon the filing in such court or with the judge
8 thereof in vacation, of a petition for appeal by the owner
9 or owners aggrieved by such objection or preliminary
10 determination, within thirty days from the date of the
11

12 giving of notice of such objection or preliminary de-
13 termination.

14 (b) The owner or owners making such appeal shall
15 forthwith send a copy of such petition for appeal, by
16 certified or registered mail, to the state road commissioner.
17 Upon receipt of such copy of such petition for appeal the
18 state road commissioner shall promptly certify and file
19 in such court a complete transcript of the record upon
20 which the preliminary determination or objection com-
21 plained of was made. The costs of such transcript shall
22 be paid by the commissioner.

23 (c) The court sitting in lieu of a jury, or judge thereof
24 in vacation, shall, after due notice, conduct a hearing on
25 the issues presented by such appeal and shall permit
26 argument, oral or written or both, by the parties. The
27 court shall permit such pleadings, in addition to the
28 pleadings before the state road commissioner, as it deems
29 to be required. Evidence relating to the making of the
30 objection or preliminary determination complained of
31 and relating to the questions raised by the allegations
32 of the pleadings or other questions pertinent in the
33 proceeding may be offered by the parties to the pro-
34 ceeding.

35 (d) Upon such conditions as may be required and to
36 the extent necessary to prevent irreparable injury, any
37 circuit court to which an appeal has been made as pro-
38 vided in this section, may, after due notice to and hearing
39 of the parties to the appeal, issue all necessary and ap-
40 propriate process to postpone the effective date of the
41 objection or final determination of the state road com-
42 missioner or to grant such other relief as may be appro-
43 priate pending final determination.

44 (e) A circuit court to which an appeal has been made
45 as provided in this section, may affirm, annul or revise
46 the objection or preliminary determination of the state
47 road commissioner, or it may remand the proceeding to
48 the state road commissioner for such further action as
49 it directs.

50 (f) The decision of the circuit court on an appeal from
51 the state road commissioner shall be final, subject only

52 to review by the supreme court of appeals of West Vir-
53 ginia upon a petition for certiorari filed in such court
54 within sixty days from the entry of the order and de-
55 cision of the circuit court upon such appeal from the
56 state road commissioner.

CHAPTER 163

(House Bill No. 468—By Mr. Speaker, Mr. Singleton, and Mr. England)

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

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.
2. License required; restrictions as to location; existing salvage yards.
3. Issuance of license; fee; term; renewal; disposition of fees.
4. Requirements as to fences; rules and regulations.
5. Penalties; injunction.
6. Date of enforcement.
7. Reference to other statutes.

Section 1. Definitions.—As used in this article:

- 2 “Salvage” shall mean old or scrap copper, brass, rope,
3 rags, batteries, paper, rubber, junked, dismantled or
4 wrecked automobiles or parts thereof, iron, steel and other
5 old or scrap ferrous or nonferrous materials.
- 6 “Salvage yard” shall mean an establishment or place of
7 business which is maintained or operated for the use of
8 storing, keeping, buying or selling such salvage, or for the
9 maintenance or operation of an automobile graveyard.
- 10 “Person” shall include an individual, partnership, asso-
11 ciation or corporation.

12 "Fence" shall mean an enclosure at least six feet in
13 height so constructed or planted and maintained as to
14 obscure the salvage in said enclosure from ordinary view
15 to those persons passing upon the public highways in
16 this state.

17 "Commissioner" shall mean the state road commis-
18 sioner of West Virginia.

Sec. 2. License Required; Restrictions as to Location;
2 **Existing Salvage Yards.**—No salvage yard shall be oper-
3 ated or maintained outside a municipality without a
4 license and no license shall be granted a person who main-
5 tains a salvage yard outside a municipality within one
6 thousand feet of any primary or interstate highway. If a
7 salvage yard is operated or maintained within three hun-
8 dred feet of any secondary highway the view thereof from
9 such highway shall be obscured by natural objects or a
10 fence as herein defined: *Provided, however,* That a per-
11 son who was maintaining or operating a salvage yard
12 prior to January one, one thousand nine hundred fifty-
13 nine, outside a municipality shall be granted a license if
14 his salvage yard is operated or maintained adjoining any
15 primary, interstate or secondary highway right-of-way
16 and the view from such highway is obscured by natural
17 objects, plantings or a fence on his property line as herein
18 defined: *Provided further,* That the provisions hereof
19 shall not be construed to permit any person who operated
20 or maintained a salvage yard prior to January one, one
21 thousand nine hundred fifty-nine, to enlarge, expand or
22 increase the size of said salvage yard.

Sec. 3. Issuance of License; Fee; Term; Renewal; Dis-
2 **position of Fees.**—The commissioner shall have the sole
3 authority to issue licenses for the establishment, mainte-
4 nance and operation of salvage yards within the limits
5 herein defined and shall charge therefor a fee of fifty
6 dollars payable annually in advance. All licenses issued
7 under this section shall expire on the first day of January
8 following the day of issue. A license may be renewed
9 from year to year upon paying the commissioner the sum
10 of fifty dollars for each such renewal. All license fees col-

11 lected under the provisions of this article shall be de-
12 posited to the credit of the state road fund.

Sec. 4. Requirements as to Fences; Rules and Regulations.—A fence constructed under this article shall be
2 kept in good order and repair and at all times painted
3 and no advertisement shall be permitted thereon other
4 than the name of the person in whose name the license
5 has been issued and the nature of the business conducted
6 therein. The commissioner shall have the power to
7 promulgate rules and regulations governing the location,
8 construction, planting and maintenance of fences, living
9 or otherwise.
10

Sec. 5. Penalties; Injunction.—Any person violating
2 any provision of this article, whether as principal or em-
3 ployee, shall be deemed guilty of a misdemeanor, and,
4 upon conviction thereof, shall be penalized by a fine of
5 not less than one hundred dollars or more than one thou-
6 sand dollars; and such person shall be guilty of a separate
7 offense for each month during a portion of which any
8 violation of this article is committed, continued or per-
9 mitted, and, in addition to other remedies provided in
10 this chapter, the state road commissioner or the county
11 court of the county in which such salvage yard is located
12 may apply to the circuit court, or other court of compe-
13 tent jurisdiction of the county in which said salvage yard
14 may be, for an injunction to abate such nuisance.

Sec. 6. Date of Enforcement.—The provisions of this
2 article shall be enforceable from the effective date there-
3 of, except that the license provided for in section three
4 hereof shall not be required until the first day of January,
5 one thousand nine hundred sixty-four.

Sec. 7. Reference to Other Statutes.—The provisions
2 of chapter eleven, article twelve, section seven, and chap-
3 ter eleven, article thirteen-a, of this code shall not apply
4 to salvage yards covered by the provisions of this article.

CHAPTER 164

(Senate Bill No. 67—By Mr. McKown)

[Passed February 18, 1963; in effect from passage. Approved by the Governor.]

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

- 20 the consent of the governor, to accept and receive gifts,
21 donations, contributions, bequests or devises of money,
22 security or property, both real and personal, or any in-
23 terest in such property, and said commission may accept,
24 receive and administer same subject to any terms, limita-
25 tions 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.—

2 Bonds of the state of West Virginia of the par value of
3 ten million dollars are hereby authorized to be issued
4 and sold for the purpose of raising funds for assisting
5 in building, constructing and maintaining the system of
6 roads and highways provided for by the constitution.
7 Such bonds may be issued by the governor in such
8 amounts, in coupon or registered form, in such denom-
9 inations, at such times and bearing such date or dates
10 as the governor may determine, and shall become due and
11 payable serially in equal amounts beginning one year
12 and ending twenty-five years from the date thereof:
13 *Provided, however,* That no bonds may be issued under
14 the provisions of this act until bonds authorized and
15 issued under the provisions of the "Good Roads Amend-
16 ment" to the constitution of the state, ratified at the
17 general election held in November, one thousand nine
18 hundred twenty, have been retired and canceled out
19 of the state road sinking fund created by section six,
20 chapter one hundred thirteen, acts of the Legislature of
21 West Virginia, one thousand nine hundred twenty-one,
22 in an amount equal to or greater than the amount to
23 be issued hereunder at any one time.

Sec. 2. Transfer Fee; Registration Fee; Where Pay-

2 able; Interest Rate; Tax Exempt.—The auditor and the
3 treasurer are hereby authorized to arrange for the trans-
4 fer of registered bonds, and for each such transfer a fee
5 of fifty cents shall be charged by and paid to the state
6 of West Virginia, to the credit of the state road sinking
7 fund. Bonds taken in exchange shall be canceled by the
8 auditor and treasurer and be carefully preserved by the
9 treasurer. The treasurer shall make provisions for
10 registering "payable to bearer" bonds, and for each bond
11 registered a fee of fifty cents shall likewise be charged
12 by and paid to the state of West Virginia, to the credit
13 of the state road sinking fund. All such bonds shall be
14 payable at the office of the treasurer of the state of West
15 Virginia, or, at the option of the holder, at some bank
16 in the city of New York to be designated by the gov-
17 ernor. The bonds shall bear interest at a rate not exceed-
18 ing four and one-half percent per annum, payable semi-

19 annually, on the first day of _____, and
20 the first day of _____, of each year, to
21 bearer, at the office of the treasurer of the state of West
22 Virginia, at the capitol of the state, or at the bank desig-
23 nated by the governor, upon presentation and surrender
24 of interest coupons, then due, in the case of coupon bonds.
25 In the case of registered bonds the treasurer of the state
26 of West Virginia shall issue his check for the interest
27 then due on the first day of _____, and
28 _____ of each year, and mail it to the
29 registered owner at the address as shown by the record
30 of registration. Both the principal and interest of the
31 bonds shall be payable in lawful money of the United
32 States of America and the bonds shall be exempt from
33 taxation by the state of West Virginia, or by any county,
34 district, or municipality thereof, which facts shall appear
35 on the face of the bonds as part of the contract with the
36 holder thereof.

Sec. 3. Form of Bond.—The bonds and coupons shall
2 be engraved and the bonds shall be signed on behalf
3 of the state of West Virginia, by the treasurer thereof,
4 under the great seal of the state, and countersigned by
5 the auditor of the state, and shall be in the following
6 form or to the following effect, as nearly as may be,
7 namely:

8 **COUPON ROAD BOND**

9 (Or registered road bond, as the case may be)

10 **OF THE**

11 **STATE OF WEST VIRGINIA**

12 \$ _____ No. _____
13 The state of West Virginia, under and by virtue of
14 authority of an act of the Legislature passed at the regular
15 session of one thousand nine hundred sixty-three, on
16 the _____ day of _____, one thousand
17 nine hundred sixty-three, and approved by the governor
18 on the _____ day of _____, one thou-
19 sand nine hundred sixty-three, which is hereby made a
20 part hereof as fully as if set forth at length herein,
21 acknowledges itself to be indebted to and hereby promises
22 to pay to the bearer hereof (in the case of a coupon bond)

23 or to.....or assigns (the owner of
24 record, in case of registered bonds) on the.....day
25 of....., 19....., in lawful money of the
26 United States of America at the office of the treasurer
27 of the state of West Virginia at the capitol of said state,
28 or at the option of the holder at.....bank
29 in the city of New York, the sum of.....
30 dollars, with interest thereon at.....percentum per
31 annum from the date, payable semiannually in like lawful
32 money of the United States of America at the treasurer's
33 office or bank aforesaid, on the first day of.....
34 and the first day of..... of each year, (and
35 in the case of coupon bonds) according to the tenor of
36 the annexed coupons bearing the engraved facsimile
37 signature of the treasurer of the state of West Virginia,
38 upon surrender of such coupons. This bond (in case of a
39 coupon bond) may be exchanged for a registered bond of
40 like tenor upon application to the treasurer of the state
41 of West Virginia.

42 To secure the payment of this bond, principal sum and
43 interest, when other funds and revenues sufficient are
44 not available for that purpose, it is agreed that within
45 the limits prescribed by the constitution, the board of
46 public works of the state of West Virginia shall annually
47 cause to be levied and collected an annual state tax on
48 all property in the state, until this bond is fully paid,
49 sufficient to pay the annual interest on this bond and the
50 principal sum thereof within the time this bond becomes
51 due and payable.

52 This bond is hereby made exempt from any taxation
53 by the state of West Virginia, or by any county, district,
54 or municipal corporation thereof.

55 In testimony whereof, witness the signature of the
56 treasurer of the state of West Virginia, and the counter-
57 signature of the auditor of the state, hereto affixed accord-
58 ing to law, dated theday of.....,
59 one thousand nine hundred.....,
60 and the seal of the state of West Virginia.

61 (SEAL)

62

63

Treasurer of the State of West Virginia

64 Countersigned:

65 -----

66 Auditor of the State of West Virginia

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

3 STATE OF WEST VIRGINIA

4 Bond No. ----- Coupon No. -----

5 On the first day of -----, 19 -----, the
6 state of West Virginia will pay to the bearer, in lawful
7 money of the United States of America, at the office of
8 the treasurer of the state, or at the option of the holder
9 at ----- bank in the city of New York, the sum of
10 -----dollars, the same being semiannual
11 interest on Road Bond No. -----.

12 -----
13 Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be
15 by his engraved facsimile signature and the coupons
16 shall be numbered in the order of their maturity, from
17 number one consecutively. The bonds and coupons may
18 be signed by the present treasurer and auditor, or by any
19 of their respective successors in office, and the bonds
20 signed by the persons now in office may be sold by the
21 governor or his successor in office without being signed
22 by the successor in office of the present treasurer or
23 auditor.

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

**Sec. 6. State Road Sinking Fund Sources Used to Pay
2 Bonds and Interest; Investment of Remainder.**—Into the
3 state road sinking fund there shall be paid all moneys
4 received from the annual state tax levy on the taxable
5 property in the state levied under the provisions of this
6 act, from any and all appropriations made by the state

7 from other sources for the purpose of paying the interest
8 on such bonds or paying off and retiring the bonds, from
9 fines, forfeitures and penalties, if any, made applicable by
10 law for the payment of such bonds or the interest thereon,
11 from transfer fees as herein provided, and from any source
12 whatsoever, which is made liable by law for the payment
13 of the principal of such bonds or the interest thereon.

14 All such funds shall be kept by the treasurer in a
15 separate account, under the designation aforesaid, and
16 all money belonging to the fund shall be deposited in
17 the state treasury to the credit thereof.

18 Such fund shall be applied by the treasurer of the
19 state first to the payment of the semiannual interest on
20 such bonds as it shall become due as herein provided. The
21 remainder of the fund shall be turned over by the state
22 treasurer to the state sinking fund commission, whose
23 duty it shall be to invest the same in bonds of the gov-
24 ernment of the United States, bonds of the State of West
25 Virginia, or any political subdivision thereof: *Provided,*
26 *however,* That bonds so purchased by the state sinking
27 fund commission shall mature so as to provide sufficient
28 money to pay off all bonds herein provided to be issued
29 as they become due; and the money so paid into the
30 state road sinking fund under the provisions of this act
31 shall be expended for the purpose of paying the interest
32 and principal of the bonds hereby provided for as they
33 severally become due and payable and for no other pur-
34 pose except that the fund may be invested until needed,
35 as herein provided.

Sec. 7. Tax Levy to Pay, unless other Funds Available.

2 —In order to provide the revenue necessary for the pay-
3 ment of the principal and interest of such bonds, as here-
4 inbefore provided, the board of public works, within the
5 limits prescribed by the constitution, is authorized, em-
6 powered and directed to lay annually a tax upon all real
7 and personal property subject to taxation within this
8 state, sufficient to pay interest on the bonds accruing dur-
9 ing the current year and one twenty-fifth of the total
10 issue (at par value) of such bonds, for such number of
11 years, not exceeding twenty-five, as may be necessary to

12 pay the interest thereon and to pay off the principal sum
13 of the bonds; and such taxes, when so collected, shall not
14 be liable for or applicable to any other purpose: *Pro-*
15 *vided, however,* That if there be other funds in the state
16 treasury, or in the state road funds, in any fiscal year,
17 not otherwise appropriated, or if other sources of revenue
18 be hereafter provided by law for the purpose, the board
19 of public works is authorized, empowered and directed to
20 set apart, in any year there be such funds, or other sources
21 of revenue provided for such purpose, a sum sufficient to
22 pay the interest on bonds accruing during the current
23 year, and to pay off, and retire the principal of such
24 bonds, or any part thereof, at maturity.

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

Sec. 8. **Sale by Governor; Minimum Price.**—The
2 governor shall sell the bonds herein mentioned at such
3 time or times as he may determine necessary to provide
4 funds for road construction and maintenance purposes,
5 as herein provided, upon recommendation of the state
6 road commissioner. All sales shall be at not less than
7 par and accrued interest. All interest coupons becoming
8 payable prior to the sale date shall be cancelled by the
9 treasurer and rendered ineffective, before the delivery
10 of the bonds so sold.

Sec. 9. **Proceeds Paid into State Road Fund.**—The
2 proceeds of all sales of bonds herein authorized shall
3 be paid into the state road fund created by section one,
4 article three, chapter seventeen of the code of West
5 Virginia, one thousand nine hundred thirty-one, as last
6 amended.

Sec. 10. **Plates, Property of State.**—The plates from
2 which the bonds authorized by this act are engraved
3 shall be the property of the state of West Virginia.

Sec. 11. **Auditor to Be Custodian of Unsold Bonds.**—
2 The state auditor shall be the custodian of all unsold
3 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

7 shall fail to file such certified copies on or before January
8 one, one thousand nine hundred sixty-four, then the rules
9 of such agency which are not so filed shall become void
10 and unenforceable and shall be of no legal force and
11 effect. Each rule, amendment, modification or repeal of
12 a rule lawfully adopted by any agency after the effective
13 date of this section, shall neither be enforced nor en-
14 forceable unless and until two certified copies of such
15 rule, amendment, modification or repeal of a rule have
16 been on file in the office of the secretary of state for sixty
17 consecutive days. It shall be the duty of the secretary of
18 state to keep such rules filed in his office in a manner
19 which shall be available and convenient for public in-
20 spection. The secretary of state shall prescribe by rule
21 a standard size, format and numbering system for rules
22 to be filed in his office, making exceptions where rules
23 issued by other agencies cannot effectively convey neces-
24 sary information within such size and format. Rules per-
25 taining to the size, format and numbering system issued
26 by the secretary of state under the authority of this sec-
27 tion may be amended from time to time and any such rule
28 or amendment thereof shall become effective sixty days
29 after such rule or amendment has been filed. The secre-
30 tary of state may refuse to accept for filing any rules
31 which do not comply with this section or with rules issued
32 by the secretary under authority of this section.

33 For the purpose of this section "agency" means any au-
34 thority, department, commission, board or officer of the
35 government of the state of West Virginia authorized by
36 law to make rules, but this section shall not apply to the
37 Legislature or to the courts of the state of West Virginia.
38 The word "rule" includes every regulation, standard, or
39 statement of policy or interpretation of general applica-
40 tion and future effect, including the amendment or repeal
41 thereof adopted by any agency, as herein defined, to im-
42 plement or make specific the law enforced by or ad-
43 ministered by it, or to govern its organization or proce-
44 dure, but does not include regulations concerning only
45 the internal management of the agency and not directly
46 affecting the rights of or procedures available to the
47 public.

CHAPTER 167

(House Bill No. 418—By Mr. Speaker, Mr. Singleton)

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

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 1. Securities; Definitions; Registration; Unlawful Acts; Penalties; Liabilities.

Section

5. Necessity of registration by qualification; register of securities.
6. Manner of registration by qualification.
8. Limitation of sale price and commissions.
12. Dealer and salesman registered; process fees.
28. Sales in over-the-counter transactions.
29. How chapter cited.

Section 5. Necessity of Registration by Qualification;

- 2 **Register of Securities.**—No securities except of a class
- 3 exempt under a provision of section three hereof or unless
- 4 sold in any transaction exempt under a provision of sec-
- 5 tion four hereof shall be sold within this state unless such
- 6 securities shall have been registered by qualification as
- 7 hereinafter defined or the sale thereof authorized under
- 8 section twenty-eight of this article.

- 9 A record of the registration of securities shall be kept
- 10 in a register of securities to be kept in the office of the
- 11 commissioner, in which register of securities shall also
- 12 be recorded any order entered by the commissioner with
- 13 respect to such securities. Such register and all informa-

14 tion with respect to the securities registered therein shall
15 be open to public inspection.

Sec. 6. Manner of Registration by Qualification.—All
2 securities required by this article to be registered before
3 being sold in this state, shall be registered only by quali-
4 fication in the manner provided by this section, except
5 those securities authorized for sale under section twenty-
6 eight of this article.

7 The commissioner shall receive and act upon appli-
8 cations to have securities registered by qualification,
9 and may prescribe forms on which he may require
10 such application to be submitted. Applications shall be
11 in writing and shall be duly signed by applicant and
12 sworn to by any person having knowledge of the facts,
13 and filed in the office of the commissioner and may be
14 made either by the issuer of the securities for which
15 registration is applied or by any registered dealer desir-
16 ing to sell the same within the state.

17 The commissioner may require the applicant to sub-
18 mit to him the following information respecting the is-
19 suer or the security or the person or persons obligated by
20 such security, and such other information as he may
21 deem necessary to enable him to ascertain whether such
22 securities shall be registered pursuant to the provisions
23 of this section:

24 (a) The name under which the issuer is doing or in-
25 tends to do business;

26 (b) The name of the state or other sovereign power
27 under which the issuer is organized;

28 (c) The location of the issuer's principal business of-
29 fice, and if the issuer is a foreign or territorial person, the
30 name and address of its agents in the United States auth-
31 orized to receive notices;

32 (d) The names and addresses of the directors or per-
33 sons performing similar functions, and the chief execu-
34 tive, financial and accounting officers chosen or to be
35 chosen if the issuer be a corporation, association, trust
36 or other entity, of all partners, if the issuer be a partner-
37 ship, and of the issuer, if the issuer be an individual, and
38 of the promoters in the case of a business to be formed,

39 or formed within two years prior to the filing of the ap-
40 plication;

41 (e) Names and addresses of the underwriters;

42 (f) The names and addresses of all persons, if any,
43 owning of record or beneficially, if known, more than
44 ten per cent of any class of stock of the issuer or
45 more than ten per cent in the aggregate of the out-
46 standing stock of the issuer as of a date within twenty
47 days prior to the filing of the application;

48 (g) The amount of securities of the issuer held by any
49 person specified in subsections (d), (e) and (f) of this
50 section, as of a date within twenty days prior to the filing
51 of the application, and, if possible, as of one year prior
52 thereto, and the amount of the securities, for which the
53 application is filed, to which such persons have indi-
54 cated their intention to subscribe;

55 (h) The general character of the business actually
56 transacted or to be transacted by the issuer;

57 (i) A statement of the capitalization of the issuer, in-
58 cluding the authorized and outstanding amounts of its
59 capital stock and the proportion thereof paid up, the num-
60 ber of classes of shares in which such capital stock is
61 divided, par value thereof, or, if it has no par value,
62 the stated or assigned value thereof, a description of the
63 respective voting rights, preferences, conversion and ex-
64 change rights, rights to dividends, profits, or capital of
65 each class, with respect to each other class, including the
66 retirement and liquidation rights or values thereof;

67 (j) A statement of the securities, if any, covered by
68 options outstanding or to be created in connection with
69 the securities to be offered;

70 (k) The amount of capital stock of each class is-
71 sued or included in the shares of stock to be offered;

72 (l) The amount of funded debt outstanding and to
73 be created by the securities to be offered and a descrip-
74 tion of such;

75 (m) The specific purposes, in detail, and the approxi-
76 mate amounts to be devoted to such purposes so far as
77 determinable, for which the securities to be offered are
78 to supply funds, and if the funds are to be raised in part

79 from other sources the amounts thereof and the sources
80 thereof shall be stated;

81 (n) The remuneration, paid or estimated to be paid, by
82 the issuer or its predecessors, directly or indirectly during
83 the past year, and ensuing year, to all officers and directors
84 and to any other individuals if required by the commis-
85 sioner;

86 (o) The price at which it is proposed that the securities
87 shall be offered to the public or the methods by which such
88 price is computed and a detailed statement as to all com-
89 missions paid or to be paid, directly or indirectly, in re-
90 spect of the sale of the securities to be offered. Commis-
91 sions shall include all cash, securities, contracts or any-
92 thing else of value, paid, to be set aside, disposed of, or un-
93 derstandings with or for the benefit of any person in con-
94 nection with the sale of such securities;

95 (p) The amount or estimated amounts, itemized in
96 reasonable detail, of all expenses other than commissions
97 specified in subsection (o) of this section;

98 (q) The amount paid within two years preceding the
99 filing of the application or intended to be paid to any pro-
100 moter and the consideration for any such payment;

101 (r) Full particulars of the nature and extent of the
102 interest, if any, of every director, principal executive
103 officer, and of every stockholder holding more than ten
104 per cent of any class of stock or more than ten per cent
105 in the aggregate of the stock of the issuer, in any prop-
106 erty acquired, not in the ordinary course of business of
107 the issuer, within two years preceding the filing of the
108 application or proposed to be acquired at such date;

109 (s) The dates of and parties to, and the general ef-
110 fect concisely stated of every material contract made, not
111 in the ordinary course of business, which contract is to
112 be executed in whole or in part at or after the filing of the
113 application or which contract has been made not more
114 than two years before such filing;

115 (t) A detailed balance sheet as of a date not more
116 than ninety days prior to the date of the filing of the
117 application, and in the case of a new corporation or
118 organization a pro forma balance sheet shall be submitted

119 showing what the conditions of the company will be after
120 the financing is completed and as of a date when the com-
121 pany begins business as authorized by its charter. Addi-
122 tional details and information regarding any item or
123 items in the balance sheet shall be submitted as prescribed
124 by the commissioner. There shall also be submitted a
125 profit and loss statement of the issuer showing earnings
126 and income, the nature and source thereof, and the ex-
127 penses and fixed charges in such detail and such form
128 as the commissioner shall prescribe, giving an estimated
129 profit and loss statement for a new company or organi-
130 zation;

131 (u) A copy of any agreement or agreements made
132 or to be made, including contracts or options, effec-
133 tive at the time of registration or at some future
134 date if such are in connection with, refer to or are
135 material to the sale of securities, (no public disclos-
136 ure shall be required of any portion of any such con-
137 tracts or agreements if the commissioner determines
138 that the disclosure of such portion would impair the
139 value of the contract or agreement and would not
140 be necessary for the protection of the investors), a
141 copy of the articles of incorporation with all amend-
142 ments thereof and of the existing by-laws or instru-
143 ments corresponding thereto, whatever the name, if
144 the issuer be a corporation, a copy of all instru-
145 ments by which the trust is created or declared, if
146 the issuer is a trust, a copy of the articles of part-
147 nership or association and all other papers pertain-
148 ing to its organization, if the issuer is a partnership,
149 unincorporated association, joint stock company, or any
150 other form of organization;

151 (v) A detailed statement prescribed by the commis-
152 sioner of all individuals who are officers or who are em-
153 ployed as promoters by the issuer, underwriter or dealer
154 in securities;

155 (w) A copy of prospectus;

156 (x) Any other information as required and prescribed
157 by the commissioner as he may deem necessary and per-
158 tinent in determining whether the applicant or issuer

159 shall be registered pursuant to the provisions of this sec-
160 tion.

161 All of the statements, exhibits and documents of every
162 kind required by the commissioner under this section, ex-
163 cept properly certified public documents, shall be veri-
164 fied by the oath of the applicant or of the issuer in such
165 manner and form as may be prescribed by the commis-
166 sioner.

167 The commissioner shall have power and authority to
168 place such conditions, limitations and restrictions on any
169 registration as may be necessary to carry out the purposes
170 of this chapter.

171 The commissioner may require the use of a prospectus
172 by registered issuer and may require the printing therein
173 of all or any parts of the information required by this
174 section to be submitted with the application and may des-
175 ignate by ruling how such prospectus may be used. Every
176 prospectus used, distributed or made available in this
177 state must first have the approval of the commis-
178 sioner.

179 At the time of filing of application the applicant shall
180 pay to the commissioner one twentieth of one per cent
181 of the aggregate par value or offering price, whichever
182 is greater, of the securities to be sold in this state for
183 which the applicant is seeking registration, but in no
184 case shall such fees be less than fifty dollars, except
185 that the minimum fee for each oil and gas well regis-
186 tration shall be twenty-five dollars. In case of a stock
187 having no par value, the offering price to the public shall
188 be deemed to be the par value of such stock. When an
189 application is denied, the commissioner shall retain the
190 registration fee deposited.

191 If, upon examination of any application, the commis-
192 sioner shall find that the sale of the security referred to
193 therein will not be fraudulent or will not work or tend
194 to work a fraud upon the purchaser, or that the enter-
195 prise or business of the issuer is not based upon un-
196 sound business principles and that it is in every respect
197 equitable, just and fair to the investor and after all pro-
198 visions of this article have been complied with, the com-

199 commissioner shall record the registration of such secur-
200 ity in the register of securities and thereupon such se-
201 curity so registered may be sold by the issuer or by
202 any registered dealer who has notified the commis-
203 sioner of his intention to do so, in the manner herein-
204 after provided, subject, however, to the further order of
205 the commissioner as hereinafter provided.

206 Every registration under this section shall expire on
207 the thirtieth day of June in each year, but new regis-
208 trations for the succeeding year shall be issued upon
209 written application, the applicant furnishing the com-
210 missioner, upon request, information as hereinbefore pro-
211 vided in this section, and by paying to the commissioner
212 a fee of one twentieth of one per cent of the aggregate
213 par value or offering price, whichever is greater, of the
214 securities to be sold in this state within the year auth-
215 orized by registration, but in no case shall the fee be
216 less than fifty dollars, except that the minimum fee for
217 each oil and gas well registration shall be twenty-five
218 dollars. Applications for renewals must be made not
219 less than thirty days before the first day of the ensu-
220 ing registration year, otherwise they shall be treated as
221 original applications.

222 Each different type, class, series or kind of securities
223 not exempt by sections three and four of this article shall
224 require separate registration and the same requirements
225 and regulations shall apply to each, and the registra-
226 tion fee paid by each. This does not apply to a serial
227 issue of securities where the entire amount is issued
228 at one time and where the only difference is in the ma-
229 turity or interest date.

230 Investment trust securities shall be registered separ-
231 ately as herein provided where there is any change or
232 difference from the registered security other than the
233 maturity date of the trust.

Sec. 8. Limitation of Sale Price and Commissions.—

2 The commissioner may limit the price at which securities,
3 to be registered under section six hereof, either of par or
4 no par value, may be sold, and may prescribe the amount
5 of commission to be allowed on such sales, but said com-

6 mission shall in no instance exceed twenty per cent of the
7 sale price, such percentage to include all expenses incidental
8 to such sale including advertising or any other expense
9 chargeable in any way to the sale of such securities. In no
10 instance shall commissions be paid on the aggregate subscription
11 or sales price, except to the extent of payments actually made
12 thereon: *Provided, however,* That this provision shall not apply
13 to any security registered with the securities and exchange
14 commission under the investment company act of 1940.

Sec. 12. Dealer and Salesman Registered; Process; Fees.—
2 No dealer or salesman shall engage in business in this state
3 as such dealer or salesman or sell any securities, including
4 securities exempted in section three of this article, or transact
5 a brokerage or trading business or do a business of buying or
6 selling securities listed or traded in on any stock exchange,
7 except in transactions exempt under section four of this article,
8 unless he has been registered as a dealer or salesman in the
9 office of the commissioner pursuant to the provisions of this
10 section.

12 An application for registration as a dealer shall be
13 filed in writing with the commissioner, in such form as he may
14 prescribe, duly verified by oath, which shall state the principal
15 office of the applicant, wherever situated, and the location of
16 the principal office and all branch offices in this state, if any,
17 the name or style of doing business, the names, residences and
18 business addresses of all persons interested in the business as
19 principals, co-partners, officers and directors, specifying as to
20 each his capacity and title, the general plan and character of
21 business and the length of time the dealer has been engaged
22 in business, a financial statement in detail showing the actual
23 conditions of the dealer, classification and condition of all
24 margin or installment accounts, partner, officer and director
25 accounts, a list of securities sold in West Virginia during the
26 preceding year and so far as possible, a list of those to be sold
27 or offered for sale when the registration is completed, and such
28 information to be given in such detail as the commissioner may
29 require. The commissioner may also require such additional
30 information

32 as to applicant's previous history, record and association,
34 in business of the applicant. The commissioner may re-
33 as he may deem necessary to establish the good reput
35 quire every applicant for registration as a salesman to
36 pass a written examination as a requirement for issuance
37 of said license. Every applicant for registration as a sales-
38 man shall have reached the age of twenty-one years, and
39 shall not, at the time of examination, be employed by any
40 securities dealer other than the one by whom he was
41 employed at the time of making application.

42 Every dealer, at the time of filing his application,
43 shall file with the commissioner of securities his irrevoc-
44 able written consent to service of process as prescribed
45 by section nine of this article.

46 If the commissioner shall find that the applicant is of
47 good repute, has furnished sufficient proof of financial
48 responsibility, and has complied with the provisions of
49 this section including the payment of the fee hereinafter
50 provided, he may register such applicant as a dealer.

51 Upon written application of a registered dealer and
52 payment of the proper fees, the commissioner may regis-
53 ter as salesmen of such dealer such natural persons as
54 shall appear to the commissioner to be qualified and of
55 good character.

56 The partners of a partnership and the executive officers
57 of a corporation or other association registered as a dealer
58 may act as salesmen during such time as such partnership,
59 corporation or association is so registered without further
60 registration as salesmen. The salesmen registered by a
61 dealer may sell any securities for which the dealer regis-
62 tering such salesmen is registered.

63 The names and addresses of all persons approved for
64 registration as dealers or salesmen and all orders with
65 respect thereto shall be recorded in a register of dealers
66 and salesmen, which shall be open to public inspection.
67 Every registration under this section shall expire on the
68 thirtieth day of June in each year, but new registrations
69 for the succeeding year shall be issued upon written ap-
70 plication and upon payment of the fee as hereinafter pro-
71 vided, and by filing of further statements or furnishing

72 any further information specifically required by the com-
73 missioner. Applications for renewals must be made not
74 less than thirty days before the first day of the ensuing
75 year, otherwise they shall be treated as original applica-
76 tions. The fee for each dealer's registration and for each
77 dealer's annual renewal shall be one hundred dollars.
78 The fee for each salesman's registration shall be twenty
79 dollars, and the fee for each salesman's annual renewal
80 shall be ten dollars. When an application is denied, the
81 commissioner shall retain the registration or renewal fee
82 deposited.

83 Changes in registration occasioned by changes in
84 personnel of a partnership or in the principals, co-part-
85 ners, officers or directors of any dealer may be made
86 from time to time by written application setting forth the
87 facts with respect to such change.

88 Every dealer registered under this section shall be sub-
89 ject to examination as to his financial condition or meth-
90 ods of business by the commissioner or by his duly auth-
91 orized representative at the time the commissioner may
92 deem it advisable. The expense of the examination shall
93 be paid by the applicant and the failure or refusal of such
94 applicant to pay such expense upon the demand of the
95 commissioner shall work a forfeiture of his right to regis-
96 tration under this section.

97 Every dealer or salesman shall send a copy of all bills,
98 confirmations or orders on transactions with any em-
99 ployee or active official of any bank, trust company or sav-
100 ings institution, to the president of the institution by
101 which the person is employed or in which the person is an
102 official, and a copy shall also be sent to the commissioner
103 of banking of the state of West Virginia. These copies of
104 bills, confirmations or orders shall be sent at the same
105 time as the original. Any dealer or salesman wilfully vio-
106 lating the provisions of this paragraph shall have his reg-
107 istration revoked by the commissioner and may be liable
108 to such bank, trust company or savings institution for any
109 losses or damages incurred in any case where such dealer
110 or salesman failed to comply with this provision.

111 This section shall not apply to a person or his agent sell-

112 ing exclusively his own contracts, if such contracts are
113 exempt from this chapter by section three, subdivision (g)
114 of this article.

115 This section shall not apply to an unincorporated per-
116 son selling exclusively undivided interest in oil, gas or
117 other mineral rights if such unincorporated person is the
118 bona fide owner of the lease, interest, royalty or property
119 in which he is selling interests.

Sec. 28. Sales in Over-the-Counter Transactions.—Any
2 security, as defined in this article, which has been pre-
3 viously but is not now registered by qualification pursu-
4 ant to this article, may, in the discretion of the commis-
5 sioner, be offered and sold by registered dealers in an
6 over-the-counter transaction. The commissioner shall
7 regulate the offering and sale of all such securities and
8 shall register dealers to buy, sell, trade or otherwise deal
9 in such securities. The commissioner shall promulgate
10 rules and regulations to provide for the registration of
11 dealers and for the regulation of over-the-counter trans-
12 actions in securities.

13 All dealers, registered pursuant to this section, shall be
14 registered pursuant to section twelve of this article and
15 shall pay the fees set forth for dealers in said section.

Sec. 29. How Chapter Cited.—This chapter may be
2 cited as "The Act Regulating and Supervising the Sale of
3 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.

14 The commissioner may order any licensee to desist
15 from any conduct which he shall find to be a violation of
16 the foregoing provisions.

17 No licensee shall take a lien upon real estate as security
18 for any loan under the provisions of this article, except
19 such lien as is created by law upon the recording of a
20 judgment.

21 No licensee shall conduct the business of making loans
22 under the provisions of this article within any office, room,
23 or place of business in which any other business is so-
24 licited or engaged in, or in association or conjunction
25 therewith, except as may be authorized in writing by the
26 commissioner upon his finding that the character of such
27 other business is such that the granting of such authority
28 would not facilitate evasions of this article or of the rules
29 and regulations lawfully made hereunder, except nothing
30 herein shall prohibit the licensee from purchasing install-
31 ment sales contracts.

32 No licensee shall transact such business or make any loan
33 provided for by this article under any other name or at
34 any other place of business than that named in the license.

35 No licensee shall take any confession of judgment or
36 any power of attorney. No licensee shall take any note,
37 promise to pay, or security that does not accurately dis-
38 close the actual amount of the loan, the time for which
39 it is made, and the agreed rate of interest or charge, nor
40 any instrument in which blanks are left to be filled in
41 after execution.

42 It shall be unlawful for any licensee to renegotiate the
43 original loan, or any part thereof, or make a new contract
44 covering the original loan, or any part thereof, with any
45 borrower, who has received a discharge in bankruptcy of
46 the original loan or any balance due thereon at the time
47 of said discharge from any court of the United States of
48 America exercising jurisdiction in insolvency and bank-
49 ruptcy matters, unless said licensee shall pay to and de-
50 liver to the borrower the full amount of the loan shown
51 on said note, promise to pay, or security, less any deduc-
52 tions for charges herein specifically authorized. Any

53 violation hereof shall be grounds for suspension or revoca-
54 tion of the license of the licensee by the commissioner of
55 banking.

Sec. 13. Interest; Other Charges Prohibited.—Division

2 A. Every licensee hereunder may loan any sum of money
3 not exceeding eight hundred dollars in amount and may
4 charge, contract for, and receive thereon interest at a rate
5 not exceeding three per centum per month on the first
6 two hundred dollars of any loan, or the remaining bal-
7 ance thereof, two per centum per month on the excess of
8 two hundred dollars to six hundred dollars of any loan,
9 or the remaining balance thereof, and one and one-half
10 per centum per month on the excess of six hundred dol-
11 lars to eight hundred dollars of any loan or the remaining
12 balance thereof.

13 No amount whatsoever shall be paid, deducted, or re-
14 ceived in advance. Interest shall not be compounded and
15 shall be computed only on unpaid principal balances.

16 In addition to the interest herein provided for no fur-
17 ther or other charge or amount whatsoever for any exam-
18 ination, service, brokerage, commission, expense, fee, or
19 bonus or other thing or otherwise, except credit life in-
20 surance premiums as hereinafter provided for in section
21 sixteen of this article, shall be directly or indirectly
22 charged, contracted for, or received. If any interest, con-
23 sideration or charges, in excess of those permitted by this
24 article, are charged, contracted for, or received, the con-
25 tract of loan shall be void and the licensee shall have no
26 right to collect or receive any principal, interest, or
27 charges whatsoever.

28 Division B. In lieu of computing and collecting interest
29 as provided in division A of this section, a licensee may
30 contract for and receive charges, on any loan not exceed-
31 ing eight hundred dollars, exclusive of such charges,
32 under a contract which requires the combined total of the
33 original principal amount of the loan and the charges for
34 payment according to schedule to be paid in substantially
35 equal successive monthly installments as follows:

36 (1) The loan charges may be computed, when the loan
37 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-

linquent installment and may be collected when due or at any time thereafter. In no event shall both a default charge and a deferment charge be levied or collected on any one installment.

(5) 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.

(6) 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.

(7) 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-

120 vided in subsections (1) to (6) inclusive, of this division
121 B, charges may be charged, collected and received as pro-
122 vided by division A of this section, until the contract is
123 fully paid.

124 (8) If part or all of the consideration for a contract of
125 loan is the unpaid principal balance of a prior loan with
126 the same licensee, then the principal amount payable un-
127 der such new contract of loan shall not include any un-
128 paid charges on the prior loan except such charges which
129 have accrued within sixty days before the making of such
130 new contract of loan and may include the balance remain-
131 ing after giving the rebate required by subsection (6)
132 hereof.

Sec. 14. Duties of Licensee to Borrower.—Every li-
2 censee shall:

3 Deliver to the borrower at the time any loan is made
4 a statement upon which there shall be printed in the
5 English language a copy of division A, section thirteen, of
6 this article, if the loan is made under said division A, or a
7 statement upon which there shall be printed in the
8 English language a copy of division B, section thirteen, of
9 this article, if the loan is made under said division B, and
10 such statement shall show in clear and distinct terms the
11 amount and date of the loan and of its maturity, the
12 nature of the security, if any, for the loan, the name and
13 address of the borrower and of the licensee, the agreed
14 rate of interest or charges with the amount thereof and a
15 notice, if applicable, that default and deferment charges
16 may be made and the amount thereof;

17 Give to the borrower a receipt for all payments made
18 in cash on account of any such loan at the time such pay-
19 ments are made;

20 Permit payment to be made in advance in any amount
21 equal to one or more full installments on any contract of
22 loan at any time during the regular business hours of the
23 licensee, but the licensee may apply such payment first
24 to accrued charges and interest in full at the agreed rate
25 up to the date of such payment;

26 Upon repayment of the loan in full, mark indelibly

27 every obligation and security signed by the borrower with
28 the word "paid" or "cancelled", and release any mortgage,
29 restore any pledge, and cancel and return any note given
30 to the licensee by the borrower.

Sec. 15. Interest When Loan Is in Excess of Eight Hundred Dollars.—No licensee shall directly or indirectly
2 charge, contract for, or receive any interest, discount, or
3 consideration greater than six per cent per annum upon
4 the loan, use, or forbearance of money, goods, or things
5 in action, or upon the loan, use, or sale of credit, of the
6 amount or value of more than eight hundred dollars. The
7 foregoing prohibition shall also apply to any licensee who
8 permits any person, as borrower or as endorser, guaran-
9 tor, or surety for any borrower, or otherwise, to owe di-
10 rectly or contingently, or both, to the licensee at any time
11 the sum of more than eight hundred dollars for principal.
12

Sec. 16. Credit Life Insurance.—Notwithstanding any
2 other provision of law, a licensee may request but shall
3 not require as security for a loan made pursuant to this
4 article insurance on the life of the borrower, or one of
5 them if there are two or more. The initial amount of such
6 insurance shall not exceed the total amount repayable un-
7 der the contract of loan and where the loan is repayable
8 in substantially equal installments the amount of insur-
9 ance shall at no time exceed the scheduled or actual
10 amount unpaid of the total amount payable by the bor-
11 rower to a licensee in accordance with the loan contract,
12 whichever is greater. The term of such insurance shall
13 not extend more than fifteen days beyond the scheduled
14 maturity date of the indebtedness. The premium or identi-
15 fiable charge for such insurance may be deducted from the
16 proceeds of any loan or may be included as part of the
17 principal. Such premium or identifiable charge shall not
18 be in excess of that filed by the insurance company with
19 the insurance commissioner. Any gain or benefit to the
20 licensee, directly or indirectly, from such insurance or the
21 sale or provision thereof shall not be deemed a violation
22 of any section of this article. No licensee shall require the
23 purchasing of such insurance as a condition precedent to
24 the making of a loan, and if the borrower elects to pur-

25 chase insurance the licensee shall not require the pur-
26 chasing of such insurance through a particular agent or
27 broker or from a particular insurance company.

**Sec. 17. Assignment of Wages Prohibited; When Lien
2 on Household Furniture not Valid.**—No licensee shall take
3 any assignment of, or order for payment of, any salary,
4 wages, commissions, or other compensation for services,
5 earned or to be earned, to secure any loan made by any
6 licensee under this article.

7 No chattel mortgage, trust deed or other lien on house-
8 hold furniture then in the possession and use of the bor-
9 rower, shall be valid unless it be in writing, signed in
10 person by the borrower, and if the borrower is married
11 unless it is signed in person by both husband and wife:
12 *Provided*, That the signature of both husband and wife
13 shall not be required when they have been living separate
14 and apart for a period of at least five months prior to the
15 making of such chattel mortgage, deed of trust or other
16 lien.

**Sec. 18. Interest on Loans of Less Than Eight Hundred
2 Dollars.**—No person, copartnership, association, or cor-
3 poration, except as authorized by this article, shall di-
4 rectly or indirectly charge, contract for, or receive any
5 interest, discount, or consideration greater than six per
6 cent per annum upon the loan, use, or forbearance of
7 money, goods, or things in action, or upon the loan, use,
8 or sale of credit of the amount or value of eight hundred
9 dollars or less.

10 The foregoing prohibition shall apply to any person,
11 copartnership, association, or corporation who or which,
12 by any device, subterfuge, or pretense whatsoever shall
13 charge, contract for, or receive greater interest, considera-
14 tion, or charges than is authorized by this article for any
15 such loan, use, or forbearance of money, goods, or things
16 in action or for any such loan, use, or sale of credit.

17 No loan of the amount or value of eight hundred dollars
18 or less for which a greater rate of interest, consideration,
19 or charges than is permitted by this article has been
20 charged, contracted for, or received, wherever made, shall

21 be enforced in this state and every person in anywise
22 participating therein in this state shall be subject to the
23 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:

Article 7. Berkeley Springs Sanitarium.

Section

3. Institutional fees; special sanitarium fund.

Section 3. Institutional Fees; Special Sanitarium Fund.

2 —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.

9 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:

Article 6. State Office Building Commission.

Section

7. Commission empowered to issue state office revenue bonds; grants and gifts.

Section 7. Commission Empowered to Issue State Office

2 **Revenue Bonds; Grants and Gifts.**—The commission is
3 hereby empowered to raise the cost of the project, as de-
4 fined hereinabove, by the issuance of state office building
5 revenue bonds of the state, the principal of and interest
6 on which bonds shall be payable solely from the special
7 fund herein provided for such payment. Such bonds shall
8 be authorized by resolution of the commission which
9 shall recite an estimate by the commission of such cost,
10 and shall provide for the issuance of bonds in an amount
11 sufficient, when sold as hereinafter provided, to produce
12 such cost, less the amount of any grant or grants, gift or
13 gifts received, or in the opinion of the commission ex-
14 pected to be received from the United States of America
15 or from any other source. The acceptance by the com-
16 mission of any and all such grants and gifts, whether in
17 money or in land, labor or materials, is hereby expressly
18 authorized. All such bonds shall have and are hereby
19 declared to have all the qualities of negotiable instru-
20 ments under the law merchant. Such bonds shall bear
21 interest at not more than four per cent per annum, pay-
22 able semiannually, and shall mature in not more than
23 twenty-five years from their date or dates, and may be
24 made redeemable at the option of the state, to be exer-
25 cised by the commission, at such price and under such
26 terms and conditions as the commission may fix prior to
27 the issuance of such bonds. The commission shall de-
28 termine the form of such bonds, including coupons to be
29 attached thereto to evidence the right of interest pay-
30 ments, which bonds shall be signed by the chairman and
31 secretary of the commission, under the great seal of the
32 state, attested by the secretary of state, and the coupons
33 attached thereto shall bear the facsimile signature of said
34 chairman of the commission. In case any of the officers
35 whose signatures appear on the bonds or coupons shall

36 cease to be such officers before the delivery of such bonds,
37 such signatures shall nevertheless be valid and sufficient
38 for all purposes the same as if they had remained in
39 office until such delivery. The commission shall fix the
40 denominations of said bonds, the principal and interest
41 of which shall be payable at the office of the treasurer of
42 the state of West Virginia, at the capitol of said state, or,
43 at the option of the holder, at some bank or trust company
44 in the city of New York to be named in the bonds in such
45 medium as may be determined by the commission. The
46 said bonds shall be exempt from taxation by the state of
47 West Virginia, or any county or municipality therein.
48 The commission may provide for the registration of such
49 bonds in the name of the owner as to principal alone, and
50 as to both principal and interest under such terms and
51 conditions as the commission may determine, and shall
52 sell such bonds in such manner as it may determine to be
53 for the best interest of the state, taking into consideration
54 the financial responsibility of the purchaser, and the
55 terms and conditions of the purchase, and especially the
56 availability of the proceeds of the bonds when required
57 for payment of the cost of the project, such sale to be
58 made at a price not lower than a price which, computed
59 upon standard tables of bond values, will show a net
60 return of four per cent per annum to the purchaser upon
61 the amount paid therefor. The proceeds of such bonds
62 shall be used solely for the payment of the cost of the
63 project, and shall be deposited and checked out as pro-
64 vided by section four of this article, and under such
65 further restrictions, if any, as the commission may pro-
66 vide. If the proceeds of such bonds, by error in calcula-
67 tion or otherwise, shall be less than the cost of the project,
68 additional bonds may in like manner be issued to pro-
69 vide the amount of the deficiency, and unless otherwise
70 provided for in the trust agreement hereinafter men-
71 tioned, shall be deemed to be of the same issue, and shall
72 be entitled to payment from the same fund, without pref-
73 erence or priority as the bonds before issued, provided
74 that the aggregate amount of all issues of bonds out-
75 standing at one time shall not exceed ten million dollars.
76 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 purchased shall forthwith be cancelled, and shall not again be issued. 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 revenue bonds may be issued without any other proceedings 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 constitution of the state. Revenue bonds issued under the authority 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 additional project shall be first submitted to the Legislature for its approval.

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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, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation 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
2 on and after the first Monday after the second Wednesday
3 in January, one thousand nine hundred fifty-seven, the
4 salary of the governor shall be seventeen thousand five
5 hundred dollars per year.

6 The salary of the attorney general and superintendent
7 of free schools shall each be twelve thousand dollars per
8 year; the salary of the state auditor, secretary of state,
9 state treasurer and the commissioner of agriculture shall
10 each be eleven thousand dollars per year.

11 The salary of each of the judges of the supreme court
12 of appeals shall be nineteen thousand dollars per year.

13 Such salaries shall be paid out of the state treasury.

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

34 authorized to make appointment to such office for the full
35 term thereof.

CHAPTER 174

(Senate Bill No. 327—By Mr. Moreland)

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

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

2 to Show; Vote Required; Amount and Continuation of
3 Additional Levy; Issuance of Bonds.—A local levying
4 body may provide for an election to increase the levies,
5 by entering on its record of proceedings an order setting
6 forth:

- 7 (1) The purpose for which additional funds are needed;
8 (2) The amount for each purpose;
9 (3) The total amount;
10 (4) The separate and aggregate assessed valuation of
11 each class of taxable property within its jurisdiction;
12 (5) The proposed additional rate of levy in cents on
13 each class of property;
14 (6) The proposed number of years, not to exceed three,
15 to which the additional levy shall apply, except that in the
16 case of county boards of education the proposed number
17 of years shall not exceed five;

18 (7) The fact that the local levying body will or will not
19 issue bonds, as provided by this section, upon approval
20 of the proposed increased levy.

21 The local levying body shall submit to the voters within
22 their political subdivision, the question of the additional
23 levy at either a general or special election. If at least
24 sixty per cent of the voters cast their ballots in favor
25 of the additional levy, the local levying body may impose
26 the additional levy. This levy shall not exceed fifty per
27 cent of the rates authorized in sections ten and fourteen
28 of this article for county courts and municipalities, nor
29 one hundred per cent of the rates authorized in section
30 twelve of this article for county boards of education, as
31 the case may be.

32 Levies authorized by this section shall not continue for
33 more than three years in the case of county courts and
34 municipalities and five years in the case of county boards
35 of education without resubmission to the voters.

36 Upon approval of an increased levy as provided by this
37 section, a local levying body may immediately issue bonds
38 in an amount not exceeding the amount of the increased
39 levy plus the total interest thereon, but the term of such
40 bonds shall not extend beyond the period of such in-
41 creased levy.

42 Insofar as they might concern the issuance of bonds as
43 provided for in this section, the provisions of sections
44 three and four, article one, chapter thirteen of this code
45 shall not apply: *Provided*, That nothing herein contained
46 shall conflict with the provisions of article ten, section
47 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.]

AN ACT to amend and reenact section seventeen, article eight, chapter eleven of the code of West Virginia, one thousand

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.

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 ofaccording to
30 the order of theentered
31 on the day of”
32 The additional levy shall be on class I property.....
33 cents; on class II property cents; on class III
34 property (if any)cents; on class IV property
35 (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, designated 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
2 body of any municipality may impose any tax not there-

3 tofore levied, or may increase any tax theretofore levied,
4 and may make said tax or increase effective as of the date
5 of the adoption of the ordinance imposing or increasing
6 said tax, or as of any date thereafter specified in the
7 ordinance regardless of whether or not said tax or the
8 increase thereof is included within the levy estimate for
9 the current or ensuing fiscal year, provided for in section
10 fourteen of this article: *Provided, That* when said tax or
11 increase is not included within such levy estimate, such
12 tax or increase shall not be imposed until such levy esti-
13 mate is revised in accordance with the provisions of sec-
14 tion twenty-six-a hereof. If such tax or increase is con-
15 tinued in effect during subsequent fiscal years, it shall
16 thereafter be included in the levy estimate.

Sec. 26. Unlawful Expenditures by Local Fiscal Body.—

2 Except as provided in sections fourteen-b, twenty-five-a
3 and twenty-six-a of this article, a local fiscal body shall
4 not expend money or incur obligations:

- 5 (1) In an unauthorized manner;
- 6 (2) For an unauthorized purpose;
- 7 (3) In excess of the amount allocated to the fund in
8 the levy order;
- 9 (4) In excess of the funds available for current ex-
10 penses.

11 Notwithstanding the foregoing and any other provision
12 of law to the contrary, a local fiscal body or its duly
13 authorized officials shall not be penalized for a casual
14 deficit which does not exceed its approved levy estimate
15 by more than three per cent, provided such casual deficit
16 be satisfied in the levy estimate for the succeeding fiscal
17 year.

Sec. 26-a. Revision of Levy Estimate.—The tax commis-

2 sioner shall, by uniform regulations, provide for the re-
3 vision of the levy estimate of a county court or municipi-
4 tality to permit expenditures for purposes for which no
5 appropriation or an insufficient appropriation was made in
6 the annual levy estimate as approved by the tax commis-
7 sioner. The revision shall be made only with the prior
8 written approval of the tax commissioner.

CHAPTER 177

(House Bill No. 103—By Mr. White)

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

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 to read as follows:

Article 11. Inheritance and Transfer Taxes.

Section

4. Exemptions.

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-

23 ferred to the person resident of another state or to a for-
24 eign corporation, in trust or for the purposes herein men-
25 tioned, shall be exempt only so far as the laws of the
26 state where such person or foreign corporation is domi-
27 ciled would exempt like property transferred from that
28 state to a person or corporation in this state in trust and
29 for similar purposes.

30 The provisions of this section as hereby amended shall
31 apply to all future devises, bequests and gifts for such
32 purposes, and shall be retroactive in applying to all past
33 devises, bequests and gifts for such purposes, where the
34 final payment of transfer or inheritance taxes has not
35 been made to the state of West Virginia.

CHAPTER 178

(Senate Bill No. 313—By Mr. McCourt)

[Passed March 4, 1963; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appeals from assessments of inheritance and transfer taxes.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article eleven, 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 11. Inheritance and Transfer Taxes.

Section

21. Appeals from assessment.

Section 21. Appeals from Assessment.—Within sixty
2 days after the tax commissioner shall have forwarded
3 a certificate of the amount of tax assessed upon the trans-
4 fer of any property, any person interested in such transfer,
5 or in such property, may apply to the circuit court of any
6 county, in which such property or the greater part thereof
7 may be, for an appeal from the assessment so made. Un-

8 less such appeal is taken within the time period herein
9 provided, the tax commissioner's assessment shall be final
10 and not subject to judicial review. Such application shall
11 be by petition in writing, stating the names and addresses
12 of all persons interested, showing the grounds upon which
13 the appellant claims to be aggrieved, and an appeal shall
14 be allowed thereon forthwith; and, until the same shall
15 have been heard and decided, proceedings for the collec-
16 tion of such taxes may be stayed by order of such court
17 for good cause shown, and upon such conditions as it may
18 direct. Such appeal shall be heard and decided as soon
19 as may be. Before any such hearing reasonable notice
20 thereof shall be given to all other persons interested, and
21 to the tax commissioner and prosecuting attorney, who,
22 with the said commissioner, shall defend the interest of
23 the state. Upon such hearing the court shall consider all
24 certificates relating to such taxes, and all other pertinent
25 evidence, that may be offered by either party. If it be
26 of the opinion that the assessment appealed from was cor-
27 rect, it shall affirm the same; if it be of the opinion that
28 the transfer was not subject to any such taxes, it shall
29 set aside such assessment and enter an order exonerating
30 the property from taxes. If it be of the opinion that the
31 transfer was subject to such taxation, but that the amount
32 of taxes assessed was erroneous, it shall correct the as-
33 sessment thereof by increasing or decreasing the amount
34 thereof, as it may think just, and shall enter judgment
35 accordingly. A copy of the judgment upon any such ap-
36 peal shall be certified in duplicate, and forwarded and
37 recorded as is herein provided with respect to the certifi-
38 cate 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-

- 2 **Operated Merchandise, Service and Amusement Devices,**
3 **and Vending Machines.**—Persons installing, maintaining
4 or operating coin-operated service, merchandise and
5 amusement devices or vending machines will be herein-
6 after referred to as vending machine operators.

- 7 The liability for the license to operate any type of coin-
8 operated service, merchandise, amusement devices or
9 vending machines shall be upon the owner of the machine.
10 The ownership shall be established by either a bill of
11 sale, paid invoice or a conditional sales contract which
12 has been recorded in the applicable county clerk's office.
13 The leasing of such a machine shall not be considered as
14 a transfer of ownership of the machine and where a
15 lessor-lessee relationship exists, the lessor shall be liable
16 for the applicable license and fees.

- 17 The annual license fee to keep or maintain a coin-
18 operated baggage or parcel checking machine or device
19 which is used for the storage of baggage or parcels of any
20 character, shall be fifty cents for each section of any such
21 device which is operated on the coin-in-the-slot principle;
22 the annual license fee to keep or maintain any coin-
23 operated toilet locker or device shall be fifty cents for
24 every such locker or device.

- 25 The annual license fee to keep or maintain any coin-
26 operated penny machine or device, which is not a gam-

27 bling device under any law of this state, shall be based
28 upon the total number of machines maintained in this
29 state by each operator with the tax to be assessed on a
30 graduated scale according to such number of the machines
31 so maintained.

32 The license fee for machines operated by pennies will
33 be as follows: (1) For one machine, or more, but not
34 exceeding four machines, two dollars per machine; (2)
35 for five machines, or more, but not exceeding fifty ma-
36 chines, twenty-five dollars per operator; (3) for fifty-one
37 machines, or more, but not exceeding one hundred fifty
38 machines, seventy-five dollars per operator; (4) one hun-
39 dred fifty-one machines, or more, but not exceeding three
40 hundred machines, two hundred dollars per operator; (5)
41 for machines in excess of three hundred, six hundred
42 dollars per operator.

43 The annual license fee to keep or maintain any vending
44 device operated by other than pennies, which is not a
45 gambling device under any law of this state, shall be based
46 upon the total number of machines maintained in this state
47 by each operator with the tax to be assessed on a gradu-
48 ated scale according to such number of the machines so
49 maintained.

50 The license fees for machines operated by other than pen-
51 nies will be as follows: (1) For one machine, or more, but
52 not exceeding nine machines, five dollars and fifty cents
53 per machine; (2) for ten machines, or more, but not ex-
54 ceeding forty-nine machines, one hundred seventy-five
55 dollars per operator; (3) for fifty machines, or more, but
56 not exceeding one hundred machines, four hundred fifty
57 dollars per operator; (4) for one hundred one machines,
58 or more, but not exceeding two hundred machines, eight
59 hundred dollars per operator; (5) for two hundred one
60 machines, or more, but not exceeding three hundred ma-
61 chines, one thousand two hundred dollars per operator;
62 (6) for three hundred one machines, or more, but not
63 exceeding four hundred fifty machines, one thousand five
64 hundred dollars per operator; (7) for in excess of four
65 hundred fifty machines, one thousand eight hundred dol-
66 lars per operator. Where an operator is operating both

67 penny and other than penny machines, he shall secure
68 licenses for both types of machines in the appropriate
69 brackets.

70 The term "machine" when used in this section shall not
71 be deemed to mean or include any pay telephone or post-
72 age stamp vending machine operated on the coin-in-the-
73 slot principle.

74 Application for the license required herein shall contain
75 the number of machines that are to be kept or maintained
76 on location by the licensee within this state during the
77 ensuing license year. Each vending machine operator shall
78 make application to the tax commissioner on forms pro-
79 vided by him, and the applicant shall furnish such in-
80 formation as may be required by the tax commissioner
81 including the total number of vending machines on loca-
82 tion in this state and the applicant shall be subject to the
83 penalties of false swearing for any untrue statements con-
84 tained in his application.

85 The annual license fee as determined by the application
86 and the above-listed brackets, shall be paid prior to the
87 first day of July of each year: *Provided*, That each op-
88 erator will submit to the tax commissioner, not later than
89 the thirty-first day of May and not later than the thirtieth
90 day of November of each year, a certified statement as to
91 the total number of machines he has on location in this
92 state: *Provided, however*, That these semiannual re-
93 ports shall be used to determine the license fee due for
94 the immediate succeeding six-month period from the first
95 day of July through the thirty-first day of December or
96 from the first day of January through the thirtieth day
97 of June. In the event the certified statement should show
98 that the operator has increased the number of his ma-
99 chines on location to such an extent that he would then
100 be required to secure a license for the next higher bracket,
101 then the licensee shall remit the difference between the
102 two brackets; and likewise, if the certified statement
103 should show that the licensee has reduced the number of
104 machines on location to the extent that he would be li-
105 censed in the next lower bracket, then a refund for the

106 difference between the two brackets would be issued to
107 the licensee.

108 In addition to the semiannual certified statements from
109 each operator, it is required that all manufacturers, job-
110 bers, distributors or other sources of obtaining vending
111 machines will be required to file monthly with the tax
112 commissioner copies of all invoices or other evidence in
113 writing, covering all shipments and deliveries of vending
114 machines into this state and showing the name of con-
115 signee and his address, date, number of machines shipped
116 and delivered to any operator in this state.

117 One license certificate shall be issued to each person
118 keeping or maintaining such machines or devices as afore-
119 said, but the tax commissioner shall issue to any such
120 licensee a decalcomania stamp for each such machine or
121 device, which decalcomania stamp shall be securely at-
122 tached to each such machine or device properly protected
123 and plainly visible. Every such machine or device shall
124 also bear so as to be plainly visible the name and address
125 of the person keeping or maintaining such machine or
126 device. Each license certificate when issued by the state
127 tax commissioner shall be accompanied by a decalcomania
128 as described above to the exact number the licensee has
129 applied for and each licensee shall pay to the state tax
130 commissioner in addition to his proper licensing fee the
131 sum of five dollars which sum shall be his full payment
132 for the decalcomania issued the licensee. These decal-
133 comania shall be attached to each machine on location
134 but may be transferable from machine to machine by the
135 licensee. The state tax commissioner shall have clearly
136 visible on each decalcomania the tax period for which
137 said decalcomania are issued.

138 If any licensee shall need additional decalcomania dur-
139 ing any one tax period he shall be issued such decal-
140 comania by the state tax commissioner with no additional
141 cost unless the number requested shall put such licensee
142 in a new licensing class and then said licensee shall
143 pay an additional five dollars for the additional decal-
144 comania.

145 The proprietor or owner of the business conducted in

146 the place where any such machine is kept or maintained
147 is charged with the responsibility of satisfying himself
148 that such decalcomania stamp or other evidence of owner-
149 ship and license is so attached before permitting its in-
150 stallation in his place of business and in the event any
151 machine is found on location without such decalcomania
152 stamp then the machine will be considered to be un-
153 licensed and the tax commissioner, or his agents, may
154 take such machine or device into possession and deliver
155 the same to the sheriff of the county in which such ma-
156 chine or device is found, or the sheriff of such county on
157 his own initiative or upon order or direction of the tax
158 commissioner, or his agents, may take such machine or
159 device into possession, and in either event, said machine
160 or device shall be impounded until such license fee is paid;
161 in the event the license fee and penalties are not paid to
162 the sheriff within ten days after the date of such impound-
163 ing, then the sheriff shall sell such machine or device
164 in the manner provided by law for the sale of personal
165 property for taxes, within the time specified by the tax
166 commissioner which shall not be less than twenty days
167 nor more than sixty days from the date of the order or
168 direction of the tax commissioner; and from the proceeds
169 thereof shall discharge and pay the license fee due on
170 such machine or device and his costs, including costs of
171 impounding, storage, penalties and other fees due the
172 state and the sheriff; and the balance, if any there be,
173 shall be forfeited to the state.

174 No license fee shall be required of businesses keeping
175 or maintaining such machines or devices owned by them
176 in their own licensed store: *Provided, however,* That
177 where the principal business is the operation of the ma-
178 chines or devices, then licenses shall be obtained on the
179 graduated scale as outlined above: *And provided further,*
180 That any person exempt from such license shall obtain
181 from the tax commissioner a license receipt, decalcomania
182 stamp, or other evidence of exemption, at a cost not to
183 exceed fifty cents each, showing that he is so exempt,
184 which shall be effective for the period as provided for
185 annual licenses in this article; but to obtain such license
186 receipt or other evidence of exemption, he shall make an

187 affidavit and produce such other evidence as to the fact
188 entitling him to such exemption as the tax commissioner,
189 in his discretion, may require, which shall be on a form
190 to be prescribed by the tax commissioner.

191 Every person subject to the provisions of this section
192 shall make such reports and keep such records as may be
193 required by the rules and regulations of the commissioner
194 and shall permit him to inspect such records and the
195 stocks and supplies on hand at any time. Every such
196 person shall be required to make his records available for
197 inspection by the tax commissioner or his authorized
198 representative.

199 The commissioner is hereby authorized to make and
200 promulgate such reasonable rules and regulations as may
201 be necessary to administer the provisions of this section
202 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 insurance 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 Corporations; 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-

5 ter eleven, acts of the Legislature, regular session, one
6 thousand nine hundred fifty-six, requiring the payment
7 of an additional license fee by domestic and foreign in-
8 surance corporations and other organizations licensed by
9 the insurance commissioner, is hereby repealed.

CHAPTER 181

(Senate Bill No. 177—By Mr. McCourt)

[Passed February 21, 1963; in effect from passage. Approved by the Governor.]

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
2 taxpayer to the circuit court of the county in which the
3 activity taxed was engaged, or in which the taxpayer
4 resides, or in the circuit court of Kanawha county, within
5 thirty days after he shall have received notice from the
6 tax commissioner of his determination as provided in sec-
7 tion eight-c.

8 The appeal shall be taken by written notice to the tax
9 commissioner and served as an original notice. When said
10 notice is so served it shall, with the return thereon, be
11 filed in the office of the clerk of the circuit court and dock-
12 eted as other cases with the taxpayer as plaintiff and the
13 tax commissioner as defendant. Before the appeal is heard,
14 the plaintiff shall file with such clerk a bond for the use
15 of the defendant, with sureties approved by said clerk,
16 the penalty of the bond to be not less than the total amount
17 of the tax and penalties appealed from, and conditioned
18 that the plaintiff shall perform the orders of the court;
19 except that in lieu of said bond, the tax commissioner
20 may upon a proper showing find and certify to said clerk
21 that the properties of the plaintiff subject to the liens
22 imposed by sections ten and ten-a of this article are ade-
23 quate to secure the performance of the orders of the court.

24 The court shall hear the appeal and determine anew all
25 questions submitted to it on appeal from the determina-
26 tion of the tax commissioner. In such appeal a certified
27 copy of the tax commissioner's assessment shall be ad-
28 missible and shall constitute prima facie evidence of the
29 tax due under the provisions of this article. The court
30 shall render its decree thereon and a certified copy of
31 said decree shall be filed by the clerk of said court with
32 the tax commissioner who shall then correct the assess-
33 ment in accordance with said decree. An appeal may be
34 taken by the taxpayer or the tax commissioner to the
35 supreme court of appeals of this state.

Sec. 10. Lien of Tax; Penalty.—The amount of the tax
2 imposed by this article shall be a debt due the state. It
3 shall be a personal obligation of the taxpayer and shall
4 be a lien upon all property used in the business or occu-
5 pation upon which such tax is imposed, and said lien shall
6 have priority over all other liens and obligations except
7 those due the United States. A penalty of one per cent
8 per month shall be added to the amount of tax for each
9 month of delinquency and shall be secured by said lien:
10 *Provided*, That if such delinquency is due to reasonable
11 cause the tax commissioner may waive or remit in whole
12 or in part said penalties.

CHAPTER 182

(Senate Bill No. 178—By Mr. McCourt)

[Passed February 21, 1963; in effect from passage. Approved by the Governor.]

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:

Article 13. Business and Occupation Tax.

Section

8. Appeal.

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;

19 except that in lieu of said bond, the tax commissioner may
20 upon a proper showing find and certify to said clerk that
21 the properties of the plaintiff subject to the liens imposed
22 by sections twelve and fourteen of this article are ade-
23 quate to secure the performance of the orders of the court.
24 The court shall hear the appeal and determine anew
25 all questions submitted to it on appeal from the deter-
26 mination of the tax commissioner. In such appeal a cer-
27 tified copy of the tax commissioner's assessment shall be
28 admissible and shall constitute prima facie evidence of
29 the tax due under the provisions of this article. The court
30 shall render its decree thereon and a certified copy of
31 said decree shall be filed by the clerk of said court with
32 the tax commissioner who shall then correct the assess-
33 ment in accordance with said decree. An appeal may be
34 taken by the taxpayer or the tax commissioner to the
35 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.

Section 16. Penalty for Violation of Article; Concurrent

2 **Jurisdiction of Justices of the Peace.**—Any person who

3 violates any of the provisions of this article shall be guilty
4 of a misdemeanor, and, upon conviction thereof, shall be
5 fined not less than twenty-five dollars nor more than one
6 hundred dollars and each and every day that such viola-
7 tion shall continue shall constitute a separate and distinct
8 offense. Justices of the peace shall have concurrent juris-
9 diction with any other courts having jurisdiction for the
10 trial of all misdemeanors arising under this section.

CHAPTER 184

(Senate Bill No. 243—By Mr. McCourt)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

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.
14. Enforcement; assistance of department of public safety.

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

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
15 tax in such form as may be required by the commissioner
16 shall be furnished by each motor carrier claiming the
17 credit herein allowed. When the amount of the credit
18 herein provided exceeds the amount of the tax for which
19 the carrier is liable for the same quarter, such excess
20 shall, under regulations of the commissioner, be allowed
21 as a credit on the tax for which the carrier would be oth-
22 erwise liable for any of the four succeeding quarters. The
23 commissioner is, under regulations to be established by
24 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
28 to do so and the commissioner is satisfied that said motor
29 carrier is entitled to said refund and that said motor car-
30 rier has not applied for a refund of the tax imposed by
31 article fourteen of this chapter: *Provided, however*, That
32 such refund shall not be made until after audit of the
33 applicant's records by the commissioner or upon the post-
34 ing of a surety company bond by the applicant in an
35 amount fixed by the commissioner conditioned to pay all
36 road taxes due hereunder: *Provided further*, That said
37 credit or refund shall in no case be allowed to reduce the
38 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-
41 sioner shall refuse to allow a refund or credit in the
42 amount claimed by the applicant, the applicant may re-
43 quest a hearing on said application. Such hearing shall
44 be held within a reasonable time after such request is
45 made and after notice to the applicant of not less than ten
46 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-

51 correct. After such hearing the tax commissioner shall,
52 within a reasonable time, give notice in writing of the de-
53 cision. Unless an appeal is taken within thirty days from
54 the service of this notice, the tax commissioner's decision
55 shall be final.

56 An appeal may be taken by the taxpayer to the circuit
57 court of Kanawha county, within thirty days after he
58 shall have received notice from the tax commissioner of
59 his determination as provided in this section.

60 The court shall hear the appeal, and determine anew
61 all questions submitted to it on appeal from the determi-
62 nation of the tax commissioner. The court shall render
63 its decree thereon and a certified copy of said decree shall
64 be filed by the clerk of said court with the tax commis-
65 sioner who shall then correct his decision accordingly and
66 allow the credit or refund as decreed by said court.

67 An appeal may be taken by the taxpayer or the tax
68 commissioner to the supreme court of appeals of this state.

**Sec. 14. Enforcement; Assistance of Department of Pub-
2 lic Safety.**—The tax commissioner, or any employee of
3 the gasoline tax division so designated by him, shall have
4 the same powers and authority to enforce the provisions
5 of this article as are available to him for the enforcement
6 of article fourteen of this chapter.

7 The state department of public safety is hereby author-
8 ized and may be requested to assist in the enforcement of
9 the provisions of this article as directed by the tax com-
10 missioner.

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.

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

19 fide charitable organizations who make no charge what-
20 ever for the services they render or to persons engaged
21 in this state in the business of contracting, manufacturing,
22 transportation, transmission, communication, or in the
23 production of natural resources: *Provided, however,* That
24 the exemption herein granted shall apply only to serv-
25 ices, machinery, supplies and materials directly used or
26 consumed in the businesses or organizations named
27 above;

28 (7) An isolated transaction in which any tangible per-
29 sonal property is sold, transferred, offered for sale, or
30 delivered by the owner thereof or by his representative
31 for the owner's account, such sale, transfer, offer for sale
32 or delivery not being made in the ordinary course of
33 repeated and successive transactions of like character by
34 such owner or on his account by such representative;

35 (8) Sales of tangible personal property and services
36 rendered for use or consumption in connection with the
37 conduct of the business of selling tangible personal prop-
38 erty to consumers or dispensing a service subject to tax
39 under this article and sales of tangible personal property
40 and services rendered for use or consumption in connec-
41 tion with the commercial production of an agricultural
42 product the ultimate sale of which will be subject to the
43 tax imposed by this article: *Provided, however,* That
44 sales of tangible personal property and services to be
45 used or consumed in the construction of or permanent
46 improvement of real property shall not be exempt;

47 (9) Sales of tangible personal property for the purpose
48 of resale in the form of tangible personal property;

49 (10) Sales of property or services to nationally char-
50 tered fraternal or social organizations for the sole purpose
51 of free distribution in public welfare or relief work;

52 (11) Sales and services, fire fighting, or station house
53 equipment, including construction and automotive; made
54 to any volunteer fire department organized and incorpo-
55 rated under the laws of the state of West Virginia;

56 (12) Sales of newspapers when delivered to consumers
57 by route carriers.

CHAPTER 187

(Senate Bill No. 5—By Mr. McCourt)

[Passed February 12, 1963; in effect July 1, 1963. Approved by the Governor.]

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 sections 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.
9. Wholesale dealers.
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.
24. Amounts allowed for administration.
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:

- 2 (a) "Person" shall mean and include any individual,
- 3 firm, association, company, partnership, corporation, joint
- 4 stock company, club, agency, syndicate, municipal cor-
- 5 poration or other political subdivision of this state, trust,
- 6 receiver, trustee, fiduciary or conservator.
- 7 (b) "Wholesaler" shall include any person who: (1)
- 8 Purchases cigarettes directly from the manufacturer; or
- 9 (2) purchases cigarettes from any other person who
- 10 purchases from the manufacturer and who acquires such
- 11 cigarettes solely for the purpose of bona fide resale to
- 12 retail dealers or to other persons for the purposes of re-
- 13 sale only; or (3) services retail outlets by the mainte-
- 14 nance of an established place of business for the pur-
- 15 chase of cigarettes, including but not limited to, the
- 16 maintenance of warehousing facilities for the storage and
- 17 distribution of cigarettes. Nothing contained herein
- 18 shall prevent a person from qualifying in different
- 19 capacities as both a "wholesaler" and "retailer" under the
- 20 applicable provisions of this article.

21 (c) "Retail dealer" includes every person in this state,
22 other than a wholesale dealer, engaged in the business
23 of selling cigarettes irrespective of quantity or amount or
24 number of sales thereof.

25 (d) "Vending machine operator" is any person oper-
26 ating one or more cigarette vending machines.

27 (e) "Sale" includes exchange, barter, gift, offer for
28 sale or distribution.

29 (f) "Cigarette" includes any roll for smoking made
30 wholly or in any part of tobacco irrespective of size or
31 shape and whether or not such tobacco is flavored, adul-
32 terated or mixed with any other ingredient, the wrapper
33 or cover of which is made of paper or any other material
34 excepting tobacco.

35 (g) "Package" means the individual package, box or
36 other container in or from which retail sales of cigarettes
37 are normally made or intended to be made.

38 (h) "Stamp" shall mean any cigarette stamps required
39 under this article, or any meter or ink impression author-
40 ized by the tax commissioner to serve as such stamp.

41 (i) "Commissioner" means the state tax commissioner
42 and where the meaning of the context requires, all dep-
43 uties, and employees duly authorized by him.

Sec. 3. Money Received Paid into General Revenue

2 **Fund.**—All moneys received by the state tax commissioner
3 from the excise tax on sales of cigarettes under this article,
4 less deductions therefrom allowed for the cost of admin-
5 istration and operation, and refunds provided in section
6 eleven hereunder, shall be paid into the general revenue
7 fund of the state and expended therefrom in satisfaction
8 of appropriations.

Sec. 4. How Tax Paid; Stamps; How Affixed and Can-

2 **celled; Violations.**—The tax hereby imposed shall be paid
3 by the purchase of stamps as provided in this article. A
4 stamp or stamps shall be affixed to or printed on each
5 package of an aggregate denomination of not less than
6 the amount of the tax upon the contents thereof. The
7 stamp or stamps, so affixed, shall be prima facie evidence
8 of payment of the tax imposed by this article. Except as

9 may be otherwise provided in the rules and regulations
10 prescribed by the commissioner under authority of this
11 article, and unless such stamps have been previously af-
12 fixed, they shall be so affixed by each wholesale dealer in
13 this state, and cancelled, by writing across the face thereof
14 the name of such wholesale dealer and the date of cancel-
15 lation, or cancelled by methods prescribed by the tax
16 commissioner, prior to the delivery of any cigarettes to
17 any retail dealer in this state.

18 Each retail dealer, authorized to deal in unstamped cig-
19 arettes, who receives, brings or causes to be brought into
20 this state unstamped cigarettes, shall immediately upon
21 receipt of such unstamped cigarettes at his place of busi-
22 ness, so affix such stamp to each package and shall cancel
23 the same by writing or stamping his name and the date
24 of cancellation across the face thereof, or as otherwise di-
25 rected by regulation of the commissioner, or shall immedi-
26 ately mark in ink on each unopened box, carton or
27 other container of such cigarettes the word "Received"
28 and the month, day and hour of such receipt and shall af-
29 fix his signature thereto or as otherwise directed by reg-
30 ulation of the commissioner. He shall in any event open
31 such box, carton or other container and so affix such
32 stamps to each package therein, and cancel the same in
33 the manner herein designated, within twenty-four hours
34 after such receipt and prior to the sale of such cigarettes
35 to any other person.

36 Whenever any cigarettes are found in the place of busi-
37 ness of such retail dealer without the stamps so affixed
38 and cancelled or not so marked as having been received
39 within the preceding twenty-four hours, the prima facie
40 presumption shall arise that such cigarettes are kept
41 therein in violation of the provisions of this article.

Sec. 5. Ultimate Liability for Tax.—Any person who
2 advances or pays the tax imposed by this article through
3 the purchase of such stamps shall add the amount of the
4 tax so advanced or paid to the price of the cigarettes when
5 sold by such person, it being intended that the ultimate
6 incidence of and the liability for the tax shall be upon the
7 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

5 considered as a retail dealer. Cigarette vending machines
6 are licensed under the general license law.

Sec. 9. Wholesale Dealers.—No wholesale dealer shall
2 sell cigarettes to any person in this state other than to a
3 licensed wholesaler or retail dealer, and no person in this
4 state other than a licensed wholesale dealer shall sell
5 cigarettes to a licensed retail dealer.

Sec. 10. Power of Tax Commissioner; Rules and Regu-
2 **lations; Records by Wholesalers and Retailers; Metering**
3 **in Lieu of Stamping; Agents for Metering; Levy to Collect**
4 **Tax.**—The tax commissioner shall have power and author-
5 ity to enforce and administer the provisions of this ar-
6 ticle. The tax commissioner shall have authority to pro-
7 mulgate in accordance with the provisions of this article
8 such rules and regulations as he may deem necessary to
9 carry out its provisions, and may adopt different detailed
10 regulations applicable to diverse methods and conditions
11 of sale of cigarettes in this state, prescribing in each class
12 of cases upon whom, as between the wholesale dealer and
13 the retail dealer, the primary duty of affixing stamps shall
14 rest and the manner in which the stamps are to be af-
15 fixed. Each licensed dealer shall be furnished a copy of
16 such regulations upon request. Any such rule or regula-
17 tion so furnished, excusing a wholesale dealer from affix-
18 ing stamps under the circumstances of the particular case,
19 shall be a defense in the prosecution of such dealer for
20 violation of section seventeen of this article.

21 All books, papers, invoices and records of any wholesale
22 or retail dealer in this state, whether or not required un-
23 der the provisions of this article to be kept by him, show-
24 ing his sales, receipts and purchases of cigarettes, shall at
25 all times, during the usual business hours of the day, be
26 open for the inspection of the tax commissioner, or his
27 authorized agent, for such purposes; and the tax commis-
28 sioner or a deputy shall have power to investigate and
29 examine the stock of cigarettes in and upon the premises
30 where the same are placed, stored, or sold, for the purpose
31 of determining whether or not the provisions of this ar-
32 ticle are being obeyed.

33 The tax commissioner, if he shall determine that it is

34 practicable to stamp packages of cigarettes by impression
35 by means of a metering device, shall provide that such
36 metering device and its impression may be used in lieu of
37 the stamps otherwise required by law. The tax commis-
38 sioner may authorize any wholesale or retail dealer pur-
39 chasing unstamped cigarettes and holding the licenses
40 herein required, to use any metering device approved by
41 the commissioner, such device to be sealed by the com-
42 missioner or a deputy, or agent, authorized by the com-
43 missioner, before being used, and which device shall be
44 used only in accordance with the regulations prescribed
45 by the commissioner.

46 Any wholesale or retail dealer authorized by the tax
47 commissioner to affix stamps to packages of cigarettes by
48 means of a metering device shall file with the tax com-
49 missioner a bond in such amount as the tax commissioner
50 may designate, conditioned upon the payment of the tax
51 upon the cigarettes so stamped.

52 Wholesale and retail dealers licensed to use said device
53 shall make a monthly return to the commissioner and re-
54 mit monthly the amounts of tax due the state: *Provided,*
55 *however,* That a wholesale or retail dealer may elect to
56 pay the tax in advance where a metering device is used,
57 in which event such dealer shall deliver the metering de-
58 vice to the commissioner, or his agent authorized for the
59 purpose, who shall seal the meter in accordance with the
60 prepayment so made. The commissioner may designate
61 and authorize any bank or trust company with banking
62 offices in any county of this state, to act as his deputy or
63 agent for the purpose of performing his duties with re-
64 spect to sealing of metering devices or the selling of
65 stamps in such county, and may require bond, and the
66 action of any such deputy by its duly authorized officer
67 or employees shall be as valid as though performed by
68 the commissioner.

69 The commissioner shall have power to make an assess-
70 ment, against any retail or wholesale dealer who fails to
71 return or makes a false or erroneous return. The commis-
72 sioner may collect such assessment by levy, action at law,
73 distraint or any other method of enforcing taxes which

74 may be provided by law and shall have the right to file
75 liens therefor in any county.

Sec. 11. Form of Stamps; Custody; Discounts; Security
2 **for Payments.**—The commissioner shall design and pro-
3 cure stamps to be used as herein provided for, affixed
4 and attached to containers, packages or receptacle of
5 whatever kind that may be used for containing cigarettes.
6 In the preparing of said stamp or stamps the same shall
7 have printed or impressed thereon the words "State of
8 West Virginia—Cigarette Tax Stamp" and such other
9 words and figures as he may deem proper to show the
10 value and denomination of the stamp or stamps. He
11 shall also prescribe the form of impression to be placed
12 upon any package or container of cigarettes by any
13 metering device. The state tax commissioner shall col-
14 lect the taxes provided for by this article.

15 Such stamps shall be kept in the custody of the state
16 tax commissioner or such deputies as he may designate
17 to sell the same. Such stamps shall be sold and accounted
18 for at the face value thereof except that the tax com-
19 missioner may authorize sale thereof, or sell to wholesale
20 or retail dealers in this state, or to wholesalers outside
21 of this state such stamps at a discount of four per cent
22 of the face value of such stamps, the same to be allowed
23 as a commission for affixing and cancelling such stamps;
24 and excepting further that the tax commissioner may,
25 by like regulation so certified, authorize the delivery
26 of stamps to wholesale or retail dealers in this state, or
27 to wholesale dealers outside of this state on credit, allow-
28 ing the same discount as when sold for cash, if when the
29 purchaser shall file with the tax commissioner a bond
30 made payable to the state of West Virginia, in such
31 form and amount as the commissioner shall prescribe,
32 and with surety or sureties to the satisfaction of the
33 commissioner, conditioned as he may require, to guar-
34 antee payment within thirty days for stamps so de-
35 livered within such period of time and by making of
36 such reports and settlement as the commissioner may
37 require. The commissioner may, by further regulations,
38 provide for cancelling, renewing or increasing such bond

39 or for the substitution of the surety thereon. The com-
40 missioner shall redeem any unused or mutilated, but
41 identifiable stamps, that any licensed wholesale dealer
42 or retail dealer may present for redemption, on written
43 verified requests made by the purchaser, his administra-
44 tors, executors, successors, or assigns, and refund there-
45 for, ninety-five per cent of the face value of said stamps,
46 less any discounts allowed on the purchase of said stamps.
47 The commissioner shall pay on a like basis for stamps
48 destroyed by fire or flood upon presentation of proof of
49 such loss satisfactory to him. Such payments shall for
50 the purposes hereof be deemed to be refunds of taxes
51 improperly collected and shall be allowed and paid as
52 part of the cost of administration of this article as in
53 this article provided.

Sec. 12. Sales by Deputies; Fees; Reports of Deputies.

2 —The tax commissioner may appoint, subject to such
3 conditions as he shall deem to the best interests of the
4 state, any bank or trust company authorized to do busi-
5 ness in, and doing business in this state, as his deputy
6 for the purpose of selling such stamps, excepting that no
7 such deputy shall be thereby authorized to sell the same
8 at a discount or on credit, without prior written author-
9 ity by the tax commissioner and excepting, further, that
10 provisions hereof relating to sale of stamps shall not
11 prevent any bank or trust company from acting as the
12 commissioner's deputy for purposes of checking and seal-
13 ing meters under other provisions of this article. The
14 tax commissioner is hereby authorized to allow such
15 deputy, authorized to sell stamps hereunder, a fee of
16 one eighth of one per cent of the face value of all stamps
17 sold by such deputy and charge the same as a part of
18 the costs of administration of this article. The state tax
19 commissioner shall be responsible for the delivery of
20 stamps to any deputy so appointed, and may prescribe
21 such regulations and forms of receipts and reports as he
22 may deem necessary and advisable for the transaction of
23 the business of selling such stamps. Each such deputy
24 shall remit monthly, or oftener as requested, to the tax
25 commissioner all moneys arising from the sale of such

26 stamps by him, together with a report showing the names
27 of the purchasers and the number of each denomination
28 and the aggregate face value sold by each such deputy.
29 The tax commissioner may sell stamps at his office.

**Sec. 13. Possession of Unstamped Cigarettes; Failure to
2 Produce Invoices; Penalty.**—Whoever, being a retail
3 dealer in this state, has in his possession packages of
4 cigarettes not bearing the stamps herein required to be
5 affixed thereto, unless such packages shall be in un-
6 broken containers marked, pursuant to section four of
7 this article, as received within the preceding twenty-four
8 hours, or, whoever fails to produce on demand by the
9 commissioner invoices of all cigarettes purchased or re-
10 ceived by him within two years prior to such demand,
11 unless upon satisfactory proof it is shown that such
12 nonproduction is due to providential or other causes be-
13 yond his control, shall be guilty of a misdemeanor, and,
14 upon conviction thereof, shall be fined not less than
15 twenty-five dollars nor more than five hundred dollars,
16 or imprisoned in the county jail not more than ninety
17 days, or both, in the discretion of the court.

Sec. 14. False Records; Penalties.—Whoever makes any
2 false entry upon an invoice, package or container of
3 cigarettes required to be made under the provisions of
4 this article, or with intent to evade the tax imposed by
5 this article, presents any such false entry for the in-
6 spection of the commissioner, shall be guilty of a mis-
7 demeanor, and, upon conviction thereof, shall be fined not
8 less than twenty-five dollars nor more than five hundred
9 dollars, or imprisoned in the county jail not more than
10 ninety days, or both, in the discretion of the court.

Sec. 15. Preventing Inspections; Penalties.—Whoever
2 prevents or hinders the commissioner or his deputy from
3 making a full inspection of any place where cigarettes
4 subject to the tax imposed by this state are sold or
5 stored, or prevents or hinders the full inspection of in-
6 voices, books, records, or papers required to be kept
7 under the provisions of this article, shall be guilty of a
8 misdemeanor, and, upon conviction thereof, shall be fined
9 not less than twenty-five dollars nor more than five

10 hundred dollars, or imprisoned in the county jail not
11 more than ninety days, or both, in the discretion of the
12 court.

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.

10 If a person, firm or corporation, who is not a regularly
11 licensed dealer in tobacco products, as provided by this
12 article, shall have in his possession within the state more
13 than ten packages of cigarettes not bearing cigarette tax
14 paid indicia of this state, such possession shall be presumed to be for the purpose of evading the payment of
15 the taxes due thereon and shall be subject to the penalties
16 as outlined in this section.

Sec. 17. Altering or Counterfeiting Stamps; Penalties.
2 —Whoever falsely or fraudulently makes, forges, alters,
3 or counterfeits any stamp prescribed by the commissioner
4 under the provisions of this article, or causes or procures
5 to be falsely or fraudulently made, forged, altered or
6 counterfeited any such stamps or knowingly or wilfully
7 utters, publishes, passes or tenders as true, any such
8 false, altered, forged or counterfeited stamps, or uses
9 more than once any stamp provided for and required by
10 this article for the purpose of evading the tax hereby
11 imposed shall be guilty of a felony, and, upon conviction
12 thereof, shall be imprisoned in the penitentiary for a
13 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

7 dollars nor more than one hundred dollars, or imprisoned
8 in the county jail not more than ninety days, or both, in
9 the discretion of the court.

Sec. 19. Jurisdiction of the Justices of the Peace.—

2 Justices of the peace shall have concurrent jurisdiction
3 with any other courts having jurisdiction for the trial
4 of all misdemeanors arising under this article.

Sec. 20. Seizure and Sale of Cigarettes by Commis-

2 sioner; Forfeiture; Collection of Tax.—Whenever the com-
3 missioner or any of his deputies or employees authorized
4 by him for the purpose shall discover any cigarettes,
5 subject to tax as provided by this article and upon which
6 the tax has not been paid as herein required, the commis-
7 sioner, or such deputy or employee is hereby authorized
8 and empowered forthwith to seize and take possession
9 of such cigarettes, which shall thereupon be deemed to be
10 forfeited to the state and the commissioner may within
11 a reasonable time thereafter by a notice posted upon the
12 premises where such seizure was made, or by publication
13 in some newspaper having circulation in the county
14 wherein such seizure is made, at least five days before
15 the day of sale, sell such forfeited cigarettes, and from
16 the proceeds of such sale shall collect the tax due thereon
17 together with a penalty of fifty per centum thereof and
18 all expenses and costs incurred in such proceedings, and
19 deduct and pay any other sums due the tax commissioner
20 by the person in possession of said forfeited cigarettes,
21 and pay the balance, if any, to such possessor: *Provided,*
22 *however,* That such seizure and sale shall not be deemed
23 to relieve any person from fine or imprisonment provided
24 herein for violation of any provision of this article.
25 Such sale may be made in any county the tax commis-
26 sioner deems most convenient and economical. All taxes
27 and penalties collected under the provisions of this sec-
28 tion shall be paid into the state treasury and treated as
29 other taxes collected under this article.

Sec. 21. Issuance of Warrant to Sheriff by Commis-

2 sioner; Priority of Tax.—In addition to all other remedies
3 for the collection of any taxes or fees due under the
4 provisions of law, the tax commissioner may issue a

5 warrant directed to the sheriff of any county of the
6 state commanding said sheriff to levy upon and sell the
7 goods and chattels of such dealer, without exemption,
8 found within his jurisdiction, for the payment of the
9 amount of such delinquency with the added penalties
10 and interest and the cost of executing the warrant and
11 to return such warrant to the tax commissioner and to pay
12 him the money collected by virtue thereof within the
13 time to be therein specified which shall not be less than
14 twenty nor more than sixty days from the date of the
15 warrant. The sheriff to whom any such warrant shall
16 be directed shall proceed upon the same in all respects
17 and with like effect and in the same manner as prescribed
18 by law in respect to executions issued against goods and
19 chattels upon judgments by a court of record, and shall be
20 entitled to the same fees for his services in executing the
21 warrant to be collected in the same manner.

22 The claim arising by reason of delinquent cigarette
23 taxes shall be a preferred claim against all of the assets of
24 the dealer, real and personal, with priority over all taxes
25 except real property taxes and other recorded state tax
26 claims docketed according to law.

Sec. 22. Revocation or Suspension of License; Power of
2 **Commissioners.**—The commissioner shall have the right
3 to revoke or suspend any license issued under the pro-
4 visions of this article and any tobacco license issued under
5 article twelve of this chapter for violation by the licensee
6 of the provisions of this article, or of the provisions of
7 article eighteen of this chapter, or of the provisions of any
8 other statute regulating the business of a wholesale dealer
9 in cigarettes or of a retail dealer in cigarettes.

Sec. 23. Same; Notice and Hearing; Subpoena of Wit-
2 **nesses; Appeals.**—No such revocation or suspension shall
3 be made by the commissioner unless and until a hearing
4 shall have been held after ten days' notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reason for such proposed action, and which
8 shall be served upon the licensee as other notices or by
9 registered mail to the licensee at his last known address;

10 at the time and place designated in the notice the licensee
11 shall have the right to appear and produce evidence in
12 his behalf and to be represented by counsel. The com-
13 missioner shall have authority to subpoena witnesses,
14 whose fees shall be the same as those in similar hearings
15 in the courts and which shall be treated as part of the
16 expenses of administration and enforcement.

17 The hearing shall be conducted by the commissioner or
18 by an examiner designated by him, and shall be held in
19 the commissioner's office or at such other place upon
20 which the parties may agree. The commissioner's de-
21 cision shall be rendered within thirty days after the
22 hearing.

23 If at the request of the licensee, or on his motion, the
24 hearing shall be continued and shall not take place on the
25 day fixed by the commissioner, then such licensee's license
26 shall be suspended until the decision of the commis-
27 sioner.

28 In the event of revocation or suspension of such license,
29 the licensee shall not be permitted to exercise such
30 license pending an appeal as provided in this article.

31 The action of the commissioner in revoking or sus-
32 pending a license shall be subject to review upon certio-
33 rari by the circuit court of Kanawha county or by the
34 circuit court of the county in which the licensee resides,
35 when such licensee shall be aggrieved by such revoca-
36 tion or suspension. Petition for review upon certiorari
37 shall be filed with such court within thirty days from the
38 date of revocation or suspension by the commissioner,
39 and the granting of certiorari shall be within the sound
40 discretion of the court. The licensee shall pay the costs
41 and fees incident to transcribing, certifying and trans-
42 mitting the records to the circuit court.

43 If aggrieved by the final order of the circuit court,
44 either the commissioner or the licensee may file a petition
45 in the supreme court of appeals of West Virginia for a
46 writ of error, but such petition shall be filed within thirty
47 days from the date of such final order of the circuit court.

Sec. 24. Amounts Allowed for Administration.—The
2 state tax commissioner, in the administration and enforce-

3 ment of this article, shall be allowed to expend out of the
4 taxes collected thereunder, or proceeds of sales of stamps,
5 a sum of not to exceed one and one-half per centum of the
6 tax collected or stamps sold, and in addition to said one
7 and one-half per centum all refunds allowed by this
8 article and discounts allowed and commissions paid to
9 deputies for the sales of stamps shall be charged as a
10 part of the expense of administration. The tax com-
11 missioner is authorized to draw his warrants for any
12 costs of administration authorized by this article upon
13 the proper officer of the state in the manner provided by
14 law.

**Sec. 25. No Cigarette Tax by Municipalities or Other
2 Governmental Subdivisions.**—No municipality or govern-
3 mental subdivision shall levy any excise or other tax re-
4 quiring cigarettes to be stamped, or requiring licenses for
5 sale thereof other than licenses which may be imposed as
6 a result of licenses provided for in article twelve of this
7 chapter.

Sec. 26. Expiration and Renewal of License.—The li-
2 cense required to be issued pursuant to this article shall
3 expire on the thirtieth day of June of each year. On or
4 before the first day of July of each year, every person
5 having a license shall apply to the state tax commis-
6 sioner for a renewal for the year next ensuing, unless
7 such person has ceased to operate or does not propose to
8 continue operation during the year next ensuing, in
9 which event he shall notify the state tax commissioner
10 that he has ceased operation or that he proposes to cease
11 operation prior to the first day of July of the year next
12 ensuing. All applications for renewal shall be made on
13 the forms prescribed by the state tax commissioner.

**Sec. 27. Transportation of Unstamped Cigarettes; Un-
2 stamped Cigarettes in Vending Machine; Forfeitures and
3 Sales of Cigarettes and Equipment.**—Every person who
4 shall transport cigarettes not stamped as required by this
5 article upon the public highways, waterways, roads or
6 streets of this state shall have in his actual possession in-
7 voices or delivery tickets for such cigarettes which shall
8 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

50 order payment of the amount of the claim out of the
51 proceeds of the sale.

52 If unstamped cigarettes be found in any vending
53 machine, both the cigarettes and the vending machine
54 shall be contraband goods and may be seized by the com-
55 missioner, his agents or employees or by any peace
56 officer of the state at the direction of the commissioner,
57 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
2 Schools.**—For the purpose of providing additional revenue
3 for the support of free schools, there is hereby levied and
4 imposed, on and after midnight of the last day of June,

5 one thousand nine hundred sixty-two, in addition to the
6 taxes imposed by sections two and two-a of this article,
7 an additional excise tax of two cents on each ten ciga-
8 rettes, or fractional part thereof, sold within this state.
9 Except as otherwise provided in this section, all pro-
10 visions of this article relating to the levy, imposition and
11 collection of the regular excise tax on the sale of ciga-
12 rettes shall be applicable to the levy, imposition and col-
13 lection of such additional tax. Notwithstanding other
14 provisions of this article to the contrary, all moneys re-
15 ceived from the additional tax imposed by this section,
16 less deductions allowed by this article for refunds and
17 for costs of administration and operation, shall be paid
18 by the tax commissioner into the general school fund,
19 to be used solely for the support of free schools.

Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Section

2. Levy of tax on cigarettes.

Section 2. Levy of Tax on Cigarettes.—For the pur-
2 pose of providing revenue for the general fund of this
3 state an excise tax is hereby levied, on and after mid-
4 night of the last day of June, one thousand nine hundred
5 sixty-two, on the use, consumption or storage of ciga-
6 rettes by consumers in this state at the rate of three
7 cents on each ten cigarettes or fractional part thereof:
8 *Provided, however,* That the tax shall not apply if the
9 tax levied in article seventeen of this chapter has been
10 paid.

CHAPTER 190

(Senate Bill No. 133—By Mr. McCourt)

[Passed February 25, 1963; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to

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:

Article 21. Personal Income Tax.

Section

4. Rate of tax; taxable years ending prior to January 1, 1963.
- 4-a. Same; taxable years beginning on or after January 1, 1963.
- 4-b. Effect of rate changes during a taxable year.
9. Meaning of terms.

Section 4. Rate of Tax; Taxable Years Ending Prior to

2 **January 1, 1963.**—(a) *Rate of Tax on Individuals.*—The
3 tax imposed by section three of this article on the West
4 Virginia taxable income of every individual (other than
5 a head of a household to whom subsection (b) applies)
6 and upon the West Virginia taxable income of every estate
7 and trust shall be equal to six per centum of the federal
8 income tax which would be imposed on an identical
9 amount of federal taxable income under subsection (a)
10 of section one of the United States Internal Revenue
11 Code of 1954.

11 (b) *Rate of Tax on Heads of Households.*—The tax
12 imposed by section three of this article on the West Vir-
13 ginia taxable income of every individual who is a head
14 of a household in the determination of his federal income
15 tax for the taxable year shall be equal to six per centum
16 of the federal income tax which would be imposed upon
17 an identical amount of federal taxable income under sub-
18 section (b) of section one of the United States Internal
19 Revenue Code of 1954.

20 (c) *Rates of Tax in Case of Joint Return or Return of*
21 *Surviving Spouse.*—In the case of a joint return of a hus-
22 band and wife, the tax imposed by section three of this
23 article on the West Virginia taxable income shall be equal
24 to six per centum of twice the tax which would be im-

25 posed upon half the identical amount of federal taxable
26 income under subsection (a) of section one of the United
27 States Internal Revenue Code of 1954. For purposes of
28 this subsection of this article and for the purposes of sec-
29 tion five of this article, the return of an individual who is
30 entitled to file his federal income tax return for the tax-
31 able year as a surviving spouse shall be treated as a joint
32 return of a husband and wife.

33 (d) *Effective Date.*—The provisions of this section shall
34 be given effect in determining the rate of tax imposed by
35 this article for all taxable years or portions thereof ending
36 prior to the first day of January, one thousand nine hun-
37 dred sixty-three.

Sec. 4-a. Same; Taxable Years Beginning on or After
2 **January 1, 1963.**—(a) *Rate of Tax on Individuals and*
3 *Heads of Households.*—The tax imposed by section three
4 of this article on the West Virginia taxable income of
5 every individual, every individual who is a head of a
6 household in the determination of his federal income tax
7 for the taxable year, and every estate and trust shall be
7-a determined in accordance with the following table:

8 If the West Virginia taxable
9 income is:

The tax is:

10	Not over \$2,000	1.2% of the taxable income
11	Over \$2,000 but not over \$4,000	\$24.00, plus 1.3% of excess over \$2,000
12	Over \$4,000 but not over \$6,000	\$50.00, plus 1.6% of excess over \$4,000
13	Over \$6,000 but not over \$8,000	\$82.00, plus 1.8% of excess over \$6,000
14	Over \$8,000 but not over \$10,000	\$118.00, plus 2.0% of excess over \$8,000
15	Over \$10,000 but not over \$12,000	\$158.00, plus 2.3% of excess over \$10,000
16	Over \$12,000 but not over \$14,000	\$204.00, plus 2.6% of excess over \$12,000
17	Over \$14,000 but not over \$16,000	\$256.00, plus 2.8% of excess over \$14,000
18	Over \$16,000 but not over \$18,000	\$312.00, plus 3.0% of excess over \$16,000
19	Over \$18,000 but not over \$20,000	\$372.00, plus 3.1% of excess over \$18,000
20	Over \$20,000 but not over \$22,000	\$434.00, plus 3.4% of excess over \$20,000
21	Over \$22,000 but not over \$26,000	\$502.00, plus 3.5% of excess over \$22,000
22	Over \$26,000 but not over \$32,000	\$642.00, plus 3.7% of excess over \$26,000
23	Over \$32,000 but not over \$38,000	\$864.00, plus 3.9% of excess over \$32,000
24	Over \$38,000 but not over \$44,000	\$1,098.00, plus 4.1% of excess over \$38,000
25	Over \$44,000 but not over \$50,000	\$1,344.00, plus 4.3% of excess over \$44,000
26	Over \$50,000 but not over \$60,000	\$1,602.00, plus 4.5% of excess over \$50,000
27	Over \$60,000 but not over \$70,000	\$2,052.00, plus 4.7% of excess over \$60,000
28	Over \$70,000 but not over \$80,000	\$2,522.00, plus 4.9% of excess over \$70,000
29	Over \$80,000 but not over \$90,000	\$3,012.00, plus 5.0% of excess over \$80,000

30	Over \$90,000 but not over \$100,000.....	\$3,512.00, plus 5.2% of excess over \$90,000
31	Over \$100,000 but not over \$150,000	\$4,032.00, plus 5.3% of excess over \$100,000
32	Over \$150,000 but not over \$200,000	\$6,682.00, plus 5.4% of excess over \$150,000
33	Over \$200,000	\$9,382.00, plus 5.5% of excess over \$200,000

34 (b) *Rate of Tax in Case of Joint Return or Return of*
 35 *Surviving Spouse.*—In the case of a joint return of a
 36 husband and wife and the return of an individual who is
 37 entitled to file his federal income tax return for the tax-
 38 able year as a surviving spouse, the tax imposed by sec-
 39 tion three of this article on the West Virginia taxable
 40 income shall be determined in accordance with the fol-
 41 lowing table:

42 If the West Virginia taxable
 43 income is:

The tax is:

44	Not over \$4,000	1.2% of the taxable income
45	Over \$4,000 but not over \$8,000	\$48.00, plus 1.3% of excess over \$4,000
46	Over \$8,000 but not over \$12,000	\$100.00, plus 1.6% of excess over \$8,000
47	Over \$12,000 but not over \$16,000	\$164.00, plus 1.8% of excess over \$12,000
48	Over \$16,000 but not over \$20,000	\$236.00, plus 2.0% of excess over \$16,000
49	Over \$20,000 but not over \$24,000	\$316.00, plus 2.3% of excess over \$20,000
50	Over \$24,000 but not over \$28,000	\$408.00, plus 2.6% of excess over \$24,000
51	Over \$28,000 but not over \$32,000	\$512.00, plus 2.8% of excess over \$28,000

52	Over \$32,000 but not over \$36,000.....	\$624.00, plus 3.0% of excess over \$32,000
53	Over \$36,000 but not over \$40,000.....	\$744.00, plus 3.1% of excess over \$36,000
54	Over \$40,000 but not over \$44,000.....	\$868.00, plus 3.4% of excess over \$40,000
55	Over \$44,000 but not over \$52,000.....	\$1,004.00, plus 3.5% of excess over \$44,000
56	Over \$52,000 but not over \$64,000.....	\$1,284.00, plus 3.7% of excess over \$52,000
57	Over \$64,000 but not over \$76,000.....	\$1,728.00, plus 3.9% of excess over \$64,000
58	Over \$76,000 but not over \$88,000.....	\$2,196.00, plus 4.1% of excess over \$76,000
59	Over \$88,000 but not over \$100,000.....	\$2,688.00, plus 4.3% of excess over \$88,000
60	Over \$100,000 but not over \$120,000.....	\$3,204.00, plus 4.5% of excess over \$100,000
61	Over \$120,000 but not over \$140,000.....	\$4,104.00, plus 4.7% of excess over \$120,000
62	Over \$140,000 but not over \$160,000.....	\$5,044.00, plus 4.9% of excess over \$140,000
63	Over \$160,000 but not over \$180,000.....	\$6,024.00, plus 5.0% of excess over \$160,000
64	Over \$180,000 but not over \$200,000.....	\$7,024.00, plus 5.2% of excess over \$180,000
65	Over \$200,000 but not over \$300,000.....	\$8,064.00, plus 5.3% of excess over \$200,000
66	Over \$300,000 but not over \$400,000.....	\$13,364.00, plus 5.4% of excess over \$300,000
67	Over \$400,000	\$18,764.00, plus 5.5% of excess over \$400,000

68 (c) *Effective Date.*—The provisions of this section
 69 shall be given effect in determining the rate of tax im-
 70 posed by this article for all taxable years or portions
 71 thereof beginning on or after the first day of January, one
 72 thousand nine hundred sixty-three.

Sec. 4-b. Effect of Rate Changes during a Taxable Year.

2 —If any rate of tax imposed by this article changes to be
3 come effective after the thirty-first day of December, one
4 thousand nine hundred sixty-two, and if the taxable year
5 includes the effective date of the change (unless that date
6 is the first day of the taxable year), then: (1) Tentative
7 taxes shall be computed by applying the rate for the peri-
8 od before the effective date of the change, and the rate
9 for the period on and after such date, to the taxable in-
10 come for the entire taxable year; and (2) the tax for such
11 taxable year shall be the sum of that proportion of each
12 tentative tax which the number of days in each period
13 bears to the number of days in the entire taxable year.

Sec. 9. Meaning of Terms.—Any term used in this
2 article shall have the same meaning as when used in a
3 comparable context in the laws of the United States re-
4 lating to income taxes, unless a different meaning is clear-
5 ly required. Any reference in this article to the laws of
6 the United States shall mean the provisions of the Inter-
7 nal Revenue Code of 1954, as amended, and such other
8 provisions of the laws of the United States as relate to
9 the determination of income for federal income tax pur-
10 poses. All amendments made to the laws of the United
11 States prior to the first day of January, one thousand nine
12 hundred sixty-three, shall be given effect in determining
13 the taxes imposed by this article for the tax period be-
14 ginning the first day of January, one thousand nine hun-
15 dred sixty-two, and thereafter, but no amendment to laws
16 of the United States made on or after the first day of
17 January, one thousand nine hundred sixty-three, shall be
18 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

3. Sale of Land for Taxes.

4. Sale of Lands for School Fund.

Article 3. Sale of Land for Taxes.

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.
24. Service of notice.
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;

- 2 **Receipt; List of Redemptions; Lien.**—After the sale, the
- 3 former owner of, or any other person who was entitled to
- 4 pay the taxes on, any real estate purchased by an indi-
- 5 vidual, may redeem at any time before April first of the
- 6 second year following the sale. In order to redeem, he must
- 7 pay to the purchaser, his heirs or assigns, the following
- 8 amounts: (1) The amount of purchase money paid to
- 9 the sheriff, with interest at the rate of twelve per cent
- 10 per annum from the date of sale. (2) All other taxes
- 11 thereon, which have since been paid by the purchaser, his
- 12 heirs or assigns, with interest at the rate of twelve per
- 13 cent per annum from the date of payment. (3) Such

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

55 clerk shall docket the claim on the judgment lien docket
56 in his office and properly index the same. Such lien may
57 be enforced as other judgment liens are enforced.

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.

17 If the person requesting preparation and service of the
18 notice is an assignee of the purchaser, he shall, at the time
19 of the request, file with the clerk a written assignment
20 to him of the purchaser's rights, executed, acknowledged
21 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:

5 To.....

6 You will take notice that....., the purchaser (or
7, the assignee, heir or devisee of, the
8 purchaser) of the following real estate,,
9 (here describe the real estate sold) located in,
10 (here name the city, town or village in which the real
11 estate is situated or, if not within a city, town or village,
12 give the district and a general description) which was re-
13 turned delinquent in the name of....., and was sold
14 by the Sheriff of.....County at the sale for delinquent
15 taxes made on the..... day of, 19....., has requested

16 that you be notified that a deed for such real estate will be
17 made to him on or after the first day of April, 19____, as
18 provided by law, unless before that day you redeem such
19 real estate. The amount you will have to pay to redeem
20 on the last day, March thirty-first, will be as follows:

21 Amount paid sheriff at sale, with interest to March
22 31st \$.....

23 Amount of taxes paid on the property, since the sale,
24 with interest to March 31st \$.....

25 Amount paid for survey and report \$.....

26 Amount paid for preparation of list of those to be served,
27 and for preparation and service of the notice \$.....

28 Total \$.....

29 You may redeem at any time before March thirty-first
30 by paying the above total less any unearned interest.

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

32

33 Clerk of the County Court of

34 County,

35 State of West Virginia

36 The clerk for his service in preparing the notice shall
37 receive a fee of fifty cents for the original and twenty-
38 five cents for each copy required.

Sec. 24. Service of Notice.—As soon as the clerk has
2 prepared the notice provided for in the preceding section,
3 he shall cause it to be served upon the following persons:
4 (1) The person in whose name the real estate was re-
5 turned delinquent and sold, or, in case of his death, his
6 heir or devisee and his personal representative, if such
7 there be; (2) any grantee of such person, or his heir or
8 devisee and his personal representative, if such there be,
9 if a conveyance of such real estate is recorded or filed for
10 record in the office of the clerk; (3) any person having a
11 lien upon such real estate disclosed by any paper recorded
12 in the clerk's office; and (4) any other person having such
13 an interest in the property as would entitle him to redeem,
14 if the existence of such interest appears of record.

15 The notice shall be personally served upon all such per-
16 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

4 had in fact been paid before the sale, his heirs and assigns,
5 or the person who paid the taxes, may, on or before
6 October thirty-first of the third year following the sale,
7 whether the sale was to an individual or to the state,
8 institute a civil action to set aside the sale and to enjoin
9 the proper official from taking any further steps in the
10 procedure provided in this and the following article, or,
11 if a deed has been delivered to the purchaser, to set aside
12 the deed. If such suit is instituted by or on behalf of the
13 owner of an undivided interest which was included in a
14 group assessment but which was separately redeemed as
15 provided in section eighteen, article two of this chapter,
16 the sale or the deed shall be set aside only insofar as it
17 affects his interest.

Sec. 31. Right to Set Aside Deed Improperly Obtained.

2 —Whenever the clerk of the county court has delivered
3 a deed to the purchaser after the time specified in section
4 twenty-five of this article, or, within that time, has de-
5 livered a deed to a purchaser who was not entitled thereto
6 either because of his failure to meet the requirements of
7 section twenty of this article or because the property con-
8 veyed had been redeemed, the owner of such property,
9 his heirs and assigns, or the person who redeemed the
10 property, may, on or before October thirty-first of the
11 third year following the sale, institute a civil action to
12 set aside the deed. No deed shall be set aside under the
13 provisions of this section, except in the case of redemp-
14 tion, until payment has been made or tendered to the
15 purchaser, or his heirs or assigns, of the amount which
16 would have been required for redemption, together with
17 any taxes which have been paid on the property since
18 delivery of the deed, with interest at the rate of twelve
19 per cent per annum.

Sec. 32. Right to Set Aside Deed When One Entitled to

2 **Notice Not Notified.**—If any person entitled to be notified
3 under the provisions of section twenty-four of this article
4 is not served with the notice as therein required, and does
5 not have actual knowledge that such notice has been
6 given to others in time to protect his interests by redeem-
7 ing the property, he, his heirs and assigns, may, on or
8 before October thirty-first of the third year following the

9 sale, institute a civil action to set aside the deed. No
10 deed shall be set aside under the provisions of this section
11 until payment has been made or tendered to the pur-
12 chaser, or his heirs or assigns, of the amount which would
13 have been required for redemption, together with any
14 taxes which have been paid on the property since delivery
15 of the deed, with interest at the rate of twelve per cent
16 per annum.

Sec. 43. Certification by Sheriff of Delinquent Taxes.—

2 In the event any part of article three of this chapter be
3 declared to be unconstitutional so that it is impossible for
4 the sheriff to collect delinquent taxes upon any property,
5 which are in his hands for collection, or make sale thereof
6 pursuant to the provisions of this chapter, then and in
7 that event the sheriff shall prepare and certify to the
8 auditor, on or after the first day of October, and on or be-
9 fore the first day of November, of the year next following
10 the year for which such taxes may have been levied, a
11 list or lists of such taxes which are delinquent. The lien
12 of such taxes upon all such property shall remain in force
13 and in effect until enforced or the taxes paid. After certi-
14 fication to the auditor, the auditor shall have the right to
15 receive collection of any such taxes, and shall retain such
16 lists pending the further enactment by the Legislature of
17 West Virginia of statutes relating to the enforcement of
18 the lien for taxes and sale and disposition of any property
19 subject to such liens.

Sec. 44. Exception.—Notwithstanding the provisions of
2 sections two, four, five, fourteen, seventeen, twenty, twen-
3 ty-three, twenty-four, twenty-eight, thirty, thirty-one,
4 thirty-two, and forty-three of this article, the provisions
5 of this article as of January first, one thousand nine hun-
6 dred sixty-one, shall govern the sale of land for taxes
7 levied upon assessed values as of January first, one thou-
8 sand nine hundred sixty-one, or prior years.

Article 4. Sale of Lands for School Fund.

Section

9-a. Exception.

Section 9-a. Exception.—Notwithstanding the provi-
2 sions of section nine of this article, the provisions of this

- 3 article as of January first, one thousand nine hundred
4 sixty-one, shall govern the sale of land for taxes levied
5 upon assessed values as of January first, one thousand
6 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.
7. Per diem tax on tracks; tax on pool contributions; how taxes paid; financial responsibility of licensees; contents of licenses.
8. Disposition of funds for payment of outstanding pari-mutuel tickets; awards to resident owners, etc., of winning horses.
9. Only pari-mutuel system of wagering permitted; commission of licensee on pari-mutuel pools; minors; auditor.

- 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

6 commission, and shall not exceed the sum of four thou-
7 sand dollars per annum in the aggregate for compensation.
8 The commission shall, under the restrictions and within
9 the qualifications hereinafter set forth, appoint a secretary
10 and steward, to represent the commission, and such addi-
11 tional help as shall be reasonably necessary to administer
12 the provisions of this article, and shall, within the limits
13 prescribed by the Legislature, fix their compensation and
14 actual expenses. The compensation and actual expenses
15 of the members and employees of the commission shall
16 be paid from the funds in the hands of the state treasurer
17 collected from the license tax on pari-mutuel wagering
18 and shall be itemized in the budget in the same manner
19 as all other departments of the state government, but no
20 such expenses shall be paid unless an itemized account
21 thereof, under oath, be first filed with the state auditor.

22 (a) No person who directly or indirectly has an interest
23 in any manner whatsoever, including an interest as owner,
24 lessor, lessee, stockholder or employee, in any race track,
25 where horse race meetings may be held, shall be eligible
26 for appointment to the commission.

27 (b) No person while serving as a member of the Legis-
28 lature, or as an elective officer of this state, shall be eligi-
29 ble for appointment to the commission.

30 (c) No person convicted of an offense, which, under the
31 laws of this state or any other state or of the United States
32 of America, constitutes a felony or a violation of chapter
33 sixty-one, article four of this code, shall be eligible for
34 appointment to the commission.

35 (d) No person shall knowingly be employed by the
36 commission in any capacity whatsoever who shall:

37 1. Directly or indirectly, or in any capacity, own or
38 have an interest in any race track where horse race meet-
39 ings may be held, including an interest as owner, lessor,
40 lessee, stockholder or employee.

41 2. At the time of his employment as a racing official
42 be or have been within one year prior thereto, a member
43 of the Legislature or an elective officer of this state, un-
44 less he is experienced and qualified as a racing official.

45 3. Have been prior to the time of his employment, or

46 shall be during the time of his employment, convicted of
47 an offense, which, under the laws of this state or any other
48 state or of the United States of America, constitutes a
49 felony or a violation of chapter sixty-one, article four of
50 this code.

51 4. In any manner have delegated to him the duties and
52 powers of the members of the commission, as director or
53 supervisor of racing, or in any other manner or capacity
54 whatsoever, except such authority as shall be necessary
55 in order to carry out fully and effectively the reasonable
56 regulations adopted and promulgated by the commission,
57 may be delegated to employees and/or representatives
58 of the commission.

59 Any steward employed by the commission or by a li-
60 censee thereof, shall be a person of integrity, and experi-
61 enced and qualified for such position by the generally
62 accepted practices and customs of horse racing in the
63 United States.

64 Any person violating any provision of this section shall
65 be guilty of a misdemeanor, and, upon conviction, shall
66 be confined in jail not less than six months nor more than
67 one year or be fined not less than five hundred nor more
68 than one thousand dollars, or, in the discretion of the
69 court, may be punished by both such fine and imprison-
70 ment. Venue of such offense shall be in the county, or
71 any one of the counties, wherein the person violating this
72 section carries out any duties of, or performs any work
73 for, the commission, which constitutes the basis of the
74 charge or complaint against him.

Sec. 7. Per Diem Tax on Tracks; Tax on Pool Con-
2 **tributions; How Taxes Paid; Financial Responsibility**
3 **of Licensees; Contents of Licenses.**—Any person oper-
4 ating thoroughbred or running type racing at any
5 horse race track one mile or more in length shall pay
6 each day upon which horse races are run, a license
7 tax of five hundred dollars; any race track less than
8 one mile in length shall pay for each day upon which
9 horse races are run a license tax of two hundred fifty
10 dollars: *Provided*, That the per diem tax shall not apply
11 to horse shows or county fairs at which racing is con-

12 ducted for not more than six days. Any person licensed
13 by the commission to conduct thoroughbred or running
14 type racing and to permit and conduct pari-mutuel wager-
15 ing under this article shall, in addition to the aforemen-
16 tioned tax, pay to the racing commission of the state of
17 West Virginia a tax of five and three-fourths per cent
18 of the total contribution to all pari-mutuel pools con-
19 ducted or made at any and every race meeting licensed
20 under this article. Such payments shall be made to the
21 commission or its agent after the last race of each day
22 and every day of each and every race meeting, and shall
23 be made from all contributions to all pari-mutuel pools
24 to each and every race of the day, which payment shall
25 be deposited with the treasurer of the state of West Vir-
26 ginia to the credit of the general revenue fund: *Provided,*
27 *however,* That a person operating any duly licensed horse
28 race track, having an average daily pari-mutuel pool of
29 one hundred fifty thousand dollars or less, per day, for
30 the licensed race meetings, of the preceding calendar
31 year, shall, in lieu of payment of the five and three-
32 fourths percent tax, paid to the state, from pari-mutuel
33 pools, as above provided, be permitted to conduct pari-
34 mutuel wagering at such horse race track, under this
35 article, on the basis of a daily tax which is fixed as fol-
36 lows: On a daily pari-mutuel pool not exceeding one
37 hundred fifty thousand dollars the daily tax shall be four
38 thousand dollars plus five and three-fourths per cent of
39 the daily pari-mutuel pool, if any, in excess of one hun-
40 dred fifty thousand dollars.

41 Any person making application for a license for a
42 meeting to be held on any track in the state of West
43 Virginia, shall, when required, furnish satisfactory evi-
44 dence to the commission of his or their ability to pay
45 license fees, purses, salaries of officials and other expenses
46 incident to the meeting. In the event the applicant is not
47 able to furnish such satisfactory evidence of his or their
48 ability to pay such expenses and fees, then the commis-
49 sion may require bond or other adequate security for not
50 more than four successive days before license is issued.

51 When issuing any license under this article, the com-
52 mission shall designate upon the face of the license, the

53 kind or type of horse racing for which the same is issued,
54 the number of days the licensee is permitted to conduct
55 horse racing of any kind, the location of the place or
56 track or enclosure at which the horse racing thereby per-
57 mitted is to be conducted, and such other provisions and
58 conditions as the commission may wish to prescribe; no
59 kind or type of horse racing shall be conducted by licensee
60 other than that for which the license is issued.

Sec. 8. Disposition of Funds for Payment of Outstand-
2 **ing Pari-Mutuel Tickets; Awards to Resident Owners, etc.,**
3 **of Winning Horses.**—All moneys held by any licensee
4 for payment of outstanding pari-mutuel tickets, if not
5 claimed within ninety days after the close of any race
6 meeting, shall be turned over by the licensee to the
7 commission within fifteen days after the expiration of
8 such ninety-day period, and the licensee shall give such
9 information as the commission may require concerning
10 such outstanding and unredeemed tickets. All such
11 moneys shall be deposited by the commission and kept
12 by it in a special account to be known as "West Virginia
13 Racing Commission Special Account—Unredeemed Pari-
14 Mutuel Tickets." Notice of the amount, time and place
15 of such deposit shall be given by the commission, in
16 writing, to the state treasurer. The commission shall
17 cause to be published one time, in the week following
18 the close of any race meeting, in some newspaper of
19 general circulation in the county in which such race
20 meeting was held, a notice to the holders of such un-
21 redeemed tickets, notifying them to present such tickets
22 for the payment at the office of the commission in the city
23 of Charleston within ninety days from the date of the
24 publication of such notice.

25 Any such tickets that shall not be presented for pay-
26 ment within ninety days from the date of the publication
27 of the notice shall thereafter be irredeemable, and the
28 moneys theretofore held for the redemption of such tickets
29 shall become the property of the commission, and be de-
30 posited, as aforesaid, and be expended as follows:

31 To the owner of the winning horse in any horse race,
32 at any horse race track licensed in this state, provided

33 that the owner of such horse is at the time, of such race,
34 a bona fide resident of this state, a sum equal to ten per
35 cent of the purse won by such horse.

36 To the breeder, that is the owner of the mare, of the
37 winning horse in any horse race, at any horse race track
38 licensed in this state, provided, that such breeder was, at
39 the time such winning horse was foaled, a bona fide resi-
40 dent of this state, a sum equal to ten per cent of the
41 purse won by such horse.

42 To the owner of the stallion which sired the winning
43 horse in any horse race, at any horse race track licensed
44 in this state, provided, that the mare which foaled such
45 winning horse, was served by such stallion in this state,
46 and the owner of such stallion, was, at the time of such
47 service, a bona fide resident of this state, a sum equal to
48 ten per cent of the purse won by such horse.

49 One person may qualify for any one or all of the awards
50 aforesaid.

51 The cost for the publication of the notice provided for
52 by this section shall be paid from the funds in the hands
53 of the state treasurer collected from the license tax on
54 pari-mutuel wagering, when not otherwise provided in
55 the budget; but no such costs shall be paid unless an
56 itemized account thereof, under oath, be first filed with
57 the state auditor.

Sec. 9. Only Pari-Mutuel System of Wagering Per-
2 **mitted; Commission of Licensee on Pari-Mutuel Pools;**
3 **Minors; Auditor.**—A person licensed by the commission
4 shall permit only the pari-mutuel system of wagering
5 within the enclosure at which horse racing is held, and
6 the commission deducted by any thoroughbred or run-
7 ning horse race licensee from the said pari-mutuel pools
8 shall not exceed fifteen per cent of the total pari-mutuel
9 pools for the day, including the license fee of the gross
10 amount handled hereinbefore provided for, plus the
11 breakage, which shall be made and calculated to the dime.
12 Such breakage shall be retained by the licensee.

13 No holder of such license shall permit or allow any
14 person under the age of twenty-one years to wager there-
15 at, knowing or having reason to believe that such person

16 is under the age of twenty-one years. Any violation of
17 this paragraph shall be punishable by revocation of li-
18 cense.

19 An auditor of pari-mutuel pools shall be appointed by
20 the commission and shall be compensated by said commis-
21 sion. He shall be an experienced public accountant. Said
22 auditor shall have free access to the space or enclosure
23 where the pari-mutuel pool system of wagering is con-
24 ducted or calculated at any race meeting to which he
25 shall be assigned for the purpose of ascertaining whether
26 or not said licensee is retaining only the commission pro-
27 vided for in this section. He shall also, for the same pur-
28 poses only, have full and free access to all records and
29 papers pertaining to such pari-mutuel pool system of wa-
30 gering and shall report to the commission in writing,
31 under oath, whether or not the licensee has retained any
32 commissions in excess of those permitted under this
33 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, 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; 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

- 1. General Provisions.**
- 2. Sales.**
- 3. Commercial Paper.**
- 4. Bank Deposits and Collections.**
- 5. Letters of Credit.**
- 6. Bulk Transfers.**
- 7. Warehouse Receipts, Bills of Lading and Other Documents of Title.**
- 8. Investment Securities.**

9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

10. Effective Date and Repealer.

Article 1. General Provisions.

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
2 known as and may be cited as Uniform Commercial Code.

**Sec. 1-102. Purposes; Rules of Construction; Variation
2 by Agreement.**—(1) This chapter shall be liberally con-
3 strued and applied to promote its underlying purposes
4 and policies.
5 (2) Underlying purposes and policies of this chapter
6 are
7 (a) to simplify, clarify and modernize the law gov-
8 erning commercial transactions;
9 (b) to permit the continued expansion of commercial
10 practices through custom, usage and agreement of the
11 parties;
12 (c) to make uniform the law among various jurisdic-
13 tions.

14 (3) The effect of provisions of this chapter may be
15 varied by agreement, except as otherwise provided in
16 this chapter and except that the obligations of good faith,
17 diligence, reasonableness and care prescribed by this
18 chapter may not be disclaimed by agreement but the
19 parties may by agreement determine the standards by
20 which the performance of such obligations is to be meas-
21 ured if such standards are not manifestly unreasonable.

22 (4) The presence in certain provisions of this chapter
23 of the words "unless otherwise agreed" or words of
24 similar import does not imply that the effect of other pro-
25 visions may not be varied by agreement under subsec-
26 tion (3).

27 (5) In this chapter unless the context otherwise re-
28 quires

29 (a) words in the singular number include the plural,
30 and in the plural include the singular;

31 (b) words of the masculine gender include the femi-
32 nine and the neuter, and when the sense so indicates
33 words of the neuter gender may refer to any gender.

Sec. 1-103. Supplementary General Principles of Law
2 **Applicable.**—Unless displaced by the particular provisions
3 of this chapter, the principles of law and equity, includ-
4 ing the law merchant and the law relative to capacity to
5 contract, principal and agent, estoppel, fraud, misrepres-
6 entation, duress, coercion, mistake, bankruptcy, or other
7 validating or invalidating cause shall supplement its
8 provisions.

Sec. 1-104. Construction Against Implicit Repeal.—This
2 chapter being a general act intended as a unified coverage
3 of its subject matter, no part of it shall be deemed to be
4 impliedly repealed by subsequent legislation if such con-
5 struction can reasonably be avoided.

Sec. 1-105. Territorial Application of this Chapter;
2 **Parties' Power to Choose Applicable Law.**—(1) Except as
3 provided hereafter in this section, when a transaction
4 bears a reasonable relation to this state and also to an-
5 other state or nation the parties may agree that the law
6 either of this state or of such other state or nation shall

7 govern their rights and duties. Failing such agreement
8 this chapter applies to transactions bearing an appropri-
9 ate relation to this state.

10 (2) Where one of the following provisions of this
11 chapter specifies the applicable law, that provision gov-
12 erns and a contrary agreement is effective only to the
13 extent permitted by the law (including the conflict of
14 laws rules) so specified:

15 Rights of creditors against sold goods. Section 2-402.

16 Applicability of the article on Bank Deposits and Col-
17 lections. Section 4-102.

18 Bulk transfers subject to the article on Bulk Transfers.
19 Section 6-102.

20 Applicability of the article on Investment Securities.
21 Section 8-106.

22 Policy and scope of the article on Secured Transactions.
23 Sections 9-102 and 9-103.

Sec. 1-106. Remedies to Be Liberally Administered.—

2 (1) The remedies provided by this chapter shall be
3 liberally administered to the end that the aggrieved party
4 may be put in as good a position as if the other party had
5 fully performed but neither consequential or special nor
6 penal damages may be had except as specifically provided
7 in this chapter or by other rule of law.

8 (2) Any right or obligation declared by this chapter
9 is enforceable by action unless the provision declaring it
10 specifies a different and limited effect.

**Sec. 1-107. Waiver or Renunciation of Claim or Right
2 After Breach.—**Any claim or right arising out of an al-
3 leged breach can be discharged in whole or in part with-
4 out consideration by a written waiver or renunciation
5 signed and delivered by the aggrieved party.

Sec. 1-108. Severability.—If any provision or clause of
2 this chapter or application thereof to any person or cir-
3 cumstances is held invalid, such invalidity shall not affect
4 other provisions or applications of this chapter which can
5 be given effect without the invalid provision or applica-
6 tion, and to this end the provisions of this chapter are
7 declared to be severable.

Sec. 1-109. **Section Captions.**—Section captions are 2 parts of this chapter.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Sec. 1-201. **General Definitions.**—Subject to additional 2 definitions contained in the subsequent articles of this 3 chapter which are applicable to specific articles or parts 4 thereof, and unless the context otherwise requires, in this 5 chapter:

6 (1) “Action” in the sense of a judicial proceeding in- 7 cludes recoupment, counterclaim, set-off, suit in equity and 8 any other proceedings in which rights are determined.

9 (2) “Aggrieved party” means a party entitled to re- 10 sort to a remedy.

11 (3) “Agreement” means the bargain of the parties in 12 fact as found in their language or by implication from 13 other circumstances including course of dealing or usage 14 of trade or course of performance as provided in this 15 chapter (Sections 1-205 and 2-208). Whether an agree- 16 ment has legal consequences is determined by the pro- 17 visions of this chapter, if applicable; otherwise by the 18 law of contracts (Section 1-103). (Compare “Contract”.)

19 (4) “Bank” means any person engaged in the busi- 20 ness of banking.

21 (5) “Bearer” means the person in possession of an 22 instrument, document of title, or security payable to 23 bearer or indorsed in blank.

24 (6) “Bill of lading” means a document evidencing the 25 receipt of goods for shipment issued by a person engaged 26 in the business of transporting or forwarding goods, and 27 includes an airbill. “Airbill” means a document serving 28 for air transportation as a bill of lading does for marine 29 or rail transportation, and includes an air consignment 30 note or air waybill.

31 (7) “Branch” includes a separately incorporated for- 32 eign branch of a bank.

33 (8) “Burden of establishing” a fact means the burden 34 of persuading the triers of fact that the existence of the 35 fact is more probable than its non-existence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights or
39 security interest of a third party in the goods buys in ordi-
40 nary course from a person in the business of selling goods
41 of that kind but does not include a pawnbroker. "Buy-
42 ing" may be for cash or by exchange of other property or
43 on secured or unsecured credit and includes receiving
44 goods or documents of title under a pre-existing contract
45 for sale but does not include a transfer in bulk or as secu-
46 rity for or in total or partial satisfaction of a money debt.

47 (10) "Conspicuous": A term or clause is conspicuous
48 when it is so written that a reasonable person against
49 whom it is to operate ought to have noticed it. A printed
50 heading in capitals (as: NON-NEGOTIABLE BILL OF LADING)
51 is conspicuous. Language in the body of a form is "con-
52 spicuous" if it is in larger or other contrasting type or
53 color. But in a telegram any stated term is "conspicuous".
54 Whether a term or clause is "conspicuous" or not is for
55 decision by the court.

56 (11) "Contract" means the total legal obligation which
57 results from the parties' agreement as affected by this
58 chapter and any other applicable rules of law. (Compare
59 "Agreement".)

60 (12) "Creditor" includes a general creditor, a secured
61 creditor, a lien creditor and any representative of credi-
62 tors, including an assignee for the benefit of creditors, a
63 trustee in bankruptcy, a receiver in equity and an execu-
64 tor or administrator of an insolvent debtor's or assignor's
65 estate.

66 (13) "Defendant" includes a person in the position of
67 defendant in a cross-action or counterclaim.

68 (14) "Delivery" with respect to instruments, docu-
69 ments of title, chattel paper or securities means voluntary
70 transfer of possession.

71 (15) "Document of title" includes bill of lading, dock
72 warrant, dock receipt, warehouse receipt or order for the
73 delivery of goods, and also any other document which in
74 the regular course of business or financing is treated as ad-
75 equately evidencing that the person in possession of it is

76 entitled to receive, hold and dispose of the document and
77 the goods it covers. To be a document of title a document
78 must purport to be issued by or addressed to a bailee and
79 purport to cover goods in the bailee's possession which
80 are either identified or are fungible portions of an identi-
81 fied mass.

82 (16) "Fault" means wrongful act, omission or breach.

83 (17) "Fungible" with respect to goods or securities
84 means goods or securities of which any unit is, by nature
85 or usage of trade, the equivalent of any other like unit.
86 Goods which are not fungible shall be deemed fungible
87 for the purposes of this chapter to the extent that
88 under a particular agreement or document unlike units
89 are treated as equivalents.

90 (18) "Genuine" means free of forgery or counterfeit-
91 ing.

92 (19) "Good faith" means honesty in fact in the con-
93 duct or transaction concerned.

94 (20) "Holder" means a person who is in possession of
95 a document of title or an instrument or an investment
96 security drawn, issued or indorsed to him or to his order
97 or to bearer or in blank.

98 (21) To "honor" is to pay or to accept and pay, or
99 where a credit so engages to purchase or discount a draft
100 complying with the terms of the credit.

101 (22) "Insolvency proceedings" includes any assign-
102 ment for the benefit of creditors or other proceedings
103 intended to liquidate or rehabilitate the estate of the per-
104 son involved.

105 (23) A person is "insolvent" who either has ceased to
106 pay his debts in the ordinary course of business or cannot
107 pay his debts as they become due or is insolvent within
108 the meaning of the federal bankruptcy law.

109 (24) "Money" means a medium of exchange author-
110 ized or adopted by a domestic or foreign government as
111 a part of its currency.

112 (25) A person has "notice" of a fact when

113 (a) he has actual knowledge of it; or

114 (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.

155 (29) "Party", as distinct from "third party", means a
156 person who has engaged in a transaction or made an
157 agreement within this chapter.

158 (30) "Person" includes an individual or an organiza-
159 tion (See Section 1-102).

160 (31) "Presumption" or "presumed" means that the
161 trier of fact must find the existence of the fact presumed
162 unless and until evidence is introduced which would sup-
163 port a finding of its non-existence.

164 (32) "Purchase" includes taking by sale, discount, ne-
165 gotiation, mortgage, pledge, lien, issue or re-issue, gift or
166 any other voluntary transaction creating an interest in
167 property.

168 (33) "Purchaser" means a person who takes by pur-
169 chase.

170 (34) "Remedy" means any remedial right to which an
171 aggrieved party is entitled with or without resort to a
172 tribunal.

173 (35) "Representative" includes an agent, an officer of
174 a corporation or association, and a trustee, executor or ad-
175 ministrator of an estate, or any other person empowered
176 to act for another.

177 (36) "Rights" includes remedies.

178 (37) "Security interest" means an interest in personal
179 property or fixtures which secures payment or perform-
180 ance of an obligation. The retention or reservation of
181 title by a seller of goods notwithstanding shipment or de-
182 livery to the buyer (Section 2-401) is limited in effect to
183 a reservation of a "security interest". The term also in-
184 cludes any interest of a buyer of accounts, chattel paper,
185 or contract rights which is subject to Article 9. The spe-
186 cial property interest of a buyer of goods on identification
187 of such goods to a contract for sale under Section 2-401 is
188 not a "security interest", but a buyer may also acquire a
189 "security interest" by complying with Article 9. Unless
190 a lease or consignment is intended as security, reservation
191 of title thereunder is not a "security interest" but a con-
192 signment is in any event subject to the provisions on con-
193 signment sales (Section 2-326). Whether a lease is in-

194 tended as security is to be determined by the facts of each
195 case; however, (a) the inclusion of an option to purchase
196 does not of itself make the lease one intended for security,
197 and (b) an agreement that upon compliance with the
198 terms of the lease the lessee shall become or has the op-
199 tion to become the owner of the property for no additional
200 consideration or for a nominal consideration does make
201 the lease one intended for security.

202 (38) "Send" in connection with any writing or notice
203 means to deposit in the mail or deliver for transmission
204 by any other usual means of communication with postage
205 or cost of transmission provided for and properly ad-
206 dressed and in the case of an instrument to an address
207 specified thereon or otherwise agreed, or if there be none
208 to any address reasonable under the circumstances. The
209 receipt of any writing or notice within the time at which
210 it would have arrived if properly sent has the effect of a
211 proper sending.

212 (39) "Signed" includes any symbol executed or
213 adopted by a party with present intention to authenticate
214 a writing.

215 (40) "Surety" includes guarantor.

216 (41) "Telegram" includes a message transmitted by
217 radio, teletype, cable, any mechanical method of transmis-
218 sion, or the like.

219 (42) "Term" means that portion of an agreement
220 which relates to a particular matter.

221 (43) "Unauthorized" signature or indorsement means
222 one made without actual, implied or apparent authority
223 and includes a forgery.

224 (44) "Value". Except as otherwise provided with re-
225 spect to negotiable instruments and bank collections
226 (Sections 3-303, 4-208 and 4-209) a person gives "value"
227 for rights if he acquires them

228 (a) in return for a binding commitment to extend
229 credit or for the extension of immediately available credit
230 whether or not drawn upon and whether or not a charge-
231 back is provided for in the event of difficulties in collec-
232 tion; or

233 (b) as security for or in total or partial satisfaction of
234 a pre-existing claim; or

235 (c) by accepting delivery pursuant to a pre-existing
236 contract for purchase; or

237 (d) generally, in return for any consideration suffi-
238 cient to support a simple contract.

239 (45) "Warehouse receipt" means a receipt issued by a
240 person engaged in the business of storing goods for hire.

241 (46) "Written" or "writing" includes printing, type-
242 writing or any other intentional reduction to tangible
243 form.

**Sec. 1-202. Prima Facie Evidence by Third Party Docu-
2 ments.**—A document in due form purporting to be a bill
3 of lading, policy or certificate of insurance, official
4 weigher's or inspector's certificate, consular invoice, or
5 any other document authorized or required by the con-
6 tract to be issued by a third party shall be prima facie evi-
7 dence of its own authenticity and genuineness and of the
8 facts stated in the document by the third party.

Sec. 1-203. Obligation of Good Faith.—Every contract
2 or duty within this chapter imposes an obligation of good
3 faith in its performance or enforcement.

Sec. 1-204. Time; Reasonable Time; "Seasonably".—(1)
2 Whenever this chapter requires any action to be taken
3 within a reasonable time, any time which is not mani-
4 festly unreasonable may be fixed by agreement.

5 (2) What is a reasonable time for taking any action
6 depends on the nature, purpose and circumstances of such
7 action.

8 (3) An action is taken "seasonably" when it is taken
9 at or within the time agreed or if no time is agreed at or
10 within a reasonable time.

Sec. 1-205. Course of Dealing and Usage of Trade.—(1)
2 A course of dealing is a sequence of previous conduct be-
3 tween the parties to a particular transaction which is
4 fairly to be regarded as establishing a common basis of
5 understanding for interpreting their expressions and
6 other conduct.

7 (2) A usage of trade is any practice or method of deal-
8 ing having such regularity of observance in a place, voca-
9 tion or trade as to justify an expectation that it will be
10 observed with respect to the transaction in question. The
11 existence and scope of such a usage are to be proved as
12 facts. If it is established that such a usage is embodied in
13 a written trade code or similar writing the interpretation
14 of the writing is for the court.

15 (3) A course of dealing between parties and any usage
16 of trade in the vocation or trade in which they are en-
17 gaged or of which they are or should be aware give par-
18 ticular meaning to and supplement or qualify terms of
19 an agreement.

20 (4) The express terms of an agreement and an appli-
21 cable course of dealing or usage of trade shall be con-
22 strued wherever reasonable as consistent with each other;
23 but when such construction is unreasonable express terms
24 control both course of dealing and usage of trade and
25 course of dealing controls usage of trade.

26 (5) An applicable usage of trade in the place where
27 any part of performance is to occur shall be used in inter-
28 preting the agreement as to that part of the performance.

29 (6) Evidence of a relevant usage of trade offered by
30 one party is not admissible unless and until he has given
31 the other party such notice as the court finds sufficient to
32 prevent unfair surprise to the latter.

Sec. 1-206. Statute of Frauds for Kinds of Personal
2 **Property Not Otherwise Covered.**—(1) Except in the cases
3 described in subsection (2) of this section a contract for
4 the sale of personal property is not enforceable by way of
5 action or defense beyond five thousand dollars in amount
6 or value of remedy unless there is some writing which in-
7 dicates that a contract for sale has been made between the
8 parties at a defined or stated price, reasonably identifies
9 the subject matter, and is signed by the party against
10 whom enforcement is sought or by his authorized agent.

11 (2) Subsection (1) of this section does not apply to
12 contracts for the sale of goods (Section 2-201) nor of se-
13 curities (Section 8-319) nor to security agreements (Sec-
14 tion 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

- 2-101. Short title.
- 2-102. Scope; certain security and other transactions excluded from this article.
- 2-103. Definitions and index of definitions.
- 2-104. Definitions: “merchant”; “between merchants”; “financing agency”.
- 2-105. Definitions: transferability; “goods”; “future” goods; “lot”; “commercial unit”.
- 2-106. Definitions: “contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming” to contract; “termination”; “cancellation”.
- 2-107. Goods to be severed from realty: recording.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

- 2-201. Formal requirements; statute of frauds.
- 2-202. Final written expression: parol or extrinsic evidence.
- 2-203. Seals inoperative.
- 2-204. Formation in general.
- 2-205. Firm offers.
- 2-206. Offer and acceptance in formation of contract.
- 2-207. Additional terms in acceptance or confirmation.
- 2-208. Course of performance or practical construction.
- 2-209. Modification, rescission and waiver.
- 2-210. Delegation of performance; assignment of rights.

PART 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 2-301. General obligations of parties.
- 2-302. Unconscionable contract or clause.
- 2-303. Allocation or division of risks.
- 2-304. Price payable in money, goods, realty, or otherwise.
- 2-305. Open price term.
- 2-306. Output, requirements and exclusive dealings.
- 2-307. Delivery in single lot or several lots.
- 2-308. Absence of specified place for delivery.
- 2-309. Absence of specific time provisions; notice of termination.
- 2-310. Open time for payment or running of credit; authority to ship under reservation.
- 2-311. Options and cooperation respecting performance.
- 2-312. Warranty of title and against infringement; buyer's obligation against infringement.
- 2-313. Express warranties by affirmation, promise, description, sample.
- 2-314. Implied warranty: merchantability; usage of trade.
- 2-315. Implied warranty: fitness for particular purpose.
- 2-316. Exclusion or modification of warranties.
- 2-317. Cumulation and conflict of warranties express or implied.
- 2-318. Third party beneficiaries of warranties express or implied.
- 2-319. F.O.B. and F.A.S. terms.
- 2-320. C.I.F. and C. & F. terms.
- 2-321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival.
- 2-322. Delivery "ex-ship".
- 2-323. Form of bill of lading required in overseas shipment; "overseas".
- 2-324. "No arrival, no sale" term.
- 2-325. "Letter of credit" term; "confirmed credit".
- 2-326. Sale on approval and sale or return; consignment sales and rights of creditors.
- 2-327. Special incidents of sale on approval and sale or return.
- 2-328. Sale by auction.

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

- 2-401. Passing of title; reservation for security; limited application of this section.
- 2-402. Rights of seller's creditors against sold goods.
- 2-403. Power to transfer; good faith purchase of goods; "entrusting".

PART 5. PERFORMANCE

- 2-501. Insurable interest in goods; manner of identification of goods.
- 2-502. Buyer's right to goods on seller's insolvency.
- 2-503. Manner of seller's tender of delivery.
- 2-504. Shipment by seller.
- 2-505. Seller's shipment under reservation.
- 2-506. Rights of financing agency.
- 2-507. Effect of seller's tender; delivery on condition.
- 2-508. Cure by seller of improper tender or delivery; replacement.
- 2-509. Risk of loss in the absence of breach.
- 2-510. Effect of breach on risk of loss.
- 2-511. Tender of payment by buyer; payment by check.
- 2-512. Payment by buyer before inspection.
- 2-513. Buyer's right to inspection of goods.
- 2-514. When documents deliverable on acceptance; when on payment.
- 2-515. Preserving evidence of goods in dispute.

PART 6. BREACH, REPUDIATION AND EXCUSE

- 2-601. Buyer's rights on improper delivery.
- 2-602. Manner and effect of rightful rejection.
- 2-603. Merchant buyer's duties as to rightfully rejected goods.
- 2-604. Buyer's options as to salvage of rightfully rejected goods.

- 2-605. Waiver of buyer's objections by failure to particularize.
- 2-606. What constitutes acceptance of goods.
- 2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
- 2-608. Revocation of acceptance in whole or in part.
- 2-609. Right to adequate assurance of performance.
- 2-610. Anticipatory repudiation.
- 2-611. Retraction of anticipatory repudiation.
- 2-612. "Installment contract"; breach.
- 2-613. Casualty to identified goods.
- 2-614. Substituted performance.
- 2-615. Excuse by failure of presupposed conditions.
- 2-616. Procedure on notice claiming excuse.

PART 7. REMEDIES

- 2-701. Remedies for breach of collateral contracts not impaired.
- 2-702. Seller's remedies on discovery of buyer's insolvency.
- 2-703. Seller's remedies in general.
- 2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
- 2-705. Seller's stoppage of delivery in transit or otherwise.
- 2-706. Seller's resale including contract for resale.
- 2-707. "Person in the position of a seller".
- 2-708. Seller's damages for non-acceptance or repudiation.
- 2-709. Action for the price.
- 2-710. Seller's incidental damages.
- 2-711. Buyer's remedies in general; buyer's security interest in rejected goods.
- 2-712. "Cover"; buyer's procurement of substitute goods.
- 2-713. Buyer's damages for non-delivery or repudiation.
- 2-714. Buyer's damages for breach in regard to accepted goods.
- 2-715. Buyer's incidental and consequential damages.
- 2-716. Buyer's right to specific performance or replevin.
- 2-717. Deduction of damages from the price.
- 2-718. Liquidation or limitation of damages. Deposits.
- 2-719. Contractual modification or limitation of remedy.
- 2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
- 2-721. Remedies for fraud.
- 2-722. Who can sue third parties for injury to goods.
- 2-723. Proof of market price: time and place.
- 2-724. Admissibility of market quotation.
- 2-725. Statute of limitations in contracts for sale.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section 2-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Sales.

Sec. 2-102. Scope; Certain Security and Other Transac-
2 **tions Excluded From This Article.**—Unless the context
3 otherwise requires, this article applies to transactions in
4 goods; it does not apply to any transaction which although
5 in the form of an unconditional contract to sell or present
6 sale is intended to operate only as a security transaction

7 nor does this article impair or repeal any statute regulat-
8 ing sales to consumers, farmers or other specified classes
9 of buyers.

Sec. 2-103. Definitions and Index of Definitions.—(1)

2 In this article unless the context otherwise requires

3 (a) "Buyer" means a person who buys or contracts to
4 buy goods.

5 (b) "Good faith" in the case of a merchant means hon-
6 esty in fact and the observance of reasonable commercial
7 standards of fair dealing in the trade.

8 (c) "Receipt" of goods means taking physical posses-
9 sion of them.

10 (d) "Seller" means a person who sells or contracts to
11 sell goods.

12 (2) Other definitions applying to this article or to
13 specified parts thereof, and the sections in which they ap-
14 pear are:

15 "Acceptance". Section 2-606.

16 "Banker's credit". Section 2-325.

17 "Between merchants". Section 2-104.

18 "Cancellation". Section 2-106(4).

19 "Commercial unit". Section 2-105.

20 "Confirmed credit". Section 2-325.

21 "Conforming to contract". Section 2-106.

22 "Contract for sale". Section 2-106.

23 "Cover". Section 2-712.

24 "Entrusting". Section 2-403.

25 "Financing agency". Section 2-104.

26 "Future goods". Section 2-105.

27 "Goods". Section 2-105.

28 "Identification". Section 2-501.

29 "Installment contract". Section 2-612.

30 "Letter of Credit". Section 2-325.

31 "Lot". Section 2-105.

32 "Merchant". Section 2-104.

33 "Overseas". Section 2-323.

34 "Person in position of seller". Section 2-707.

35 "Present sale". Section 2-106.

36 "Sale". Section 2-106.

37 "Sale on approval". Section 2-326.

38 "Sale or return". Section 2-326.

39 "Termination". Section 2-106.

40 (3) The following definitions in other articles of this
41 chapter apply to this article:

42 "Check". Section 3-104.

43 "Consignee". Section 7-102.

44 "Consignor". Section 7-102.

45 "Consumer goods". Section 9-109.

46 "Dishonor". Section 3-507.

47 "Draft". Section 3-104.

48 (4) In addition Article 1 of this chapter contains gen-
49 eral definitions and principles of construction and inter-
50 pretation applicable throughout this article.

Sec. 2-104. Definitions: "Merchant"; "Between Mer-
2 **chants"; "Financing Agency".**—(1) "Merchant" means a
3 person who deals in goods of the kind or otherwise by his
4 occupation holds himself out as having knowledge or skill
5 peculiar to the practices or goods involved in the transac-
6 tion or to whom such knowledge or skill may be attrib-
7 uted by his employment of an agent or broker or other
8 intermediary who by his occupation holds himself out as
9 having such knowledge or skill.

10 (2) "Financing agency" means a bank, finance com-
11 pany or other person who in the ordinary course of busi-
12 ness makes advances against goods or documents of title
13 or who by arrangement with either the seller or the buyer
14 intervenes in ordinary course to make or collect payment
15 due or claimed under the contract for sale, as by purchas-
16 ing or paying the seller's draft or making advances against
17 it or by merely taking it for collection whether or not doc-
18 uments of title accompany the draft. "Financing agency"
19 includes also a bank or other person who similarly inter-
20 venes between persons who are in the position of seller
21 and buyer in respect to the goods (Section 2-707).

22 (3) "Between merchants" means in any transaction
23 with respect to which both parties are chargeable with the
24 knowledge or skill of merchants.

Sec. 2-105. Definitions: Transferability; "Goods"; "Fu-
2 **ture" Goods; "Lot"; "Commercial Unit".**—(1) "Goods"
3 mean all things (including specially manufactured goods)

4 which are movable at the time of identification to the con-
5 tract for sale other than the money in which the price is
6 to be paid, investment securities (Article 8) and things in
7 action. "Goods" also includes the unborn young of ani-
8 mals and growing crops and other identified things at-
9 tached to realty as described in the section on goods to be
10 severed from realty (Section 2-107).

11 (2) Goods must be both existing and identified before
12 any interest in them can pass. Goods which are not both
13 existing and identified are "future" goods. A purported
14 present sale of future goods or of any interest therein
15 operates as a contract to sell.

16 (3) There may be a sale of a part interest in existing
17 identified goods.

18 (4) An undivided share in an identified bulk of fungi-
19 ble goods is sufficiently identified to be sold although the
20 quantity of the bulk is not determined. Any agreed pro-
21 portion of such a bulk or any quantity thereof agreed
22 upon by number, weight or other measure may to the
23 extent of the seller's interest in the bulk be sold to the
24 buyer who then becomes an owner in common.

25 (5) "Lot" means a parcel or a single article which is
26 the subject matter of a separate sale or delivery, whether
27 or not it is sufficient to perform the contract.

28 (6) "Commercial unit" means such a unit of goods as
29 by commercial usage is a single whole for purposes of sale
30 and division of which materially impairs its character or
31 value on the market or in use. A commercial unit may be
32 a single article (as a machine) or a set of articles (as a
33 suite of furniture or an assortment of sizes) or a quantity
34 (as a bale, gross, or carload) or any other unit treated in
35 use or in the relevant market as a single whole.

Sec. 2-106. Definitions: "Contract"; "Agreement"; "Con-
2 **tract for Sale"; "Sale"; "Present Sale"; "Conforming" to**
3 **Contract; "Termination"; "Cancellation".—**(1) In this
4 article unless the context otherwise requires "contract"
5 and "agreement" are limited to those relating to the pres-
6 ent or future sale of goods. "Contract for sale" includes
7 both a present sale of goods and a contract to sell goods at
8 a future time. A "sale" consists in the passing of title

9 from the seller to the buyer for a price (Section 2-401). A
10 "present sale" means a sale which is accomplished by the
11 making of the contract.

12 (2) Goods or conduct including any part of a perform-
13 ance are "conforming" or conform to the contract when
14 they are in accordance with the obligations under the
15 contract.

16 (3) "Termination" occurs when either party pursuant
17 to a power created by agreement or law puts an end to
18 the contract otherwise than for its breach. On "termina-
19 tion" all obligations which are still executory on both
20 sides are discharged but any right based on prior breach
21 or performance survives.

22 (4) "Cancellation" occurs when either party puts an
23 end to the contract for breach by the other and its effect
24 is the same as that of "termination" except that the can-
25 celling party also retains any remedy for breach of the
26 whole contract or any unperformed balance.

Sec. 2-107. Goods to Be Severed From Realty: Record-
2 **ing.**—(1) A contract for the sale of timber, minerals or
3 the like or a structure or its materials to be removed from
4 realty is a contract for the sale of goods within this article
5 if they are to be severed by the seller but until severance
6 a purported present sale thereof which is not effective as
7 a transfer of an interest in land is effective only as a con-
8 tract to sell.

9 (2) A contract for the sale apart from the land of
10 growing crops or other things attached to realty and
11 capable of severance without material harm thereto but
12 not described in subsection (1) is a contract for the sale
13 of goods within this article whether the subject matter is
14 to be severed by the buyer or by the seller even though it
15 forms part of the realty at the time of contracting, and
16 the parties can by identification effect a present sale be-
17 fore severance.

18 (3) The provisions of this section are subject to any
19 third party rights provided by the law relating to realty
20 records, and the contract for sale may be executed and
21 recorded as a document transferring an interest in land

22 and shall then constitute notice to third parties of the
23 buyer's rights under the contract for sale.

PART 2. FORM, FORMATION AND READJUSTMENT OF CONTRACT

Sec. 2-201. Formal Requirements; Statute of Frauds.—

2 (1) Except as otherwise provided in this section a con-
3 tract for the sale of goods for the price of \$500 or more is
4 not enforceable by way of action or defense unless there
5 is some writing sufficient to indicate that a contract for
6 sale has been made between the parties and signed by the
7 party against whom enforcement is sought or by his au-
8 thorized agent or broker. A writing is not insufficient be-
9 cause it omits or incorrectly states a term agreed upon
10 but the contract is not enforceable under this paragraph
11 beyond the quantity of goods shown in such writing.

12 (2) Between merchants if within a reasonable time a
13 writing in confirmation of the contract and sufficient
14 against the sender is received and the party receiving it
15 has reason to know its contents, it satisfies the require-
16 ments of subsection (1) against such party unless written
17 notice of objection to its contents is given within ten days
18 after it is received.

19 (3) A contract which does not satisfy the require-
20 ments of subsection (1) but which is valid in other re-
21 spects is enforceable

22 (a) if the goods are to be specially manufactured for
23 the buyer and are not suitable for sale to others in the
24 ordinary course of the seller's business and the seller, be-
25 fore notice of repudiation is received and under circum-
26 stances which reasonably indicate that the goods are for
27 the buyer, has made either a substantial beginning of
28 their manufacture or commitments for their procure-
29 ment; or

30 (b) if the party against whom enforcement is sought
31 admits in his pleading, testimony or otherwise in court
32 that a contract for sale was made, but the contract is not
33 enforceable under this provision beyond the quantity of
34 goods admitted; or

35 (c) with respect to goods for which payment has been

36 made and accepted or which have been received and ac-
37 cepted (Section 2-606).

Sec. 2-202. Final Written Expression: Parol or Extrinsic

2 **Evidence.**—Terms with respect to which the confirmatory
3 memoranda of the parties agree or which are otherwise
4 set forth in a writing intended by the parties as a final ex-
5 pression of their agreement with respect to such terms as
6 are included therein may not be contradicted by evidence
7 of any prior agreement or of a contemporaneous oral
8 agreement but may be explained or supplemented

9 (a) by course of dealing or usage of trade (Section 1-
10 205) or by course of performance (Section 2-208); and

11 (b) by evidence of consistent additional terms unless
12 the court finds the writing to have been intended also as
13 a complete and exclusive statement of the terms of the
14 agreement.

Sec. 2-203. Seals Inoperative.—The affixing of a seal

2 to a writing evidencing a contract for sale or an offer to
3 buy or sell goods does not constitute the writing a sealed
4 instrument and the law with respect to sealed instruments
5 does not apply to such a contract or offer.

Sec. 2-204. Formation in General.—(1) A contract for

2 sale of goods may be made in any manner sufficient to
3 show agreement, including conduct by both parties which
4 recognizes the existence of such a contract.

5 (2) An agreement sufficient to constitute a contract
6 for sale may be found even though the moment of its mak-
7 ing is undetermined.

8 (3) Even though one or more terms are left open a
9 contract for sale does not fail for indefiniteness if the par-
10 ties have intended to make a contract and there is a rea-
11 sonably certain basis for giving an appropriate remedy.

Sec. 2-205. Firm Offers.—An offer by a merchant to buy

2 or sell goods in a signed writing which by its terms gives
3 assurance that it will be held open is not revocable, for
4 lack of consideration, during the time stated or if no time
5 is stated for a reasonable time, but in no event may such
6 period of irrevocability exceed three months; but any such

7 term of assurance on a form supplied by the offeree must
8 be separately signed by the offeror.

Sec. 2-206. Offer and Acceptance in Formation of Contract.—(1) Unless otherwise unambiguously indicated by
3 the language or circumstances

4 (a) an offer to make a contract shall be construed as
5 inviting acceptance in any manner and by any medium
6 reasonable in the circumstances;

7 (b) an order or other offer to buy goods for prompt or
8 current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt
9 or current shipment of conforming or non-conforming
10 goods, but such a shipment of non-conforming goods does
11 not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

12 (2) Where the beginning of a requested performance
13 is a reasonable mode of acceptance an offeror who is not
14 notified of acceptance within a reasonable time may treat
15 the offer as having lapsed before acceptance.

Sec. 2-207. Additional Terms in Acceptance or Confirmation.—(1) A definite and seasonable expression of
3 acceptance or a written confirmation which is sent within
4 a reasonable time operates as an acceptance even though
5 it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made
6 conditional on assent to the additional or different terms.

7 (2) The additional terms are to be construed as proposals for addition to the contract. Between merchants
8 such terms become part of the contract unless:

9 (a) the offer expressly limits acceptance to the terms
10 of the offer;

11 (b) they materially alter it; or

12 (c) notification of objection to them has already been
13 given or is given within a reasonable time after notice of
14 them is received.

15 (3) Conduct by both parties which recognizes the
16 existence of a contract is sufficient to establish a contract
17 for sale although the writings of the parties do not other-

20 wise establish a contract. In such case the terms of the
21 particular contract consist of those terms on which the
22 writings of the parties agree, together with any supple-
23 mentary terms incorporated under any other provisions
24 of this chapter.

Sec. 2-208. Course of Performance or Practical Con-

2 **struction.**—(1) Where the contract for sale involves re-
3 peated occasions for performance by either party with
4 knowledge of the nature of the performance and oppor-
5 tunity for objection to it by the other, any course of per-
6 formance accepted or acquiesced in without objection
7 shall be relevant to determine the meaning of the agree-
8 ment.

9 (2) The express terms of the agreement and any such
10 course of performance, as well as any course of dealing
11 and usage of trade, shall be construed whenever reasona-
12 ble as consistent with each other; but when such con-
13 struction is unreasonable, express terms shall control
14 course of performance and course of performance shall
15 control both course of dealing and usage of trade (Sec-
16 tion 1-205).

17 (3) Subject to the provisions of the next section on
18 modification and waiver, such course of performance shall
19 be relevant to show a waiver or modification of any term
20 inconsistent with such course of performance.

Sec. 2-209. Modification, Rescission and Waiver.—(1)

2 An agreement modifying a contract within this article
3 needs no consideration to be binding.

4 (2) A signed agreement which excludes modification
5 or rescission except by a signed writing cannot be other-
6 wise modified or rescinded, but except as between mer-
7 chants such a requirement on a form supplied by the
8 merchant must be separately signed by the other party.

9 (3) The requirements of the statute of frauds section
10 of this article (Section 2-201) must be satisfied if the con-
11 tract as modified is within its provisions.

12 (4) Although an attempt at modification or rescission
13 does not satisfy the requirements of subsection (2) or
14 (3) it can operate as a waiver.

15 (5) A party who has made a waiver affecting an
16 executory portion of the contract may retract the waiver
17 by reasonable notification received by the other party
18 that strict performance will be required of any term
19 waived, unless the retraction would be unjust in view of a
20 material change of position in reliance on the waiver.

Sec. 2-210. Delegation of Performance; Assignment of

2 **Rights.**—(1) A party may perform his duty through a
3 delegate unless otherwise agreed or unless the other party
4 has a substantial interest in having his original promisor
5 perform or control the acts required by the contract. No
6 delegation of performance relieves the party delegating of
7 any duty to perform or any liability for breach.

8 (2) Unless otherwise agreed all rights of either seller or
9 buyer can be assigned except where the assignment would
10 materially change the duty of the other party, or increase
11 materially the burden or risk imposed on him by his con-
12 tract, or impair materially his chance of obtaining return
13 performance. A right to damages for breach of the whole
14 contract or a right arising out of the assignor's due per-
15 formance of his entire obligation can be assigned despite
16 agreement otherwise.

17 (3) Unless the circumstances indicate the contrary a
18 prohibition of assignment of "the contract" is to be con-
19 strued as barring only the delegation to the assignee of the
20 assignor's performance.

21 (4) An assignment of "the contract" or of "all my
22 rights under the contract" or an assignment in similar
23 general terms is an assignment of rights and unless the
24 language or the circumstances (as in an assignment for
25 security) indicate the contrary, it is a delegation of per-
26 formance of the duties of the assignor and its acceptance
27 by the assignee constitutes a promise by him to perform
28 those duties. This promise is enforceable by either the as-
29 signor or the other party to the original contract.

30 (5) The other party may treat any assignment which
31 delegates performance as creating reasonable grounds for
32 insecurity and may without prejudice to his rights against
33 the assignor demand assurances from the assignee (Sec-
34 tion 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

6 (b) the price is left to be agreed by the parties and
7 they fail to agree; or

8 (c) the price is to be fixed in terms of some agreed
9 market or other standard as set or recorded by a third
10 person or agency and it is not so set or recorded.

11 (2) A price to be fixed by the seller or by the buyer
12 means a price for him to fix in good faith.

13 (3) When a price left to be fixed otherwise than by
14 agreement of the parties fails to be fixed through fault of
15 one party the other may at his option treat the contract
16 as cancelled or himself fix a reasonable price.

17 (4) Where, however, the parties intend not to be
18 bound unless the price be fixed or agreed and it is not
19 fixed or agreed there is no contract. In such a case the
20 buyer must return any goods already received or if un-
21 able so to do must pay their reasonable value at the time
22 of delivery and the seller must return any portion of the
23 price paid on account.

Sec. 2-306. Output, Requirements and Exclusive Deal-
2 **ings.**—(1) A term which measures the quantity by the
3 output of the seller or the requirements of the buyer
4 means such actual output or requirements as may occur
5 in good faith, except that no quantity unreasonably dis-
6 proportionate to any stated estimate or in the absence of a
7 stated estimate to any normal or otherwise comparable
8 prior output or requirements may be tendered or de-
9 manded.

10 (2) A lawful agreement by either the seller or the
11 buyer for exclusive dealing in the kind of goods con-
12 cerned imposes unless otherwise agreed an obligation by
13 the seller to use best efforts to supply the goods and by
14 the buyer to use best efforts to promote their sale.

Sec. 2-307. Delivery in Single Lot or Several Lots.—
2 Unless otherwise agreed all goods called for by a contract
3 for sale must be tendered in a single delivery and pay-
4 ment is due only on such tender but where the circum-
5 stances give either party the right to make or demand
6 delivery in lots the price if it can be apportioned may be
7 demanded for each lot.

Sec. 2-308. Absence of Specified Place for Delivery.—

2 Unless otherwise agreed

3 (a) the place for delivery of goods is the seller's place
4 of business or if he has none his residence; but

5 (b) in a contract for sale of identified goods which to
6 the knowledge of the parties at the time of contracting
7 are in some other place, that place is the place for their
8 delivery; and

9 (c) documents of title may be delivered through cus-
10 tomary banking channels.

Sec. 2-309. Absence of Specific Time Provisions; Notice

2 **of Termination.**—(1) The time for shipment or delivery
3 or any other action under a contract if not provided in this
4 article or agreed upon shall be a reasonable time.

5 (2) Where the contract provides for successive per-
6 formances but is indefinite in duration it is valid for a rea-
7 sonable time but unless otherwise agreed may be termi-
8 nated at any time by either party.

9 (3) Termination of a contract by one party except on
10 the happening of an agreed event requires that reasonable
11 notification be received by the other party and an agree-
12 ment dispensing with notification is invalid if its operation
13 would be unconscionable.

Sec. 2-310. Open Time for Payment or Running of

2 **Credit; Authority to Ship Under Reservation.**—Unless
3 otherwise agreed

4 (a) payment is due at the time and place at which the
5 buyer is to receive the goods even though the place of
6 shipment is the place of delivery; and

7 (b) if the seller is authorized to send the goods he
8 may ship them under reservation, and may tender the doc-
9 uments of title, but the buyer may inspect the goods after
10 their arrival before payment is due unless such inspection
11 is inconsistent with the terms of the contract (Section 2-
12 513); and

13 (c) if delivery is authorized and made by way of docu-
14 ments of title otherwise than by subsection (b) then pay-
15 ment is due at the time and place at which the buyer is to

16 receive the documents regardless of where the goods are
17 to be received; and

18 (d) where the seller is required or authorized to ship
19 the goods on credit the credit period runs from the time
20 of shipment but post-dating the invoice or delaying its dis-
21 patch will correspondingly delay the starting of the credit
22 period.

Sec. 2-311. Options and Cooperation Respecting Per-

2 **formance.**—(1) An agreement for sale which is otherwise
3 sufficiently definite (subsection (3) of Section 2-204) to
4 be a contract is not made invalid by the fact that it leaves
5 particulars of performance to be specified by one of the
6 parties. Any such specification must be made in good
7 faith and within limits set by commercial reasonableness.

8 (2) Unless otherwise agreed specifications relating to
9 assortment of the goods are at the buyer's option and ex-
10 cept as otherwise provided in subsections (1) (c) and (3)
11 of Section 2-319 specifications or arrangements relating to
12 shipment are at the seller's option.

13 (3) Where such specification would materially affect
14 the other party's performance but is not seasonably made
15 or where one party's cooperation is necessary to the
16 agreed performance of the other but is not seasonably
17 forthcoming, the other party in addition to all other rem-
18 edies

19 (a) is excused for any resulting delay in his own per-
20 formance; and

21 (b) may also either proceed to perform in any reason-
22 able manner or after the time for a material part of his
23 own performance treat the failure to specify or to cooper-
24 ate as a breach by failure to deliver or accept the goods.

Sec. 2-312. Warranty of Title and Against Infringe-

2 **ment; Buyer's Obligation Against Infringement.**—(1) Sub-
3 ject to subsection (2) there is in a contract for sale a
4 warranty by the seller that

5 (a) the title conveyed shall be good, and its transfer
6 rightful; and

7 (b) the goods shall be delivered free from any securi-

8 ty interest or other lien or encumbrance of which the
9 buyer at the time of contracting has no knowledge.

10 (2) A warranty under subsection (1) will be excluded
11 or modified only by specific language or by circumstances
12 which give the buyer reason to know that the person sell-
13 ing does not claim title in himself or that he is purporting
14 to sell only such right or title as he or a third person may
15 have.

16 (3) Unless otherwise agreed a seller who is a mer-
17 chant regularly dealing in goods of the kind warrants that
18 the goods shall be delivered free of the rightful claim of
19 any third person by way of infringement or the like but a
20 buyer who furnishes specifications to the seller must hold
21 the seller harmless against any such claim which arises
22 out of compliance with the specifications.

**Sec. 2-313. Express Warranties by Affirmation, Prom-
2 ise, Description, Sample.—(1) Express warranties by the
3 seller are created as follows:**

4 (a) Any affirmation of fact or promise made by the
5 seller to the buyer which relates to the goods and be-
6 comes part of the basis of the bargain creates an express
7 warranty that the goods shall conform to the affirmation
8 or promise.

9 (b) Any description of the goods which is made part
10 of the basis of the bargain creates an express warranty
11 that the goods shall conform to the description.

12 (c) Any sample or model which is made part of the
13 basis of the bargain creates an express warranty that the
14 whole of the goods shall conform to the sample or model.

15 (2) It is not necessary to the creation of an express
16 warranty that the seller use formal words such as "war-
17 rant" or "guarantee" or that he have a specific intention
18 to make a warranty, but an affirmation merely of the
19 value of the goods or a statement purporting to be merely
20 the seller's opinion or commendation of the goods does
21 not create a warranty.

**Sec. 2-314. Implied Warranty: Merchantability; Usage
2 of Trade.—(1) Unless excluded or modified (Section 2-316),
3 a warranty that the goods shall be merchantable is im-**

4 plied in a contract for their sale if the seller is a merchant
5 with respect to goods of that kind. Under this section the
6 serving for value of food or drink to be consumed either
7 on the premises or elsewhere is a sale.

8 (2) Goods to be merchantable must be at least such as

9 (a) pass without objection in the trade under the con-
10 tract description; and

11 (b) in the case of fungible goods, are of fair average
12 quality within the description; and

13 (c) are fit for the ordinary purposes for which such
14 goods are used; and

15 (d) run, within the variations permitted by the agree-
16 ment, of even kind, quality and quantity within each unit
17 and among all units involved; and

18 (e) are adequately contained, packaged, and labeled
19 as the agreement may require; and

20 (f) conform to the promises or affirmations of fact
21 made on the container or label if any.

22 (3) Unless excluded or modified (Section 2-316) other
23 implied warranties may arise from course of dealing or
24 usage of trade.

Sec. 2-315. Implied Warranty: Fitness for Particular

2 **Purpose.**—Where the seller at the time of contracting has
3 reason to know any particular purpose for which the
4 goods are required and that the buyer is relying on the
5 seller's skill or judgment to select or furnish suitable
6 goods, there is unless excluded or modified under the next
7 section an implied warranty that the goods shall be fit for
8 such purpose.

Sec. 2-316. Exclusion or Modification of Warranties.—

2 (1) Words or conduct relevant to the creation of an ex-
3 press warranty and words or conduct tending to negate or
4 limit warranty shall be construed wherever reasonable as
5 consistent with each other; but subject to the provisions
6 of this article on parol or extrinsic evidence (Section 2-
7 202) negation or limitation is inoperative to the extent
8 that such construction is unreasonable.

9 (2) Subject to subsection (3), to exclude or modify
10 the implied warranty of merchantability or any part of it

11 the language must mention merchantability and in case of
12 a writing must be conspicuous, and to exclude or modify
13 any implied warranty of fitness the exclusion must be by
14 a writing and conspicuous. Language to exclude all im-
15 plied warranties of fitness is sufficient if it states, for ex-
16 ample, that "There are no warranties which extend be-
17 yond the description on the face hereof".

18 (3) Notwithstanding subsection (2)

19 (a) unless the circumstances indicate otherwise, all
20 implied warranties are excluded by expressions like "as
21 is", "with all faults" or other language which in common
22 understanding calls the buyer's attention to the exclusion
23 of warranties and makes plain that there is no implied
24 warranty; and

25 (b) when the buyer before entering into the contract
26 has examined the goods or the sample or model as fully
27 as he desired or has refused to examine the goods there is
28 no implied warranty with regard to defects which an ex-
29 amination ought in the circumstances to have revealed to
30 him; and

31 (c) an implied warranty can also be excluded or modi-
32 fied by course of dealing or course of performance or
33 usage of trade.

34 (4) Remedies for breach of warranty can be limited in
35 accordance with the provisions of this article on liquida-
36 tion or limitation of damages and on contractual modifi-
37 cation of remedy (Sections 2-718 and 2-719).

**Sec. 2-317. Cumulation and Conflict of Warranties Ex-
2 press or Implied.**—Warranties whether express or implied
3 shall be construed as consistent with each other and as
4 cumulative, but if such construction is unreasonable the
5 intention of the parties shall determine which warranty
6 is dominant. In ascertaining that intention the following
7 rules apply:

8 (a) Exact or technical specifications displace an incon-
9 sistent sample or model or general language of descrip-
10 tion.

11 (b) A sample from an existing bulk displaces incon-
12 sistent general language of description.

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-
2 **press or Implied.**—A seller's warranty whether express or
3 implied extends to any natural person who is in the fam-
4 ily or household of his buyer or who is a guest in his home
5 if it is reasonable to expect that such person may use, con-
6 sume or be affected by the goods and who is injured in
7 person by breach of the warranty. A seller may not ex-
8 clude or limit the operation of this section.

Sec. 2-319. F.O.B. and F.A.S. Terms.—(1) Unless other-
2 wise agreed the term F.O.B. (which means "free on
3 board") at a named place, even though used only in con-
4 nection with the stated price, is a delivery term under
5 which

6 (a) when the term is F.O.B. the place of shipment, the
7 seller must at that place ship the goods in the manner pro-
8 vided in this article (Section 2-504) and bear the expense
9 and risk of putting them into the possession of the carrier;
10 or

11 (b) when the term is F.O.B. the place of destination,
12 the seller must at his own expense and risk transport the
13 goods to that place and there tender delivery of them in
14 the manner provided in this article (Section 2-503);

15 (c) when under either (a) or (b) the term is also F.O.B.
16 vessel, car or other vehicle, the seller must in addi-
17 tion at his own expense and risk load the goods on board.
18 If the term is F.O.B. vessel the buyer must name the ves-
19 sel and in an appropriate case the seller must comply with
20 the provisions of this article on the form of bill of lading
21 (Section 2-323).

22 (2) Unless otherwise agreed the term F.A.S. vessel
23 (which means "free alongside") at a named port, even
24 though used only in connection with the stated price, is a
25 delivery term under which the seller must

26 (a) at his own expense and risk deliver the goods
27 alongside the vessel in the manner usual in that port or
28 on a dock designated and provided by the buyer; and

29 (b) obtain and tender a receipt for the goods in ex-
30 change for which the carrier is under a duty to issue a bill
31 of lading.

32 (3) Unless otherwise agreed in any case falling within
33 subsection (1) (a) or (c) or subsection (2) the buyer must
34 seasonably give any needed instructions for making deliv-
35 ery, including when the term is F.A.S. or F.O.B. the load-
36 ing berth of the vessel and in an appropriate case its name
37 and sailing date. The seller may treat the failure of
38 needed instructions as a failure of cooperation under this
39 article (Section 2-311). He may also at his option move
40 the goods in any reasonable manner preparatory to deliv-
41 ery or shipment.

42 (4) Under the term F.O.B. vessel or F.A.S. unless other-
43 wise agreed the buyer must make payment against tender
44 of the required documents and the seller may not tender
45 nor the buyer demand delivery of the goods in substitu-
46 tion for the documents.

Sec. 2-320. C.I.F. and C. & F. Terms.—(1) The term C.I.F.

2 means that the price includes in a lump sum the cost
3 of the goods and the insurance and freight to the named
4 destination. The term C. & F. or C.F. means that the price
5 so includes cost and freight to the named destination.

6 (2) Unless otherwise agreed and even though used
7 only in connection with the stated price and destination,
8 the term C.I.F. destination or its equivalent requires the
9 seller at his own expense and risk to

10 (a) put the goods into the possession of a carrier at the
11 port for shipment and obtain a negotiable bill or bills of
12 lading covering the entire transportation to the named
13 destination; and

14 (b) load the goods and obtain a receipt from the car-
15 rier (which may be contained in the bill of lading) show-
16 ing that the freight has been paid or provided for; and

17 (c) obtain a policy or certificate of insurance, includ-
18 ing any war risk insurance, of a kind and on terms then
19 current at the port of shipment in the usual amount, in
20 the currency of the contract, shown to cover the same
21 goods covered by the bill of lading and providing for pay-
22 ment of loss to the order of the buyer or for the account

23 of whom it may concern; but the seller may add to the
24 price the amount of the premium for any such war risk
25 insurance; and

26 (d) prepare an invoice of the goods and procure any
27 other documents required to effect shipment or to comply
28 with the contract; and

29 (e) forward and tender with commercial promptness
30 all the documents in due form and with any indorsement
31 necessary to perfect the buyer's rights.

32 (3) Unless otherwise agreed the term C. & F. or its
33 equivalent has the same effect and imposes upon the seller
34 the same obligations and risks as a C.I.F. term except the
35 obligation as to insurance.

36 (4) Under the term C.I.F. or C. & F. unless otherwise
37 agreed the buyer must make payment against tender of
38 the required documents and the seller may not tender nor
39 the buyer demand delivery of the goods in substitution
40 for the documents.

Sec. 2-321. C.I.F. or C. & F.: "Net Landed Weights";
2 **"Payment on Arrival"; Warranty of Condition on Arrival.**

3 —Under a contract containing a term C.I.F. or C. & F.

4 (1) Where the price is based on or is to be adjusted
5 according to "net landed weights", "delivered weights",
6 "out turn" quantity or quality or the like, unless other-
7 wise agreed the seller must reasonably estimate the price.
8 The payment due on tender of the documents called for
9 by the contract is the amount so estimated, but after final
10 adjustment of the price a settlement must be made with
11 commercial promptness.

12 (2) An agreement described in subsection (1) or any
13 warranty of quality or condition of the goods on arrival
14 places upon the seller the risk of ordinary deterioration,
15 shrinkage and the like in transportation but has no effect
16 on the place or time of identification to the contract for
17 sale or delivery or on the passing of the risk of loss.

18 (3) Unless otherwise agreed where the contract pro-
19 vides for payment on or after arrival of the goods the
20 seller must before payment allow such preliminary inspec-
21 tion as is feasible; but if the goods are lost delivery of the

22 documents and payment are due when the goods should
23 have arrived.

Sec. 2-322. Delivery "Ex-Ship".—(1) Unless otherwise
2 agreed a term for delivery of goods "ex-ship" (which
3 means from the carrying vessel) or in equivalent language
4 is not restricted to a particular ship and requires delivery
5 from a ship which has reached a place at the named port
6 of destination where goods of the kind are usually dis-
7 charged.

8 (2) Under such a term unless otherwise agreed

9 (a) the seller must discharge all liens arising out of
10 the carriage and furnish the buyer with a direction which
11 puts the carrier under a duty to deliver the goods; and

12 (b) the risk of loss does not pass to the buyer until the
13 goods leave the ship's tackle or are otherwise properly un-
14 loaded.

**Sec. 2-323. Form of Bill of Lading Required in Overseas
2 Shipment; "Overseas".**—(1) Where the contract contem-
3 plates overseas shipment and contains a term C.I.F. or
4 C. & F. or F.O.B. vessel, the seller unless otherwise agreed
5 must obtain a negotiable bill of lading stating that the
6 goods have been loaded on board or, in the case of a term
7 C.I.F. or C. & F., received for shipment.

8 (2) Where in a case within subsection (1) a bill of lad-
9 ing has been issued in a set of parts, unless otherwise
10 agreed if the documents are not to be sent from abroad
11 the buyer may demand tender of the full set; otherwise
12 only one part of the bill of lading need be tendered.
13 Even if the agreement expressly requires a full set

14 (a) due tender of a single part is acceptable within the
15 provisions of this article on cure of improper delivery
16 (subsection (1) of Section 2-508); and

17 (b) even though the full set is demanded, if the docu-
18 ments are sent from abroad the person tendering an in-
19 complete set may nevertheless require payment upon fur-
20 nishing an indemnity which the buyer in good faith deems
21 adequate.

22 (3) A shipment by water or by air or a contract con-
23 templating such shipment is "overseas" insofar as by us-

24 age of trade or agreement it is subject to the commercial,
25 financing or shipping practices characteristic of inter-
26 national deep water commerce.

Sec. 2-324. "No Arrival, No Sale" Term.—Under a term
2 "no arrival, no sale" or terms of like meaning, unless oth-
3 erwise agreed,

4 (a) the seller must properly ship conforming goods
5 and if they arrive by any means he must tender them on
6 arrival but he assumes no obligation that the goods will
7 arrive unless he has caused the non-arrival; and

8 (b) where without fault of the seller the goods are in
9 part lost or have so deteriorated as no longer to conform
10 to the contract or arrive after the contract time, the buyer
11 may proceed as if there had been casualty to identified
12 goods (Section 2-613).

**Sec. 2-325. "Letter of Credit" Term; "Confirmed
2 Credit".**—(1) Failure of the buyer seasonably to furnish an
3 agreed letter of credit is a breach of the contract for sale.

4 (2) The delivery to seller of a proper letter of credit
5 suspends the buyer's obligation to pay. If the letter of
6 credit is dishonored, the seller may on seasonable notifi-
7 cation to the buyer require payment directly from him.

8 (3) Unless otherwise agreed the term "letter of credit"
9 or "banker's credit" in a contract for sale means an irre-
10 vocable credit issued by a financing agency of good repute
11 and, where the shipment is overseas, of good international
12 repute. The term "confirmed credit" means that the credit
13 must also carry the direct obligation of such an agency
14 which does business in the seller's financial market.

**Sec. 2-326. Sale on Approval and Sale or Return; Con-
2 signment Sales and Rights of Creditors.**—(1) Unless oth-
3 erwise agreed, if delivered goods may be returned by the
4 buyer even though they conform to the contract, the
5 transaction is

6 (a) a "sale on approval" if the goods are delivered pri-
7 marily for use, and

8 (b) a "sale or return" if the goods are delivered pri-
9 marily for resale.

10 (2) Except as provided in subsection (3), goods held
11 on approval are not subject to the claims of the buyer's
12 creditors until acceptance; goods held on sale or return are
13 subject to such claims while in the buyer's possession.

14 (3) Where goods are delivered to a person for sale and
15 such person maintains a place of business at which he
16 deals in goods of the kind involved, under a name other
17 than the name of the person making delivery, then with
18 respect to claims of creditors of the person conducting the
19 business the goods are deemed to be on sale or return.
20 The provisions of this subsection are applicable even
21 though an agreement purports to reserve title to the per-
22 son making delivery until payment or resale or uses such
23 words as "on consignment" or "on memorandum". How-
24 ever, this subsection is not applicable if the person making
25 delivery

26 (a) complies with an applicable law providing for a
27 consignor's interest or the like to be evidenced by a sign,
28 or

29 (b) establishes that the person conducting the busi-
30 ness is generally known by his creditors to be substanti-
31 ally engaged in selling the goods of others, or

32 (c) complies with the filing provisions of the article on
33 Secured Transactions (Article 9).

34 (4) Any "or return" term of a contract for sale is to be
35 treated as a separate contract for sale within the statute
36 of frauds section of this article (Section 2-201) and as con-
37 tradicting the sale aspect of the contract within the pro-
38 visions of this article on parol or extrinsic evidence (Sec-
39 tion 2-202).

Sec. 2-327. Special Incidents of Sale on Approval and
2 **Sale or Return.**—(1) Under a sale on approval unless
3 otherwise agreed

4 (a) although the goods are identified to the contract
5 the risk of loss and the title do not pass to the buyer until
6 acceptance; and

7 (b) use of the goods consistent with the purpose of
8 trial is not acceptance but failure seasonably to notify the

9 seller of election to return the goods is acceptance, and if
10 the goods conform to the contract acceptance of any part
11 is acceptance of the whole; and

12 (c) after due notification of election to return, the re-
13 turn is at the seller's risk and expense but a merchant
14 buyer must follow any reasonable instructions.

15 (2) Under a sale or return unless otherwise agreed

16 (a) the option to return extends to the whole or any
17 commercial unit of the goods while in substantially their
18 original condition, but must be exercised seasonably; and

19 (b) the return is at the buyer's risk and expense.

Sec. 2-328. Sale by Auction.—(1) In a sale by auction
2 if goods are put up in lots each lot is the subject of a
3 separate sale.

4 (2) A sale by auction is complete when the auctioneer
5 so announces by the fall of the hammer or in other cus-
6 tomary manner. Where a bid is made while the hammer
7 is falling in acceptance of a prior bid the auctioneer may
8 in his discretion reopen the bidding or declare the goods
9 sold under the bid on which the hammer was falling.

10 (3) Such a sale is with reserve unless the goods are in
11 explicit terms put up without reserve. In an auction
12 with reserve the auctioneer may withdraw the goods at
13 any time until he announces completion of the sale. In an
14 auction without reserve, after the auctioneer calls for bids
15 on an article or lot, that article or lot cannot be withdrawn
16 unless no bid is made within a reasonable time. In either
17 case a bidder may retract his bid until the auctioneer's
18 announcement of completion of the sale, but a bidder's re-
19 traction does not revive any previous bid.

20 (4) If the auctioneer knowingly receives a bid on the
21 seller's behalf or the seller makes or procures such a bid,
22 and notice has not been given that liberty for such bidding
23 is reserved, the buyer may at his option avoid the sale or
24 take the goods at the price of the last good faith bid prior
25 to the completion of the sale. This subsection shall not
26 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;

2 Limited Application of This Section.—Each provision of
3 this article with regard to the rights, obligations and
4 remedies of the seller, the buyer, purchasers or other
5 third parties applies irrespective of title to the goods ex-
6 cept where the provision refers to such title. Insofar as
7 situations are not covered by the other provisions of this
8 article and matters concerning title become material the
9 following rules apply:

10 (1) Title to goods cannot pass under a contract for
11 sale prior to their identification to the contract (Section
12 2-501), and unless otherwise explicitly agreed the buyer
13 acquires by their identification a special property as lim-
14 ited by this chapter. Any retention or reservation by the
15 seller of the title (property) in goods shipped or de-
16 livered to the buyer is limited in effect to a reservation of
17 a security interest. Subject to these provisions and to the
18 provisions of the article on Secured Transactions (Article
19 9), title to goods passes from the seller to the buyer in
20 any manner and on any conditions explicitly agreed on
21 by the parties.

22 (2) Unless otherwise explicitly agreed title passes to the
23 buyer at the time and place at which the seller completes
24 his performance with reference to the physical delivery of
25 the goods, despite any reservation of a security interest and
26 even though a document of title is to be delivered at a dif-
27 ferent time or place; and in particular and despite any
28 reservation of a security interest by the bill of lading

29 (a) if the contract requires or authorizes the seller to
30 send the goods to the buyer but does not require him to
31 deliver them at destination, title passes to the buyer at
32 the time and place of shipment; but

33 (b) if the contract requires delivery at destination,
34 title passes on tender there.

35 (3) Unless otherwise explicitly agreed where delivery
36 is to be made without moving the goods,

37 (a) if the seller is to deliver a document of title, title

38 passes at the time when and the place where he delivers
39 such documents; or

40 (b) if the goods are at the time of contracting already
41 identified and no documents are to be delivered, title
42 passes at the time and place of contracting.

43 (4) A rejection or other refusal by the buyer to re-
44 ceive or retain the goods, whether or not justified, or a
45 justified revocation of acceptance revests title to the
46 goods in the seller. Such revesting occurs by operation of
47 law and is not a "sale".

Sec. 2-402. Rights of Seller's Creditors Against Sold
2 **Goods.**—(1) Except as provided in subsections (2) and
3 (3), rights of unsecured creditors of the seller with re-
4 spect to goods which have been identified to a contract for
5 sale are subject to the buyer's rights to recover the goods
6 under this article (Sections 2-502 and 2-716).

7 (2) A creditor of the seller may treat a sale or an
8 identification of goods to a contract for sale as void if as
9 against him a retention of possession by the seller is
10 fraudulent under any rule of law of the state where the
11 goods are situated, except that retention of possession in
12 good faith and current course of trade by a merchant-
13 seller for a commercially reasonable time after a sale or
14 identification is not fraudulent.

15 (3) Nothing in this article shall be deemed to impair
16 the rights of creditors of the seller

17 (a) under the provisions of the article on Secured
18 Transactions (Article 9); or

19 (b) where identification to the contract or delivery is
20 made not in current course of trade but in satisfaction of
21 or as security for a pre-existing claim for money, secur-
22 ity or the like and is made under circumstances which
23 under any rule of law of the state where the goods are
24 situated would apart from this article constitute the
25 transaction a fraudulent transfer or voidable preference.

Sec. 2-403. Power to Transfer; Good Faith Purchase of
2 **Goods; "Entrusting".**—(1) A purchaser of goods acquires
3 all title which his transferor had or had power to transfer
4 except that a purchaser of a limited interest acquires

5 rights only to the extent of the interest purchased. A per-
6 son with voidable title has power to transfer a good title
7 to a good faith purchaser for value. When goods have
8 been delivered under a transaction of purchase the pur-
9 chaser has such power even though

10 (a) the transferor was deceived as to the identity of
11 the purchaser, or

12 (b) the delivery was in exchange for a check which
13 is later dishonored, or

14 (c) it was agreed that the transaction was to be a
15 "cash sale", or

16 (d) the delivery was procured through fraud punisha-
17 ble as larcenous under the criminal law.

18 (2) Any entrusting of possession of goods to a mer-
19 chant who deals in goods of that kind gives him power
20 to transfer all rights of the entruster to a buyer in ordi-
21 nary course of business.

22 (3) "Entrusting" includes any delivery and any acqui-
23 escence in retention of possession regardless of any condi-
24 tion expressed between the parties to the delivery or
25 acquiescence and regardless of whether the procurement
26 of the entrusting or the possessor's disposition of the
27 goods have been such as to be larcenous under the crimi-
28 nal law.

29 (4) The rights of other purchasers of goods and of lien
30 creditors are governed by the articles on Secured Trans-
31 actions (Article 9), Bulk Transfers (Article 6) and Docu-
32 ments of Title (Article 7).

PART 5. PERFORMANCE

Sec. 2-501. Insurable Interest in Goods; Manner of
2 **Identification of Goods.**—(1) The buyer obtains a special
3 property and an insurable interest in goods by identifica-
4 tion of existing goods as goods to which the contract
5 refers even though the goods so identified are non-
6 conforming and he has an option to return or reject them.
7 Such identification can be made at any time and in any
8 manner explicitly agreed to by the parties. In the ab-
9 sence of explicit agreement identification occurs

10 (a) when the contract is made if it is for the sale of
11 goods already existing and identified;

12 (b) if the contract is for the sale of future goods other
13 than those described in paragraph (c), when goods are
14 shipped, marked or otherwise designated by the seller as
15 goods to which the contract refers;

16 (c) when the crops are planted or otherwise become
17 growing crops or the young are conceived if the contract
18 is for the sale of unborn young to be born within twelve
19 months after contracting or for the sale of crops to be
20 harvested within twelve months or the next normal har-
21 vest season after contracting whichever is longer.

22 (2) The seller retains an insurable interest in goods so
23 long as title to or any security interest in the goods re-
24 mains in him and where the identification is by the seller
25 alone he may until default or insolvency or notification to
26 the buyer that the identification is final substitute other
27 goods for those identified.

28 (3) Nothing in this section impairs any insurable in-
29 terest recognized under any other statute or rule of law.

Sec. 2-502. Buyer's Right to Goods on Seller's Insol-
2 **vency.**—(1) Subject to subsection (2) and even though
3 the goods have not been shipped a buyer who has paid a
4 part or all of the price of goods in which he has a special
5 property under the provisions of the immediately preced-
6 ing section may on making and keeping good a tender of
7 any unpaid portion of their price recover them from the
8 seller if the seller becomes insolvent within ten days after
9 receipt of the first installment on their price.

10 (2) If the identification creating his special property
11 has been made by the buyer he acquires the right to re-
12 cover the goods only if they conform to the contract for
13 sale.

Sec. 2-503. Manner of Seller's Tender of Delivery.—
2 (1) Tender of delivery requires that the seller put and
3 hold conforming goods at the buyer's disposition and give
4 the buyer any notification reasonably necessary to enable
5 him to take delivery. The manner, time and place for

6 tender are determined by the agreement and this article,
7 and in particular

8 (a) tender must be at a reasonable hour, and if it is of
9 goods they must be kept available for the period reasonably
10 necessary to enable the buyer to take possession; but

11 (b) unless otherwise agreed the buyer must furnish
12 facilities reasonably suited to the receipt of the goods.

13 (2) Where the case is within the next section respecting
14 shipment tender requires that the seller comply with
15 its provisions.

16 (3) Where the seller is required to deliver at a particular
17 destination tender requires that he comply with subsection
18 (1) and also in any appropriate case tender documents as
19 described in subsections (4) and (5) of this section.
20

21 (4) Where goods are in the possession of a bailee and
22 are to be delivered without being moved

23 (a) tender requires that the seller either tender a
24 negotiable document of title covering such goods or procure
25 acknowledgment by the bailee of the buyer's right to
26 possession of the goods; but

27 (b) tender to the buyer of a non-negotiable document
28 of title or of a written direction to the bailee to deliver is
29 sufficient tender unless the buyer seasonably objects, and
30 receipt by the bailee of notification of the buyer's rights
31 fixes those rights as against the bailee and all third persons;
32 but risk of loss of the goods and of any failure by the
33 bailee to honor the non-negotiable document of title or to
34 obey the direction remains on the seller until the buyer has
35 had a reasonable time to present the document or direction,
36 and a refusal by the bailee to honor the document or to obey
37 the direction defeats the tender.

38 (5) Where the contract requires the seller to deliver
39 documents

40 (a) he must tender all such documents in correct
41 form, except as provided in this article with respect to
42 bills of lading in a set (subsection (2) of Section 2-323);
43 and

44 (b) tender through customary banking channels is

45 sufficient and dishonor of a draft accompanying the docu-
46 ments constitutes non-acceptance or rejection.

Sec. 2-504. Shipment by Seller.—Where the seller is
2 required or authorized to send the goods to the buyer and
3 the contract does not require him to deliver them at a par-
4 ticular destination, then unless otherwise agreed he must

5 (a) put the goods in the possession of such a carrier
6 and make such a contract for their transportation as may
7 be reasonable having regard to the nature of the goods
8 and other circumstances of the case; and

9 (b) obtain and promptly deliver or tender in due form
10 any document necessary to enable the buyer to obtain
11 possession of the goods or otherwise required by the
12 agreement or by usage of trade; and

13 (c) promptly notify the buyer of the shipment.
14 Failure to notify the buyer under paragraph (c) or to
15 make a proper contract under paragraph (a) is a ground
16 for rejection only if material delay or loss ensues.

Sec. 2-505. Seller's Shipment Under Reservation.—(1)
2 Where the seller has identified goods to the contract by
3 or before shipment:

4 (a) his procurement of a negotiable bill of lading to
5 his own order or otherwise reserves in him a security in-
6 terest in the goods. His procurement of the bill to the
7 order of a financing agency or of the buyer indicates in
8 addition only the seller's expectation of transferring that
9 interest to the person named.

10 (b) a non-negotiable bill of lading to himself or his
11 nominee reserves possession of the goods as security but
12 except in a case of conditional delivery (subsection (2) of
13 Section 2-507) a non-negotiable bill of lading naming the
14 buyer as consignee reserves no security interest even
15 though the seller retains possession of the bill of lading.

16 (2) When shipment by the seller with reservation of a
17 security interest is in violation of the contract for sale it
18 constitutes an improper contract for transportation with-
19 in the preceding section but impairs neither the rights
20 given to the buyer by shipment and identification of the

21 goods to the contract nor the seller's powers as a holder of
22 a negotiable document.

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)

2 Where the contract requires or authorizes the seller to
3 ship the goods by carrier

4 (a) if it does not require him to deliver them at a par-
5 ticular destination, the risk of loss passes to the buyer
6 when the goods are duly delivered to the carrier even
7 though the shipment is under reservation (Section 2-505);
8 but

9 (b) if it does require him to deliver them at a particu-
10 lar destination and the goods are there duly tendered
11 while in the possession of the carrier, the risk of loss
12 passes to the buyer when the goods are there duly so ten-
13 dered as to enable the buyer to take delivery.

14 (2) Where the goods are held by a bailee to be deliv-
15 ered without being moved, the risk of loss passes to the
16 buyer

17 (a) on his receipt of a negotiable document of title
18 covering the goods; or

19 (b) on acknowledgment by the bailee of the buyer's
20 right to possession of the goods; or

21 (c) after his receipt of a non-negotiable document of
22 title or other written direction to deliver, as provided in
23 subsection (4) (b) of Section 2-503.

24 (3) In any case not within subsection (1) or (2), the
25 risk of loss passes to the buyer on his receipt of the goods
26 if the seller is a merchant; otherwise the risk passes to the
27 buyer on tender of delivery.

28 (4) The provisions of this section are subject to con-
29 trary agreement of the parties and to the provisions of
30 this article on sale on approval (Section 2-327) and on
31 effect of breach on risk of loss (Section 2-510).

Sec. 2-510. Effect of Breach on Risk of Loss.—(1)

2 Where a tender or delivery of goods so fails to conform
3 to the contract as to give a right of rejection the risk
4 of their loss remains on the seller until cure or acceptance.

5 (2) Where the buyer rightfully revokes acceptance he
6 may to the extent of any deficiency in his effective insur-
7 ance coverage treat the risk of loss as having rested on the
8 seller from the beginning.

9 (3) Where the buyer as to conforming goods already

10 identified to the contract for sale repudiates or is other-
11 wise in breach before risk of their loss has passed to him,
12 the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on
13 the buyer for a commercially reasonable time.

Sec. 2-511. Tender of Payment by Buyer; Payment by

2 **Check.**—(1) Unless otherwise agreed tender of payment
3 is a condition to the seller's duty to tender and complete
4 any delivery.

5 (2) Tender of payment is sufficient when made by any
6 means or in any manner current in the ordinary course of
7 business unless seller demands payment in legal tender
8 and gives any extension of time reasonably necessary to
9 procure it.

10 (3) Subject to the provisions of this chapter on the effect of an instrument on an obligation (Section 3-802),
11 payment by check is conditional and is defeated as between the parties by dishonor of the check on due present-
12 ment.

Sec. 2-512. Payment by Buyer Before Inspection.—(1)

2 Where the contract requires payment before inspection
3 non-conformity of the goods does not excuse the buyer
4 from so making payment unless

5 (a) the non-conformity appears without inspection; or

6 (b) despite tender of the required documents the circumstances would justify injunction against honor under
7 the provisions of this chapter (Section 5-114).

9 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right
10 to inspect or any of his remedies.

Sec. 2-513. Buyer's Right to Inspection of Goods.—(1)

2 Unless otherwise agreed and subject to subsection (3),
3 where goods are tendered or delivered or identified to the
4 contract for sale, the buyer has a right before payment or
5 acceptance to inspect them at any reasonable place and
6 time and in any reasonable manner. When the seller is
7 required or authorized to send the goods to the buyer, the
8 inspection may be after their arrival.

9 (2) Expenses of inspection must be borne by the buyer
10 but may be recovered from the seller if the goods do not
11 conform and are rejected.

12 (3) Unless otherwise agreed and subject to the provi-
13 sions of this article on C.I.F. contracts (subsection (3) of
14 Section 2-321), the buyer is not entitled to inspect the
15 goods before payment of the price when the contract pro-
16 vides

17 (a) for delivery "C.O.D." or on other like terms; or

18 (b) for payment against documents of title, except
19 where such payment is due only after the goods are to be-
20 come available for inspection.

21 (4) A place or method of inspection fixed by the par-
22 ties is presumed to be exclusive but unless otherwise ex-
23 pressly agreed it does not postpone identification or shift
24 the place for delivery or for passing the risk of loss. If
25 compliance becomes impossible, inspection shall be as pro-
26 vided in this section unless the place or method fixed was
27 clearly intended as an indispensable condition failure of
28 which avoids the contract.

Sec. 2-514. When Documents Deliverable on Accept-
2 **ance; When on Payment.**—Unless otherwise agreed docu-
3 ments against which a draft is drawn are to be delivered
4 to the drawee on acceptance of the draft if it is payable
5 more than three days after presentment; otherwise, only
6 on payment.

Sec. 2-515. Preserving Evidence of Goods in Dispute.—
2 In furtherance of the adjustment of any claim or dispute

3 (a) either party on reasonable notification to the other
4 and for the purpose of ascertaining the facts and preserv-
5 ing evidence has the right to inspect, test and sample the
6 goods including such of them as may be in the possession
7 or control of the other; and

8 (b) the parties may agree to a third party inspection
9 or survey to determine the conformity or condition of the
10 goods and may agree that the findings shall be binding
11 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 in-
3 stallment contracts (Section 2-612) and unless otherwise
4 agreed under the sections on contractual limitations of
5 remedy (Sections 2-718 and 2-719), if the goods or the ten-
6 der of delivery fail in any respect to conform to the con-
7 tract, 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
11 rest.

Sec. 2-602. Manner and Effect of Rightful Rejection.

2 —(1) Rejection of goods must be within a reasonable
3 time after their delivery or tender. It is ineffective un-
4 less the buyer seasonably notifies the seller.

5 (2) Subject to the provisions of the two following sec-
6 tions on rejected goods (Sections 2-603 and 2-604),

7 (a) after rejection any exercise of ownership by the
8 buyer with respect to any commercial unit is wrongful as
9 against the seller; and

10 (b) if the buyer has before rejection taken physical
11 possession of goods in which he does not have a security
12 interest under the provisions of this article (subsection
13 (3) of Section 2-711), he is under a duty after rejection to
14 hold them with reasonable care at the seller's disposition
15 for a time sufficient to permit the seller to remove them;
16 but

17 (c) the buyer has no further obligations with regard
18 to goods rightfully rejected.

19 (3) The seller's rights with respect to goods wrong-
20 fully rejected are governed by the provisions of this ar-
21 ticle on seller's remedies in general (Section 2-703).

Sec. 2-603. Merchant Buyer's Duties as to Rightfully

2 **Rejected Goods.**—(1) Subject to any security interest in
3 the buyer (subsection (3) of Section 2-711), when the
4 seller has no agent or place of business at the market of
5 rejection a merchant buyer is under a duty after rejection

6 of goods in his possession or control to follow any reason-
7 able instructions received from the seller with respect to
8 the goods and in the absence of such instructions to make
9 reasonable efforts to sell them for the seller's account if
10 they are perishable or threaten to decline in value speed-
11 ily. Instructions are not reasonable if on demand indem-
12 nity for expenses is not forthcoming.

13 (2) When the buyer sells goods under subsection (1), he
14 is entitled to reimbursement from the seller or out of the
15 proceeds for reasonable expenses of caring for and selling
16 them, and if the expenses include no selling commission
17 then to such commission as is usual in the trade or if there
18 is none to a reasonable sum not exceeding ten per cent on
19 the gross proceeds.

20 (3) In complying with this section the buyer is held
21 only to good faith and good faith conduct hereunder is
22 neither acceptance nor conversion nor the basis of an ac-
23 tion for damages.

Sec. 2-604. Buyer's Options as to Salvage of Rightfully
2 **Rejected Goods.**—Subject to the provisions of the immedi-
3 ately preceding section on perishables if the seller gives
4 no instructions within a reasonable time after notification
5 of rejection the buyer may store the rejected goods for the
6 seller's account or reship them to him or resell them for
7 the seller's account with reimbursement as provided in
8 the preceding section. Such action is not acceptance or
9 conversion.

Sec. 2-605. Waiver of Buyer's Objections by Failure to
2 **Particularize.**—(1) The buyer's failure to state in connec-
3 tion with rejection a particular defect which is ascertain-
4 able by reasonable inspection precludes him from relying
5 on the unstated defect to justify rejection or to establish
6 breach

7 (a) where the seller could have cured it if stated sea-
8 sonably; or

9 (b) between merchants when the seller has after re-
10 jection made a request in writing for a full and final writ-
11 ten statement of all defects on which the buyer proposes
12 to rely.

13 (2) Payment against documents made without reser-
14 vation of rights precludes recovery of the payment for de-
15 fects apparent on the face of the documents.

Sec. 2-606. What Constitutes Acceptance of Goods.—

- 2 (1) Acceptance of goods occurs when the buyer
- 3 (a) after a reasonable opportunity to inspect the
4 goods signifies to the seller that the goods are conforming
5 or that he will take or retain them in spite of their non-
6 conformity; or
- 7 (b) fails to make an effective rejection (subsection
8 (1) of Section 2-602), but such acceptance does not occur
9 until the buyer has had a reasonable opportunity to in-
10 spect them; or
- 11 (c) does any act inconsistent with the seller's owner-
12 ship; but if such act is wrongful as against the seller it is
13 an acceptance only if ratified by him.
- 14 (2) Acceptance of a part of any commercial unit is
15 acceptance of that entire unit.

**Sec. 2-607. Effect of Acceptance; Notice of Breach;
2 Burden of Establishing Breach After Acceptance; Notice
3 of Claim or Litigation to Person Answerable Over.—(1)**
4 The buyer must pay at the contract rate for any goods
5 accepted.

6 (2) Acceptance of goods by the buyer precludes rejec-
7 tion of the goods accepted and if made with knowledge of
8 a non-conformity cannot be revoked because of it unless
9 the acceptance was on the reasonable assumption that the
10 non-conformity would be seasonably cured but accept-
11 ance does not of itself impair any other remedy provided
12 by this article for non-conformity.

13 (3) Where a tender has been accepted

14 (a) the buyer must within a reasonable time after he
15 discovers or should have discovered any breach notify the
16 seller of breach or be barred from any remedy; and

17 (b) if the claim is one for infringement or the like
18 (subsection (3) of Section 2-312) and the buyer is
19 sued as a result of such a breach he must so notify the
20 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 litigation. If the notice states that the seller may come in and
28 defend and that if the seller does not do so he will be
29 bound in any action against him by his buyer by any de-
30 termination of fact common to the two litigations, then
31 unless the seller after seasonable receipt of the notice
32 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 pense 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

15 change in condition of the goods which is not caused by
16 their own defects. It is not effective until the buyer
17 notifies the seller of it.

18 (3) A buyer who so revokes has the same rights and
19 duties with regard to the goods involved as if he had re-
20 jected them.

Sec. 2-609. Right to Adequate Assurance of Perform-
2 **ance.**—(1) A contract for sale imposes an obligation on
3 each party that the other's expectation of receiving due
4 performance will not be impaired. When reasonable
5 grounds for insecurity arise with respect to the perform-
6 ance of either party the other may in writing demand
7 adequate assurance of due performance and until he re-
8 ceives such assurance may if commercially reasonable
9 suspend any performance for which he has not already
10 received the agreed return.

11 (2) Between merchants the reasonableness of grounds
12 for insecurity and the adequacy of any assurance offered
13 shall be determined according to commercial standards.

14 (3) Acceptance of any improper delivery or payment
15 does not prejudice the aggrieved party's right to demand
16 adequate assurance of future performance.

17 (4) After receipt of a justified demand failure to pro-
18 vide within a reasonable time not exceeding thirty days
19 such assurance of due performance as is adequate under
20 the circumstances of the particular case is a repudiation
21 of the contract.

Sec. 2-610. Anticipatory Repudiation.—When either
2 party repudiates the contract with respect to a perform-
3 ance not yet due the loss of which will substantially im-
4 pair the value of the contract to the other, the aggrieved
5 party may

6 (a) for a commercially reasonable time await per-
7 formance by the repudiating party; or

8 (b) resort to any remedy for breach (Section 2-703 or
9 Section 2-711), even though he has notified the repudiat-
10 ing party that he would await the latter's performance
11 and has urged retraction; and

12 (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
3 due he can retract his repudiation unless the aggrieved
4 party has since the repudiation cancelled or materially
5 changed his position or otherwise indicated that he con-
6 sider the repudiation final.

7 (2) Retraction may be by any method which clearly
8 indicates to the aggrieved party that the repudiating
9 party intends to perform, but must include any assurance
10 justifiably demanded under the provisions of this article
11 (Section 2-609).

12 (3) Retraction reinstates the repudiating party's
13 rights under the contract with due excuse and allowance
14 to the aggrieved party for any delay occasioned by the
15 repudiation.

Sec. 2-612. "Installment Contract"; Breach.—(1) An

2 "installment contract" is one which requires or authorizes
3 the delivery of goods in separate lots to be separately ac-
4 cepted, even though the contract contains a clause "each
5 delivery is a separate contract" or its equivalent.

6 (2) The buyer may reject any installment which is
7 non-conforming if the non-conformity substantially im-
8 pairs the value of that installment and cannot be cured or
9 if the non-conformity is a defect in the required docu-
10 ments; but if the non-conformity does not fall within sub-
11 section (3) and the seller gives adequate assurance of its
12 cure the buyer must accept that installment.

13 (3) Whenever non-conformity or default with respect
14 to one or more installments substantially impairs the
15 value of the whole contract there is a breach of the whole.
16 But the aggrieved party reinstates the contract if he ac-
17 cepts a non-conforming installment without seasonably
18 notifying of cancellation or if he brings an action with re-
19 spect only to past installments or demands performance
20 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

11 by compliance in good faith with any applicable foreign
12 or domestic governmental regulation or order whether or
13 not it later proves to be invalid.

14 (b) Where the causes mentioned in paragraph (a) af-
15 fect only a part of the seller's capacity to perform, he must
16 allocate production and deliveries among his customers
17 but may at his option include regular customers not then
18 under contract as well as his own requirements for further
19 manufacture. He may so allocate in any manner which
20 is fair and reasonable.

21 (c) The seller must notify the buyer seasonably that
22 there will be delay or non-delivery and, when allocation
23 is required under paragraph (b), of the estimated quota
24 thus made available for the buyer.

Sec. 2-616. Procedure on Notice Claiming Excuse.—(1)

2 Where the buyer receives notification of a material or in-
3 definite delay or an allocation justified under the preced-
4 ing section he may by written notification to the seller as
5 to any delivery concerned, and where the prospective de-
6 ficiency substantially impairs the value of the whole con-
7 tract under the provisions of this article relating to breach
8 of installment contracts (Section 2-612), then also as to
9 the whole,

10 (a) terminate and thereby discharge any unexecuted
11 portion of the contract; or

12 (b) modify the contract by agreeing to take his avail-
13 able quota in substitution.

14 (2) If after receipt of such notification from the seller
15 the buyer fails so to modify the contract within a reason-
16 able time not exceeding thirty days the contract lapses
17 with respect to any deliveries affected.

18 (3) The provisions of this section may not be negated
19 by agreement except in so far as the seller has assumed
20 a greater obligation under the preceding section.

PART 7. REMEDIES

**Sec. 2-701. Remedies for Breach of Collateral Con-
2 tracts Not Impaired.—**Remedies for breach of any obliga-
3 tion or promise collateral or ancillary to a contract for
4 sale are not impaired by the provisions of this article.

Sec. 2-702. Seller's Remedies on Discovery of Buyer's

2 **Insolvency.**—(1) Where the seller discovers the buyer to
3 be insolvent he may refuse delivery except for cash in-
4 cluding payment for all goods theretofore delivered under
5 the contract, and stop delivery under this article (Section
6 2-705).

7 (2) Where the seller discovers that the buyer has re-
8 ceived goods on credit while insolvent he may reclaim the
9 goods upon demand made within ten days after the re-
10 ceipt, but if misrepresentation of solvency has been made
11 to the particular seller in writing within three months be-
12 fore delivery the ten day limitation does not apply. Ex-
13 cept as provided in this subsection the seller may not base
14 a right to reclaim goods on the buyer's fraudulent or inno-
15 cent misrepresentation of solvency or of intent to pay.

16 (3) The seller's right to reclaim under subsection (2)
17 is subject to the rights of a buyer in ordinary course or
18 other good faith purchaser or lien creditor under this ar-
19 ticle (Section 2-403). Successful reclamation of goods ex-
20 cludes all other remedies with respect to them.

Sec. 2-703. Seller's Remedies in General.—Where the

2 buyer wrongfully rejects or revokes acceptance of goods
3 or fails to make a payment due on or before delivery or
4 repudiates with respect to a part or the whole, then with
5 respect to any goods directly affected and, if the breach is
6 of the whole contract (Section 2-612), then also with re-
7 spect to the whole undelivered balance, the aggrieved
8 seller may

9 (a) withhold delivery of such goods;

10 (b) stop delivery by any bailee as hereafter provided
11 (Section 2-705);

12 (c) proceed under the next section respecting goods
13 still unidentified to the contract;

14 (d) resell and recover damages as hereafter provided
15 (Section 2-706);

16 (e) recover damages for non-acceptance (Section 2-
17 708) or in a proper case the price (Section 2-709);

18 (f) cancel.

Sec. 2-704. Seller's Right to Identify Goods to the Con-

2 **tract Notwithstanding Breach or to Salvage Unfinished**
3 **Goods.**—(1) An aggrieved seller under the preceding sec-
4 tion may

5 (a) identify to the contract conforming goods not al-
6 ready identified if at the time he learned of the breach
7 they are in his possession or control;

8 (b) treat as the subject of resale goods which have
9 demonstrably been intended for the particular contract
10 even though those goods are unfinished.

11 (2) Where the goods are unfinished an aggrieved seller
12 may in the exercise of reasonable commercial judgment
13 for the purposes of avoiding loss and of effective realiza-
14 tion either complete the manufacture and wholly identify
15 the goods to the contract or cease manufacture and resell
16 for scrap or salvage value or proceed in any other reason-
17 able manner.

Sec. 2-705. Seller's Stoppage of Delivery in Transit or
2 **Otherwise.**—(1) The seller may stop delivery of goods in
3 the possession of a carrier or other bailee when he discov-
4 ers the buyer to be insolvent (Section 2-702) and may stop
5 delivery of carload, truckload, planeload or larger ship-
6 ments of express or freight when the buyer repudiates or
7 fails to make a payment due before delivery or if for any
8 other reason the seller has a right to withhold or reclaim
9 the goods.

10 (2) As against such buyer the seller may stop delivery
11 until

12 (a) receipt of the goods by the buyer; or

13 (b) acknowledgment to the buyer by any bailee of the
14 goods except a carrier that the bailee holds the goods for
15 the buyer; or

16 (c) such acknowledgment to the buyer by a carrier by
17 re-shipment or as warehouseman; or

18 (d) negotiation to the buyer of any negotiable docu-
19 ment of title covering the goods.

20 (3) (a) To stop delivery the seller must so notify as
21 to enable the bailee by reasonable diligence to prevent de-
22 livery of the goods.

23 (b) After such notification the bailee must hold and

24 deliver the goods according to the directions of the seller
25 but the seller is liable to the bailee for any ensuing
26 charges or damages.

27 (c) If a negotiable document of title has been issued
28 for goods the bailee is not obliged to obey a notification to
29 stop until surrender of the document.

30 (d) A carrier who has issued a non-negotiable bill of
31 lading is not obliged to obey a notification to stop received
32 from a person other than the consignor.

Sec. 2-706. Seller's Resale Including Contract for Re-
2 **sale.**—(1) Under the conditions stated in Section 2-703
3 on seller's remedies, the seller may resell the goods con-
4 cerned or the undelivered balance thereof. Where the re-
5 sale is made in good faith and in a commercially reasona-
6 ble manner the seller may recover the difference between
7 the resale price and the contract price together with any
8 incidental damages allowed under the provisions of this
9 article (Section 2-710), but less expenses saved in conse-
10 quence of the buyer's breach.

11 (2) Except as otherwise provided in subsection (3) or
12 unless otherwise agreed resale may be at public or private
13 sale including sale by way of one or more contracts to sell
14 or of identification to an existing contract of the seller.
15 Sale may be as a unit or in parcels and at any time and
16 place and on any terms but every aspect of the sale in-
17 cluding the method, manner, time, place and terms must
18 be commercially reasonable. The resale must be reasona-
19 bly identified as referring to the broken contract, but it is
20 not necessary that the goods be in existence or that any
21 or all of them have been identified to the contract before
22 the breach.

23 (3) Where the resale is at private sale the seller must
24 give the buyer reasonable notification of his intention to
25 resell.

26 (4) Where the resale is at public sale

27 (a) only identified goods can be sold except where
28 there is a recognized market for a public sale of futures
29 in goods of the kind; and

30 (b) it must be made at a usual place or market for
31 public sale if one is reasonably available and except in

32 the case of goods which are perishable or threaten to de-
33 cline in value speedily the seller must give the buyer rea-
34 sonable notice of the time and place of the resale; and

35 (c) if the goods are not to be within the view of those
36 attending the sale the notification of sale must state the
37 place where the goods are located and provide for their
38 reasonable inspection by prospective bidders; and

39 (d) the seller may buy.

40 (5) A purchaser who buys in good faith at a resale
41 takes the goods free of any rights of the original buyer
42 even though the seller fails to comply with one or more
43 of the requirements of this section.

44 (6) The seller is not accountable to the buyer for any
45 profit made on any resale. A person in the position of a
46 seller (Section 2-707) or a buyer who has rightfully re-
47 jected or justifiably revoked acceptance must account for
48 any excess over the amount of his security interest, as
49 hereinafter defined (subsection (3) of Section 2-711).

Sec. 2-707. "Person in the Position of a Seller".—(1) A
2 "person in the position of a seller" includes as against a
3 principal an agent who has paid or become responsible for
4 the price of goods on behalf of his principal or anyone who
5 otherwise holds a security interest or other right in goods
6 similar to that of a seller.

7 (2) A person in the position of a seller may as pro-
8 vided in this article withhold or stop delivery (Section 2-
9 705) and resell (Section 2-706) and recover incidental
10 damages (Section 2-710).

**Sec. 2-708. Seller's Damages for Non-acceptance or Re-
2 pudiation.—**(1) Subject to subsection (2) and to the pro-
3 visions of this article with respect to proof of market
4 price (Section 2-723), the measure of damages for non-
5 acceptance or repudiation by the buyer is the difference
6 between the market price at the time and place for tender
7 and the unpaid contract price together with any inciden-
8 tal damages provided in this article (Section 2-710), but
9 less expenses saved in consequence of the buyer's breach.

10 (2) If the measure of damages provided in subsection
11 (1) is inadequate to put the seller in as good a position as

12 performance would have done then the measure of dam-
13 ages is the profit (including reasonable overhead) which
14 the seller would have made from full performance by the
15 buyer, together with any incidental damages provided in
16 this article (Section 2-710), due allowance for costs rea-
17 sonably incurred and due credit for payments or proceeds
18 of resale.

Sec. 2-709. Action for the Price.—(1) When the buyer
2 fails to pay the price as it becomes due the seller may re-
3 cover, together with any incidental damages under the
4 next section, the price

5 (a) of goods accepted or of conforming goods lost or
6 damaged within a commercially reasonable time after
7 risk of their loss has passed to the buyer; and

8 (b) of goods identified to the contract if the seller is
9 unable after reasonable effort to resell them at a reasona-
10 ble price or the circumstances reasonably indicate that
11 such effort will be unavailing.

12 (2) Where the seller sues for the price he must hold
13 for the buyer any goods which have been identified to the
14 contract and are still in his control except that if resale
15 becomes possible he may resell them at any time prior to
16 the collection of the judgment. The net proceeds of any
17 such resale must be credited to the buyer and payment of
18 the judgment entitles him to any goods not resold.

19 (3) After the buyer has wrongfully rejected or re-
20 voked acceptance of the goods or has failed to make a
21 payment due or has repudiated (Section 2-610), a seller
22 who is held not entitled to the price under this section
23 shall nevertheless be awarded damages for non-accept-
24 ance under the preceding section.

Sec. 2-710. Seller's Incidental Damages.—Incidental
2 damages to an aggrieved seller include any commercially
3 reasonable charges, expenses or commissions incurred in
4 stopping delivery, in the transportation, care and custody
5 of goods after the buyer's breach, in connection with re-
6 turn or resale of the goods or otherwise resulting from
7 the breach.

Sec. 2-711. Buyer's Remedies in General; Buyer's Secu-

2 **rity Interest in Rejected Goods.**—(1) Where the seller
3 fails to make delivery or repudiates or the buyer right-
4 fully rejects or justifiably revokes acceptance then with
5 respect to any goods involved, and with respect to the
6 whole if the breach goes to the whole contract (Section 2-
7 612), the buyer may cancel and whether or not he has
8 done so may in addition to recovering so much of the
9 price as has been paid

10 (a) “cover” and have damages under the next section
11 as to all the goods affected whether or not they have been
12 identified to the contract; or

13 (b) recover damages for non-delivery as provided in
14 this article (Section 2-713).

15 (2) Where the seller fails to deliver or repudiates the
16 buyer may also

17 (a) if the goods have been identified recover them as
18 provided in this article (Section 2-502); or

19 (b) in a proper case obtain specific performance or
20 replevy the goods as provided in this article (Section 2-
21 716).

22 (3) On rightful rejection or justifiable revocation of
23 acceptance a buyer has a security interest in goods in his
24 possession or control for any payments made on their
25 price and any expenses reasonably incurred in their in-
26 spection, receipt, transportation, care and custody and
27 may hold such goods and resell them in like manner as
28 an aggrieved seller (Section 2-703).

Sec. 2-712. “Cover”; Buyer’s Procurement of Substitute
2 **Goods.**—(1) After a breach within the preceding section
3 the buyer may “cover” by making in good faith and with-
4 out unreasonable delay any reasonable purchase of or
5 contract to purchase goods in substitution for those due
6 from the seller.

7 (2) The buyer may recover from the seller as damages
8 the difference between the cost of cover and the contract
9 price together with any incidental or consequential dam-
10 ages as hereinafter defined (Section 2-715), but less ex-
11 penses saved in consequence of the seller’s breach.

12 (3) Failure of the buyer to effect cover within this
13 section does not bar him from any other remedy.

Sec. 2-713. Buyer's Damages for Non-Delivery or Re-

pu diation.—(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 Dam-

ages.—(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

- 13 contracting had reason to know and which could not rea-
14 sonably be prevented by cover or otherwise; and
15 (b) injury to person or property proximately resulting
16 from any breach of warranty.

Sec. 2-716. Buyer's Right to Specific Performance or Replevin.—(1) Specific performance may be decreed
2 where the goods are unique or in other proper circum-
3 stances.
4

5 (2) The decree for specific performance may include
6 such terms and conditions as to payment of the price, dam-
7 ages, or other relief as the court may deem just.

8 (3) The buyer has a right of replevin for goods iden-
9 tified to the contract if after reasonable effort he is unable
10 to effect cover for such goods or the circumstances reason-
11 ably indicate that such effort will be unavailing or if the
12 goods have been shipped under reservation and satisfac-
13 tion of the security interest in them has been made or ten-
14 dered.

Sec. 2-717. Deduction of Damages From the Price.—
2 The buyer on notifying the seller of his intention to do so
3 may deduct all or any part of the damages resulting from
4 any breach of the contract from any part of the price still
5 due under the same contract.

Sec. 2-718. Liquidation or Limitation of Damages; Deposits.—(1) Damages for breach by either party may be
2 liquidated in the agreement but only at an amount which
3 is reasonable in the light of the anticipated or actual harm
4 caused by the breach, the difficulties of proof of loss, and
5 the inconvenience or non-feasibility of otherwise obtain-
6 ing an adequate remedy. A term fixing unreasonably
7 large liquidated damages is void as a penalty.
8

9 (2) Where the seller justifiably withholds delivery of
10 goods because of the buyer's breach, the buyer is entitled
11 to restitution of any amount by which the sum of his pay-
12 ments exceeds

13 (a) the amount to which the seller is entitled by virtue
14 of terms liquidating the seller's damages in accordance
15 with subsection (1), or

16 (b) in the absence of such terms, twenty per cent of

17 the value of the total performance for which the buyer is
18 obligated under the contract or \$500, whichever is smaller.

19 (3) The buyer's right to restitution under subsection
20 (2) is subject to offset to the extent that the seller estab-
21 lishes

22 (a) a right to recover damages under the provisions of
23 this article other than subsection (1), and

24 (b) the amount or value of any benefits received by
25 the buyer directly or indirectly by reason of the contract.

26 (4) Where a seller has received payment in goods their
27 reasonable value or the proceeds of their resale shall be
28 treated as payments for the purposes of subsection (2);
29 but if the seller has notice of the buyer's breach before
30 reselling goods received in part performance, his resale is
31 subject to the conditions laid down in this article on resale
32 by an aggrieved seller (Section 2-706).

Sec. 2-719. Contractual Modification or Limitation of
2 **Remedy.**—(1) Subject to the provisions of subsections (2)
3 and (3) of this section and of the preceding section on
4 liquidation and limitation of damages,

5 (a) the agreement may provide for remedies in addi-
6 tion to or in substitution for those provided in this article
7 and may limit or alter the measure of damages recover-
8 able under this article, as by limiting the buyer's remedies
9 to return of the goods and repayment of the price or to
10 repair and replacement of non-conforming goods or parts;
11 and

12 (b) resort to a remedy as provided is optional unless
13 the remedy is expressly agreed to be exclusive, in which
14 case it is the sole remedy.

15 (2) Where circumstances cause an exclusive or limited
16 remedy to fail of its essential purpose, remedy may be had
17 as provided in this article.

18 (3) Consequential damages may be limited or ex-
19 cluded unless the limitation or exclusion is unconscion-
20 able. Limitation of consequential damages for injury to
21 the person in the case of consumer goods is prima facie
22 unconscionable but limitation of damages where the loss
23 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

9 places described in this article is not readily available the
10 price prevailing within any reasonable time before or after
11 the time described or at any other place which in commercial judgment or under usage of trade would serve as a
12 reasonable substitute for the one described may be used,
13 making any proper allowance for the cost of transporting
14 the goods to or from such other place.

16 (3) Evidence of a relevant price prevailing at a time
17 or place other than the one described in this article offered
18 by one party is not admissible unless and until he has
19 given the other party such notice as the court finds sufficient to prevent unfair surprise.
20

Sec. 2-724. Admissibility of Market Quotations.—When-
2 ever the prevailing price or value of any goods regularly
3 bought and sold in any established commodity market is
4 in issue, reports in official publications or trade journals
5 or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in
6 evidence. The circumstances of the preparation of such
7 a report may be shown to affect its weight but not its admissibility.
8
9

Sec. 2-725. Statute of Limitations in Contracts for Sale.
2 —(1) An action for breach of any contract for sale must
3 be commenced within four years after the cause of action
4 has accrued. By the original agreement the parties may
5 reduce the period of limitation to not less than one year
6 but may not extend it.

7 (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge
8 of the breach. A breach of warranty occurs when tender
9 of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or
10 should have been discovered.
11
12

13 (3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such
14 other action may be commenced after the expiration of
15 the time limited and within six months after the termination.
16
17
18
19
20

20 tion of the first action unless the termination resulted
21 from voluntary discontinuance or from dismissal for fail-
22 ure or neglect to prosecute.

23 (4) This section does not alter the law on tolling of the
24 statute of limitations nor does it apply to causes of action
25 which have accrued before this chapter becomes effective.

Article 3. Commercial Paper

PART 1. SHORT TITLE, FORM AND INTERPRETATION

Section

- 3-101. Short title.
- 3-102. Definitions and index of definitions.
- 3-103. Limitations on scope of article.
- 3-104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note".
- 3-105. When promise or order unconditional.
- 3-106. Sum certain.
- 3-107. Money.
- 3-108. Payable on demand.
- 3-109. Definite time.
- 3-110. Payable to order.
- 3-111. Payable to bearer.
- 3-112. Terms and omissions not affecting negotiability.
- 3-113. Seal.
- 3-114. Date, antedating, postdating.
- 3-115. Incomplete instruments.
- 3-116. Instruments payable to two or more persons.
- 3-117. Instruments payable with words of description.
- 3-118. Ambiguous terms and rules of construction.
- 3-119. Other writings affecting instrument.
- 3-120. Instruments "payable through" bank.
- 3-121. Instruments payable at bank.
- 3-122. Accrual of cause of action.

PART 2. TRANSFER AND NEGOTIATION

- 3-201. Transfer: right to indorsement.
- 3-202. Negotiation.
- 3-203. Wrong or misspelled name.
- 3-204. Special indorsement; blank indorsement.
- 3-205. Restrictive indorsements.
- 3-206. Effect of restrictive indorsement.
- 3-207. Negotiation effective although it may be rescinded.
- 3-208. Reacquisition.

PART 3. RIGHTS OF A HOLDER

- 3-301. Rights of a holder.
- 3-302. Holder in due course.
- 3-303. Taking for value.
- 3-304. Notice to purchaser.
- 3-305. Rights of a holder in due course.
- 3-306. Rights of one not holder in due course.
- 3-307. Burden of establishing signatures, defenses and due course.

PART 4. LIABILITY OF PARTIES

- 3-401. Signature.
- 3-402. Signature in ambiguous capacity.
- 3-403. Signature by authorized representative.
- 3-404. Unauthorized signatures.
- 3-405. Imposters; signature in name of payee.

- 3-406. Negligence contributing to alteration or unauthorized signature.
- 3-407. Alteration.
- 3-408. Consideration.
- 3-409. Draft not an assignment.
- 3-410. Definition and operation of acceptance.
- 3-411. Certification of a check.
- 3-412. Acceptance varying draft.
- 3-413. Contract of maker, drawer and acceptor.
- 3-414. Contract of indorser; order of liability.
- 3-415. Contract of accommodation party.
- 3-416. Contract of guarantor.
- 3-417. Warranties on presentment and transfer.
- 3-418. Finality of payment or acceptance.
- 3-419. Conversion of instrument; innocent representative.

PART 5. PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

- 3-501. When presentment, notice of dishonor, and protest necessary or permissible.
- 3-502. Unexcused delay; discharge.
- 3-503. Time of presentment.
- 3-504. How presentment made.
- 3-505. Rights of party to whom presentment is made.
- 3-506. Time allowed for acceptance or payment.
- 3-507. Dishonor; holder's right of recourse; term allowing re-presentment.
- 3-508. Notice of dishonor.
- 3-509. Protest; noting for protest.
- 3-510. Evidence of dishonor and notice of dishonor.
- 3-511. Waived or excused presentment, protest or notice of dishonor or delay therein.

PART 6. DISCHARGE

- 3-601. Discharge of parties.
- 3-602. Effect of discharge against holder in due course.
- 3-603. Payment or satisfaction.
- 3-604. Tender of payment.
- 3-605. Cancellation and renunciation.
- 3-606. Impairment of recourse or of collateral.

PART 7. ADVICE OF INTERNATIONAL SIGHT DRAFT

- 3-701. Letter of advice of international sight draft.

PART 8. MISCELLANEOUS

- 3-801. Drafts in a set.
- 3-802. Effect of instrument on obligation for which it is given.
- 3-803. Notice to third party.
- 3-804. Lost, destroyed or stolen instruments.
- 3-805. Instruments not payable to order or to bearer.

PART 1. SHORT TITLE, FORM AND INTERPRETATION

- Sec. 3-101. Short Title.**—This article shall be known
- 2 and may be cited as Uniform Commercial Code—Com-
- 3 mercial Paper.

- Sec. 3-102. Definitions and Index of Definitions.**—(1)
- 2 In this article unless the context otherwise requires
- 3 (a) "Issue" means the first delivery of an instrument
- 4 to a holder or remitter.
- 5 (b) An "order" is a direction to pay and must be more

6 than an authorization or request. It must identify the per-
7 son to pay with reasonable certainty. It may be addressed
8 to one or more such persons jointly or in the alternative
9 but not in succession.

10 (c) A "promise" is an undertaking to pay and must be
11 more than an acknowledgment of an obligation.

12 (d) "Secondary party" means a drawer or endorser.

13 (e) "Instrument" means a negotiable instrument.

14 (2) Other definitions applying to this article and the
15 sections in which they appear are:

16 "Acceptance". Section 3-410.

17 "Accommodation party". Section 3-415.

18 "Alteration". Section 3-407.

19 "Certificate of Deposit". Section 3-104.

20 "Certification". Section 3-411.

21 "Check". Section 3-104.

22 "Definite time". Section 3-109.

23 "Dishonor". Section 3-507.

24 "Draft". Section 3-104.

25 "Holder in due course". Section 3-302.

26 "Negotiation". Section 3-202.

27 "Note". Section 3-104.

28 "Notice of dishonor". Section 3-508.

29 "On demand". Section 3-108.

30 "Presentment". Section 3-504.

31 "Protest". Section 3-509.

32 "Restrictive Indorsement". Section 3-205.

33 "Signature". Section 3-401.

34 (3) The following definitions in other articles of this
35 chapter apply to this article:

36 "Account". Section 4-104.

37 "Banking Day". Section 4-104.

38 "Clearing house". Section 4-104.

39 "Collecting bank". Section 4-105.

40 "Customer". Section 4-104.

41 "Depository Bank". Section 4-105.

42 "Documentary Draft". Section 4-104.

43 "Intermediary Bank". Section 4-105.

44 "Item". Section 4-104.

45 "Midnight deadline". Section 4-104.

46 "Payor bank". Section 4-105.

47 (4) In addition Article 1 of this chapter contains gen-
48 eral definitions and principles of construction and inter-
49 pretation applicable throughout this article.

Sec. 3-103. Limitations on Scope of Article.—(1) This
2 article does not apply to money, documents of title or in-
3 vestment securities.

4 (2) The provisions of this article are subject to the pro-
5 visions of the article on Bank Deposits and Collections
6 (Article 4) and Secured Transactions (Article 9) of this
7 chapter.

Sec. 3-104. Form of Negotiable Instruments; "Draft";
2 **"Check"; "Certificate of Deposit"; "Note".**—(1) Any writ-
3 ing to be a negotiable instrument within this article must

4 (a) be signed by the maker or drawer; and

5 (b) contain an unconditional promise or order to pay
6 a sum certain in money and no other promise, order, ob-
7 ligation or power given by the maker or drawer except as
8 authorized by this article; and

9 (c) be payable on demand or at a definite time; and

10 (d) be payable to order or to bearer.

11 (2) A writing which complies with the requirements
12 of this section is

13 (a) a "draft" ("bill of exchange") if it is an order;

14 (b) a "check" if it is a draft drawn on a bank and pay-
15 able on demand;

16 (c) a "certificate of deposit" if it is an acknowledgment
17 by a bank of receipt of money with an engagement to re-
18 pay it;

19 (d) a "note" if it is a promise other than a certificate
20 of deposit.

21 (3) As used in other articles of this Chapter, and as
22 the context may require, the terms "draft", "check", "cer-
23 tificate of deposit" and "note" may refer to instruments
24 which are not negotiable within this article as well as to
25 instruments which are so negotiable.

Sec. 3-105. When Promise or Order Unconditional.—

2 (1) A promise or order otherwise unconditional is not
3 made conditional by the fact that the instrument

- 4 (a) is subject to implied or constructive conditions; or
5 (b) states its consideration, whether performed or
6 promised, or the transaction which gave rise to the instru-
7 ment, or that the promise or order is made or the instru-
8 ment matures in accordance with or "as per" such transac-
9 tion; or
10 (c) refers to or states that it arises out of a separate
11 agreement or refers to a separate agreement for rights as
12 to prepayment or acceleration; or
13 (d) states that it is drawn under a letter of credit; or
14 (e) states that it is secured, whether by mortgage, res-
15 ervation of title or otherwise; or
16 (f) indicates a particular account to be debited or any
17 other fund or source from which reimbursement is ex-
18 pected; or
19 (g) is limited to payment out of a particular fund or
20 the proceeds of a particular source, if the instrument is
21 issued by a government or governmental agency or unit;
22 or
23 (h) is limited to payment out of the entire assets of a
24 partnership, unincorporated association, trust or estate by
25 or on behalf of which the instrument is issued.
26 (2) A promise or order is not unconditional if the in-
27 strument
28 (a) states that it is subject to or governed by any other
29 agreement; or
30 (b) states that it is to be paid only out of a particular
31 fund or source except as provided in this section.

Sec. 3-106. Sum Certain.—(1) The sum payable is a sum
2 certain even though it is to be paid

- 3 (a) with stated interest or by stated installments; or
4 (b) with stated different rates of interest before and
5 after default or a specified date; or
6 (c) with a stated discount or addition if paid before or
7 after the date fixed for payment; or
8 (d) with exchange or less exchange, whether at a fixed
9 rate or at the current rate; or

10 (e) with costs of collection or an attorney's fee or both
11 upon default.

12 (2) Nothing in this section shall validate any term
13 which is otherwise illegal.

Sec. 3-107. Money.—(1) An instrument is payable in
2 money if the medium of exchange in which it is payable
3 is money at the time the instrument is made. An instru-
4 ment payable in "currency" or "current funds" is payable
5 in money.

6 (2) A promise or order to pay a sum stated in a foreign
7 currency is for a sum certain in money and, unless a dif-
8 ferent medium of payment is specified in the instrument,
9 may be satisfied by payment of that number of dollars
10 which the stated foreign currency will purchase at the
11 buying sight rate for that currency on the day on which
12 the instrument is payable or, if payable on demand, on the
13 day of demand. If such an instrument specifies a foreign
14 currency as the medium of payment the instrument is pay-
15 able in that currency.

Sec. 3-108. Payable on Demand.—Instruments payable
2 on demand include those payable at sight or on presenta-
3 tion and those in which no time for payment is stated.

Sec. 3-109. Definite Time.—(1) An instrument is pay-
2 able at a definite time if by its terms it is payable

3 (a) on or before a stated date or at a fixed period after
4 a stated date; or

5 (b) at a fixed period after sight; or

6 (c) at a definite time subject to any acceleration; or

7 (d) at a definite time subject to extension at the op-
8 tion of the holder, or to extension to a further definite time
9 at the option of the maker or acceptor or automatically
10 upon or after a specified act or event.

11 (2) An instrument which by its terms is otherwise
12 payable only upon an act or event uncertain as to time of
13 occurrence is not payable at a definite time even though
14 the act or event has occurred.

Sec. 3-110. Payable to Order.—(1) An instrument is
2 payable to order when by its terms it is payable to the or-

3 der or assigns of any person therein specified with reason-
4 able certainty, or to him or his order, or when it is con-
5 spicuously designated on its face as "exchange" or the like
6 and names a payee. It may be payable to the order of

7 (a) the maker or drawer; or

8 (b) the drawee; or

9 (c) a payee who is not maker, drawer or drawee; or

10 (d) two or more payees together or in the alternative;
11 or

12 (e) an estate, trust or fund, in which case it is payable
13 to the order of the representative of such estate, trust or
14 fund or his successors; or

15 (f) an office, or an officer by his title as such in which
16 case it is payable to the principal but the incumbent of the
17 office or his successors may act as if he or they were the
18 holder; or

19 (g) a partnership or unincorporated association, in
20 which case it is payable to the partnership or association
21 and may be indorsed or transferred by any person thereto
22 authorized.

23 (2) An instrument not payable to order is not made so
24 payable by such words as "payable upon return of this in-
25 strument properly indorsed".

26 (3) An instrument made payable both to order and to
27 bearer is payable to order unless the bearer words are
28 handwritten or typewritten.

Sec. 3-111. Payable to Bearer.—An instrument is pay-
2 able to bearer when by its terms it is payable to

3 (a) bearer or the order of bearer; or

4 (b) a specified person or bearer; or

5 (c) "cash" or the order of "cash", or any other indica-
6 tion which does not purport to designate a specific payee.

Sec. 3-112. Terms and Omissions Not Affecting Nego-
2 **tiability.**—(1) The negotiability of an instrument is not
3 affected by

4 (a) the omission of a statement of any consideration or
5 of the place where the instrument is drawn or payable; or

6 (b) a statement that collateral has been given to se-

7 cure obligations either on the instrument or otherwise of
8 an obligor on the instrument or that in the case of de-
9 fault on those obligations the holder may realize on or dis-
10 pose of the collateral; or

11 (c) a promise or power to maintain or protect collat-
12 eral or to give additional collateral; or

13 (d) a term authorizing a confession of judgment on the
14 instrument if it is not paid when due; or

15 (e) a term purporting to waive the benefit of any law
16 intended for the advantage or protection of any obligor; or

17 (f) a term in a draft providing that the payee by in-
18 dorsing or cashing it acknowledges full satisfaction of an
19 obligation of the drawer; or

20 (g) a statement in a draft drawn in a set of parts (Sec-
21 tion 3-801) to the effect that the order is effective only if
22 no other part has been honored.

23 (2) Nothing in this section shall validate any term
24 which is otherwise illegal.

Sec. 3-113. Seal.—An instrument otherwise negotiable
2 is within this article even though it is under a seal.

Sec. 3-114. Date, Antedating, Postdating.—(1) The
2 negotiability of an instrument is not affected by the fact
3 that it is undated, antedated or postdated.

4 (2) Where an instrument is antedated or postdated the
5 time when it is payable is determined by the stated date
6 if the instrument is payable on demand or at a fixed period
7 after date.

8 (3) Where the instrument or any signature thereon is
9 dated, the date is presumed to be correct.

Sec. 3-115. Incomplete Instruments.—(1) When a paper
2 whose contents at the time of signing show that it is in-
3 tended to become an instrument is signed while still in-
4 complete in any necessary respect it cannot be enforced
5 until completed, but when it is completed in accordance
6 with authority given it is effective as completed.

7 (2) If the completion is unauthorized the rules as to
8 material alteration apply (Section 3-407), even though the
9 paper was not delivered by the maker or drawer; but the

10 burden of establishing that any completions is unauthor-
11 ized is on the party so asserting.

Sec. 3-116. Instruments Payable to Two or More Per-
2 **sons.**—An instrument payable to the order of two or more
3 persons

4 (a) if in the alternative is payable to any one of them
5 and may be negotiated, discharged or enforced by any of
6 of them who has possession of it;

7 (b) if not in the alternative is payable to all of them
8 and may be negotiated, discharged or enforced only by all
9 of them.

Sec. 3-117. Instruments Payable With Words of De-
2 **scription.**—An instrument made payable to a named per-
3 son with the addition of words describing him

4 (a) as agent or officer of a specified person is payable
5 to his principal but the agent or officer may act as if he
6 were the holder;

7 (b) as any other fiduciary for a specified person or pur-
8 pose is payable to the payee and may be negotiated, dis-
9 charged or enforced by him;

10 (c) in any other manner is payable to the payee un-
11 conditionally and the additional words are without effect
12 on subsequent parties.

Sec. 3-118. Ambiguous Terms and Rules of Construc-
2 **tion.**—The following rules apply to every instrument:

3 (a) Where there is doubt whether the instrument is a
4 draft or a note the holder may treat it as either. A draft
5 drawn on the drawer is effective as a note.

6 (b) Handwritten terms control typewritten and
7 printed terms, and typewritten control printed.

8 (c) Words control figures except that if the words are
9 ambiguous figures control.

10 (d) Unless otherwise specified a provision for interest
11 means interest at the judgment rate at the place of pay-
12 ment from the date of the instrument, or if it is undated
13 from the date of issue.

14 (e) Unless the instrument otherwise specifies two or
15 more persons who sign as maker, acceptor or drawer or

16 indorser and as a part of the same transaction are jointly
17 and severally liable even though the instrument contains
18 such words as "I promise to pay".

19 (f) Unless otherwise specified consent to extension
20 authorizes a single extension for not longer than the orig-
21 inal period. A consent to extension, expressed in the in-
22 strument, is binding on secondary parties and accommo-
23 dation makers. A holder may not exercise his option to
24 extend an instrument over the objection of a maker or ac-
25 ceptor or other party who in accordance with Section 3-
26 604 tenders full payment when the instrument is due.

Sec. 3-119. Other Writings Affecting Instrument.—(1)

2 As between the obligor and his immediate obligee or any
3 transferee the terms of an instrument may be modified or
4 affected by any other written agreement executed as a
5 part of the same transaction, except that a holder in due
6 course is not affected by any limitation of his rights aris-
7 ing out of the separate written agreement if he had no no-
8 tice of the limitation when he took the instrument.

9 (2) A separate agreement does not affect the negoti-
10 ability of an instrument.

Sec. 3-120. Instruments "Payable Through" Bank.—An

2 instrument which states that it is "payable through" a
3 bank or the like designates that bank as a collecting bank
4 to make presentment but does not of itself authorize the
5 bank to pay the instrument.

Sec. 3-121. Instruments Payable at Bank.—A note or

2 acceptance which states that it is payable at a bank is not
3 of itself an order or authorization to the bank to pay it.

Sec. 3-122. Accrual of Cause of Action.—(1) A cause

2 of action against a maker or an acceptor accrues

3 (a) in the case of a time instrument on the day after
4 maturity;

5 (b) in the case of a demand instrument upon its date
6 or, if no date is stated, on the date of issue.

7 (2) A cause of action against the obligor of a demand
8 or time certificate of deposit accrues upon demand, but de-
9 mand on a time certificate may not be made until on or
10 after the date of maturity.

11 (3) A cause of action against a drawer of a draft or an
12 indorser of any instrument accrues upon demand follow-
13 ing dishonor of the instrument. Notice of dishonor is a
14 demand.

15 (4) Unless an instrument provides otherwise, interest
16 runs at the rate provided by law for a judgment

17 (a) in the case of a maker, acceptor or other primary
18 obligor of a demand instrument, from the date of demand;

19 (b) in all other cases from the date of accrual of the
20 cause of action.

PART 2. TRANSFER AND NEGOTIATION

Sec. 3-201. **Transfer: Right to Indorsement.**—(1) Trans-
2 fer of an instrument vests in the transferee such rights
3 as the transferor has therein, except that a transferee
4 who has himself been a party to any fraud or illegality
5 affecting the instrument or who as a prior holder had
6 notice of a defense or claim against it cannot improve
7 his position by taking from a later holder in due course.

8 (2) A transfer of a security interest in an instru-
9 ment vests the foregoing rights in the transferee to the
10 extent of the interest transferred.

11 (3) Unless otherwise agreed any transfer for value
12 of an instrument not then payable to bearer gives the
13 transferee the specifically enforceable right to have the
14 unqualified indorsement of the transferor. Negotiation
15 takes effect only when the indorsement is made and un-
16 til that time there is no presumption that the transferee
17 is the owner.

Sec. 3-202. **Negotiation.**—(1) Negotiation is the trans-
2 fer of an instrument in such form that the transferee be-
3 comes a holder. If the instrument is payable to order
4 it is negotiated by delivery with any necessary indorse-
5 ment; if payable to bearer it is negotiated by delivery.

6 (2) An indorsement must be written by or on be-
7 half of the holder and on the instrument or on a paper
8 so firmly affixed thereto as to become a part thereof.

9 (3) An indorsement is effective for negotiation
10 only when it conveys the entire instrument or any un-

11 paid residue. If it purports to be of less it operates only
12 as a partial assignment.

13 (4) Words of assignment, condition, waiver, guar-
14 anty, limitation or disclaimer of liability and the like ac-
15 companying an indorsement do not affect its character
16 as an indorsement.

Sec. 3-203. Wrong or Misspelled Name.—Where an in-
2 strument is made payable to a person under a misspelled
3 name or one other than his own he may indorse in that
4 name or his own or both; but signature in both names
5 may be required by a person paying or giving value
6 for the instrument.

Sec. 3-204. Special Indorsement; Blank Indorsement.—
2 (1) A special indorsement specifies the person to whom
3 or to whose order it makes the instrument payable.
4 Any instrument specially indorsed becomes payable to
5 the order of the special indorsee and may be further
6 negotiated only by his indorsement.

7 (2) An indorsement in blank specifies no particular
8 indorsee and may consist of a mere signature. An in-
9 strument payable to order and indorsed in blank be-
10 comes payable to bearer and may be negotiated by
11 delivery alone until specially indorsed.

12 (3) The holder may convert a blank indorsement
13 into a special indorsement by writing over the signa-
14 ture of the indorser in blank any contract consistent
15 with the character of the indorsement.

Sec. 3-205. Restrictive Indorsements.—An indorsement
2 is restrictive which either

3 (a) is conditional; or

4 (b) purports to prohibit further transfer of the in-
5 strument; or

6 (c) includes the words "for collection", "for de-
7 posit", "pay any bank", or like terms signifying a pur-
8 pose of deposit or collection; or

9 (d) otherwise states that it is for the benefit or use
10 of the indorser or of another person.

Sec. 3-206. Effect of Restrictive Indorsement.—(1) No

2 restrictive indorsement prevents further transfer or
3 negotiation of the instrument.

4 (2) An intermediary bank, or a payor bank which
5 is not the depository bank, is neither given notice nor
6 otherwise affected by a restrictive indorsement of any
7 person except the bank's immediate transferor or the
8 person presenting for payment.

9 (3) Except for an intermediary bank, any transferee
10 under an indorsement which is conditional or includes
11 the words "for collection", "for deposit", "pay any
12 bank", or like terms (subparagraphs (a) and (c) of Sec-
13 tion 3-205) must pay or apply any value given by him for
14 or on the security of the instrument consistently with
15 the indorsement and to the extent that he does so he
16 becomes a holder for value. In addition such transferee
17 is a holder in due course if he otherwise complies with
18 the requirements of Section 3-302 on what constitutes
19 a holder in due course.

20 (4) The first taker under an indorsement for the
21 benefit of the indorser or another person (subparagraph
22 (d) of Section 3-205) must pay or apply any value given
23 by him for or on the security of the instrument consist-
24 ently with the indorsement and to the extent that he
25 does so he becomes a holder for value. In addition such
26 taker is a holder in due course if he otherwise complies
27 with the requirements of Section 3-302 on what consti-
28 tutes a holder in due course. A later holder for value is
29 neither given notice nor otherwise affected by such re-
30 strictive indorsement unless he has knowledge that a
31 fiduciary or other person has negotiated the instrument
32 in any transaction for his own benefit or otherwise in
33 breach of duty (subsection (2) of Section 3-304).

Sec. 3-207. Negotiation Effective Although It May Be
2 **Rescinded.**—(1) Negotiation is effective to transfer the
3 instrument although the negotiation is

4 (a) made by an infant, a corporation exceeding its
5 powers, or any other person without capacity; or

6 (b) obtained by fraud, duress or mistake of any kind;
7 or

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
11 course such negotiation is in an appropriate case sub-
12 ject to rescission, the declaration of a constructive trust
13 or any other remedy permitted by law.

Sec. 3-208. Reacquisition.—Where an instrument is re-
2 turned to or reacquired by a prior party he may cancel
3 any indorsement which is not necessary to his title and
4 reissue or further negotiate the instrument, but any in-
5 tervening party is discharged as against the reacquiring
6 party and subsequent holders not in due course and if
7 his indorsement has been cancelled is discharged as
8 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 in-
2 strument whether or not he is the owner may transfer
3 or negotiate it and, except as otherwise provided in Sec-
4 tion 3-603 on payment or satisfaction, discharge it or
5 enforce payment in his own name.

Sec. 3-302. Holder in Due Course.—(1) A holder in due
2 course is a holder who takes the instrument
3 (a) for value; and
4 (b) in good faith; and
5 (c) without notice that it is overdue or has been dis-
6 honored or of any defense against or claim to it on the part
7 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
10 of an instrument:

11 (a) by purchase of it at judicial sale or by taking it un-
12 der 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
15 in regular course of business of the transferor.

16 (4) A purchaser of a limited interest can be a holder
17 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.

- 28 (4) Knowledge of the following facts does not of itself
29 give the purchaser notice of a defense or claim
- 30 (a) that the instrument is antedated or postdated;
- 31 (b) that it was issued or negotiated in return for an
32 executory promise or accompanied by a separate agree-
33 ment, unless the purchaser has notice that a defense or
34 claim has arisen from the terms thereof;
- 35 (c) that any party has signed for accommodation;
- 36 (d) that an incomplete instrument has been com-
37 pleted, unless the purchaser has notice of any improper
38 completion;
- 39 (e) that any person negotiating the instrument is or
40 was a fiduciary;
- 41 (f) that there has been default in payment of interest
42 on the instrument or in payment of any other instrument,
43 except one of the same series.
- 44 (5) The filing or recording of a document does not of
45 itself constitute notice within the provisions of this article
46 to a person who would otherwise be a holder in due course.
- 47 (6) To be effective notice must be received at such
48 time and in such manner as to give a reasonable opportu-
49 nity to act on it.

Sec. 3-305. Rights of a Holder in Due Course.—To the
2 extent that a holder is a holder in due course he takes the
3 instrument free from

- 4 (1) all claims to it on the part of any person; and
- 5 (2) all defenses of any party to the instrument with
6 whom the holder has not dealt except
- 7 (a) infancy, to the extent that it is a defense to a sim-
8 ple contract; and
- 9 (b) such other incapacity, or duress, or illegality of the
10 transaction, as renders the obligation of the party a nul-
11 lity; and
- 12 (c) such misrepresentation as has induced the party
13 to sign the instrument with neither knowledge nor rea-
14 sonable opportunity to obtain knowledge of its character
15 or its essential terms; and
- 16 (d) discharge in insolvency proceedings; and

- 17 (e) any other discharge of which the holder has notice
18 when he takes the instrument.

Sec. 3-306. Rights of One Not Holder in Due Course.—

- 2 Unless he has the rights of a holder in due course any per-
3 son takes the instrument subject to
4 (a) all valid claims to it on the part of any person; and
5 (b) all defenses of any party which would be available
6 in an action on a simple contract; and
7 (c) the defenses of want or failure of consideration,
8 non-performance of any condition precedent, non-deliv-
9 ery, or delivery for a special purpose (Section 3-408); and
10 (d) the defense that he or a person through whom he
11 holds the instrument acquired it by theft, or that payment
12 or satisfaction to such holder would be inconsistent with
13 the terms of a restrictive indorsement. The claim of any
14 third person to the instrument is not otherwise available
15 as a defense to any party liable thereon unless the third
16 person himself defends the action for such party.

Sec. 3-307. Burden of Establishing Signatures, Defenses

- 2 **and Due Course.**—(1) Unless specifically denied in the
3 pleadings each signature on an instrument is admitted.
4 When the effectiveness of a signature is put in issue
5 (a) the burden of establishing it is on the party claim-
6 ing under the signature; but
7 (b) the signature is presumed to be genuine or author-
8 ized except where the action is to enforce the obligation
9 of a purported signer who has died or become incompetent
10 before proof is required.
11 (2) When signatures are admitted or established, pro-
12 duction of the instrument entitles a holder to recover on
13 it unless the defendant establishes a defense.
14 (3) After it is shown that a defense exists a person
15 claiming the rights of a holder in due course has the bur-
16 den of establishing that he or some person under whom
17 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 in-

- 2 strument unless his signature appears thereon.

- 3 (2) A signature is made by use of any name, including
4 any trade or assumed name, upon an instrument, or by
5 any word or mark used in lieu of a written signature.

Sec. 3-402. Signature in Ambiguous Capacity.—Unless
2 the instrument clearly indicates that a signature is made
3 in some other capacity it is an indorsement.

- Sec. 3-403. Signature by Authorized Representative.**—
2 (1) A signature may be made by an agent or other repre-
3 sentative, and his authority to make it may be established
4 as in other cases of representation. No particular form
5 of appointment is necessary to establish such authority.
6 (2) An authorized representative who signs his own
7 name to an instrument
8 (a) is personally obligated if the instrument neither
9 names the person represented nor shows that the repre-
10 sentative signed in a representative capacity;
11 (b) except as otherwise established between the im-
12 mediate parties, is personally obligated if the instrument
13 names the person represented but does not show that the
14 representative signed in a representative capacity, or if
15 the instrument does not name the person represented but
16 does show that the representative signed in a represent-
17 ative capacity.
18 (3) Except as otherwise established the name of an or-
19 ganization preceded or followed by the name and office of
20 an authorized individual is a signature made in a repre-
21 sentative capacity.

- Sec. 3-404. Unauthorized Signatures.**—(1) Any unauth-
2 orized signature is wholly inoperative as that of the per-
3 son whose name is signed unless he ratifies it or is pre-
4 cluded from denying it; but it operates as the signature of
5 the unauthorized signer in favor of any person who in
6 good faith pays the instrument or takes it for value.
7 (2) Any unauthorized signature may be ratified for all
8 purposes of this article. Such ratification does not of it-
9 self affect any rights of the person ratifying against the
10 actual signer.

Sec. 3-405. Impostors; Signature in Name of Payee.—

2 (1) An indorsement by any person in the name of a
3 named payee is effective if

4 (a) an impostor by use of the mails or otherwise has
5 induced the maker or drawer to issue the instrument to
6 him or his confederate in the name of the payee; or

7 (b) a person signing as or on behalf of a maker or
8 drawer intends the payee to have no interest in the instru-
9 ment; or

10 (c) an agent or employee of the maker or drawer has
11 supplied him with the name of the payee intending the
12 latter to have no such interest.

13 (2) Nothing in this section shall affect the criminal or
14 civil liability of the person so indorsing.

Sec. 3-406. Negligence Contributing to Alteration or
2 **Unauthorized Signature.**—Any person who by his negli-
3 gence substantially contributes to a material alteration
4 of the instrument or to the making of an unauthorized
5 signature is precluded from asserting the alteration or
6 lack of authority against a holder in due course or
7 against a drawee or other payor who pays the instru-
8 ment in good faith and in accordance with the reason-
9 able commercial standards of the drawee's or payor's
10 business.

Sec. 3-407. Alteration.—(1) Any alteration of an instru-
2 ment is material which changes the contract of any
3 party thereto in any respect, including any such change
4 in

5 (a) the number or relations of the parties; or

6 (b) an incomplete instrument, by completing it other-
7 wise than as authorized; or

8 (c) the writing as signed, by adding to it or by re-
9 moving any part of it.

10 (2) As against any person other than a subsequent
11 holder in due course

12 (a) alteration by the holder which is both fraud-
13 ulent and material discharges any party whose contract
14 is thereby changed unless that party assents or is pre-
15 cluded from asserting the defense;

16 (b) no other alteration discharges any party and the
17 instrument may be enforced according to its original
18 tenor, or as to incomplete instruments according to the
19 authority given.

20 (3) A subsequent holder in due course may in all
21 cases enforce the instrument according to its original
22 tenor, and when an incomplete instrument has been com-
23 pleted, he may enforce it as completed.

Sec. 3-408. Consideration.—Want or failure of consider-
2 ation is a defense as against any person not having the
3 rights of a holder in due course (Section 3-305), except
4 that no consideration is necessary for an instrument or
5 obligation thereon given in payment of or as security
6 for an antecedent obligation of any kind. Nothing in
7 this section shall be taken to displace any statute out-
8 side this Chapter under which a promise is enforceable
9 notwithstanding lack or failure of consideration. Partial
10 failure of consideration is a defense pro tanto whether
11 or not the failure is in an ascertained or liquidated
12 amount.

Sec. 3-409. Draft Not an Assignment.—(1) A check or
2 other draft does not of itself operate as an assignment
3 of any funds in the hands of the drawee available for its
4 payment, and the drawee is not liable on the instrument
5 until he accepts it.

6 (2) Nothing in this section shall affect any liability
7 in contract, tort or otherwise arising from any letter of
8 credit or other obligation or representation which is not
9 an acceptance.

Sec. 3-410. Definition and Operation of Acceptance.—
2 (1) Acceptance is the drawee's signed engagement to
3 honor the draft as presented. It must be written on the
4 draft, and may consist of his signature alone. It becomes
5 operative when completed by delivery or notification.

6 (2) A draft may be accepted although it has not been
7 signed by the drawer or is otherwise incomplete or is
8 overdue or has been dishonored.

9 (3) Where the draft is payable at a fixed period after

10 sight and the acceptor fails to date his acceptance the
11 holder may complete it by supplying a date in good faith.

Sec. 3-411. Certification of a Check.—(1) Certification
2 of a check is acceptance. Where a holder procures cer-
3 tification the drawer and all prior indorsers are dis-
4 charged.

5 (2) Unless otherwise agreed a bank has no obliga-
6 tion to certify a check.

7 (3) A bank may certify a check before returning it
8 for lack of proper indorsement. If it does so the drawer
9 is discharged.

Sec. 3-412. Acceptance Varying Draft.—(1) Where the
2 drawee's proffered acceptance in any manner varies the
3 draft as presented the holder may refuse the acceptance
4 and treat the draft as dishonored in which case the
5 drawee is entitled to have his acceptance cancelled.

6 (2) The terms of the draft are not varied by an ac-
7 ceptance to pay at any particular bank or place in the
8 United States, unless the acceptance states that the
9 draft is to be paid only at such bank or place.

10 (3) Where the holder assents to an acceptance vary-
11 ing the terms of the draft each drawer and indorser who
12 does not affirmatively assent is discharged.

Sec. 3-413. Contract of Maker, Drawer and Acceptor.—

2 (1) The maker or acceptor engages that he will pay the
3 instrument according to its tenor at the time of his en-
4 gagement or as completed pursuant to Section 3-115 on
5 incomplete instruments.

6 (2) The drawer engages that upon dishonor of the
7 draft and any necessary notice of dishonor or protest he
8 will pay the amount of the draft to the holder or to any
9 indorser who takes it up. The drawer may disclaim this
10 liability by drawing without recourse.

11 (3) By making, drawing or accepting the party ad-
12 mits as against all subsequent parties including the
13 drawee the existence of the payee and his then capacity
14 to indorse.

Sec. 3-414. Contract of Indorser; Order of Liability.—

2 (1) Unless the indorsement otherwise specifies (as by
3 such words as "without recourse") every indorser en-
4 gages that upon dishonor and any necessary notice of
5 dishonor and protest he will pay the instrument accord-
6 ing to its tenor at the time of his indorsement to the
7 holder or to any subsequent indorser who takes it up,
8 even though the indorser who takes it up was not obli-
9 gated to do so.

10 (2) Unless they otherwise agree indorsers are liable
11 to one another in the order in which they indorse, which
12 is presumed to be the order in which their signatures
13 appear on the instrument.

Sec. 3-415. Contract of Accommodation Party.—(1) An
2 accommodation party is one who signs the instrument
3 in any capacity for the purpose of lending his name to
4 another party to it.

5 (2) When the instrument has been taken for value
6 before it is due the accommodation party is liable in the
7 capacity in which he has signed even though the taker
8 knows of the accommodation.

9 (3) As against a holder in due course and without
10 notice of the accommodation oral proof of the accommo-
11 dation is not admissible to give the accommodation party
12 the benefit of discharges dependent on his character as
13 such. In other cases the accommodation character may
14 be shown by oral proof.

15 (4) An indorsement which shows that it is not in the
16 chain of title is notice of its accommodation character.

17 (5) An accommodation party is not liable to the party
18 accommodated, and if he pays the instrument has a right
19 of recourse on the instrument against such party.

Sec. 3-416. Contract of Guarantor.—(1) "Payment
2 guaranteed" or equivalent words added to a signature
3 mean that the signer engages that if the instrument is
4 not paid when due he will pay it according to its tenor
5 without resort by the holder to any other party.

6 (2) "Collection guaranteed" or equivalent words
7 added to a signature mean that the signer engages that
8 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,

22 except that this warranty is not given by a holder in
23 due course acting in good faith

24 (i) to the maker of a note; or

25 (ii) to the drawer of a draft whether or not the
26 drawer is also the drawee; or

27 (iii) to the acceptor of a draft with respect to an alter-
28 ation made prior to the acceptance if the holder in due
29 course took the draft after the acceptance, even though
30 the acceptance provided "payable as originally drawn"
31 or equivalent terms; or

32 (iv) to the acceptor of a draft with respect to an
33 alteration made after the acceptance.

34 (2) Any person who transfers an instrument and
35 receives consideration warrants to his transferee and if
36 the transfer is by indorsement to any subsequent holder
37 who takes the instrument in good faith that

38 (a) he has a good title to the instrument or is auth-
39 orized to obtain payment or acceptance on behalf of one
40 who has a good title and the transfer is otherwise right-
41 ful; and

42 (b) all signatures are genuine or authorized; and

43 (c) the instrument has not been materially altered;
44 and

45 (d) no defense of any party is good against him; and

46 (e) he has no knowledge of any insolvency proceed-
47 ing instituted with respect to the maker or acceptor or
48 the drawer of an unaccepted instrument.

49 (3) By transferring "without recourse" the trans-
50 feror limits the obligation stated in subsection (2) (d)
51 to a warranty that he has no knowledge of such a defense.

52 (4) A selling agent or broker who does not disclose
53 the fact that he is acting only as such gives the war-
54 ranties provided in this section, but if he makes such dis-
55 closure warrants only his good faith and authority.

Sec. 3-418. Finality of Payment or Acceptance.—Except
2 for recovery of bank payments as provided in the article
3 on Bank Deposits and Collections (Article 4) and ex-
4 cept for liability for breach of warranty on present-
5 ment under the preceding section, payment or accept-

6 ance of any instrument is final in favor of a holder in
7 due course, or a person who has in good faith changed
8 his position in reliance on the payment.

Sec. 3-419. Conversion of Instrument; Innocent Repre-
2 **sentative.**—(1) An instrument is converted when

3 (a) a drawee to whom it is delivered for acceptance
4 refuses to return it on demand; or

5 (b) any person to whom it is delivered for payment
6 refuses on demand either to pay or to return it; or

7 (c) it is paid on a forged indorsement.

8 (2) In an action against a drawee under subsection
9 (1) the measure of the drawee's liability is the face
10 amount of the instrument. In any other action under
11 subsection (1) the measure of liability is presumed to be
12 the face amount of the instrument.

13 (3) Subject to the provisions of this chapter concern-
14 ing restrictive indorsements a representative, including
15 a depositary or collecting bank, who has in good faith
16 and in accordance with the reasonable commercial
17 standards applicable to the business of such represen-
18 tative dealt with an instrument or its proceeds on be-
19 half of one who was not the true owner is not liable in
20 conversion or otherwise to the true owner beyond the
21 amount of any proceeds remaining in his hands.

22 (4) An intermediary bank or payor bank which is
23 not a depositary bank is not liable in conversion solely
24 by reason of the fact that proceeds of an item in-
25 dorsed restrictively (Sections 3-205 and 3-206) are not
26 paid or applied consistently with the restrictive indorse-
27 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
2 **Protest Necessary or Permissible.**—(1) Unless excused
3 (Section 3-511) presentment is necessary to charge sec-
4 ondary parties as follows:

5 (a) presentment for acceptance is necessary to
6 charge the drawer and indorsers of a draft where the
7 draft so provides, or is payable elsewhere than at the

8 residence or place of business of the drawee, or its date
9 of payment depends upon such presentment. The holder
10 may at his option present for acceptance any other
11 draft payable at a stated date;

12 (b) presentment for payment is necessary to charge
13 any indorser;

14 (c) in the case of any drawer, the acceptor of a
15 draft payable at a bank or the maker of a note payable
16 at a bank, presentment for payment is necessary, but
17 failure to make presentment discharges such drawer,
18 acceptor or maker only as stated in Section 3-502 (1) (b).

19 (2) Unless excused (Section 3-511)

20 (a) notice of any dishonor is necessary to charge
21 any indorser;

22 (b) in the case of any drawer, the acceptor of a draft
23 payable at a bank or the maker of a note payable at a
24 bank, notice of any dishonor is necessary, but failure
25 to give such notice discharges such drawer, acceptor or
26 maker only as stated in Section 3-502 (1) (b).

27 (3) Unless excused (Section 3-511) protest of any
28 dishonor is necessary to charge the drawer and indor-
29 sers of any draft which on its face appears to be drawn
30 or payable outside of the states and territories of the
31 United States and the District of Columbia. The holder
32 may at his option make protest of any dishonor of any
33 other instrument and in the case of a foreign draft may
34 on insolvency of the acceptor before maturity make pro-
35 test for better security.

36 (4) Notwithstanding any provision of this section,
37 neither presentment nor notice of dishonor nor protest
38 is necessary to charge an indorser who has indorsed an
39 instrument after maturity.

Sec. 3-502. Unexcused Delay; Discharge.—(1) Where
2 without excuse any necessary presentment or notice of
3 dishonor is delayed beyond the time when it is due

4 (a) any indorser is discharged; and

5 (b) any drawer or the acceptor of a draft payable
6 at a bank or the maker of a note payable at a bank who
7 because the drawee or payor bank becomes insolvent

8 during the delay is deprived of funds maintained with
9 the drawee or payor bank to cover the instrument may
10 discharge his liability by written assignment to the
11 holder of his rights against the drawee or payor bank in
12 respect of such funds, but such drawer, acceptor or
13 maker is not otherwise discharged.

14 (2) Where without excuse a necessary protest is
15 delayed beyond the time when it is due any drawer or
16 indorser is discharged.

Sec. 3-503. Time of Presentment.—(1) Unless a differ-
2 ent time is expressed in the instrument the time for any
3 presentment is determined as follows:

4 (a) where an instrument is payable at or a fixed period
5 after a stated date any presentment for acceptance must
6 be made on or before the date it is payable;

7 (b) where an instrument is payable after sight it must
8 either be presented for acceptance or negotiated within
9 a reasonable time after date or issue whichever is later;

10 (c) where an instrument shows the date on which it
11 is payable presentment for payment is due on that date;

12 (d) where an instrument is accelerated presentment
13 for payment is due within a reasonable time after the ac-
14 celeration;

15 (e) with respect to the liability of any secondary
16 party presentment for acceptance or payment of any other
17 instrument is due within a reasonable time after such
18 party becomes liable thereon.

19 (2) A reasonable time for presentment is determined
20 by the nature of the instrument, any usage of banking or
21 trade and the facts of the particular case. In the case of
22 an uncertified check which is drawn and payable within
23 the United States and which is not a draft drawn by a
24 bank the following are presumed to be reasonable periods
25 within which to present for payment or to initiate bank
26 collection:

27 (a) with respect to the liability of the drawer, thirty
28 days after date or issue whichever is later; and

29 (b) with respect to the liability of an indorser, seven
30 days after his indorsement.

31 (3) Where any presentment is due on a day which is
32 not a full business day for either the person making pre-
33 sentment or the party to pay or accept, presentment is due
34 on the next following day which is a full business day for
35 both parties.

36 (4) Presentment to be sufficient must be made at a
37 reasonable hour, and if at a bank during its banking day.

Sec. 3-504. How Presentment Made.—(1) Presentment
2 is a demand for acceptance or payment made upon the
3 maker, acceptor, drawee or other payor by or on behalf
4 of the holder.

5 (2) Presentment may be made

6 (a) by mail, in which event the time of presentment
7 is determined by the time of receipt of the mail; or

8 (b) through a clearing house; or

9 (c) at the place of acceptance or payment specified in
10 the instrument or if there be none at the place of business
11 or residence of the party to accept or pay. If neither the
12 party to accept or pay nor anyone authorized to act for
13 him is present or accessible at such place presentment is
14 excused.

15 (3) It may be made

16 (a) to any one of two or more makers, acceptors,
17 drawees or other payors; or

18 (b) to any person who has authority to make or refuse
19 the acceptance or payment.

20 (4) A draft accepted or a note made payable at a bank
21 in the United States must be presented at such bank.

22 (5) In the cases described in Section 4-210 presentment
23 may be made in the manner and with the result stated in
24 that section.

Sec. 3-505. Rights of Party to Whom Presentment Is
2 **Made.**—(1) The party to whom presentment is made may
3 without dishonor require

4 (a) exhibition of the instrument; and

5 (b) reasonable identification of the person making
6 presentment and evidence of his authority to make it if
7 made for another; and

8 (c) that the instrument be produced for acceptance or
9 payment at a place specified in it, or if there be none at
10 any place reasonable in the circumstances; and

11 (d) a signed receipt on the instrument for any partial
12 or full payment and its surrender upon full payment.

13 (2) Failure to comply with any such requirement in-
14 validates the presentment but the person presenting has
15 a reasonable time in which to comply and the time for
16 acceptance or payment runs from the time of compliance.

Sec. 3-506. Time Allowed for Acceptance or Payment.—

2 (1) Acceptance may be deferred without dishonor until
3 the close of the next business day following presentment.
4 The holder may also in a good faith effort to obtain ac-
5 ceptance and without either dishonor of the instrument
6 or discharge of secondary parties allow postponement of
7 acceptance for an additional business day.

8 (2) Except as a longer time is allowed in the case of
9 documentary drafts drawn under a letter of credit, and
10 unless an earlier time is agreed to by the party to pay,
11 payment of an instrument may be deferred without dis-
12 honor pending reasonable examination to determine
13 whether it is properly payable, but payment must be made
14 in any event before the close of business on the day of
15 presentment.

Sec. 3-507. Dishonor; Holder's Right of Recourse; Term
2 **Allowing Re-Presentment.—**(1) An instrument is dishon-
3 ored when

4 (a) a necessary or optional presentment is duly made
5 and due acceptance or payment is refused or cannot be
6 obtained within the prescribed time or in case of bank col-
7 lections the instrument is seasonably returned by the
8 midnight deadline (Section 4-301); or

9 (b) presentment is excused and the instrument is not
10 duly accepted or paid.

11 (2) Subject to any necessary notice of dishonor and
12 protest, the holder has upon dishonor an immediate right
13 of recourse against the drawers and indorsers.

14 (3) Return of an instrument for lack of proper in-
15 dorsement is not dishonor.

16 (4) A term in a draft or an indorsement thereof al-
17 lowing a stated time for re-presentment in the event of
18 any dishonor of the draft by nonacceptance if a time draft
19 or by nonpayment if a sight draft gives the holder as
20 against any secondary party bound by the term an option
21 to waive the dishonor without affecting the liability of the
22 secondary party and he may present again up to the end
23 of the stated time.

Sec. 3-508. Notice of Dishonor.—(1) Notice of dishonor
2 may be given to any person who may be liable on the in-
3 strument by or on behalf of the holder or any party who
4 has himself received notice, or any other party who can
5 be compelled to pay the instrument. In addition an agent
6 or bank in whose hands the instrument is dishonored may
7 give notice to his principal or customer or to another
8 agent or bank from which the instrument was received.

9 (2) Any necessary notice must be given by a bank be-
10 fore its midnight deadline and by any other person before
11 midnight of the third business day after dishonor or re-
12 ceipt of notice of dishonor.

13 (3) Notice may be given in any reasonable manner.
14 It may be oral or written and in any terms which identify
15 the instrument and state that it has been dishonored. A
16 misdescription which does not mislead the party notified
17 does not vitiate the notice. Sending the instrument bear-
18 ing a stamp, ticket or writing stating that acceptance or
19 payment has been refused or sending a notice of debit
20 with respect to the instrument is sufficient.

21 (4) Written notice is given when sent although it is
22 not received.

23 (5) Notice to one partner is notice to each although
24 the firm has been dissolved.

25 (6) When any party is in insolvency proceedings in-
26 stituted after the issue of the instrument notice may be
27 given either to the party or to the representative of his
28 estate.

29 (7) When any party is dead or incompetent notice
30 may be sent to his last known address or given to his per-
31 sonal representative.

32 (8) Notice operates for the benefit of all parties who
33 have rights on the instrument against the party notified.

Sec. 3-509. Protest; Noting for Protest.—(1) A protest
2 is a certificate of dishonor made under the hand and seal
3 of a United States consul or vice consul or a notary pub-
4 lic or other person authorized to certify dishonor by the
5 law of the place where dishonor occurs. It may be made
6 upon information satisfactory to such person.

7 (2) The protest must identify the instrument and cer-
8 tify either that due presentment has been made or the rea-
9 son why it is excused and that the instrument has been
10 dishonored by nonacceptance or nonpayment.

11 (3) The protest may also certify that notice of dis-
12 honor has been given to all parties or to specified parties.

13 (4) Subject to subsection (5) any necessary protest is
14 due by the time that notice of dishonor is due.

15 (5) If, before protest is due, an instrument has been
16 noted for protest by the officer to make protest, the pro-
17 test may be made at any time thereafter as of the date of
18 the noting.

Sec. 3-510. Evidence of Dishonor and Notice of Dis-
2 **honor.**—The following are admissible as evidence and
3 create a presumption of dishonor and of any notice of dis-
4 honor therein shown:

5 (a) a document regular in form as provided in the
6 preceding section which purports to be a protest;

7 (b) the purported stamp or writing of the drawee,
8 payor bank or presenting bank on the instrument or ac-
9 companying it stating that acceptance or payment has
10 been refused for reasons consistent with dishonor;

11 (c) any book or record of the drawee, payor bank, or
12 any collecting bank kept in the usual course of business
13 which shows dishonor, even though there is no evidence
14 of who made the entry.

Sec. 3-511. Waived or Excused Presentment, Protest or
2 **Notice of Dishonor or Delay Therein.**—(1) Delay in pre-
3 sentment, protest or notice of dishonor is excused when
4 the party is without notice that it is due or when the de-
5 lay is caused by circumstances beyond his control and he

6 exercises reasonable diligence after the cause of the delay
7 ceases to operate.

8 (2) Presentment or notice or protest as the case may
9 be is entirely excused when

10 (a) the party to be charged has waived it expressly
11 or by implication either before or after it is due; or

12 (b) such party has himself dishonored the instrument
13 or has countermanded payment or otherwise has no rea-
14 son to expect or right to require that the instrument be
15 accepted or paid; or

16 (c) by reasonable diligence the presentment or pro-
17 test cannot be made or the notice given.

18 (3) Presentment is also entirely excused when

19 (a) the maker, acceptor or drawee of any instrument
20 except a documentary draft is dead or in insolvency pro-
21 ceedings instituted after the issue of the instrument; or

22 (b) acceptance or payment is refused but not for want
23 of proper presentment.

24 (4) Where a draft has been dishonored by nonaccept-
25 ance a later presentment for payment and any notice of
26 dishonor and protest for nonpayment are excused unless
27 in the meantime the instrument has been accepted.

28 (5) A waiver of protest is also a waiver of present-
29 ment and of notice of dishonor even though protest is not
30 required.

31 (6) Where a waiver of presentment or notice or pro-
32 test is embodied in the instrument itself it is binding upon
33 all parties; but where it is written above the signature of
34 an indorser it binds him only.

PART 6. DISCHARGE

2 **Sec. 3-601. Discharge of Parties.**—(1) The extent of the
3 discharge of any party from liability on an instrument is
governed by the sections on

4 (a) payment or satisfaction (Section 3-603); or

5 (b) tender of payment (Section 3-604); or

6 (c) cancellation or renunciation (Section 3-605); or

7 (d) impairment of right of recourse or of collateral
8 (Section 3-606); or

9 (e) reacquisition of the instrument by a prior party
10 (Section 3-208); or

11 (f) fraudulent and material alteration (Section 3-407);
12 or

13 (g) certification of a check (Section 3-411); or

14 (h) acceptance varying a draft (Section 3-412); or

15 (i) unexcused delay in presentment or notice of dis-
16 honor or protest (Section 3-502).

17 (2) Any party is also discharged from his liability on
18 an instrument to another party by any other act or agree-
19 ment with such party which would discharge his simple
20 contract for the payment of money.

21 (3) The liability of all parties is discharged when any
22 party who has himself no right of action or recourse on
23 the instrument

24 (a) reacquires the instrument in his own right; or

25 (b) is discharged under any provision of this article,
26 except as otherwise provided with respect to discharge
27 for impairment of recourse or of collateral (Section 3-
28 606).

Sec. 3-602. Effect of Discharge Against Holder in Due
2 **Course.**—No discharge of any party provided by this
3 article is effective against a subsequent holder in due
4 course unless he has notice thereof when he takes the
5 instrument.

Sec. 3-603. Payment or Satisfaction.—(1) The liability
2 of any party is discharged to the extent of his payment
3 or satisfaction to the holder even though it is made with
4 knowledge of a claim of another person to the instru-
5 ment unless prior to such payment or satisfaction the
6 person making the claim either supplies indemnity
7 deemed adequate by the party seeking the discharge
8 or enjoins payment or satisfaction by order of a court of
9 competent jurisdiction in an action in which the ad-
10 verse claimant and the holder are parties. This sub-
11 section does not, however, result in the discharge of the
12 liability

13 (a) of a party who in bad faith pays or satisfies a
14 holder who acquired the instrument by theft or who

15 (unless having the rights of a holder in due course)
16 holds through one who so acquired it; or

17 (b) of a party (other than an intermediary bank or
18 a payor bank which is not a depository bank) who pays
19 or satisfies the holder of an instrument which has been
20 restrictively indorsed in a manner not consistent with
21 the terms of such restrictive indorsement.

22 (2) Payment or satisfaction may be made with the
23 consent of the holder by any person including a stranger
24 to the instrument. Surrender of the instrument to such
25 a person gives him the rights of a transferee (Section
26 3-201).

Sec. 3-604. Tender of Payment.—(1) Any party making
2 tender of full payment to a holder when or after it is
3 due is discharged to the extent of all subsequent liabil-
4 ity for interest, costs and attorney's fees.

5 (2) The holder's refusal of such tender wholly dis-
6 charges any party who has a right of recourse against
7 the party making the tender.

8 (3) Where the maker or acceptor of an instrument
9 payable otherwise than on demand is able and ready to
10 pay at every place of payment specified in the instru-
11 ment when it is due, it is equivalent to tender.

Sec. 3-605. Cancellation and Renunciation.—(1) The
2 holder of an instrument may even without considera-
3 tion discharge any party

4 (a) in any manner apparent on the face of the in-
5 strument or the indorsement, as by intentionally can-
6 celling the instrument or the party's signature by
7 destruction or mutilation, or by striking out the party's
8 signature; or

9 (b) by renouncing his rights by a writing signed
10 and delivered or by surrender of the instrument to the
11 party to be discharged.

12 (2) Neither cancellation nor renunciation without
13 surrender of the instrument affects the title thereto.

Sec. 3-606. Impairment of Recourse or of Collateral.—

2 (1) The holder discharges any party to the instru-

3 ment to the extent that without such party's consent
4 the holder

5 (a) without express reservation of rights releases
6 or agrees not to sue any person against whom the party
7 has to the knowledge of the holder a right of recourse
8 or agrees to suspend the right to enforce against such
9 person the instrument or collateral or otherwise dis-
10 charges such person, except that failure or delay in
11 effecting any required presentment, protest or notice
12 of dishonor with respect to any such person does not
13 discharge any party as to whom presentment, protest
14 or notice of dishonor is effective or unnecessary; or

15 (b) unjustifiably impairs any collateral for the in-
16 strument given by or on behalf of the party or any per-
17 son against whom he has a right of recourse.

18 (2) By express reservation of rights against a party
19 with a right of recourse the holder preserves

20 (a) all his rights against such party as of the time
21 when the instrument was originally due; and

22 (b) the right of the party to pay the instrument as
23 of that time; and

24 (c) all rights of such party to recourse against
25 others.

PART 7. ADVICE OF INTERNATIONAL SIGHT DRAFT

Sec. 3-701. Letter of Advice of International Sight

2 **Draft.**—(1) A "letter of advice" is a drawer's communica-
3 tion to the drawee that a described draft has been
4 drawn.

5 (2) Unless otherwise agreed when a bank receives
6 from another bank a letter of advice of an international
7 sight draft the drawee bank may immediately debit the
8 drawer's account and stop the running of interest pro
9 tanto. Such a debit and any resulting credit to any
10 account covering outstanding drafts leaves in the drawer
11 full power to stop payment or otherwise dispose of the
12 amount and creates no trust or interest in favor of the
13 holder.

14 (3) Unless otherwise agreed and except where a
15 draft is drawn under a credit issued by the drawee, the

16 drawee of an international sight draft owes the drawer
17 no duty to pay an unadvised draft but if it does so and
18 the draft is genuine, may appropriately debit the draw-
19 er's account.

PART 8. MISCELLANEOUS

Sec. 3-801. Drafts in a Set.—(1) Where a draft is drawn
2 in a set of parts, each of which is numbered and ex-
3 pressed to be an order only if no other part has been
4 honored, the whole of the parts constitutes one draft
5 but a taker of any part may become a holder in due
6 course of the draft.

7 (2) Any person who negotiates, indorses or accepts a
8 single part of a draft drawn in a set thereby becomes liable
9 to any holder in due course of that part as if it were the
10 whole set, but as between different holders in due
11 course to whom different parts have been negotiated
12 the holder whose title first accrues has all rights to the
13 draft and its proceeds.

14 (3) As against the drawee the first presented part
15 of a draft drawn in a set is the part entitled to payment,
16 or if a time draft to acceptance and payment. Accept-
17 ance of any subsequently presented part renders the
18 drawee liable thereon under subsection (2). With re-
19 spect both to a holder and to the drawer payment of a
20 subsequently presented part of a draft payable at sight
21 has the same effect as payment of a check notwith-
22 standing an effective stop order (Section 4-407).

23 (4) Except as otherwise provided in this section, where
24 any part of a draft in a set is discharged by payment
25 or otherwise the whole draft is discharged.

Sec. 3-802. Effect of Instrument on Obligation for
2 **Which It Is Given.**—(1) Unless otherwise agreed where an
3 instrument is taken for an underlying obligation

4 (a) the obligation is pro tanto discharged if a bank is
5 drawer, maker or acceptor of the instrument and there is
6 no recourse on the instrument against the underlying ob-
7 ligor; and

8 (b) in any other case the obligation is suspended pro
9 tanto until the instrument is due or if it is payable on de-

10 mand until its presentment. If the instrument is dishon-
11 ored action may be maintained on either the instrument
12 or the obligation; discharge of the underlying obligor on
13 the instrument also discharges him on the obligation.

14 (2) The taking in good faith of a check which is not
15 postdated does not of itself so extend the time on the
16 original obligation as to discharge a surety.

Sec. 3-803. Notice to Third Party.—Where a defendant
2 is sued for breach of an obligation for which a third per-
3 son is answerable over under this article he may give the
4 third person written notice of the litigation, and the per-
5 son notified may then give similar notice to any other per-
6 son who is answerable over to him under this article. If
7 the notice states that the person notified may come in and
8 defend and that if the person notified does not do so he
9 will in any action against him by the person giving the
10 notice be bound by any determination of fact common to
11 the two litigations, then unless after seasonable receipt of
12 the notice the person notified does come in and defend he
13 is so bound.

Sec. 3-804. Lost, Destroyed or Stolen Instruments.—
2 The owner of an instrument which is lost, whether by de-
3 struction, theft or otherwise, may maintain an action in
4 his own name and recover from any party liable thereon
5 upon due proof of his ownership, the facts which prevent
6 his production of the instrument and its terms. The court
7 may require security indemnifying the defendant against
8 loss by reason of further claims on the instrument.

**Sec. 3-805. Instruments Not Payable to Order or to
2 Bearer.**—This article applies to any instrument whose
3 terms do not preclude transfer and which is otherwise
4 negotiable within this article but which is not payable to
5 order or to bearer, except that there can be no holder in
6 due course of such an instrument.

Article 4. Bank Deposits and Collections

PART 1. GENERAL PROVISIONS AND DEFINITIONS

Section

4-101. Short title.

4-102. Applicability.

- 4-103. Variation by agreement; measure of damages; certain action constituting ordinary care.
- 4-104. Definitions and index of definitions.
- 4-105. "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank".
- 4-106. Separate office of a bank.
- 4-107. Time of receipt of items.
- 4-108. Delays.
- 4-109. Process of posting.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

- 4-201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay and bank".
- 4-203. Effect of instructions.
- 4-204. Methods of sending and presenting; sending direct to payor bank.
- 4-205. Supplying missing indorsement; no notice from prior indorsement.
- 4-206. Transfer between banks.
- 4-207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- 4-208. Security interest of collecting bank in items, accompanying documents and proceeds.
- 4-209. When bank gives value for purposes of holder in due course.
- 4-210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 4-211. Media of remittance; provisional and final settlement in remittance cases.
- 4-212. Right of charge-back or refund.
- 4-213. Final payment of item by payor bank; when provisional debts and credits become final; when certain credits become available for withdrawal.
- 4-214. Insolvency and preference.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

- 4-301. Deferred posting; recovery of payment by return of items; time of dishonor.
- 4-302. Payor bank's responsibility for late return of item.
- 4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

- 4-401. When bank may charge customer's account.
- 4-402. Bank's liability to customer for wrongful dishonor.
- 4-403. Customer's right to stop payment; burden of proof of loss.
- 4-404. Bank not obligated to pay check more than six months old.
- 4-405. Death or incompetence of customer.
- 4-406. Customer's duty to discover and report unauthorized signature or alteration.
- 4-407. Payor bank's right to subrogation or improper payment.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

- 4-501. Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
- 4-502. Presentment of "on arrival" drafts.
- 4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
- 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
2 and may be cited as Uniform Commercial Code—Bank
3 Deposits and Collections.

Sec. 4-102. Applicability.—(1) To the extent that items
2 within this article are also within the scope of Articles 3
3 and 8, they are subject to the provisions of those articles.
4 In the event of conflict the provisions of this article gov-
5 ern those of Article 3 but the provisions of Article 8 gov-
6 ern those of this article.

7 (2) The liability of a bank for action or non-action
8 with respect to any item handled by it for purposes of pre-
9 sentment, payment or collection is governed by the law
10 of the place where the bank is located. In the case of ac-
11 tion or non-action by or at a branch or separate office of
12 a bank, its liability is governed by the law of the place
13 where the branch or separate office is located.

**Sec. 4-103. Variation by Agreement; Measure of Dam-
2 ages; Certain Action Constituting Ordinary Care.**—(1)
3 The effect of the provisions of this article may be
4 varied by agreement except that no agreement can dis-
5 claim a bank's responsibility for its own lack of good
6 faith or failure to exercise ordinary care or can limit the
7 measure of damages for such lack or failure; but the par-
8 ties may by agreement determine the standards by which
9 such responsibility is to be measured if such standards
10 are not manifestly unreasonable.

11 (2) Federal Reserve regulations and operating letters,
12 clearing house rules, and the like, have the effect of agree-
13 ments under subsection (1), whether or not specifically
14 assented to by all parties interested in items handled.

15 (3) Action or non-action approved by this article or
16 pursuant to Federal Reserve regulations or operating let-
17 ters constitutes the exercise of ordinary care and, in the
18 absence of special instructions, action or non-action con-
19 sistent with clearing house rules and the like or with a
20 general banking usage not disapproved by this article,
21 prima facie constitutes the exercise of ordinary care.

22 (4) The specification or approval of certain procedures

23 by this article does not constitute disapproval of other
24 procedures which may be reasonable under the circum-
25 stances.

26 (5) The measure of damages for failure to exercise
27 ordinary care in handling an item is the amount of the
28 item reduced by an amount which could not have been
29 realized by the use of ordinary care, and where there is
30 bad faith it includes other damages, if any, suffered by
31 the party as a proximate consequence.

Sec. 4-104. Definitions and Index of Definitions.—(1)

2 In this article unless the context otherwise requires

3 (a) "Account" means any account with a bank and
4 includes a checking, time, interest or savings account;

5 (b) "Afternoon" means the period of a day between
6 noon and midnight;

7 (c) "Banking day" means that part of any day on
8 which a bank is open to the public for carrying on sub-
9 stantially all of its banking functions;

10 (d) "Clearing house" means any association of banks
11 or other payors regularly clearing items;

12 (e) "Customer" means any person having an account
13 with a bank or for whom a bank has agreed to collect
14 items and includes a bank carrying an account with an-
15 other bank;

16 (f) "Documentary draft" means any negotiable or non-
17 negotiable draft with accompanying documents, securi-
18 ties or other papers to be delivered against honor of the
19 draft;

20 (g) "Item" means any instrument for the payment of
21 money even though it is not negotiable but does not in-
22 clude money;

23 (h) "Midnight deadline" with respect to a bank is
24 midnight on its next banking day following the banking
25 day on which it receives the relevant item or notice or
26 from which the time for taking action commences to run,
27 whichever is later;

28 (i) "Properly payable" includes the availability of
29 funds for payment at the time of decision to pay or dis-
30 honor;

31 (j) "Settle" means to pay in cash, by clearing house
32 settlement, in a charge or credit or by remittance, or other-
33 wise as instructed. A settlement may be either provi-
34 sional or final;

35 (k) "Suspends payments" with respect to a bank means
36 that it has been closed by order of the supervisory author-
37 ities, that a public officer has been appointed to take it
38 over or that it ceases or refuses to make payments in the
39 ordinary course of business.

40 (2) Other definitions applying to this article and the
41 sections in which they appear are:

42 "Collecting bank"	Section 4-105.
43 "Depository bank"	Section 4-105.
44 "Intermediary bank"	Section 4-105.
45 "Payor bank"	Section 4-105.
46 "Presenting bank"	Section 4-105.
47 "Remitting bank"	Section 4-105.

48 (3) The following definitions in other articles of this
49 chapter apply to this article:

50 "Acceptance"	Section 3-410.
51 "Certificate of deposit"	Section 3-104.
52 "Certification"	Section 3-411.
53 "Check"	Section 3-104.
54 "Draft"	Section 3-104.
55 "Holder in due course"	Section 3-302.
56 "Notice of dishonor"	Section 3-508.
57 "Presentment"	Section 3-504.
58 "Protest"	Section 3-509.
59 "Secondary party"	Section 3-102.

60 (4) In addition Article 1 of this chapter contains gen-
61 eral definitions and principles of construction and inter-
62 pretation applicable throughout this article.

Sec. 4-105. "Depository Bank"; "Intermediary Bank";
2 **"Collecting Bank"; "Payor Bank"; "Presenting Bank";**
3 **"Remitting Bank".**—In this article unless the context
4 otherwise requires:

5 (a) "Depository bank" means the first bank to which
6 an item is transferred for collection even though it is also
7 the payor bank;

- 8 (b) "Payor bank" means a bank by which an item is
9 payable as drawn or accepted;
- 10 (c) "Intermediary bank" means any bank to which an
11 item is transferred in course of collection except the de-
12 pository or payor bank;
- 13 (d) "Collecting bank" means any bank handling the
14 item for collection except the payor bank;
- 15 (e) "Presenting bank" means any bank presenting an
16 item except a payor bank;
- 17 (f) "Remitting bank" means any payor or intermedi-
18 ary bank remitting for an item.

Sec. 4-106. Separate Office of a Bank.—A branch or
2 separate office of a bank maintaining its own deposit
3 ledgers is a separate bank for the purpose of computing
4 the time within which and determining the place at or to
5 which action may be taken or notices or orders shall be
6 given under this article and under Article 3.

Sec. 4-107. Time of Receipt of Items.—(1) For the pur-
2 pose of allowing time to process items, prove balances
3 and make the necessary entries on its books to deter-
4 mine its position for the day, a bank may fix an after-
5 noon hour of two P.M. or later as a cut-off hour for the
6 handling of money and items and the making of entries
7 on its books.

8 (2) Any item or deposit of money received on any
9 day after a cut-off hour so fixed or after the close of
10 the banking day may be treated as being received at
11 the opening of the next banking day.

Sec. 4-108. Delays.—(1) Unless otherwise instructed,
2 a collecting bank in a good faith effort to secure pay-
3 ment may, in the case of specific items and with or with-
4 out the approval of any person involved, waive, modify or
5 extend time limits imposed or permitted by this chapter
6 for a period not in excess of an additional banking day
7 without discharge of secondary parties and without lia-
8 bility to its transferor or any prior party.

9 (2) Delay by a collecting bank or payor bank beyond
10 time limits prescribed or permitted by this chapter or by
11 instruction is excused if caused by interruption of com-

12 munication facilities, suspension of payments by an-
13 other bank, war, emergency conditions or other circum-
14 stances beyond the control of the bank provided it ex-
15 ercises such diligence as the circumstances require.

Sec. 4-109. Process of Posting.—The “process of post-
2 ing” means the usual procedure followed by a payor
3 bank in determining to pay an item and in recording
4 the payment including one or more of the following or
5 other steps as determined by the bank:

- 6 (a) verification of any signature;
- 7 (b) ascertaining that sufficient funds are available;
- 8 (c) affixing a “paid” or other stamp;
- 9 (d) entering a charge or entry to a customer’s ac-
10 count;
- 11 (e) correcting or reversing an entry or erroneous
12 action with respect to the item.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

**Sec. 4-201. Presumption and Duration of Agency Status
2 of Collecting Banks and Provisional Status of Credits;
3 Applicability of Article; Item Indorsed “Pay Any Bank”.**
4 —(1) Unless a contrary intent clearly appears and prior
5 to the time that a settlement given by a collecting bank
6 for an item is or becomes final (subsection (3) of Sec-
7 tion 4-211 and Sections 4-212 and 4-213) the bank is an
8 agent or sub-agent of the owner of the item and any
9 settlement given for the item is provisional. This pro-
10 vision applies regardless of the form of indorsement or
11 lack of indorsement and even though credit given for
12 the item is subject to immediate withdrawal as of right
13 or is in fact withdrawn; but the continuance of owner-
14 ship of an item by its owner and any rights of the own-
15 er to proceeds of the item are subject to rights of a col-
16 lecting bank such as those resulting from outstanding
17 advances on the item and valid rights of setoff. When
18 an item is handled by banks for purposes of present-
19 ment, payment and collection, the relevant provisions
20 of this article apply even though action of parties clearly

21 establishes that a particular bank has purchased the
22 item and is the owner of it.

23 (2) After an item has been indorsed with the words
24 "pay any bank" or the like, only a bank may acquire the
25 rights of a holder

26 (a) until the item has been returned to the cus-
27 tomer initiating collection; or

28 (b) until the item has been specially indorsed by a
29 bank to a person who is not a bank.

Sec. 4-202. Responsibility for Collection; When Action

2 **Seasonable.**—(1) A collecting bank must use ordinary
3 care in

4 (a) presenting an item or sending it for present-
5 ment; and

6 (b) sending notice of dishonor or nonpayment or
7 returning an item other than a documentary draft to
8 the bank's transferor or directly to the depository bank
9 under subsection (2) of Section 4-212 after learning that
10 the item has not been paid or accepted, as the case may
11 be; and

12 (c) settling for an item when the bank receives
13 final settlement; and

14 (d) making or providing for any necessary protest;
15 and

16 (e) notifying its transferor of any loss or delay in
17 transit within a reasonable time after discovery thereof.

18 (2) A collecting bank taking proper action before
19 its midnight deadline following receipt of an item, no-
20 tice or payment acts seasonably; taking proper action
21 within a reasonably longer time may be seasonable but
22 the bank has the burden of so establishing.

23 (3) Subject to subsection (1) (a), a bank is not liable
24 for the insolvency, neglect, misconduct, mistake or de-
25 fault of another bank or person or for loss or destruc-
26 tion of an item in transit or in the possession of others.

Sec. 4-203. Effect of Instructions.—Subject to the pro-

2 visions of Article 3 concerning conversion of instru-
3 ments (Section 3-419) and the provisions of both Article
4 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 depository 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 depository 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 depository 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

39 for it warrants to his transferee and to any subsequent
40 collecting bank who takes the item in good faith that

41 (a) he has a good title to the item or is authorized to
42 obtain payment or acceptance on behalf of one who has
43 a good title and the transfer is otherwise rightful; and

44 (b) all signatures are genuine or authorized; and

45 (c) the item has not been materially altered; and

46 (d) no defense of any party is good against him; and

47 (e) he has no knowledge of any insolvency proceeding
48 instituted with respect to the maker or acceptor or the
49 drawer of an unaccepted item.

50 In addition each customer and collecting bank so trans-
51 ferring an item and receiving a settlement or other con-
52 sideration engages that upon dishonor and any necessary
53 notice of dishonor and protest he will take up the item.

54 (3) The warranties and the engagement to honor set
55 forth in the two preceding subsections arise notwithstand-
56 ing the absence of indorsement or words of guaranty or
57 warranty in the transfer or presentment and a collecting
58 bank remains liable for their breach despite remittance
59 to its transferor. Damages for breach of such warranties
60 or engagement to honor shall not exceed the consideration
61 received by the customer or collecting bank responsible
62 plus finance charges and expenses related to the item, if
63 any.

64 (4) Unless a claim for breach of warranty under this
65 section is made within a reasonable time after the person
66 claiming learns of the breach, the person liable is dis-
67 charged to the extent of any loss caused by the delay in
68 making claim.

Sec. 4-208. Security Interest of Collecting Bank in
2 **Items, Accompanying Documents and Proceeds.**—(1) A
3 bank has a security interest in an item and any accom-
4 panying documents or the proceeds of either

5 (a) in case of an item deposited in an account to the
6 extent to which credit given for the item has been with-
7 drawn or applied;

8 (b) in case of an item for which it has given credit
9 available for withdrawal as of right, to the extent of the

10 credit given whether or not the credit is drawn upon and
11 whether or not there is a right of charge-back; or

12 (c) if it makes an advance on or against the item.

13 (2) When credit which has been given for several
14 items received at one time or pursuant to a single agree-
15 ment is withdrawn or applied in part the security interest
16 remains upon all the items, any accompanying documents
17 or the proceeds of either. For the purpose of this section,
18 credits first given are first withdrawn.

19 (3) Receipt by a collecting bank of a final settlement
20 for an item is a realization on its security interest in the
21 item, accompanying documents and proceeds. To the ex-
22 tent and so long as the bank does not receive final settle-
23 ment for the item or give up possession of the item or ac-
24 companying documents for purposes other than collec-
25 tion, the security interest continues and is subject to the
26 provisions of Article 9 except that

27 (a) no security agreement is necessary to make the
28 security interest enforceable (subsection (1) (b) of Sec-
29 tion 9-203); and

30 (b) no filing is required to perfect the security inter-
31 est; and

32 (c) the security interest has priority over conflicting
33 perfected security interests in the item, accompanying
34 documents or proceeds.

Sec. 4-209. When Bank Gives Value for Purposes of
2 **Holder in Due Course.**—For purposes of determining its
3 status as a holder in due course, the bank has given value
4 to the extent that it has a security interest in an item
5 provided that the bank otherwise complies with the re-
6 quirements of Section 3-302 on what constitutes a holder
7 in due course.

Sec. 4-210. Presentment by Notice of Item Not Pay-
2 **able by, Through or at a Bank; Liability of Secondary**
3 **Parties.**—(1) Unless otherwise instructed, a collecting
4 bank may present an item not payable by, through or
5 at a bank by sending to the party to accept or pay a
6 written notice that the bank holds the item for accept-
7 ance or payment. The notice must be sent in time to

8 be received on or before the day when presentment is
9 due and the bank must meet any requirement of the
10 party to accept or pay under Section 3-505 by the close
11 of the bank's next banking day after it knows of the
12 requirement.

13 (2) Where presentment is made by notice and neither
14 honor nor request for compliance with a requirement
15 under Section 3-505 is received by the close of business
16 on the day after maturity or in the case of demand items
17 by the close of business on the third banking day after
18 notice was sent, the presenting bank may treat the item
19 as dishonored and charge any secondary party by send-
20 ing him notice of the facts.

Sec. 4-211. Media of Remittance; Provisional and Final

2 **Settlement in Remittance Cases.**—(1) A collecting bank
3 may take in settlement of an item

4 (a) a check of the remitting bank or of another bank
5 on any bank except the remitting bank; or

6 (b) a cashier's check or similar primary obligation
7 of a remitting bank which is a member of or clears
8 through a member of the same clearing house or group
9 as the collecting bank; or

10 (c) appropriate authority to charge an account of
11 the remitting bank or of another bank with the collect-
12 ing bank; or

13 (d) if the item is drawn upon or payable by a per-
14 son other than a bank, a cashier's check, certified check
15 or other bank check or obligation.

16 (2) If before its midnight deadline the collecting
17 bank properly dishonors a remittance check or authori-
18 zation to charge on itself or presents or forwards for col-
19 lection a remittance instrument of or on another bank
20 which is of a kind approved by subsection (1) or has
21 not been authorized by it, the collecting bank is not
22 liable to prior parties in the event of the dishonor of
23 such check, instrument or authorization.

24 (3) A settlement for an item by means of a re-
25 mittance instrument or authorization to charge is or
26 becomes a final settlement as to both the person making
27 and the person receiving the settlement

28 (a) if the remittance instrument or authorization to
29 charge is of a kind approved by subsection (1) or has
30 not been authorized by the person receiving the settle-
31 ment and in either case the person receiving the settle-
32 ment acts seasonably before its midnight deadline in
33 presenting, forwarding for collection or paying the in-
34 strument or authorization,—at the time the remittance
35 instrument or authorization is finally paid by the payor
36 by which it is payable;

37 (b) if the person receiving the settlement has auth-
38 orized remittance by a non-bank check or obligation or
39 by a cashier's check or similar primary obligation of or
40 a check upon the payor or other remitting bank which
41 is not of a kind approved by subsection (1) (b),—at the
42 time of the receipt of such remittance check or obliga-
43 tion; or

44 (c) if in a case not covered by subparagraphs (a)
45 or (b) the person receiving the settlement fails to season-
46 ably present, forward for collection, pay or return a re-
47 mittance instrument or authorization to it to charge be-
48 fore its midnight deadline,—at such midnight deadline.

Sec. 4-212. Right of Charge-Back or Refund.—(1) If a
2 collecting bank has made provisional settlement with its
3 customer for an item and itself fails by reason of dishonor,
4 suspension of payments by a bank or otherwise to receive
5 a settlement for the item which is or becomes final, the
6 bank may revoke the settlement given by it, charge back
7 the amount of any credit given for the item to its cus-
8 tomer's account or obtain refund from its customer
9 whether or not it is able to return the items if by its mid-
10 night deadline or within a longer reasonable time after
11 it learns the facts it returns the item or sends notification
12 of the facts. These rights to revoke, charge-back and ob-
13 tain refund terminate if and when a settlement for the
14 item received by the bank is or becomes final (subsection
15 (3) of Section 4-211 and subsections (2) and (3) of Sec-
16 tion 4-213).

17 (2) Within the time and manner prescribed by this
18 section and Section 4-301, an intermediary or payor bank,
19 as the case may be, may return an unpaid item directly

20 to the depositary bank and may send for collection a draft
21 on the depositary bank and obtain reimbursement. In
22 such case, if the depositary bank has received provisional
23 settlement for the item, it must reimburse the bank draw-
24 ing the draft and any provisional credits for the item be-
25 tween banks shall become and remain final.

26 (3) A depositary bank which is also the payor may
27 charge-back the amount of an item to its customer's ac-
28 count or obtain refund in accordance with the section
29 governing return of an item received by a payor bank for
30 credit on its books (Section 4-301).

31 (4) The right to charge-back is not affected by

32 (a) prior use of the credit given for the item; or

33 (b) failure by any bank to exercise ordinary care with
34 respect to the item but any bank so failing remains liable.

35 (5) A failure to charge-back or claim refund does not
36 affect other rights of the bank against the customer or any
37 other party.

38 (6) If credit is given in dollars as the equivalent of the
39 value of an item payable in a foreign currency the dollar
40 amount of any charge-back or refund shall be calculated
41 on the basis of the buying sight rate for the foreign cur-
42 rency prevailing on the day when the person entitled to
43 the charge-back or refund learns that it will not receive
44 payment in ordinary course.

**Sec. 4-213. Final Payment of Item by Payor Bank;
2 When Provisional Debits and Credits Become Final;
3 When Certain Credits Become Available for Withdrawal.**

4 —(1) An item is finally paid by a payor bank when the
5 bank has done any of the following, whichever happens
6 first:

7 (a) paid the item in cash; or

8 (b) settled for the item without reserving a right to
9 revoke the settlement and without having such right un-
10 der statute, clearing house rule or agreement; or

11 (c) completed the process of posting the item to the
12 indicated account of the drawer, maker or other person
13 to be charged therewith; or

14 (d) made a provisional settlement for the item and

15 failed to revoke the settlement in the time and manner
16 permitted by statute, clearing house rule or agreement.
17 Upon a final payment under subparagraphs (b), (c) or
18 (d) the payor bank shall be accountable for the amount
19 of the item.

20 (2) If provisional settlement for an item between the
21 presenting and payor banks is made through a clearing
22 house or by debits or credits in an account between them,
23 then to the extent that provisional debits or credits for
24 the item are entered in accounts between the presenting
25 and payor banks or between the presenting and succes-
26 sive prior collecting banks seriatim, they become final
27 upon final payment of the item by the payor bank.

28 (3) If a collecting bank receives a settlement for an
29 item which is or becomes final (subsection (3) of Section
30 4-211, subsection (2) of Section 4-213) the bank is account-
31 able to its customer for the amount of the item and any
32 provisional credit given for the item in an account with
33 its customer becomes final.

34 (4) Subject to any right of the bank to apply the credit
35 to an obligation of the customer, credit given by a bank
36 for an item in an account with its customer becomes
37 available for withdrawal as of right

38 (a) in any case where the bank has received a provi-
39 sional settlement for the item,—when such settlement be-
40 comes final and the bank has had a reasonable time to
41 learn that the settlement is final;

42 (b) in any case where the bank is both a depository
43 bank and a payor bank and the item is finally paid,—at
44 the opening of the bank's second banking day following
45 receipt of the item.

46 (5) A deposit of money in a bank is final when made
47 but, subject to any right of the bank to apply the deposit
48 to an obligation of the customer, the deposit becomes
49 available for withdrawal as of right at the opening of the
50 bank's next banking day following receipt of the deposit.

Sec. 4-214. Insolvency and Preference.—(1) Any item
2 in or coming into the possession of a payor or collecting
3 bank which suspends payment and which item is not fi-
4 nally paid shall be returned by the receiver, trustee or

5 agent in charge of the closed bank to the presenting bank
6 or the closed bank's customer.

7 (2) If a payor bank finally pays an item and suspends
8 payments without making a settlement for the item with
9 its customer or the presenting bank which settlement is
10 or becomes final, the owner of the item has a preferred
11 claim against the payor bank.

12 (3) If a payor bank gives or a collecting bank gives or
13 receives a provisional settlement for an item and there-
14 after suspends payments, the suspension does not prevent
15 or interfere with the settlement becoming final if such
16 finality occurs automatically upon the lapse of certain
17 time or the happening of certain events (subsection (3)
18 of Section 4-211, subsections (1) (d), (2) and (3) of Sec-
19 tion 4-213).

20 (4) If a collecting bank receives from subsequent par-
21 ties settlement for an item which settlement is or becomes
22 final and suspends payments without making a settlement
23 for the item with its customer which is or becomes final,
24 the owner of the item has a preferred claim against such
25 collecting bank.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

Sec. 4-301. Deferred Posting; Recovery of Payment by
2 **Return of Items; Time of Dishonor.**—(1) Where an auth-
3 orized settlement for a demand item (other than a docu-
4 mentary draft) received by a payor bank otherwise than
5 for immediate payment over the counter has been made
6 before midnight of the banking day of receipt the payor
7 bank may revoke the settlement and recover any payment
8 if before it has made final payment (subsection (1) of
9 Section 4-213) and before its midnight deadline it

10 (a) returns the item; or

11 (b) sends written notice of dishonor or nonpayment
12 if the item is held for protest or is otherwise unavailable
13 for return.

14 (2) If a demand item is received by a payor bank for
15 credit on its books it may return such item or send notice
16 of dishonor and may revoke any credit given or recover
17 the amount thereof withdrawn by its customer, if it acts

18 within the time limit and in the manner specified in the
19 preceding subsection.

20 (3) Unless previous notice of dishonor has been sent
21 an item is dishonored at the time when for purposes of
22 dishonor it is returned or notice sent in accordance with
23 this section.

24 (4) An item is returned:

25 (a) as to an item received through a clearing house,
26 when it is delivered to the presenting or last collecting
27 bank or to the clearing house or is sent or delivered in ac-
28 cordance with its rules; or

29 (b) in all other cases, when it is sent or delivered to
30 the bank's customer or transferor or pursuant to his in-
31 structions.

Sec. 4-302. Payor Bank's Responsibility for Late Return

of Item.—In the absence of a valid defense such as breach
2 of a presentment warranty (subsection (1) of Section
3 4-207), settlement effected or the like, if an item is pre-
4 sented on and received by a payor bank the bank is
5 accountable for the amount of

6 (a) a demand item other than a documentary draft
7 whether properly payable or not if the bank, in any
8 case where it is not also the depository bank, retains
9 the item beyond midnight of the banking day of receipt
10 without settling for it or, regardless of whether it is also
11 the depository bank, does not pay or return the item
12 or send notice of dishonor until after its midnight dead-
13 line; or

14 (b) any other properly payable item unless within
15 the time allowed for acceptance or payment of that item
16 the bank either accepts or pays the item or returns it
17 and accompanying documents.

Sec. 4-303. When Items Subject to Notice, Stop-Order,

2 Legal Process or Setoff; Order in Which Items May Be

3 Charged or Certified.—(1) Any knowledge, notice or stop-
4 order received by, legal process served upon or setoff
5 exercised by a payor bank, whether or not effective under
6 other rules of law to terminate, suspend or modify the
7 bank's right or duty to pay an item or to charge its cus-

8 tomer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the
9 knowledge, notice, stop-order or legal process is received
10 or served and a reasonable time for the bank to act
11 thereon expires or the setoff is exercised after the bank
12 has done any of the following:

13 (a) accepted or certified the item;

14 (b) paid the item in cash;

15 (c) settled for the item without reserving a right to
16 revoke the settlement and without having such right
17 under statute, clearing house rule or agreement;

18 (d) completed the process of posting the item to the
19 indicated account of the drawer, maker or other person
20 to be charged therewith or otherwise has evidenced by
21 examination of such indicated account and by action
22 its decision to pay the item; or

23 (e) become accountable for the amount of the item
24 under subsection (1) (d) of Section 4-213 and Section
25 4-302 dealing with the payor bank's responsibility for
26 late return of items.

27 (2) Subject to the provisions of subsection (1) items
28 may be accepted, paid, certified or charged to the in-
29 dicated account of its customer in any order convenient
30 to the bank.

PART 4. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

Sec. 4-401. When Bank May Charge Customer's Account.—(1) As against its customer, a bank may charge
2 against his account any item which is otherwise prop-
3 erly payable from that account even though the charge
4 creates an overdraft.

5 (2) A bank which in good faith makes payment to
6 a holder may charge the indicated account of its cus-
7 tomer according to

8 (a) the original tenor of his altered item; or

9 (b) the tenor of his completed item, even though
10 the bank knows the item has been completed unless the
11 bank has notice that the completion was improper.

Sec. 4-402. Bank's Liability to Customer for Wrongful

2 **Dishonor.**—A payor bank is liable to its customer for
3 damages proximately caused by the wrongful dishonor
4 of an item. When the dishonor occurs through mistake
5 liability is limited to actual damages proved. If so prox-
6 imately caused and proved damages may include dam-
7 ages for an arrest or prosecution of the customer or
8 other consequential damages. Whether any consequen-
9 tial damages are proximately caused by the wrongful
10 dishonor is a question of fact to be determined in each
11 case.

Sec. 4-403. Customer's Right to Stop Payment; Burden

2 **of Proof of Loss.**—(1) A customer may by order to his
3 bank stop payment of any item payable for his account
4 but the order must be received at such time and in such
5 manner as to afford the bank a reasonable opportunity
6 to act on it prior to any action by the bank with respect
7 to the item described in Section 4-303.

8 (2) An oral order is binding upon the bank only for
9 fourteen calendar days unless confirmed in writing
10 within that period. A written order is effective for only
11 six months unless renewed in writing.

12 (3) The burden of establishing the fact and amount
13 of loss resulting from the payment of an item contrary
14 to a binding stop payment order is on the customer.

Sec. 4-404. Bank Not Obligated to Pay Check More

2 **Than Six Months Old.**—A bank is under no obligation to
3 a customer having a checking account to pay a check,
4 other than a certified check, which is presented more
5 than six months after its date, but it may charge its cus-
6 tomer's account for a payment made thereafter in good
7 faith.

Sec. 4-405. Death or Incompetence of Customer.—(1)

2 A payor or collecting bank's authority to accept, pay or
3 collect an item or to account for proceeds of its collec-
4 tion if otherwise effective is not rendered ineffective by
5 incompetence of a customer of either bank existing at
6 the time the item is issued or its collection is under-
7 taken if the bank does not know of an adjudication of

8 incompetence. Neither death nor incompetence of a
9 customer revokes such authority to accept, pay, collect
10 or account until the bank knows of the fact of death or
11 of an adjudication of incompetence and has reasonable
12 opportunity to act on it.

13 (2) Even with knowledge a bank may for ten days
14 after the date of death pay or certify checks drawn on
15 or prior to that date unless ordered to stop payment by
16 a person claiming an interest in the account.

Sec. 4-406. Customer's Duty to Discover and Report

2 **Unauthorized Signature or Alteration.**—(1) When a bank
3 sends to its customer a statement of account accompan-
4 ied by items paid in good faith in support of the debit
5 entries or holds the statement and items pursuant to a
6 request or instructions of its customer or otherwise in
7 a reasonable manner makes the statement and items
8 available to the customer, the customer must exercise
9 reasonable care and promptness to examine the state-
10 ment and items to discover his unauthorized signature
11 or any alteration on an item and must notify the bank
12 promptly after discovery thereof.

13 (2) If the bank establishes that the customer failed
14 with respect to an item to comply with the duties im-
15 posed on the customer by subsection (1) the customer
16 is precluded from asserting against the bank

17 (a) his unauthorized signature or any alteration on
18 the item if the bank also establishes that it suffered a
19 loss by reason of such failure; and

20 (b) an unauthorized signature or alteration by the
21 same wrongdoer on any other item paid in good faith by
22 the bank after the first item and statement was avail-
23 able to the customer for a reasonable period not exceed-
24 ing fourteen calendar days and before the bank receives
25 notification from the customer of any such unauthorized
26 signature or alteration.

27 (3) The preclusion under subsection (2) does not
28 apply if the customer establishes lack of ordinary care
29 on the part of the bank in paying the item(s).

30 (4) Without regard to care or lack of care of either
31 the customer or the bank a customer who does not with-

32 in one year from the time the statement and items are
33 made available to the customer (subsection (1)) dis-
34 cover and report his unauthorized signature or any alter-
35 ation on the face or back of the item or does not within
36 three years from that time discover and report any un-
37 authorized indorsement is precluded from asserting
38 against the bank such unauthorized signature or indorse-
39 ment or such alteration.

40 (5) If under this section a payor bank has a valid
41 defense against a claim of a customer upon or resulting
42 from payment of an item and waives or fails upon re-
43 quest to assert the defense the bank may not assert
44 against any collecting bank or other prior party pre-
45 senting or transferring the item a claim based upon the
46 unauthorized signature or alteration giving rise to the
47 customer's claim.

**Sec. 4-407. Payor Bank's Right to Subrogation on Im-
2 proper Payment.**—If a payor bank has paid an item over
3 the stop payment order of the drawer or maker or other-
4 wise under circumstances giving a basis for objection
5 by the drawer or maker, to prevent unjust enrichment
6 and only to the extent necessary to prevent loss to the
7 bank by reason of its payment of the item, the payor
8 bank shall be subrogated to the rights

9 (a) of any holder in due course on the item against
10 the drawer or maker; and

11 (b) of the payee or any other holder of the item
12 against the drawer or maker either on the item or under
13 the transaction out of which the item arose; and

14 (c) of the drawer or maker against the payee or any
15 other holder of the item with respect to the transaction
16 out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

**Sec. 4-501. Handling of Documentary Drafts; Duty to
2 Send for Presentment and to Notify Customer of Dis-
3 honor.**—A bank which takes a documentary draft for col-
4 lection must present or send the draft and accompanying
5 documents for presentment and upon learning that the
6 draft has not been paid or accepted in due course must

7 seasonably notify its customer of such fact even though
8 it may have discounted or bought the draft or extended
9 credit available for withdrawal as of right.

Sec. 4-502. Presentment of "On Arrival" Drafts.—When
2 a draft or the relevant instructions require presentment
3 "on arrival", "when goods arrive" or the like, the collect-
4 ing bank need not present until in its judgment a reason-
5 able time for arrival of the goods has expired. Refusal
6 to pay or accept because the goods have not arrived is not
7 dishonor; the bank must notify its transferor of such re-
8 fusals but need not present the draft again until it is in-
9 structed to do so or learns of the arrival of the goods.

Sec. 4-503. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need.—Unless otherwise instructed and
2 except as provided in Article 5 a bank presenting a docu-
3 mentary draft
4

6 (a) must deliver the documents to the drawee on ac-
7 ceptance of the draft if it is payable more than three days
8 after presentment; otherwise, only on payment; and

9 (b) upon dishonor, either in the case of presentment
10 for acceptance or presentment for payment, may seek and
11 follow instructions from any referee in case of need des-
12 ignated in the draft or if the presenting bank does not
13 choose to utilize his services it must use diligence and
14 good faith to ascertain the reason for dishonor, must no-
15 tify its transferor of the dishonor and of the results of its
16 effort to ascertain the reasons therefor and must request
17 instructions.

18 But the presenting bank is under no obligation with re-
19 spect to goods represented by the documents except to fol-
20 low any reasonable instructions seasonably received; it
21 has a right to reimbursement for any expense incurred in
22 following instructions and to prepayment of or indemnity
23 for such expenses.

Sec. 4-504. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses.—(1) A presenting
2 bank which, following the dishonor of a documentary
3 draft, has seasonably requested instructions but does not
4

5 receive them within a reasonable time may store, sell, or
6 otherwise deal with the goods in any reasonable manner.

7 (2) For its reasonable expenses incurred by action un-
8 der subsection (1) the presenting bank has a lien upon
9 the goods or their proceeds, which may be foreclosed in
10 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.
- 5-105. Consideration.
- 5-106. Time and effect of establishment of credit.
- 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
2 and may be cited as Uniform Commercial Code—Letters
3 of Credit.

Sec. 5-102. Scope.—(1) This article applies
2 (a) to a credit issued by a bank if the credit requires
3 a documentary draft or a documentary demand for pay-
4 ment; and
5 (b) to a credit issued by a person other than a bank
6 if the credit requires that the draft or demand for pay-
7 ment be accompanied by a document of title; and
8 (c) to a credit issued by a bank or other person if the
9 credit is not within subparagraphs (a) or (b) but con-
10 spicuously states that it is a letter of credit or is conspicu-
11 ously so entitled.
12 (2) Unless the engagement meets the requirements of
13 subsection (1), this article does not apply to engagements
14 to make advances or to honor drafts or demands for pay-

15 ment to authorities to pay or purchase, to guarantees or
16 to general agreements.

17 (3) This article deals with some but not all of the rules
18 and concepts of letters of credit as such rules or concepts
19 have developed prior to the effective date of this chapter
20 or may hereafter develop. The fact that this article states
21 a rule does not by itself require, imply or negate appli-
22 cation of the same or a converse rule to a situation not
23 provided for or to a person not specified by this article.

Sec. 5-103. Definitions.—(1) In this article unless the
2 context otherwise requires

3 (a) "Credit" or "letter of credit" means an engage-
4 ment by a bank or other person made at the request of a
5 customer and of a kind within the scope of this article
6 (Section 5-102) that the issuer will honor drafts or other
7 demands for payment upon compliance with the condi-
8 tions specified in the credit. A credit may be either re-
9 vocable or irrevocable. The engagement may be either
10 an agreement to honor or a statement that the bank or
11 other person is authorized to honor.

12 (b) A "documentary draft" or a "documentary de-
13 mand for payment" is one honor of which is conditioned
14 upon the presentation of a document or documents.
15 "Document" means any paper including document of
16 title, security, invoice, certificate, notice of default and the
17 like.

18 (c) An "issuer" is a bank or other person issuing a
19 credit.

20 (d) A "beneficiary" of a credit is a person who is en-
21 titled under its terms to draw or demand payment.

22 (e) An "advising bank" is a bank which gives notifi-
23 cation of the issuance of a credit by another bank.

24 (f) A "confirming bank" is a bank which engages
25 either that it will itself honor a credit already issued by
26 another bank or that such a credit will be honored by the
27 issuer or a third bank.

28 (g) A "customer" is a buyer or other person who
29 causes an issuer to issue a credit. The term also includes
30 a bank which procures issuance or confirmation on behalf
31 of that bank's customer.

32 (2) Other definitions applying to this article and the
33 sections in which they appear are:

34 "Notation of Credit". Section 5-108.

35 "Presenter". Section 5-112(3).

36 (3) Definitions in other articles of this chapter apply-
37 ing to this article and the sections in which they appear
38 are:

39 "Accept" or "Acceptance". Section 3-410.

40 "Contract for sale". Section 2-106.

41 "Draft". Section 3-104.

42 "Holder in due course". Section 3-302.

43 "Midnight deadline". Section 4-104.

44 "Security". Section 8-102.

45 (4) In addition, Article 1 of this chapter contains gen-
46 eral definitions and principles of construction and inter-
47 pretation applicable throughout this article.

Sec. 5-104. Formal Requirements; Signing.—(1) Except
2 as otherwise required in subsection (1) (c) of Section
3 5-102 on scope, no particular form of phrasing is required
4 for a credit. A credit must be in writing and signed by
5 the issuer and a confirmation must be in writing and
6 signed by the confirming bank. A modification of the
7 terms of a credit or confirmation must be signed by the
8 issuer or confirming bank.

9 (2) A telegram may be a sufficient signed writing if
10 it identifies its sender by an authorized authentication.
11 The authentication may be in code and the authorized
12 naming of the issuer in an advice of credit is a sufficient
13 signing.

Sec. 5-105. Consideration.—No consideration is neces-
2 sary to establish a credit or to enlarge or otherwise mod-
3 ify its terms.

Sec. 5-106. Time and Effect of Establishment of Credit.
2 —(1) Unless otherwise agreed a credit is established
3 (a) as regards the customer as soon as a letter of
4 credit is sent to him or the letter of credit or an author-
5 ized written advice of its issuance is sent to the bene-
6 ficiary; and
7 (b) as regards the beneficiary when he receives a

8 letter of credit or an authorized written advice of its
9 issuance.

10 (2) Unless otherwise agreed once an irrevocable
11 credit is established as regards the customer it can be
12 modified or revoked only with the consent of the cus-
13 tomer and once it is established as regards the bene-
14 ficiary it can be modified or revoked only with his con-
15 sent.

16 (3) Unless otherwise agreed after a revocable credit
17 is established it may be modified or revoked by the issuer
18 without notice to or consent from the customer or bene-
19 ficiary.

20 (4) Notwithstanding any modification or revocation
21 of a revocable credit any person authorized to honor or
22 negotiate under the terms of the original credit is en-
23 titled to reimbursement for or honor of any draft or de-
24 mand for payment duly honored or negotiated before
25 receipt of notice of the modification or revocation and
26 the issuer in turn is entitled to reimbursement from its
27 customer.

Sec. 5-107. Advice of Credit; Confirmation; Error in

2 **Statement of Terms.**—(1) Unless otherwise specified an
3 advising bank by advising a credit issued by another
4 bank does not assume any obligation to honor drafts
5 drawn or demands for payment made under the credit
6 but it does assume obligation for the accuracy of its own
7 statement.

8 (2) A confirming bank by confirming a credit be-
9 comes directly obligated on the credit to the extent of
10 its confirmation as though it were its issuer and acquires
11 the rights of an issuer.

12 (3) Even though an advising bank incorrectly ad-
13 vises the terms of a credit it has been authorized to advise
14 the credit is established as against the issuer to the ex-
15 tent of its original terms.

16 (4) Unless otherwise specified the customer bears as
17 against the issuer all risks of transmission and reason-
18 able translation or interpretation of any message relat-
19 ing to a credit.

Sec. 5-108. "Notation Credit"; Exhaustion of Credit.—

2 (1) A credit which specifies that any person purchasing
3 or paying drafts drawn or demands for payment made
4 under it must note the amount of the draft or demand
5 on the letter or advice of credit is a "notation credit".

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

2 issuer's obligation to its customer includes good faith
3 and observance of any general banking usage but unless
4 otherwise agreed does not include liability or respon-
5 sibility

6 (a) for performance of the underlying contract for
7 sale or other transaction between the customer and the
8 beneficiary; or

9 (b) for any act or omission of any person other than
10 itself or its own branch or for loss or destruction of a

11 draft, demand or document in transit or in the posses-
12 sion of others; or

13 (c) based on knowledge or lack of knowledge of any
14 usage of any particular trade.

15 (2) An issuer must examine documents with care
16 so as to ascertain that on their face they appear to com-
17 ply with the terms of the credit but unless otherwise
18 agreed assumes no liability or responsibility for the
19 genuineness, falsification or effect of any document which
20 appears on such examination to be regular on its face.

21 (3) A non-bank issuer is not bound by any banking
22 usage of which it has no knowledge.

**Sec. 5-110. Availability of Credit in Portions; Pre-
2 sender's Reservation of Lien or Claim.**—(1) Unless other-
3 wise specified a credit may be used in portions in the
4 discretion of the beneficiary.

5 (2) Unless otherwise specified a person by present-
6 ing a documentary draft or demand for payment under
7 a credit relinquishes upon its honor all claims to the
8 documents and a person by transferring such draft or
9 demand or causing such presentment authorizes such
10 relinquishment. An explicit reservation of claim makes
11 the draft or demand non-complying.

Sec. 5-111. Warranties on Transfer and Presentment.—
2 (1) Unless otherwise agreed the beneficiary by trans-
3 ferring or presenting a documentary draft or demand
4 for payment warrants to all interested parties that the
5 necessary conditions of the credit have been complied
6 with. This is in addition to any warranties arising under
7 Articles 3, 4, 7 and 8.

8 (2) Unless otherwise agreed a negotiating, advising,
9 confirming, collecting or issuing bank presenting or
10 transferring a draft or demand for payment under a
11 credit warrants only the matters warranted by a col-
12 lecting bank under Article 4 and any such bank trans-
13 ferring a document warrants only the matters warrant-
14 ed by an intermediary under Articles 7 and 8.

**Sec. 5-112. Time Allowed for Honor or Rejection; With-
2 holding Honor or Rejection by Consent; "Presenter".**—(1)

3 A bank to which a documentary draft or demand for
4 payment is presented under a credit may without dis-
5 honor of the draft, demand or credit

6 (a) defer honor until the close of the third banking
7 day following receipt of the documents; and

8 (b) further defer honor if the presenter has express-
9 ly or impliedly consented thereto.

10 Failure to honor within the time here specified consti-
11 tutes dishonor of the draft or demand and of the credit
12 except as otherwise provided in subsection (4) of Sec-
13 tion 5-114 on conditional payment.

14 (2) Upon dishonor the bank may unless otherwise
15 instructed fulfill its duty to return the draft or demand
16 and the documents by holding them at the disposal of
17 the presenter and sending him an advice to that effect.

18 (3) "Presenter" means any person presenting a draft
19 or demand for payment for honor under a credit even
20 though that person is a confirming bank or other cor-
21 respondent which is acting under an issuer's authori-
22 zation.

Sec. 5-113. Indemnities.—(1) A bank seeking to obtain
2 (whether for itself or another) honor, negotiation or
3 reimbursement under a credit may give an indemnity
4 to induce such honor, negotiation or reimbursement.

5 (2) An indemnity agreement inducing honor, nego-
6 tiation or reimbursement

7 (a) unless otherwise explicitly agreed applies to
8 defects in the documents but not in the goods; and

9 (b) unless a longer time is explicitly agreed expires
10 at the end of ten business days following receipt of the
11 documents by the ultimate customer unless notice of
12 objection is sent before such expiration date. The ulti-
13 mate customer may send notice of objection to the per-
14 son from whom he received the documents and any bank
15 receiving such notice is under a duty to send notice to
16 its transferor before its midnight deadline.

**Sec. 5-114. Issuer's Duty and Privilege to Honor; Right
2 to Reimbursement.**—(1) An issuer must honor a draft or
3 demand for payment which complies with the terms of

4 the relevant credit regardless of whether the goods or
5 documents conform to the underlying contract for sale
6 or other contract between the customer and the bene-
7 ficiary. The issuer is not excused from honor of such a
8 draft or demand by reason of an additional general term
9 that all documents must be satisfactory to the issuer,
10 but an issuer may require that specified documents must
11 be satisfactory to it.

12 (2) Unless otherwise agreed when documents appear
13 on their face to comply with the terms of a credit but
14 a required document does not in fact conform to the
15 warranties made on negotiation or transfer of a docu-
16 ment of title (Section 7-507) or of a security (Section
17 8-306) or is forged or fraudulent or there is fraud in the
18 transaction

19 (a) the issuer must honor the draft or demand for
20 payment if honor is demanded by a negotiating bank
21 or other holder of the draft or demand which has taken
22 the draft or demand under the credit and under circum-
23 stances which would make it a holder in due course
24 (Section 3-302) and in an appropriate case would make
25 it a person to whom a document of title has been duly
26 negotiated (Section 7-502) or a bona fide purchaser of
27 a security (Section 8-302); and

28 (b) in all other cases as against its customer, an
29 issuer acting in good faith may honor the draft or de-
30 mand for payment despite notification from the cus-
31 tomer of fraud, forgery or other defect not apparent on
32 the face of the documents but a court of appropriate
33 jurisdiction may enjoin such honor.

34 (3) Unless otherwise agreed an issuer which has
35 duly honored a draft or demand for payment is entitled
36 to immediate reimbursement of any payment made un-
37 der the credit and to be put in effectively available funds
38 not later than the day before maturity of any accept-
39 ance made under the credit.

40 (4) When a credit provides for payment by the issuer
41 on receipt of notice that the required documents are in
42 the possession of a correspondent or other agent of the
43 issuer

44 (a) any payment made on receipt of such notice is
45 conditional; and

46 (b) the issuer may reject documents which do not
47 comply with the credit if it does so within three banking
48 days following its receipt of the documents; and

49 (c) in the event of such rejection, the issuer is en-
50 titled by charge back or otherwise to return of the pay-
51 ment made.

52 (5) In the case covered by subsection (4) failure to
53 reject documents within the time specified in subpara-
54 graph (b) constitutes acceptance of the documents and
55 makes the payment final in favor of the beneficiary.

Sec. 5-115. Remedy for Improper Dishonor or Antici-
2 **patory Repudiation.**—(1) When an issuer wrongfully dis-
3 honors a draft or demand for payment presented under
4 a credit the person entitled to honor has with respect
5 to any documents the rights of a person in the position
6 of a seller (Section 2-707) and may recover from the
7 issuer the face amount of the draft or demand together
8 with incidental damages under Section 2-710 on seller's
9 incidental damages and interest but less any amount
10 realized by resale or other use or disposition of the sub-
11 ject matter of the transaction. In the event no resale
12 or other utilization is made the documents, goods or
13 other subject matter involved in the transaction must
14 be turned over to the issuer on payment of judgment.

15 (2) When an issuer wrongfully cancels or otherwise
16 repudiates a credit before presentment of a draft or de-
17 mand for payment drawn under it the beneficiary has
18 the rights of a seller after anticipatory repudiation by
19 the buyer under Section 2-610 if he learns of the repudi-
20 ation in time reasonably to avoid procurement of the
21 required documents. Otherwise the beneficiary has an
22 immediate right of action for wrongful dishonor.

Sec. 5-116. Transfer and Assignment.—(1) The right
2 to draw under a credit can be transferred or assigned
3 only when the credit is expressly designated as trans-
4 ferable or assignable.

5 (2) Even though the credit specifically states that

- 6 it is nontransferable or nonassignable the beneficiary
7 may before performance of the conditions of the credit
8 assign his right to proceeds. Such an assignment is an
9 assignment of a contract right under Article 9 on Secured
10 Transactions and is governed by that article except that
11 (a) the assignment is ineffective until the letter of
12 credit or advice of credit is delivered to the assignee
13 which delivery constitutes perfection of the security
14 interest under Article 9; and
15 (b) the issuer may honor drafts or demands for pay-
16 ment drawn under the credit until it receives a notifica-
17 tion of the assignment signed by the beneficiary which
18 reasonably identifies the credit involved in the assign-
19 ment and contains a request to pay the assignee; and
20 (c) after what reasonably appears to be such a noti-
21 fication has been received the issuer may without dis-
22 honor refuse to accept or pay even to a person otherwise
23 entitled to honor until the letter of credit or advice of
24 credit is exhibited to the issuer.
25 (3) Except where the beneficiary has effectively
26 assigned his right to draw or his right to proceeds, noth-
27 ing in this section limits his right to transfer or negotiate
28 drafts or demands drawn under the credit.

**Sec. 5-117. Insolvency of Bank Holding Funds for Docu-
mentary 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 fol-
lowing 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

18 (b) on expiration of the credit or surrender of the
19 beneficiary's rights under it unused any person who has
20 given such funds or collateral is similarly entitled to
21 return thereof; and

22 (c) a charge to a general or current account with a
23 bank if specifically consented to for the purpose of in-
24 demnity against or payment of drafts or demands for
25 payment drawn under the designated credit falls under
26 the same rules as if the funds had been drawn out in
27 cash and then turned over with specific instructions.

28 (2) After honor or reimbursement under this section
29 the customer or other person for whose account the in-
30 solvent bank has acted is entitled to receive the docu-
31 ments involved.

Article 6. Bulk Transfers.

Section

- 6-101. Short title.
- 6-102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.
- 6-103. Transfers excepted from this article.
- 6-104. Schedule of property, list of creditors.
- 6-105. Notice to creditors.
- 6-106. Application of the proceeds.
- 6-107. The notice.
- 6-108. Auction sales; "auctioneer".
- 6-109. What creditors protected; credit for payment to particular creditors.
- 6-110. Subsequent transfers.
- 6-111. Limitation of actions and levies.

Section 6-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Bulk
3 Transfers.

**Sec. 6-102. "Bulk Transfer"; Transfers of Equipment;
2 Enterprises Subject to This Article; Bulk Transfers Sub-
3 ject to This Article.**—(1) A "bulk transfer" is any transfer
4 in bulk and not in the ordinary course of the transferor's
5 business of a major part of the materials, supplies, mer-
6 chandise or other inventory (Section 9-109) of an enter-
7 prise subject to this article.
8 (2) A transfer of a substantial part of the equipment
9 (Section 9-109) of such an enterprise is a bulk transfer
10 if it is made in connection with a bulk transfer of in-
11 ventory, but not otherwise.

12 (3) The enterprises subject to this article are all those
13 whose principal business is the sale of merchandise from
14 stock, including those who manufacture what they sell.

15 (4) Except as limited by the following section all
16 bulk transfers of goods located within this state are sub-
17 ject to this article.

Sec. 6-103. Transfers Excepted From This Article.—

2 The following transfers are not subject to this article:

3 (1) Those made to give security for the performance
4 of an obligation;

5 (2) General assignments for the benefit of all the cred-
6 itors of the transferor, and subsequent transfers by the
7 assignee thereunder;

8 (3) Transfers in settlement or realization of a lien or
9 other security interest;

10 (4) Sales by executors, administrators, receivers, trus-
11 tees in bankruptcy, or any public officer under judicial
12 process;

13 (5) Sales made in the course of judicial or administra-
14 tive proceedings for the dissolution or reorganization of
15 a corporation and of which notice is sent to the creditors
16 of the corporation pursuant to order of the court or ad-
17 ministrative agency;

18 (6) Transfers to a person maintaining a known place
19 of business in this state who becomes bound to pay the
20 debts of the transferor in full and gives public notice of
21 that fact, and who is solvent after becoming so bound;

22 (7) A transfer to a new business enterprise organized
23 to take over and continue the business, if public notice of
24 the transaction is given and the new enterprise assumes
25 the debts of the transferor and he receives nothing from
26 the transaction except an interest in the new enterprise
27 junior to the claims of creditors;

28 (8) Transfers of property which is exempt from
29 execution.

30 Public notice under subsection (6) or subsection (7)
31 may be given by publishing once a week for two consecu-
32 tive weeks in a newspaper of general circulation where
33 the transferor had its principal place of business in this

34 state an advertisement including the names and addresses
35 of the transferor and transferee and the effective date of
36 the transfer.

Sec. 6-104. Schedule of Property, List of Creditors.—

2 (1) Except as provided with respect to auction sales
3 (Section 6-108), a bulk transfer subject to this article is
4 ineffective against any creditor of the transferor unless:

5 (a) The transferee requires the transferor to furnish
6 a list of his existing creditors prepared as stated in this
7 section; and

8 (b) The parties prepare a schedule of the property
9 transferred sufficient to identify it; and

10 (c) The transferee preserves the list and schedule for
11 six months next following the transfer and permits in-
12 spection of either or both and copying therefrom at all
13 reasonable hours by any creditor of the transferor, or
14 files the list and schedule in the office of the county clerk
15 for the county in which the principal place of business
16 of the transferor is located.

17 (2) The list of creditors must be signed and sworn to
18 or affirmed by the transferor or his agent. It must con-
19 tain the names and business addresses of all creditors of
20 the transferor, with the amounts when known, and also
21 the names of all persons who are known to the transferor
22 to assert claims against him even though such claims are
23 disputed. If the transferor is the obligor of an outstand-
24 ing issue of bonds, debentures or the like as to which
25 there is an indenture trustee, the list of creditors need
26 include only the name and address of the indenture trus-
27 tee and the aggregate outstanding principal amount of the
28 issue.

29 (3) Responsibility for the completeness and accuracy
30 of the list of creditors rests on the transferor, and the
31 transfer is not rendered ineffective by errors or omissions
32 therein unless the transferee is shown to have had knowl-
33 edge.

Sec. 6-105. Notice to Creditors.—In addition to the re-

2 quirements of the preceding section, any bulk transfer
3 subject to this article except one made by auction sale
4 (Section 6-108) is ineffective against any creditor of the

5 transferor unless at least ten days before he takes posses-
6 sion of the goods or pays for them, whichever happens
7 first, the transferee gives notice of the transfer in the
8 manner and to the persons hereafter provided (Section
9 6-107).

Sec. 6-106. Application of the Proceeds.—In addition to
2 the requirements of the two preceding sections:

3 (1) Upon every bulk transfer subject to this article for
4 which new consideration becomes payable except those
5 made by sale at auction it is the duty of the transferee to
6 assure that such consideration is applied so far as neces-
7 sary to pay those debts of the transferor which are either
8 shown on the list furnished by the transferor (Section 6-
9 104) or filed in writing in the place stated in the notice
10 (Section 6-107) within thirty days after the mailing of
11 such notice. This duty of the transferee runs to all the
12 holders of such debts, and may be enforced by any of them
13 for the benefit of all.

14 (2) If any of said debts are in dispute the necessary
15 sum may be withheld from distribution until the dispute
16 is settled or adjudicated.

17 (3) If the consideration payable is not enough to pay
18 all of the said debts in full distribution shall be made pro
19 rata.

20 (4) The transferee may within ten days after he takes
21 possession of the goods pay the consideration into the cir-
22 cuit court in the county where the transferor had its prin-
23 cipal place of business in this state and thereafter may
24 discharge his duty under this section by giving notice by
25 registered or certified mail to all the persons to whom the
26 duty runs that the consideration has been paid into that
27 court and that they should file their claims there. On
28 motion of any interested party, the court may order the
29 distribution of the consideration to the persons entitled
30 to it.

Sec. 6-107. The Notice.—(1) The notice to creditors
2 (Section 6-105) shall state:

- 3 (a) that a bulk transfer is about to be made; and
4 (b) the names and business addresses of the transferor
5 and transferee, and all other business names and addresses

6 used by the transferor within three years last past so far
7 as known to the transferee; and

8 (c) whether or not all the debts of the transferor are
9 to be paid in full as they fall due as a result of the trans-
10 action, and if so, the address to which creditors should
11 send their bills.

12 (2) If the debts of the transferor are not to be paid in
13 full as they fall due or if the transferee is in doubt on that
14 point then the notice shall state further:

15 (a) the location and general description of the prop-
16 erty to be transferred and the estimated total of the trans-
17 feror's debts;

18 (b) the address where the schedule of property and
19 list of creditors (Section 6-104) may be inspected;

20 (c) whether the transfer is to pay existing debts and
21 if so the amount of such debts and to whom owing;

22 (d) whether the transfer is for new consideration and
23 if so the amount of such consideration and the time and
24 place of payment; and

25 (e) if for new consideration the time and place where
26 creditors of the transferor are to file their claims.

27 (3) The notice in any case shall be delivered person-
28 ally or sent by registered or certified mail to all the per-
29 sons shown on the list of creditors furnished by the trans-
30 feror (Section 6-104) and to all other persons who are
31 known to the transferee to hold or assert claims against
32 the transferor.

Sec. 6-108. Auction Sales; "Auctioneer".—(1) A bulk
2 transfer is subject to this article even though it is by sale
3 at auction, but only in the manner and with the results
4 stated in this section.

5 (2) The transferor shall furnish a list of his creditors
6 and assist in the preparation of a schedule of the property
7 to be sold, both prepared as before stated (Section 6-104).

8 (3) The person or persons other than the transferor
9 who direct, control or are responsible for the auction are
10 collectively called the "auctioneer". The auctioneer shall:

11 (a) receive and retain the list of creditors and pre-

12 pare and retain the schedule of property for the period
13 stated in this article (Section 6-104);

14 (b) give notice of the auction personally or by regis-
15 tered or certified mail at least ten days before it occurs
16 to all persons shown on the list of creditors and to all
17 other persons who are known to him to hold or assert
18 claims against the transferor; and

19 (c) assure that the net proceeds of the auction are
20 applied as provided in this article (Section 6-106).

21 (4) Failure of the auctioneer to perform any of these
22 duties does not affect the validity of the sale or the title
23 of the purchasers, but if the auctioneer knows that the
24 auction constitutes a bulk transfer such failure renders
25 the auctioneer liable to the creditors of the transferor as
26 a class for the sums owing to them from the transferor
27 up to but not exceeding the net proceeds of the auction.
28 If the auctioneer consists of several persons their liability
29 is joint and several.

Sec. 6-109. What Creditors Protected; Credit for Pay-
2 **ment to Particular Creditors.**—(1) The creditors of the
3 transferor mentioned in this article are those holding
4 claims based on transactions or events occurring before
5 the bulk transfer, but creditors who become such after
6 notice to creditors is given (Sections 6-105 and 6-107)
7 are not entitled to notice.

8 (2) Against the aggregate obligation imposed by the
9 provisions of this article concerning the application of
10 the proceeds (Section 6-106 and subsection (3) (c) of
11 6-108) the transferee or auctioneer is entitled to credit
12 for sums paid to particular creditors of the transferor,
13 not exceeding the sums believed in good faith at the
14 time of the payment to be properly payable to such
15 creditors.

Sec. 6-110. Subsequent Transfers.—When the title of
2 a transferee to property is subject to a defect by reason
3 of his non-compliance with the requirements of this
4 article, then:

5 (1) a purchaser of any of such property from such
6 transferee who pays no value or who takes with notice

- 7 of such non-compliance takes subject to such defect, but
8 (2) a purchaser for value in good faith and without
9 such notice takes free of such defect.

Sec. 6-111. Limitation of Actions and Levies.—No
2 action under this article shall be brought nor levy made
3 more than six months after the date on which the trans-
4 feree took possession of the goods unless the transfer
5 has been concealed. If the transfer has been concealed,
6 actions may be brought or levies made within six months
7 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 regulation.
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

- 7-201. Who may issue a warehouse receipt; storage under government bond.
7-202. Form of warehouse receipt; essential terms; optional terms.
7-203. Liability for non-receipt or misdescription.
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.
7-210. Enforcement of warehouseman's lien.

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.
7-302. Through bills of lading and similar documents.
7-303. Diversion; reconsignment; change of instructions.
7-304. Bills of lading in a set.
7-305. Destination bills.
7-306. Altered bills of lading.
7-307. Lien of carrier.
7-308. Enforcement of carrier's lien.
7-309. Duty of care; contractual limitation of carrier's liability.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

- 7-401. Irregularities in issue of receipt or bill or conduct of issuer.
7-402. Duplicate receipt or bill; overissue.
7-403. Obligation of warehouseman or carrier to deliver; excuse.
7-404. No liability for good faith delivery pursuant to receipt or bill.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

- 7-501. Form of negotiation and requirements of "due negotiation".
- 7-502. Rights acquired by due negotiation.
- 7-503. Document of title to goods defeated in certain cases.
- 7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.
- 7-505. Indorser not a guarantor for other parties.
- 7-506. Delivery without indorsement; right to compel indorsement.
- 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

- 2 and may be cited as Uniform Commercial Code—Docu-
- 3 ments of Title.

Sec. 7-102. Definitions and Index of Definitions.—(1)

- 2 In this article, unless the context otherwise requires:

- 3 (a) "Bailee" means the person who by a warehouse
- 4 receipt, bill of lading or other document of title
- 5 acknowledges possession of goods and contracts to deliver
- 6 them.

- 7 (b) "Consignee" means the person named in a bill to
- 8 whom or to whose order the bill promises delivery.

- 9 (c) "Consignor" means the person named in a bill
- 10 as the person from whom the goods have been received
- 11 for shipment.

- 12 (d) "Delivery order" means a written order to de-
- 13 liver goods directed to a warehouseman, carrier or other
- 14 person who in the ordinary course of business issues
- 15 warehouse receipts or bills of lading.

- 16 (e) "Document" means document of title as defined
- 17 in the general definitions in Article 1 (Section 1-201).

- 18 (f) "Goods" means all things which are treated as
- 19 movable for the purposes of a contract of storage or
- 20 transportation.

- 21 (g) "Issuer" means a bailee who issues a document
- 22 except that in relation to an unaccepted delivery order

23 it means the person who orders the possessor of goods
24 to deliver. Issuer includes any person for whom an agent
25 or employee purports to act in issuing a document if the
26 agent or employee has real or apparent authority to issue
27 documents, notwithstanding that the issuer received no
28 goods or that the goods were misdescribed or that in
29 any other respect the agent or employee violated his
30 instructions.

31 (h) "Warehouseman" is a person engaged in the busi-
32 ness of storing goods for hire.

33 (2) Other definitions applying to this article or to
34 specified parts thereof, and the sections in which they
35 appear are:

36 "Duly negotiate". Section 7-501.

37 "Person entitled under the document". Section 7-403
38 (4).

39 (3) Definitions in other articles of this chapter apply-
40 ing to this article and the sections in which they appear
41 are:

42 "Contract for sale". Section 2-106.

43 "Overseas". Section 2-323.

44 "Receipt" of goods. Section 2-103.

45 (4) In addition Article 1 of this chapter contains gen-
46 eral definitions and principles of construction and in-
47 terpretation applicable throughout this article.

**Sec. 7-103. Relation of Article to Treaty, Statute, Tariff,
2 Classification or Regulation.**—To the extent that any
3 treaty or statute of the United States, regulatory statute
4 of this state or tariff, classification or regulation filed or
5 issued pursuant thereto is applicable, the provisions of
6 this article are subject thereto.

**Sec. 7-104. Negotiable and Non-Negotiable Warehouse
2 Receipt, Bill of Lading or Other Document of Title.**— (1)
3 A warehouse receipt, bill of lading or other document of
4 title is negotiable

5 (a) if by its terms the goods are to be delivered to
6 bearer or to the order of a named person; or

7 (b) where recognized in overseas trade, if it runs to
8 a named person or assigns.

9 (2) Any other document is non-negotiable. A bill of
10 lading in which it is stated that the goods are consigned
11 to a named person is not made negotiable by a provision
12 that the goods are to be delivered only against a written
13 order signed by the same or another named person.

Sec. 7-105. Construction Against Negative Implication.

2 —The omission from either Part 2 or Part 3 of this article
3 of a provision corresponding to a provision made in the
4 other Part does not imply that a corresponding rule of
5 law is not applicable.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec. 7-201. Who May Issue a Warehouse Receipt; Stor-

2 **age Under Government Bond.**—(1) A warehouse receipt
3 may be issued by any warehouseman.

4 (2) Where goods including distilled spirits and agri-
5 cultural commodities are stored under a statute requiring
6 a bond against withdrawal or a license for the issuance
7 of receipts in the nature of warehouse receipts, a receipt
8 issued for the goods has like effect as a warehouse receipt
9 even though issued by a person who is the owner of the
10 goods and is not a warehouseman.

Sec. 7-202. Form of Warehouse Receipt; Essential

2 **Terms; Optional Terms.**—(1) A warehouse receipt need
3 not be in any particular form.

4 (2) Unless a warehouse receipt embodies within its
5 written or printed terms each of the following, the ware-
6 houseman is liable for damages caused by the omission to
7 a person injured thereby:

- 8 (a) the location of the warehouse where the goods are
9 stored;
10 (b) the date of issue of the receipt;
11 (c) the consecutive number of the receipt;
12 (d) a statement whether the goods received will be
13 delivered to the bearer, to a specified person, or to a speci-
14 fied person or his order;
15 (e) the rate of storage and handling charges, except
16 that where goods are stored under a field warehousing

17 arrangement a statement of that fact is sufficient on a
18 non-negotiable receipt;

19 (f) a description of the goods or of the packages con-
20 taining them;

21 (g) the signature of the warehouseman, which may
22 be made by his authorized agent;

23 (h) if the receipt is issued for goods of which the
24 warehouseman is owner, either solely or jointly or in
25 common with others, the fact of such ownership; and

26 (i) a statement of the amount of advances made and
27 of liabilities incurred for which the warehouseman claims
28 a lien or security interest (Section 7-209). If the precise
29 amount of such advances made or of such liabilities in-
30 curred is, at the time of the issue of the receipt, unknown
31 to the warehouseman or to his agent who issues it, a state-
32 ment of the fact that advances have been made or liabili-
33 ties incurred and the purpose thereof is sufficient.

34 (3) A warehouseman may insert in his receipt any
35 other terms which are not contrary to the provisions of
36 this chapter and do not impair his obligation of delivery
37 (Section 7-403) or his duty of care (Section 7-204.) Any
38 contrary provisions shall be ineffective.

Sec. 7-203. Liability for Non-Receipt or Misdescription.

2 —A party to or purchaser for value in good faith of a doc-
3 ument of title other than a bill of lading relying in either
4 case upon the description therein of the goods may re-
5 cover from the issuer damages caused by the non-receipt
6 or misdescription of the goods, except to the extent that
7 the document conspicuously indicates that the issuer does
8 not know whether any part or all of the goods in fact were
9 received or conform to the description, as where the de-
10 scription is in terms of marks or labels or kind, quantity
11 or condition, or the receipt or description is qualified by
12 “contents, condition and quality unknown”, “said to con-
13 tain” or the like, if such indication be true, or the party
14 or purchaser otherwise has notice.

Sec. 7-204. Duty of Care; Contractual Limitation of

2 **Warehouseman’s Liability.**—(1) A warehouseman is liable
3 for damages for loss of or injury to the goods caused by

4 his failure to exercise such care in regard to them as a
5 reasonably careful man would exercise under like cir-
6 cumstances but unless otherwise agreed he is not liable
7 for damages which could not have been avoided by the
8 exercise of such care.

9 (2) Damages may be limited by a term in the ware-
10 house receipt or storage agreement limiting the amount
11 of liability in case of loss or damage, and setting forth a
12 specific liability per article or item, or value per unit of
13 weight, beyond which the warehouseman shall not be
14 liable: *Provided, however,* That such liability may on
15 written request of the bailor at the time of signing such
16 storage agreement or within a reasonable time after re-
17 ceipt of the warehouse receipt be increased on part or all
18 of the goods thereunder, in which event increased rates
19 may be charged based on such increased valuation, but
20 that no such increase shall be permitted contrary to a
21 lawful limitation of liability contained in the warehouse-
22 man's tariff, if any. No such limitation is effective with
23 respect to the warehouseman's liability for conversion to
24 his own use.

25 (3) Reasonable provisions as to the time and manner
26 of presenting claims and instituting actions based on the
27 bailment may be included in the warehouse receipt or
28 tariff.

**Sec. 7-205. Title Under Warehouse Receipt Defeated in
2 Certain Cases.**—A buyer in the ordinary course of business
3 of fungible goods sold and delivered by a warehouseman
4 who is also in the business of buying and selling such
5 goods takes free of any claim under a warehouse receipt
6 even though it has been duly negotiated.

**Sec. 7-206. Termination of Storage at Warehouseman's
2 Option.**—(1) A warehouseman may on notifying the per-
3 son on whose account the goods are held and any other
4 person known to claim an interest in the goods require
5 payment of any charges and removal of the goods from
6 the warehouse at the termination of the period of storage
7 fixed by the document, or, if no period is fixed, within
8 a stated period not less than thirty days after the notifi-
9 cation. If the goods are not removed before the date

10 specified in the notification, the warehouseman may sell
11 them in accordance with the provisions of the section
12 on enforcement of a warehouseman's lien (Section 7-210).

13 (2) If a warehouseman in good faith believes that
14 the goods are about to deteriorate or decline in value to
15 less than the amount of his lien within the time pre-
16 scribed in subsection (1) for notification, advertisement
17 and sale, the warehouseman may specify in the notifi-
18 cation any reasonable shorter time for removal of the
19 goods and in case the goods are not removed, may sell
20 them at public sale held not less than one week after
21 a single advertisement or posting.

22 (3) If as a result of a quality or condition of the
23 goods of which the warehouseman had no notice at the
24 time of deposit the goods are a hazard to other property
25 or to the warehouse or to persons, the warehouseman
26 may sell the goods at public or private sale without ad-
27 vertisement on reasonable notification to all persons
28 known to claim an interest in the goods. If the ware-
29 houseman after a reasonable effort is unable to sell the
30 goods he may dispose of them in any lawful manner and
31 shall incur no liability by reason of such disposition.

32 (4) The warehouseman must deliver the goods to
33 any person entitled to them under this article upon due
34 demand made at any time prior to sale or other dispo-
35 sition under this section.

36 (5) The warehouseman may satisfy his lien from
37 the proceeds of any sale or disposition under this section
38 but must hold the balance for delivery on the demand
39 of any person to whom he would have been bound to
40 deliver the goods.

Sec. 7-207. Goods Must Be Kept Separate; Fungible

2 **Goods.**—(1) Unless the warehouse receipt otherwise pro-
3 vides, a warehouseman must keep separate the goods
4 covered by each receipt so as to permit at all times iden-
5 tification and delivery of those goods except that differ-
6 ent lots of fungible goods may be commingled.

7 (2) Fungible goods so commingled are owned in
8 common by the persons entitled thereto and the ware-
9 houseman is severally liable to each owner for that

10 owner's share. Where because of overissue a mass of
11 fungible goods is insufficient to meet all the receipts
12 which the warehouseman has issued against it, the per-
13 sons entitled include all holders to whom overissued
14 receipts have been duly negotiated.

Sec. 7-208. Altered Warehouse Receipts.—Where a
2 blank in a negotiable warehouse receipt has been filled
3 in without authority, a purchaser for value and with-
4 out notice of the want of authority may treat the in-
5 sersion as authorized. Any other unauthorized altera-
6 tion leaves any receipt enforceable against the issuer
7 according to its original tenor.

Sec. 7-209. Lien of Warehouseman.—(1) A warehouse-
2 man has a lien against the bailor on the goods covered
3 by a warehouse receipt or on the proceeds thereof in his
4 possession for charges for storage or transportation
5 (including demurrage and terminal charges), insurance,
6 labor, or charges present or future in relation to the
7 goods, and for expenses necessary for preservation of
8 the goods or reasonably incurred in their sale pursuant
9 to law. If the person on whose account the goods are
10 held is liable for like charges or expenses in relation to
11 other goods whenever deposited and it is stated in the
12 receipt that a lien is claimed for charges and expenses
13 in relation to other goods, the warehouseman also has
14 a lien against him for such charges and expenses whether
15 or not the other goods have been delivered by the ware-
16 houseman. But against a person to whom a negotiable
17 warehouse receipt is duly negotiated a warehouseman's
18 lien is limited to charges in an amount or at a rate speci-
19 fied on the receipt or if no charges are so specified then
20 to a reasonable charge for storage of the goods covered
21 by the receipt subsequent to the date of the receipt.

22 (2) The warehouseman may also reserve a security
23 interest against the bailor for a maximum amount speci-
24 fied on the receipt for charges other than those specified
25 in subsection (1), such as for money advanced and in-
26 terest. Such a security interest is governed by the
27 article on Secured Transactions (Article 9).

28 (3) A warehouseman's lien for charges and expenses

29 under subsection (1) or a security interest under sub-
30 section (2) is also effective against any person who so
31 entrusted the bailor with possession of the goods that
32 a pledge of them by him to a good faith purchaser for
33 value would have been valid but is not effective against
34 a person as to whom the document confers no right in
35 the goods covered by it under Section 7-503.

36 (4) A warehouseman loses his lien on any goods
37 which he voluntarily delivers or which he unjustifiably
38 refuses to deliver.

Sec. 7-210. Enforcement of Warehouseman's Lien—(1)

2 Except as provided in subsection (2), a warehouseman's
3 lien may be enforced by public or private sale of the
4 goods in bloc or in parcels, at any time or place and on
5 any terms which are commercially reasonable, after
6 notifying all persons known to claim an interest in the
7 goods. Such notification must include a statement of
8 the amount due, the nature of the proposed sale and the
9 time and place of any public sale. The fact that a better
10 price could have been obtained by a sale at a different
11 time or in a different method from that selected by the
12 warehouseman is not of itself sufficient to establish that
13 the sale was not made in a commercially reasonable
14 manner. If the warehouseman either sells the goods in
15 the usual manner in any recognized market therefor,
16 or if he sells at the price current in such market at the
17 time of his sale, or if he has otherwise sold in conform-
18 ity with commercially reasonable practices among
19 dealers in the type of goods sold, he has sold in a com-
20 mercially reasonable manner. A sale of more goods than
21 apparently necessary to be offered to insure satisfac-
22 tion of the obligation is not commercially reasonable
23 except in cases covered by the preceding sentence.

24 (2) A warehouseman's lien on goods other than
25 goods stored by a merchant in the course of his business
26 may be enforced only as follows:

27 (a) All persons known to claim an interest in the
28 goods must be notified.

29 (b) The notification must be delivered in person or

30 sent by registered or certified letter to the last known
31 address of any person to be notified.

32 (c) The notification must include an itemized state-
33 ment of the claim, a description of the goods subject to
34 the lien, a demand for payment within a specified time
35 not less than ten days after receipt of the notification,
36 and a conspicuous statement that unless the claim is
37 paid within that time the goods will be advertised for
38 sale and sold by auction at a specified time and place.

39 (d) The sale must conform to the terms of the noti-
40 fication.

41 (e) The sale must be held at the nearest suitable
42 place to that where the goods are held or stored.

43 (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.

56 (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.

63 (4) The warehouseman may buy at any public sale
64 pursuant to this section.

65 (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.

70 (6) The warehouseman may satisfy his lien from
71 the proceeds of any sale pursuant to this section but
72 must hold the balance, if any, for delivery on demand
73 to any person to whom he would have been bound to
74 deliver the goods.

75 (7) The rights provided by this section shall be in
76 addition to all other rights allowed by law to a creditor
77 against his debtor.

78 (8) Where a lien is on goods stored by a merchant
79 in the course of his business the lien may be enforced
80 in accordance with either subsection (1) or (2).

81 (9) The warehouseman is liable for damages caused
82 by failure to comply with the requirements for sale under
83 this section and in case of willful violation is liable for
84 conversion.

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

Sec. 7-301. Liability for Non-Receipt or Misdescription;
2 **"Said to Contain"; "Shipper's Load and Count"; Improper**
3 **Handling.**—(1) A consignee of a non-negotiable bill who
4 has given value in good faith or a holder to whom a nego-
5 tiable bill has been duly negotiated relying in either case
6 upon the description therein of the goods, or upon the
7 date therein shown, may recover from the issuer damages
8 caused by the misdating of the bill or the non-receipt or
9 misdescription of the goods, except to the extent that the
10 document indicates that the issuer does not know whether
11 any part or all of the goods in fact were received or con-
12 form to the description, as where the description is in
13 terms of marks or labels or kind, quantity, or condition
14 or the receipt or description is qualified by "contents or
15 condition of contents of packages unknown", "said to con-
16 tain", "shipper's weight, load and count" or the like, if
17 such indication be true.

18 (2) When goods are loaded by an issuer who is a com-
19 mon carrier, the issuer must count the packages of goods
20 if package freight and ascertain the kind and quantity if
21 bulk freight. In such cases "shipper's weight, load and
22 count" or other words indicating that the description was
23 made by the shipper are ineffective except as to freight
24 concealed by packages.

25 (3) When bulk freight is loaded by a shipper who
26 makes available to the issuer adequate facilities for
27 weighing such freight, an issuer who is a common carrier
28 must ascertain the kind and quantity within a reasonable
29 time after receiving the written request of the shipper to
30 do so. In such cases "shipper's weight" or other words
31 of like purport are ineffective.

32 (4) The issuer may by inserting in the bill the words
33 "shipper's weight, load and count" or other words of like
34 purport indicate that the goods were loaded by the ship-
35 per; and if such statement be true the issuer shall not be
36 liable for damages caused by the improper loading. But
37 their omission does not imply liability for such damages.

38 (5) The shipper shall be deemed to have guaranteed
39 to the issuer the accuracy at the time of shipment of the
40 description, marks, labels, number, kind, quantity, condi-
41 tion and weight, as furnished by him; and the shipper
42 shall indemnify the issuer against damage caused by in-
43 accuracies in such particulars. The right of the issuer to
44 such indemnity shall in no way limit his responsibility
45 and liability under the contract of carriage to any person
46 other than the shipper.

Sec. 7-302. Through Bills of Lading and Similar Docu-
2 **ments.**—(1) The issuer of a through bill of lading or other
3 document embodying an undertaking to be performed in
4 part by persons acting as its agents or by connecting car-
5 riers is liable to anyone entitled to recover on the docu-
6 ment for any breach by such other persons or by a con-
7 necting carrier of its obligation under the document but
8 to the extent that the bill covers an undertaking to be per-
9 formed overseas or in territory not contiguous to the con-
10 tinental United States or an undertaking including mat-
11 ters other than transportation this liability may be varied
12 by agreement of the parties.

13 (2) Where goods covered by a through bill of lading
14 or other document embodying an undertaking to be per-
15 formed in part by persons other than the issuer are re-
16 ceived by any such person, he is subject with respect to
17 his own performance while the goods are in his possession
18 to the obligation of the issuer. His obligation is dis-

19 charged by delivery of the goods to another such person
20 pursuant to the document, and does not include liability
21 for breach by any other such persons or by the issuer.

22 (3) The issuer of such through bill of lading or other
23 document shall be entitled to recover from the connecting
24 carrier or such other person in possession of the goods
25 when the breach of the obligation under the document
26 occurred, the amount it may be required to pay to anyone
27 entitled to recover on the document therefor, as may be
28 evidenced by any receipt, judgment, or transcript thereof,
29 and the amount of any expense reasonably incurred by
30 it in defending any action brought by anyone entitled to
31 recover on the document therefor.

Sec. 7-303. Diversion; Reconsignment; Change of In-
2 **structions.**—(1) Unless the bill of lading otherwise pro-
3 vides, the carrier may deliver the goods to a person or
4 destination other than that stated in the bill or may other-
5 wise dispose of the goods on instructions from

- 6 (a) the holder of a negotiable bill; or
7 (b) the consignor on a non-negotiable bill notwith-
8 standing contrary instructions from the consignee; or
9 (c) the consignee on a non-negotiable bill in the ab-
10 sence of contrary instructions from the consignor, if the
11 goods have arrived at the billed destination or if the con-
12 signee is in possession of the bill; or

13 (d) the consignee on a non-negotiable bill if he is en-
14 titled as against the consignor to dispose of them.

15 (2) Unless such instructions are noted on a negotiable
16 bill of lading, a person to whom the bill is duly negotiated
17 can hold the bailee according to the original terms.

Sec. 7-304. Bills of Lading in a Set.—(1) Except where
2 customary in overseas transportation, a bill of lading must
3 not be issued in a set of parts. The issuer is liable for
4 damages caused by violation of this subsection.

5 (2) Where a bill of lading is lawfully drawn in a set
6 of parts, each of which is numbered and expressed to be
7 valid only if the goods have not been delivered against
8 any other part, the whole of the parts constitute one bill.

9 (3) Where a bill of lading is lawfully issued in a set

10 of parts and different parts are negotiated to different per-
11 sons, the title of the holder to whom the first due negotia-
12 tion is made prevails as to both the document and the
13 goods even though any later holder may have received
14 the goods from the carrier in good faith and discharged
15 the carrier's obligation by surrender of his part.

16 (4) Any person who negotiates or transfers a single
17 part of a bill of lading drawn in a set is liable to holders
18 of that part as if it were the whole set.

19 (5) The bailee is obliged to deliver in accordance with
20 Part 4 of this article against the first presented part of a
21 bill of lading lawfully drawn in a set. Such delivery dis-
22 charges the bailee's obligation on the whole bill.

Sec. 7-305. Destination Bills.—(1) Instead of issuing
2 a bill of lading to the consignor at the place of shipment
3 a carrier may at the request of the consignor procure the
4 bill to be issued at destination or at any other place des-
5 ignated in the request.

6 (2) Upon request of anyone entitled as against the car-
7 rier to control the goods while in transit and on surrender
8 of any outstanding bill of lading or other receipt covering
9 such goods, the issuer may procure a substitute bill to be
10 issued at any place designated in the request.

Sec. 7-306. Altered Bills of Lading.—An unauthorized
2 alteration or filling in of a blank in a bill of lading leaves
3 the bill enforceable according to its original tenor.

Sec. 7-307. Lien of Carrier.—(1) A carrier has a lien on
2 the goods covered by a bill of lading for charges sub-
3 sequent to the date of its receipt of the goods for storage
4 or transportation (including demurrage and terminal
5 charges) and for expenses necessary for preservation of
6 the goods incident to their transportation or reasonably
7 incurred in their sale pursuant to law. But against a
8 purchaser for value of a negotiable bill of lading a car-
9 rier's lien is limited to charges stated in the bill or the
10 applicable tariffs, or if no charges are stated then to a
11 reasonable charge.

12 (2) A lien for charges and expenses under subsec-
13 tion (1) on goods which the carrier was required by

14 law to receive for transportation is effective against the
15 consignor or any person entitled to the goods unless the
16 carrier had notice that the consignor lacked authority
17 to subject the goods to such charges and expenses. Any
18 other lien under subsection (1) is effective against the
19 consignor and any person who permitted the bailor to
20 have control or possession of the goods unless the car-
21 rier had notice that the bailor lacked such authority.

22 (3) A carrier loses his lien on any goods which he
23 voluntarily delivers or which he unjustifiably refuses
24 to deliver.

Sec. 7-308. Enforcement of Carrier's Lien.—(1) A car-
2 rier's lien may be enforced by public or private sale of
3 the goods, in bloc or in parcels, at any time or place and
4 on any terms which are commercially reasonable, after
5 notifying all persons known to claim an interest in the
6 goods. Such notification must include a statement of
7 the amount due, the nature of the proposed sale and the
8 time and place of any public sale. The fact that a better
9 price could have been obtained by a sale at a different
10 time or in a different method from that selected by the
11 carrier is not of itself sufficient to establish that the sale
12 was not made in a commercially reasonable manner.
13 If the carrier either sells the goods in the usual manner
14 in any recognized market therefor or if he sells at the
15 price current in such market at the time of his sale or
16 if he has otherwise sold in conformity with commer-
17 cially reasonable practices among dealers in the type of
18 goods sold he has sold in a commercially reasonable
19 manner. A sale of more goods than apparently neces-
20 sary to be offered to ensure satisfaction of the obliga-
21 tion is not commercially reasonable except in cases
22 covered by the preceding sentence.

23 (2) Before any sale pursuant to this section any per-
24 son claiming a right in the goods may pay the amount
25 necessary to satisfy the lien and the reasonable expenses
26 incurred under this section. In that event the goods
27 must not be sold, but must be retained by the carrier
28 subject to the terms of the bill and this article.

29 (3) The carrier may buy at any public sale pur-
30 suant to this section.

31 (4) A purchaser in good faith of goods sold to en-
32 force a carrier's lien takes the goods free of any rights
33 of persons against whom the lien was valid, despite
34 noncompliance by the carrier with the requirements of
35 this section.

36 (5) The carrier may satisfy his lien from the pro-
37 ceeds of any sale pursuant to this section but must hold
38 the balance, if any, for delivery on demand to any per-
39 son to whom he would have been bound to deliver the
40 goods.

41 (6) The rights provided by this section shall be in
42 addition to all other rights allowed by law to a creditor
43 against his debtor.

44 (7) A carrier's lien may be enforced in accordance
45 with either subsection (1) or the procedure set forth in
46 subsection (2) of Section 7-210.

47 (8) The carrier is liable for damages caused by failure
48 to comply with the requirements for sale under this sec-
49 tion and in case of willful violation is liable for conver-
50 sion.

Sec. 7-309. Duty of Care; Contractual Limitation of

2 **Carrier's Liability.**—(1) A carrier who issues a bill of
3 lading whether negotiable or non-negotiable must exer-
4 cise the degree of care in relation to the goods which a
5 reasonably careful man would exercise under like cir-
6 cumstances. This subsection does not repeal or change
7 any law or rule of law which imposes liability upon a
8 common carrier for damages not caused by its negligence.

9 (2) Damages may be limited by a provision that the
10 carrier's liability shall not exceed a value stated in the
11 document if the carrier's rates are dependent upon value
12 and the consignor by the carrier's tariff is afforded an op-
13 portunity to declare a higher value or a value as lawfully
14 provided in the tariff, or where no tariff is filed he is oth-
15 erwise advised of such opportunity; but no such limitation
16 is effective with respect to the carrier's liability for con-
17 version to its own use.

18 (3) Reasonable provisions as to the time and manner
19 of presenting claims and instituting actions based on the
20 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

2 Conduct of Issuer.—The obligations imposed by this article
3 on an issuer apply to a document of title regardless of the
4 fact that

5 (a) the document may not comply with the require-
6 ments of this article or of any other law or regulation re-
7 garding its issue, form or content; or

8 (b) the issuer may have violated laws regulating the
9 conduct of his business; or

10 (c) the goods covered by the document were owned
11 by the bailee at the time the document was issued; or

12 (d) the person issuing the document does not come
13 within the definition of a warehouseman if it purports to
14 be a warehouse receipt.

Sec. 7-402. Duplicate Receipt or Bill; Overissue.—

2 Neither a duplicate nor any other document of title pur-
3 porting to cover goods already represented by an out-
4 standing document of the same issuer confers any right
5 in the goods, except as provided in the case of bills in a
6 set, overissue of documents for fungible goods and substi-
7 tutes for lost, stolen or destroyed documents. But the
8 issuer is liable for damages caused by his overissue or fail-
9 ure to identify a duplicate document as such by conspicu-
10 ous notation on its face.

Sec. 7-403. Obligation of Warehouseman or Carrier to

2 Deliver; Excuse.—(1) The bailee must deliver the goods
3 to a person entitled under the document who complies
4 with subsections (2) and (3), unless and to the extent that
5 the bailee establishes any of the following:

6 (a) delivery of the goods to a person whose receipt
7 was rightful as against a claimant;

8 (b) damage to or delay, loss or destruction of the
9 goods for which the bailee is not liable;

10 (c) previous sale or other disposition of the goods
11 in lawful enforcement of a lien or on warehouseman's
12 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

2 "Due Negotiation".—(1) A negotiable document of title
3 running to the order of a named person is negotiated
4 by his indorsement and delivery. After his indorsement
5 in blank or to bearer any person can negotiate it by
6 delivery alone.

7 (2) (a) A negotiable document of title is also nego-
8 tiated by delivery alone when by its original terms it
9 runs to bearer.

10 (b) When a document running to the order of a
11 named person is delivered to him the effect is the same
12 as if the document had been negotiated.

13 (3) Negotiation of a negotiable document of title
14 after it has been indorsed to a specified person requires
15 indorsement by the special indorsee as well as delivery.

16 (4) A negotiable document of title is "duly nego-
17 tiated" when it is negotiated in the manner stated in
18 this section to a holder who purchases it in good faith
19 without notice of any defense against or claim to it on
20 the part of any person and for value, unless it is estab-
21 lished that the negotiation is not in the regular course
22 of business or financing or involves receiving the docu-
23 ment in settlement or payment of a money obligation.

24 (5) Indorsement of a non-negotiable document
25 neither makes it negotiable nor adds to the transferee's
26 rights.

27 (6) The naming in a negotiable bill of a person to
28 be notified of the arrival of the goods does not limit
29 the negotiability of the bill nor constitute notice to a
30 purchaser thereof of any interest of such person in the
31 goods.

Sec. 7-502. Rights Acquired by Due Negotiation.—

2 (1) Subject to the following section and to the pro-
3 visions of Section 7-205 on fungible goods, a holder to
4 whom a negotiable document of title has been duly
5 negotiated acquires thereby:

6 (a) title to the document;

7 (b) title to the goods;

8 (c) all rights accruing under the law of agency or
9 estoppel, including rights to goods delivered to the bailee
10 after the document was issued; and

11 (d) the direct obligation of the issuer to hold or
12 deliver the goods according to the terms of the docu-
13 ment free of any defense or claim by him except those
14 arising under the terms of the document or under this
15 article. In the case of a delivery order the bailee's ob-
16 ligation accrues only upon acceptance and the obliga-
17 tion acquired by the holder is that the issuer and any
18 indorser will procure the acceptance of the bailee.

19 (2) Subject to the following section, title and rights
20 so acquired are not defeated by any stoppage of the
21 goods represented by the document or by surrender of
22 such goods by the bailee, and are not impaired even
23 though the negotiation or any prior negotiation consti-
24 tuted a breach of duty or even though any person has
25 been deprived of possession of the document by mis-
26 representation, fraud, accident, mistake, duress, loss,
27 theft or conversion, or even though a previous sale or
28 other transfer of the goods or document has been made
29 to a third person.

Sec. 7-503. Document of Title to Goods Defeated in
2 **Certain Cases.**—(1) A document of title confers no right
3 in goods against a person who before issuance of the
4 document had a legal interest or a perfected security
5 interest in them and who neither

6 (a) delivered or entrusted them or any document
7 of title covering them to the bailor or his nominee with
8 actual or apparent authority to ship, store or sell or
9 with power to obtain delivery under this article (Sec-
10 tion 7-403) or with power of disposition under this chapter
11 (Sections 2-403 and 9-307) or other statute or rule of
12 law; nor

13 (b) acquiesced in the procurement by the bailor or
14 his nominee of any document of title.

15 (2) Title to goods based upon an unaccepted delivery
16 order is subject to the rights of anyone to whom a nego-
17 tiable warehouse receipt or bill of lading covering the
18 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 **livery.**—(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

3 bailee does not make the indorser liable for any default
4 by the bailee or by previous indorsers.

**Sec. 7-506. Delivery Without Indorsement; Right to
2 Compel Indorsement.**—The transferee of a negotiable
3 document of title has a specifically enforceable right to
4 have his transferor supply any necessary indorsement but
5 the transfer becomes a negotiation only as of the time the
6 indorsement is supplied.

**Sec. 7-507. Warranties on Negotiation or Transfer of
2 Receipt or Bill.**—Where a person negotiates or transfers
3 a document of title for value otherwise than as a mere in-
4 termediary under the next following section, then unless
5 otherwise agreed he warrants to his immediate purchaser
6 only in addition to any warranty made in selling the
7 goods
8 (a) that the document is genuine; and
9 (b) that he has no knowledge of any fact which would
10 impair its validity or worth; and
11 (c) that his negotiation or transfer is rightful and fully
12 effective with respect to the title to the document and the
13 goods it represents.

**Sec. 7-508. Warranties of Collecting Bank as to Docu-
2 ments.**—A collecting bank or other intermediary known
3 to be entrusted with documents on behalf of another or
4 with collection of a draft or other claim against delivery
5 of documents warrants by such delivery of the documents
6 only its own good faith and authority. This rule applies
7 even though the intermediary has purchased or made ad-
8 vances against the claim or draft to be collected.

**Sec. 7-509. Receipt or Bill: When Adequate Compliance
2 With Commercial Contract.**—The question whether a
3 document is adequate to fulfill the obligations of a con-
4 tract for sale or the conditions of a credit is governed by
5 the articles on Sales (Article 2) and on Letters of Credit
6 (Article 5).

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec. 7-601. Lost and Missing Documents.—(1) If a
2 document has been lost, stolen or destroyed, a court may

3 order delivery of the goods or issuance of a substitute
4 document and the bailee may without liability to any per-
5 son comply with such order. If the document was nego-
6 tiable the claimant must post security approved by the
7 court to indemnify any person who may suffer loss as a
8 result of non-surrender of the document. If the docu-
9 ment was not negotiable, such security may be required
10 at the discretion of the court. The court may also in its
11 discretion order payment of the bailee's reasonable costs
12 and counsel fees.

13 (2) A bailee who without court order delivers goods
14 to a person claiming under a missing negotiable docu-
15 ment is liable to any person injured thereby, and if the
16 delivery is not in good faith becomes liable for conversion.
17 Delivery in good faith is not conversion if made in ac-
18 cordance with a filed classification or tariff or, where no
19 classification or tariff is filed, if the claimant posts security
20 with the bailee in an amount at least double the value of
21 the goods at the time of posting to indemnify any person
22 injured by the delivery who files a notice of claim within
23 one year after the delivery.

Sec. 7-602. Attachment of Goods Covered by a Nego-
2 **tiable Document.**—Except where the document was origi-
3 nally issued upon delivery of the goods by a person who
4 had no power to dispose of them, no lien attaches by vir-
5 tue of any judicial process to goods in the possession of a
6 bailee for which a negotiable document of title is out-
7 standing unless the document be first surrendered to the
8 bailee or its negotiation enjoined, and the bailee shall not
9 be compelled to deliver the goods pursuant to process un-
10 til the document is surrendered to him or impounded by
11 the court. One who purchases the document for value
12 without notice of the process or injunction takes free of
13 the lien imposed by judicial process.

Sec. 7-603. Conflicting Claims; Interpleader.—If more
2 than one person claims title or possession of the goods, the
3 bailee is excused from delivery until he has had a reason-
4 able time to ascertain the validity of the adverse claims
5 or to bring an action to compel all claimants to interplead
6 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

Section

- 8-101. Short title.
- 8-102. Definitions and index of definitions.
- 8-103. Issuer's lien.
- 8-104. Effect of overissue; "overissue".
- 8-105. Securities negotiable; presumptions.
- 8-106. Applicability.
- 8-107. Securities deliverable; action for price.

PART 2. ISSUE—ISSUER

- 8-201. "Issuer".
- 8-202. Issuer's responsibility and defenses; notice of defect or defense.
- 8-203. Staleness as notice of defects or defenses.
- 8-204. Effect of issuer's restrictions on transfer.
- 8-205. Effect of unauthorized signature on issue.
- 8-206. Completion or alteration of instrument.
- 8-207. Rights of issuer with respect to registered owners.
- 8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

PART 3. PURCHASE

- 8-301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.
- 8-302. "Bona fide purchaser".
- 8-303. "Broker".
- 8-304. Notice to purchaser of adverse claims.
- 8-305. Staleness as notice of adverse claims.
- 8-306. Warranties on presentment and transfer.
- 8-307. Effect of delivery without indorsement; right to compel indorsement.
- 8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
- 8-309. Effect of indorsement without delivery.
- 8-310. Indorsement of security in bearer form.
- 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.
- 8-314. Duty to deliver, when completed.
- 8-315. Action against purchaser based upon wrongful transfer.
- 8-316. Purchaser's right to requisites for registration of transfer on books.
- 8-317. Attachment or levy upon security.
- 8-318. No conversion by good faith delivery.
- 8-319. Statute of frauds.
- 8-320. Transfer or pledge within a central depository system.

PART 4. REGISTRATION

- 8-401. Duty of issuer to register transfer.
- 8-402. Assurance that indorsements are effective.
- 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
2 and may be cited as Uniform Commercial Code—Invest-
3 ment Securities.

Sec. 8-102. Definitions and Index of Definitions.—
2 (1) In this article unless the context otherwise requires

3 (a) A “security” is an instrument which

4 (i) is issued in bearer or registered form; and

5 (ii) is of a type commonly dealt in upon securities
6 exchanges or markets or commonly recognized in any
7 area in which it is issued or dealt in as a medium for
8 investment; and

9 (iii) is either one of a class or series or by its terms
10 is divisible into a class or series of instruments; and

11 (iv) evidences a share, participation or other interest
12 in property or in an enterprise or evidences an obliga-
13 tion of the issuer.

14 (b) A writing which is a security is governed by
15 this article and not by Uniform Commercial Code—
16 Commercial Paper even though it also meets the require-
17 ments of that article. This article does not apply to
18 money.

19 (c) A security is in “registered form” when it speci-
20 fies a person entitled to the security or to the rights it
21 evidences and when its transfer may be registered upon
22 books maintained for that purpose by or on behalf of
23 an issuer or the security so states.

24 (d) A security is in “bearer form” when it runs to
25 bearer according to its terms and not by reason of any
26 indorsement.

27 (2) A “subsequent purchaser” is a person who takes
28 other than by original issue.

29 (3) A “clearing corporation” is a corporation all of
30 the capital stock of which is held by or for a national
31 securities exchange or association registered under a
32 statute of the United States such as the Securities Ex-
33 change Act of 1934.

34 (4) A “custodian bank” is any bank or trust com-

pany which is supervised and examined by state or federal 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 general definitions and principles of construction and interpretation 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 conspicuously on the security.

Sec. 8-104. Effect of Overissue; "Overissue."—(1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, 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 person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender 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)

2 Securities governed by this article are negotiable instru-
3 ments.

4 (2) In any action on a security

5 (a) unless specifically denied in the pleadings, each
6 signature on the security or in a necessary indorsement is
7 admitted;

8 (b) when the effectiveness of a signature is put in
9 issue the burden of establishing it is on the party claim-
10 ing under the signature but the signature is presumed to
11 be genuine or authorized;

12 (c) when signatures are admitted or established pro-
13 duction of the instrument entitles a holder to recover on
14 it unless the defendant establishes a defense or a defect
15 going to the validity of the security; and

16 (d) after it is shown that a defense or defect exists the
17 plaintiff has the burden of establishing that he or some
18 person under whom he claims is a person against whom
19 the defense or defect is ineffective (Section 8-202).

Sec. 8-106. Applicability.—The validity of a security
2 and the rights and duties of the issuer with respect to reg-
3 istration of transfer are governed by the law (including
4 the conflict of laws rules) of the jurisdiction of organiza-
5 tion of the issuer.

Sec. 8-107. Securities Deliverable; Action for Price.—
2 (1) Unless otherwise agreed and subject to any applicable
3 law or regulation respecting short sales, a person obli-
4 gated to deliver securities may deliver any security of the
5 specified issue in bearer form or registered in the name of
6 the transferee or indorsed to him or in blank.

7 (2) When the buyer fails to pay the price as it comes
8 due under a contract of sale the seller may recover the
9 price

10 (a) of securities accepted by the buyer; and

11 (b) of other securities if efforts at their resale would
12 be unduly burdensome or if there is no readily available
13 market for their resale.

PART 2. ISSUE—ISSUER

- Sec. 8-201. "Issuer."—(1) With respect to obligations
2 on or defenses to a security "issuer" includes a person
3 who
4 (a) places or authorizes the placing of his name on
5 a security (otherwise than as authenticating trustee,
6 registrar, transfer agent or the like) to evidence that it
7 represents a share, participation or other interest in his
8 property or in an enterprise or to evidence his duty to
9 perform an obligation evidenced by the security; or
10 (b) directly or indirectly creates fractional interests
11 in his rights or property which fractional interests are
12 evidenced by securities; or
13 (c) becomes responsible for or in place of any other
14 person described as an issuer in this section.
15 (2) With respect to obligations on or defenses to a
16 security a guarantor is an issuer to the extent of his
17 guaranty whether or not his obligation is noted on the
18 security.
19 (3) With respect to registration of transfer (Part
20 4 of this article) "issuer" means a person on whose be-
21 half transfer books are maintained.

- Sec. 8-202. Issuer's Responsibility and Defenses; Notice
2 of Defect or Defense.—(1) Even against a purchaser for
3 value and without notice, the terms of a security include
4 those stated on the security and those made part of the
5 security by reference to another instrument, indenture
6 or document or to a constitution, statute, ordinance, rule,
7 regulation, order or the like to the extent that the terms
8 so referred to do not conflict with the stated terms.
9 Such a reference does not of itself charge a purchaser
10 for value with notice of a defect going to the validity
11 of the security even though the security expressly states
12 that a person accepting it admits such notice.
13 (2) (a) A security other than one issued by a gov-
14 ernment or governmental agency or unit even though
15 issued with a defect going to its validity is valid in the
16 hands of a purchaser for value and without notice of
17 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)

15 and he takes the security more than two years after the
16 date set for surrender or presentation or the date on
17 which such performance became due.

18 (2) A call which has been revoked is not within sub-
19 section (1).

Section 8-204. Effect of Issuer's Restrictions on Transfer.—
2 Unless noted conspicuously on the security a re-
3 striction on transfer imposed by the issuer even though
4 otherwise lawful is ineffective except against a person
5 with actual knowledge of it.

Sec. 8-205. Effect of Unauthorized Signature on Issue.—
2 An unauthorized signature placed on a security prior to
3 or in the course of issue is ineffective except that the sig-
4 nature is effective in favor of a purchaser for value and
5 without notice of the lack of authority if the signing has
6 been done by

7 (a) an authenticating trustee, registrar, transfer agent
8 or other person entrusted by the issuer with the signing
9 of the security or of similar securities or their immediate
10 preparation for signing; or

11 (b) an employee of the issuer or of any of the forego-
12 ing entrusted with responsible handling of the security.

Sec. 8-206. Completion or Alteration of Instrument.—
2 (1) Where a security contains the signatures necessary to
3 its issue or transfer but is incomplete in any other respect
4 (a) any person may complete it by filling in the blanks
5 as authorized; and
6 (b) even though the blanks are incorrectly filled in,
7 the security as completed is enforceable by a purchaser
8 who took it for value and without notice of such incorrec-
9 ness.

10 (2) A complete security which has been improperly
11 altered even though fraudulently remains enforceable but
12 only according to its original terms.

Sec. 8-207. Rights of Issuer With Respect to Registered Owners.—
2 (1) Prior to due presentment for registration
3 of transfer of a security in registered form the issuer or
4 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
2 his signature upon a security as authenticating trustee,
3 registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect
4 that
5 that

6 (a) the security is genuine; and

7 (b) his own participation in the issue of the security
8 is within his capacity and within the scope of the authorization received by him from the issuer; and

9 (c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is
10 authorized to issue.

11 (2) Unless otherwise agreed, a person by so placing
12 his signature does not assume responsibility for the validity of the security in other respects.
13

PART 3. PURCHASE

Sec. 8-301. Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser.—(1)
2 Upon delivery of a security the purchaser acquires the
3 rights in the security which his transferor had or had actual authority to convey except that a purchaser who has
4 himself been a party to any fraud or illegality affecting
5 the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a
6 later bona fide purchaser. "Adverse claim" includes a
7 claim that a transfer was or would be wrongful or that a
8 particular adverse person is the owner of or has an interest in the security.
9

10 (2) A bona fide purchaser in addition to acquiring the
11 rights of a purchaser also acquires the security free of any
12 adverse claim.
13
14
15

- 16 (3) A purchaser of a limited interest acquires rights
17 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.—

- 2 (1) A purchaser (including the broker for the seller or
3 buyer but excluding an intermediary bank) of a security
4 is charged with notice of adverse claims if
- 5 (a) the security whether in bearer or registered form
6 has been indorsed "for collection" or "for surrender" or
7 for some other purpose not involving transfer; or
- 8 (b) the security is in bearer form and has on it an un-
9 ambiguous statement that it is the property of a person
10 other than the transferor. The mere writing of a name
11 on a security is not such a statement.
- 12 (2) The fact that the purchaser (including a broker
13 for the seller or buyer) has notice that the security is held
14 for a third person or is registered in the name of or in-
15 dorsed by a fiduciary does not create a duty of inquiry
16 into the rightfulness of the transfer or constitute notice
17 of adverse claims. If, however, the purchaser (excluding
18 an intermediary bank) has knowledge that the proceeds
19 are being used or that the transaction is for the individual
20 benefit of the fiduciary or otherwise in breach of duty, the
21 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

5 be presented or surrendered for redemption or exchange
6 does not of itself constitute any notice of adverse claims
7 except in the case of a purchase

8 (a) after one year from any date set for such present-
9 ment or surrender for redemption or exchange; or

10 (b) after six months from any date set for payment
11 of money against presentation or surrender of the secur-
12 ity if funds are available for payment on that date.

Sec. 8-306. Warranties on Presentment and Transfer.—

2 (1) A person who presents a security for registration of
3 transfer or for payment or exchange warrants to the issuer
4 that he is entitled to the registration, payment or ex-
5 change. But a purchaser for value without notice of ad-
6 verse claims who receives a new, reissued or re-registered
7 security on registration of transfer warrants only that he
8 has no knowledge of any unauthorized signature (Section
9 8-311) in a necessary indorsement.

10 (2) A person by transferring a security to a purchaser
11 for value warrants only that

12 (a) his transfer is effective and rightful; and

13 (b) the security is genuine and has not been materi-
14 ally altered; and

15 (c) he knows no fact which might impair the validity
16 of the security.

17 (3) Where a security is delivered by an intermediary
18 known to be entrusted with delivery of the security on
19 behalf of another or with collection of a draft or other
20 claim against such delivery, the intermediary by such de-
21 livery warrants only his own good faith and authority
22 even though he has purchased or made advances against
23 the claim to be collected against the delivery.

24 (4) A pledgee or other holder for security who rede-
25 livers the security received, or after payment and on or-
26 der of the debtor delivers that security to a third person
27 makes only the warranties of an intermediary under sub-
28 section (3).

29 (5) A broker gives to his customer and to the issuer
30 and a purchaser the warranties provided in this section
31 and has the rights and privileges of a purchaser under this

32 section. The warranties of and in favor of the broker
33 acting as an agent are in addition to applicable warranties
34 given by and in favor of his customer.

**Sec. 8-307. Effect of Delivery Without Indorsement;
2 Right to Compel Indorsement.**—Where a security in regis-
3 tered form has been delivered to a purchaser without a
4 necessary indorsement he may become a bona fide pur-
5 chaser only as of the time the indorsement is supplied,
6 but against the transferor the transfer is complete upon
7 delivery and the purchaser has a specifically enforceable
8 right to have any necessary indorsement supplied.

**Sec. 8-308. Indorsement, How Made; Special Indorse-
2 ment; Indorser Not a Guarantor; Partial Assignment.**—
3 (1) An indorsement of a security in registered form is
4 made when an appropriate person signs on it or on a
5 separate document an assignment or transfer of the
6 security or a power to assign or transfer it or when the
7 signature of such person is written without more upon
8 the back of the security.

9 (2) An indorsement may be in blank or special. An
10 indorsement in blank includes an indorsement to bearer.
11 A special indorsement specifies the person to whom the
12 security is to be transferred, or who has power to trans-
13 fer it. A holder may convert a blank indorsement into
14 a special indorsement.

15 (3) "An appropriate person" in subsection (1) means

16 (a) the person specified by the security or by special
17 indorsement to be entitled to the security; or

18 (b) where the person so specified is described as a
19 fiduciary but is no longer serving in the described ca-
20 pacity,—either that person or his successor; or

21 (c) where the security or indorsement so specifies
22 more than one person as fiduciaries and one or more are
23 no longer serving in the described capacity,—the remain-
24 ing fiduciary or fiduciaries, whether or not a successor
25 has been appointed or qualified; or

26 (d) where the person so specified is an individual
27 and is without capacity to act by virtue of death, in-

28 competence, infancy or otherwise,—his executor, admin-
29 istrator, guardian or like fiduciary; or

30 (e) where the security or indorsement so specifies
31 more than one person as tenants by the entirety or with
32 right of survivorship and by reason of death all cannot
33 sign,—the survivor or survivors; or

34 (f) a person having power to sign under applicable
35 law or controlling instrument; or

36 (g) to the extent that any of the foregoing persons
37 may act through an agent,—his authorized agent.

38 (4) Unless otherwise agreed the indorser by his in-
39 dorsement assumes no obligation that the security will
40 be honored by the issuer.

41 (5) An indorsement purporting to be only of part of
42 a security representing units intended by the issuer to
43 be separately transferable is effective to the extent of
44 the indorsement.

45 (6) Whether the person signing is appropriate is
46 determined as of the date of signing and an indorsement
47 by such a person does not become unauthorized for the
48 purposes of this article by virtue of any subsequent
49 change of circumstances.

50 (7) Failure of a fiduciary to comply with a control-
51 ling instrument or with the law of the state having juris-
52 diction of the fiduciary relationship, including any law
53 requiring the fiduciary to obtain court approval of the
54 transfer, does not render his indorsement unauthorized
55 for the purposes of this article.

Sec. 8-309. Effect of Indorsement Without Delivery.—

2 An indorsement of a security whether special or in blank
3 does not constitute a transfer until delivery of the
4 security on which it appears or if the indorsement is on
5 a separate document until delivery of both the docu-
6 ment and the security.

Sec. 8-310. Indorsement of Security in Bearer Form.—

2 An indorsement of a security in bearer form may give
3 notice of adverse claims (Section 8-304) but does not
4 otherwise affect any right to registration the holder may
5 possess.

Sec. 8-311. Effect of Unauthorized Indorsement.—

2 Unless the owner has ratified an unauthorized indorse-
3 ment or is otherwise precluded from asserting its in-
4 effectiveness

5 (a) he may assert its ineffectiveness against the
6 issuer or any purchaser other than a purchaser for value
7 and without notice of adverse claims who has in good
8 faith received a new, reissued or re-registered security
9 on registration of transfer; and

10 (b) an issuer who registers the transfer of a security
11 upon the unauthorized indorsement is subject to liability
12 for improper registration (Section 8-404).

Sec. 8-312. Effect of Guaranteeing Signature or In-

2 **dorsement.—**(1) Any person guaranteeing a signature
3 of an indorser of a security warrants that at the time of
4 signing

5 (a) the signature was genuine; and

6 (b) the signer was an appropriate person to indorse
7 (Section 8-308); and

8 (c) the signer had legal capacity to sign.

9 But the guarantor does not otherwise warrant the right-
10 fulness of the particular transfer.

11 (2) Any person may guarantee an indorsement of
12 a security and by so doing warrants not only the sig-
13 nature (subsection 1) but also the rightfulness of the
14 particular transfer in all respects. But no issuer may
15 require a guarantee of indorsement as a condition to
16 registration of transfer.

17 (3) The foregoing warranties are made to any person
18 taking or dealing with the security in reliance on the
19 guarantee and the guarantor is liable to such person for
20 any loss resulting from breach of the warranties.

Sec. 8-313. When Delivery to the Purchaser Occurs;

2 **Purchaser's Broker as Holder.—**(1) Delivery to a pur-
3 chaser occurs when

4 (a) he or a person designated by him acquires pos-
5 session of a security; or

6 (b) his broker acquires possession of a security specially
7 indorsed to or issued in the name of the purchaser; or

8 (c) his broker sends him confirmation of the pur-
9 chase and also by book entry or otherwise identifies a
10 specific security in the broker's possession as belonging
11 to the purchaser; or

12 (d) with respect to an identified security to be de-
13 livered while still in the possession of a third person
14 when that person acknowledges that he holds for the
15 purchaser; or

16 (e) appropriate entries on the books of a clearing
17 corporation are made under Section 8-320.

18 (2) The purchaser is the owner of a security held
19 for him by his broker, but is not the holder except as
20 specified in subparagraphs (b), (c) and (e) of subsec-
21 tion (1). Where a security is part of a fungible bulk the
22 purchaser is the owner of a proportionate property in-
23 terest in the fungible bulk.

24 (3) Notice of an adverse claim received by the broker
25 or by the purchaser after the broker takes delivery as
26 a holder for value is not effective either as to the broker
27 or as to the purchaser. However, as between the broker
28 and the purchaser the purchaser may demand delivery
29 of an equivalent security as to which no notice of an
30 adverse claim has been received.

Sec. 8-314. Duty to Deliver, When Completed.—(1) Un-
2 less otherwise agreed where a sale of a security is made
3 on an exchange or otherwise through brokers

4 (a) the selling customer fulfills his duty to deliver
5 when he places such a security in the possession of the
6 selling broker or of a person designated by the broker or if
7 requested causes an acknowledgment to be made to the
8 selling broker that it is held for him; and

9 (b) the selling broker including a correspondent
10 broker acting for a selling customer fulfills his duty to
11 deliver by placing the security or a like security in the
12 possession of the buying broker or a person designated by
13 him or by effecting clearance of the sale in accordance
14 with the rules of the exchange on which the transaction
15 took place.

16 (2) Except as otherwise provided in this section and
17 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

6 been surrendered to the issuer may be attached or levied
7 upon at the source.

8 (2) A creditor whose debtor is the owner of a security
9 shall be entitled to such aid from courts of appropriate
10 jurisdiction, by injunction or otherwise, in reaching such
11 security or in satisfying the claim by means thereof as is
12 allowed at law or in equity in regard to property which
13 cannot readily be attached or levied upon by ordinary
14 legal process.

Sec. 8-318. No Conversion by Good Faith Delivery.—

2 An agent or bailee who in good faith (including ob-
3 servance of reasonable commercial standards if he is in
4 the business of buying, selling or otherwise dealing with
5 securities) has received securities and sold, pledged or
6 delivered them according to the instructions of his prin-
7 cipal is not liable for conversion or for participation in
8 breach of fiduciary duty although the principal had no
9 right to dispose of them.

Sec. 8-319. Statute of Frauds.—A contract for the sale

2 of securities is not enforceable by way of action or de-
3 fense unless

4 (a) there is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent
6 or broker sufficient to indicate that a contract has been
7 made for sale of a stated quantity of described secur-
8 ities at a defined or stated price; or

9 (b) delivery of the security has been accepted or
10 payment has been made but the contract is enforceable
11 under this provision only to the extent of such delivery
12 or payment; or

13 (c) within a reasonable time a writing in confirma-
14 tion of the sale or purchase and sufficient against the
15 sender under paragraph (a) has been received by the
16 party against whom enforcement is sought and he has
17 failed to send written objection to its contents within
18 ten days after its receipt; or

19 (d) the party against whom enforcement is sought
20 admits in his pleading, testimony or otherwise in court
21 that a contract was made for sale of a stated quantity
22 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-

41 priate does not affect the validity or effect of the en-
42 tries nor the liabilities or obligations of the clearing
43 corporation to any person adversely affected thereby.

PART 4. REGISTRATION

Sec. 8-401. Duty of Issuer to Register Transfer.—(1)

2 Where a security in registered form is presented to the
3 issuer with a request to register transfer, the issuer is
4 under a duty to register the transfer as requested if

5 (a) the security is indorsed by the appropriate per-
6 son or persons (Section 8-308); and

7 (b) reasonable assurance is given that those indorse-
8 ments are genuine and effective (Section 8-402); and

9 (c) the issuer has no duty to inquire into adverse
10 claims or has discharged any such duty (Section 8-403);
11 and

12 (d) any applicable law relating to the collection of
13 taxes has been complied with; and

14 (e) the transfer is in fact rightful or is to a bona fide
15 purchaser.

16 (2) Where an issuer is under a duty to register a
17 transfer of a security the issuer is also liable to the per-
18 son presenting it for registration or his principal for loss
19 resulting from any unreasonable delay in registration
20 or from failure or refusal to register the transfer.

Sec. 8-402. Assurance that Indorsements Are Effec-
2 **tive.—(1)** The issuer may require the following assurance
3 that each necessary indorsement (Section 8-308) is
4 genuine and effective

5 (a) in all cases, a guarantee of the signature (sub-
6 section (1) of Section 8-312) of the person indorsing; and

7 (b) where the indorsement is by an agent, appro-
8 priate assurance of authority to sign;

9 (c) where the indorsement is by a fiduciary, appro-
10 priate evidence of appointment or incumbency;

11 (d) where there is more than one fiduciary, reason-
12 able assurance that all who are required to sign have
13 done so;

14 (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

6 a reasonable opportunity to act on it prior to the issuance
7 of a new, reissued or re-registered security and the noti-
8 fication identifies the claimant, the registered owner and
9 the issue of which the security is a part and provides an
10 address for communications directed to the claimant; or

11 (b) the issuer is charged with notice of an adverse
12 claim from a controlling instrument which it has elected
13 to require under subsection (4) of Section 8-402.

14 (2) The issuer may discharge any duty of inquiry by
15 any reasonable means, including notifying an adverse
16 claimant by registered or certified mail at the address fur-
17 nished by him or if there be no such address at his resi-
18 dence or regular place of business that the security has
19 been presented for registration of transfer by a named
20 person, and that the transfer will be registered unless
21 within thirty days from the date of mailing the notifica-
22 tion, either

23 (a) an appropriate restraining order, injunction or
24 other process issues from a court of competent jurisdic-
25 tion; or

26 (b) an indemnity bond sufficient in the issuer's judg-
27 ment to protect the issuer and any transfer agent, regis-
28 trar or other agent of the issuer involved, from any loss
29 which it or they may suffer by complying with the ad-
30 verse claim is filed with the issuer.

31 (3) Unless an issuer is charged with notice of an ad-
32 verse claim from a controlling instrument which it has
33 elected to require under subsection (4) of Section 8-402
34 or receives notification of an adverse claim under subsec-
35 tion (1) of this section, where a security presented for
36 registration is indorsed by the appropriate person or per-
37 sons the issuer is under no duty to inquire into adverse
38 claims. In particular

39 (a) an issuer registering a security in the name of a
40 person who is a fiduciary or who is described as a fiduciary
41 is not bound to inquire into the existence, extent, or cor-
42 rect description of the fiduciary relationship and thereaf-
43 ter the issuer may assume without inquiry that the newly
44 registered owner continues to be the fiduciary until the
45 issuer receives written notice that the fiduciary is no

46 longer acting as such with respect to the particular se-
47 curity;

48 (b) an issuer registering transfer on an indorsement
49 by a fiduciary is not bound to inquire whether the trans-
50 fer is made in compliance with a controlling instrument
51 or with the law of the state having jurisdiction of the fi-
52 duciary relationship, including any law requiring the fi-
53 duciary to obtain court approval of the transfer; and

54 (c) the issuer is not charged with notice of the con-
55 tents of any court record or file or other recorded or un-
56 recorded document even though the document is in its
57 possession and even though the transfer is made on the
58 indorsement of a fiduciary to the fiduciary himself or to
59 his nominee.

Sec. 8-404. Liability and Non-Liability for Registra-
2 **tion.**—(1) Except as otherwise provided in any law relat-
3 ing to the collection of taxes, the issuer is not liable to the
4 owner or any other person suffering loss as a result of the
5 registration of a transfer of a security if

6 (a) there were on or with the security the necessary
7 indorsements (Section 8-308); and

8 (b) the issuer had no duty to inquire into adverse
9 claims or has discharged any such duty (Section 8-403).

10 (2) Where an issuer has registered a transfer of a se-
11 curity to a person not entitled to it the issuer on demand
12 must deliver a like security to the true owner unless

13 (a) the registration was pursuant to subsection (1); or

14 (b) the owner is precluded from asserting any claim
15 for registering the transfer under subsection (1) of the
16 following section; or

17 (c) such delivery would result in overissue, in which
18 case the issuer's liability is governed by Section 8-104.

Sec. 8-405. Lost, Destroyed and Stolen Securities.—
2 (1) Where a security has been lost, apparently destroyed
3 or wrongfully taken and the owner fails to notify the is-
4 suer of that fact within a reasonable time after he has
5 notice of it and the issuer registers a transfer of the secur-

6 ity before receiving such a notification, the owner is pre-
7 cluded from asserting against the issuer any claim for
8 registering the transfer under the preceding section or any
9 claim to a new security under this section.

10 (2) Where the owner of a security claims that the se-
11 curity has been lost, destroyed or wrongfully taken, the is-
12 suer must issue a new security in place of the original
13 security if the owner

14 (a) so requests before the issuer has notice that the
15 security has been acquired by a bona fide purchaser; and

16 (b) files with the issuer a sufficient indemnity bond;
17 and

18 (c) satisfies any other reasonable requirements im-
19 posed by the issuer.

20 (3) If, after the issue of the new security, a bona fide
21 purchaser of the original security presents it for registra-
22 tion of transfer, the issuer must register the transfer un-
23 less registration would result in overissue, in which event
24 the issuer's liability is governed by Section 8-104. In ad-
25 dition to any rights on the indemnity bond, the issuer
26 may recover the new security from the person to whom it
27 was issued or any person taking under him except a bona
28 fide purchaser.

Sec. 8-406. Duty of Authenticating Trustee, Transfer

2 **Agent or Registrar.**—(1) Where a person acts as authenti-
3 cating trustee, transfer agent, registrar, or other agent
4 for an issuer in the registration of transfers of its secur-
5 ities or in the issue of new securities or in the cancel-
6 lation of surrendered securities

7 (a) he is under a duty to the issuer to exercise good
8 faith and due diligence in performing his functions; and

9 (b) he has with regard to the particular functions
10 he performs the same obligation to the holder or owner
11 of the security and has the same rights and privileges
12 as the issuer has in regard to those functions.

13 (2) Notice to an authenticating trustee, transfer
14 agent, registrar or other such agent is notice to the issuer
15 with respect to the functions performed by the agent.

Article 9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section

- 9-101. Short title.
- 9-102. Policy and scope of article.
- 9-103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.
- 9-104. Transactions excluded from article.
- 9-105. Definitions and index of definitions.
- 9-106. Definitions: "account"; "contract right"; "general intangibles".
- 9-107. Definitions: "purchase money security interest".
- 9-108. When after-acquired collateral not security for antecedent debt.
- 9-109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".
- 9-110. Sufficiency of description.
- 9-111. Applicability of bulk transfer laws.
- 9-112. Where collateral is not owned by debtor.
- 9-113. Security interests arising under article on sales.

PART 2. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

- 9-201. General validity of security agreement.
- 9-202. Title to collateral immaterial.
- 9-203. Enforceability of security interest; proceeds, formal requisites.
- 9-204. When security interest attaches; after-acquired property; future advances.
- 9-205. Use or disposition of collateral without accounting permissible.
- 9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.
- 9-207. Rights and duties when collateral is in secured party's possession.
- 9-208. Request for statement of account or list of collateral.

PART 3. RIGHTS OF THIRD PARTIES: PERFECTED AND UNPERFECTED SECURITY INTERESTS: RULES OF PRIORITY

- 9-301. Persons who take priority over unperfected security interests; "lien creditor".
- 9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
- 9-303. When security interest is perfected; continuity of perfection.
- 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.
- 9-305. When possession by secured party perfects security interest without filing.
- 9-306. "Proceeds"; secured party's rights on disposition of collateral.
- 9-307. Protection of buyers of goods.
- 9-308. Purchase of chattel paper and non-negotiable instruments.
- 9-309. Protection of purchasers of instruments and documents.
- 9-310. Priority of certain liens arising by operation of law.
- 9-311. Alienability of debtor's rights: judicial process.
- 9-312. Priorities among conflicting security interests in the same collateral.
- 9-313. Priority of security interests in fixtures.
- 9-314. Accessions.
- 9-315. Priority when goods are commingled or processed.
- 9-316. Priority subject to subordination.
- 9-317. Secured party not obligated on contract of debtor.
- 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

PART 4. FILING

- 9-401. Place of filing; erroneous filing; removal of collateral.
- 9-402. Formal requisites of financing statement; amendments.
- 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.
- 9-404. Termination statement.
- 9-405. Assignment of security interest; duties of filing officer; fees.
- 9-406. Release of collateral; duties of filing officer; fees.

PART 5. DEFAULT

- 9-501. Default; procedure when security agreement covers both real and personal property.
- 9-502. Collection rights of secured party.
- 9-503. Secured party's right to take possession after default.
- 9-504. Secured party's right to dispose of collateral after default; effect of disposition.
- 9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.
- 9-506. Debtor's right to redeem collateral.
- 9-507. Secured party's liability for failure to comply with this part.

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

Section 9-101. Short Title.—This article shall be known
2 and may be cited as Uniform Commercial Code—Se-
3 cured Transactions.

Sec. 9-102. Policy and Scope of Article.—(1) Except as
2 otherwise provided in Section 9-103 on multiple state
3 transactions and in Section 9-104 on excluded transac-
4 tions, this article applies so far as concerns any personal
5 property and fixtures within the jurisdiction of this
6 state

7 (a) to any transaction (regardless of its form) which
8 is intended to create a security interest in personal
9 property or fixtures including goods, documents, instru-
10 ments, general intangibles, chattel paper, accounts or
11 contract rights; and also

12 (b) to any sale of accounts, contract rights or chat-
13 tel paper.

14 (2) This article applies to security interests created
15 by contract including pledge, assignment, chattel mort-
16 gage, chattel trust, trust deed, factor's lien, equipment
17 trust, conditional sale, trust receipt, other lien or title
18 retention contract and lease or consignment intended as
19 security. This article does not apply to statutory liens
20 except as provided in Section 9-310.

21 (3) The application of this article to a security in-
22 terest in a secured obligation is not affected by the fact
23 that the obligation is itself secured by a transaction or
24 interest to which this article does not apply.

Sec. 9-103. Accounts, Contract Rights, General Intan-
2 **gibles and Equipment Relating to Another Jurisdiction;**
3 **and Incoming Goods Already Subject to a Security Inter-**
4 **est.—**(1) If the office where the assignor of accounts or
5 contract rights keeps his records concerning them is in
6 this state, the validity and perfection of a security in-
7 terest therein and the possibility and effect of proper
8 filing is governed by this article; otherwise by the law
9 (including the conflict of laws rules) of the jurisdiction
10 where such office is located.

11 (2) If the chief place of business of a debtor is in
12 this state, this article governs the validity and perfec-
13 tion of a security interest and the possibility and effect
14 of proper filing with regard to general intangibles or
15 with regard to goods of a type which are normally used
16 in more than one jurisdiction (such as automotive
17 equipment, rolling stock, airplanes, road building equip-
18 ment, commercial harvesting equipment, construction
19 machinery and the like) if such goods are classified as
20 equipment or classified as inventory by reason of their
21 being leased by the debtor to others. Otherwise, the
22 law (including the conflict of laws rules) of the juris-
23 diction where such chief place of business is located
24 shall govern. If the chief place of business is located
25 in a jurisdiction which does not provide for perfection
26 of the security interest by filing or recording in that
27 jurisdiction, then the security interest may be perfected
28 by filing in this state.

29 (3) If personal property other than that governed
30 by subsections (1) and (2) is already subject to a secur-
31 ity interest when it is brought into this state, the validity
32 of the security interest in this state is to be determined
33 by the law (including the conflict of laws rules) of the
34 jurisdiction where the property was when the security
35 interest attached. However, if the parties to the trans-
36 action understood at the time that the security interest

37 attached that the property would be kept in this state
38 and it was brought into this state within thirty days after
39 the security interest attached for purposes other than
40 transportation through this state, then the validity of
41 the security interest in this state is to be determined
42 by the law of this state. If the security interest was
43 already perfected under the law of the jurisdiction
44 where the property was when the security interest
45 attached and before being brought into this state, the
46 security interest continues perfected in this state for
47 four months and also thereafter if within the four month
48 period it is perfected in this state. The security interest
49 may also be perfected in this state after the expiration
50 of the four month period; in such case perfection dates
51 from the time of perfection in this state. If the security
52 interest was not perfected under the law of the juris-
53 diction where the property was when the security inter-
54 est attached and before being brought into this state,
55 it may be perfected in this state; in such case perfec-
56 tion dates from the time of perfection in this state.

57 (4) Notwithstanding subsections (2) and (3), if per-
58 sonal property is covered by a certificate of title issued
59 under a statute of this state or any other jurisdiction
60 which requires indication on a certificate of title of any
61 security interest in the property as a condition of per-
62 fection, then the perfection is governed by the law of
63 the jurisdiction which issued the certificate.

Sec. 9-104. Transactions Excluded From Article.—This
2 article does not apply

3 (a) to a security interest subject to any statute of
4 the United States such as the Ship Mortgage Act, 1920,
5 to the extent that such statute governs the rights of
6 parties to and third parties affected by transactions in
7 particular types of property; or

8 (b) to a landlord's lien; or

9 (c) to a lien given by statute or other rule of law
10 for services or materials except as provided in Section
11 9-310 on priority of such liens; or

12 (d) to a transfer of a claim for wages, salary or other
13 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.

19 Where the debtor and the owner of the collateral are not
20 the same person, the term "debtor" means the owner of
21 the collateral in any provision of the article dealing with
22 the collateral, the obligor in any provision dealing with
23 the obligation, and may include both where the context
24 so requires;

25 (e) "Document" means document of title as defined in
26 the general definitions of Article 1 (Section 1-201);

27 (f) "Goods" includes all things which are movable at the
28 time the security interest attaches or which are fixtures
29 (Section 9-313), but does not include money, documents,
30 instruments, accounts, chattel paper, general intangibles,
31 contract rights and other things in action. "Goods" also
32 include the unborn young of animals and growing crops;

33 (g) "Instrument" means a negotiable instrument (de-
34 fined in Section 3-104), or a security (defined in Section
35 8-102) or any other writing which evidences a right to the
36 payment of money and is not itself a security agreement
37 or lease and is of a type which is in ordinary course of
38 business transferred by delivery with any necessary in-
39 dorsement or assignment;

40 (h) "Security agreement" means an agreement which
41 creates or provides for a security interest;

42 (i) "Secured party" means a lender, seller or other
43 person in whose favor there is a security interest, includ-
44 ing a person to whom accounts, contract rights or chattel
45 paper have been sold. When the holders of obligations
46 issued under an indenture of trust, equipment trust agree-
47 ment or the like are represented by a trustee or other per-
48 son, the representative is the secured party.

49 (2) Other definitions applying to this article and the
50 sections in which they appear are:

51 "Account".	Section 9-106.
52 "Consumer goods".	Section 9-109(1).
53 "Contract right".	Section 9-106.
54 "Equipment".	Section 9-109(2).
55 "Farm products".	Section 9-109(3).
56 "General intangibles".	Section 9-106.
57 "Inventory".	Section 9-109(4).

- 58 "Lien creditor". Section 9-301(3).
59 "Proceeds". Section 9-306(1).
60 "Purchase money security
61 interest". Section 9-107.
62 (3) The following definitions in other articles of this
63 chapter apply to this article:
64 "Check". Section 3-104.
65 "Contract for sale". Section 2-106.
66 "Holder in due course". Section 3-302.
67 "Note". Section 3-104.
68 "Sale". Section 2-106.
69 (4) In addition Article 1 of this chapter contains gen-
70 eral definitions and principles of construction and inter-
71 pretation applicable throughout this article.

**Sec. 9-106. Definitions: "Account"; "Contract Right";
2 "General Intangibles".**—"Account" means any right to
3 payment for goods sold or leased or for services rendered
4 which is not evidenced by an instrument or chattel paper.
5 "Contract right" means any right to payment under a con-
6 tract not yet earned by performance and not evidenced by
7 an instrument or chattel paper. "General intangibles"
8 means any personal property (including things in action)
9 other than goods, accounts, contract rights, chattel paper,
10 documents and instruments.

**Sec. 9-107. Definitions: "Purchase Money Security In-
2 terest".**—A security interest is a "purchase money secur-
3 ity interest" to the extent that it is
4 (a) taken or retained by the seller of the collateral to
5 secure all or part of its price; or
6 (b) taken by a person who by making advances or in-
7 curring an obligation gives value to enable the debtor to
8 acquire rights in or the use of collateral if such value is
9 in fact so used.

**Sec. 9-108. When After-Acquired Collateral Not Secur-
2 ity for Antecedent Debt.**—Where a secured party makes
3 an advance, incurs an obligation, releases a perfected se-
4 curity interest, or otherwise gives new value which is to
5 be secured in whole or in part by after-acquired property
6 his security interest in the after-acquired collateral shall

7 be deemed to be taken for new value and not as security
8 for an antecedent debt if the debtor acquires his rights in
9 such collateral either in the ordinary course of his busi-
10 ness or under a contract of purchase made pursuant to
11 the security agreement within a reasonable time after
12 new value is given.

**Sec. 9-109. Classification of Goods; "Consumer Goods";
2 "Equipment"; "Farm Products"; "Inventory".—**Goods are

3 (1) "consumer goods" if they are used or bought for
4 use primarily for personal, family or household pur-
5 poses;

6 (2) "equipment" if they are used or bought for use
7 primarily in business (including farming or a profes-
8 sion) or by a debtor who is a non-profit organization or
9 a governmental subdivision or agency or if the goods
10 are not included in the definitions of inventory, farm
11 products or consumer goods;

12 (3) "farm products" if they are crops or livestock or
13 supplies used or produced in farming operations or if
14 they are products of crops or livestock in their unmanu-
15 factured states (such as ginned cotton, wool-clip, maple
16 syrup, milk and eggs), and if they are in the possession
17 of a debtor engaged in raising, fattening, grazing or
18 other farming operations. If goods are farm products
19 they are neither equipment nor inventory;

20 (4) "inventory" if they are held by a person who
21 holds them for sale or lease or to be furnished under
22 contracts of service or if he has so furnished them, or
23 if they are raw materials, work in process or materials
24 used or consumed in a business. Inventory of a person
25 is not to be classified as his equipment.

Sec. 9-110. Sufficiency of Description.—For the pur-
2 poses of this article any description of personal prop-
3 erty or real estate is sufficient whether or not it is
4 specific if it reasonably identifies what is described.

Sec. 9-111. Applicability of Bulk Transfer Laws.—The
2 creation of a security interest is not a bulk transfer
3 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

8 sales, or the like, or extends the application of any such
9 statute or regulation to any transaction not otherwise
10 subject thereto.

Sec. 9-202. Title to Collateral Immaterial.—Each pro-
2 vision of this article with regard to rights, obligations and
3 remedies applies whether title to collateral is in the se-
4 cured party or in the debtor.

Sec. 9-203. Enforceability of Security Interest; Proceeds,
2 **Formal Requisites.**—(1) Subject to the provisions of Sec-
3 tion 4-208 on the security interest of a collecting bank and
4 Section 9-113 on a security interest arising under the ar-
5 ticle on sales, a security interest is not enforceable against
6 the debtor or third parties unless

7 (a) the collateral is in the possession of the secured
8 party; or

9 (b) the debtor has signed a security agreement which
10 contains a description of the collateral and in addition,
11 when the security interest covers crops or oil, gas or min-
12 erals to be extracted or timber to be cut, a description of
13 the land concerned. In describing collateral, the word
14 “proceeds” is sufficient without further description to
15 cover proceeds of any character.

16 (2) A transaction may be subject to this article and
17 also to Article 7A of Chapter 47 relating to small loans
18 and in case of conflict between the provisions of this ar-
19 ticle and said Article 7A or any other such statute, the
20 provisions of said Article 7A or such other statute control.
21 Failure to comply with any applicable statute has only the
22 effect which is specified therein.

Sec. 9-204. When Security Interest Attaches; After-
2 **Acquired Property; Future Advances.**—(1) A security in-
3 terest cannot attach until there is agreement (subsection
4 (3) of Section 1-201) that it attach and value is given and
5 the debtor has rights in the collateral. It attaches as soon
6 as all of the events in the preceding sentence have taken
7 place unless explicit agreement postpones the time of at-
8 taching.

9 (2) For the purpose of this section the debtor has no
10 rights

11 (a) in crops until they are planted or otherwise be-
12 come growing crops, in the young of livestock until they
13 are conceived;

14 (b) in fish until caught, in oil, gas or minerals until
15 they are extracted, in timber until it is cut;

16 (c) in a contract right until the contract has been
17 made;

18 (d) in an account until it comes into existence.

19 (3) Except as provided in subsection (4) a security
20 agreement may provide that collateral, whenever ac-
21 quired, shall secure all obligations covered by the security
22 agreement.

23 (4) No security interest attaches under an after-
24 acquired property clause

25 (a) to crops which become such more than one year
26 after the security agreement is executed except that a
27 security interest in crops which is given in conjunction
28 with a lease or a land purchase or improvement trans-
29 action evidenced by a contract, mortgage or deed of
30 trust may if so agreed attach to crops to be grown on
31 the land concerned during the period of such real es-
32 tate transaction;

33 (b) to consumer goods other than accessions (Sec-
34 tion 9-314) when given as additional security unless the
35 debtor acquires rights in them within ten days after the
36 secured party gives value.

37 (5) Obligations covered by a security agreement
38 may include future advances or other value whether or
39 not the advances or value are given pursuant to com-
40 mitment.

Sec. 9-205. Use or Disposition of Collateral without
2 **Accounting Permissible.**—A security interest is not in-
3 valid or fraudulent against creditors by reason of liberty
4 in the debtor to use, commingle or dispose of all or part
5 of the collateral (including returned or repossessed goods)
6 or to collect or compromise accounts, contract rights or
7 chattel paper, or to accept the return of goods or make
8 repossessions, or to use, commingle or dispose of proceeds.
9 or by reason of the failure of the secured party to require

10 the debtor to account for proceeds or replace collateral.
11 This section does not relax the requirements of possession
12 where perfection of a security interest depends upon pos-
13 session of the collateral by the secured party or by a
14 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.

16 (2) When a seller retains a purchase money security
17 interest in goods the article on Sales (Article 2) governs
18 the sale and any disclaimer, limitation or modification of
19 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.

8 (2) Unless otherwise agreed, when collateral is in the
9 secured party's possession

10 (a) reasonable expenses (including the cost of any in-
11 surance and payment of taxes or other charges) incurred
12 in the custody, preservation, use or operation of the col-
13 lateral are chargeable to the debtor and are secured by
14 the collateral;

15 (b) the risk of accidental loss or damage is on the

16 debtor to the extent of any deficiency in any effective in-
17 surance coverage;

18 (c) the secured party may hold as additional security
19 any increase or profits (except money) received from the
20 collateral, but money so received, unless remitted to the
21 debtor, shall be applied in reduction of the secured obli-
22 gation;

23 (d) the secured party must keep the collateral identi-
24 fiable but fungible collateral may be commingled;

25 (e) the secured party may repledge the collateral upon
26 terms which do not impair the debtor's right to redeem
27 it.

28 (3) A secured party is liable for any loss caused by his
29 failure to meet any obligation imposed by the preceding
30 subsections but does not lose his security interest.

31 (4) A secured party may use or operate the collateral
32 for the purpose of preserving the collateral or its value
33 or pursuant to the order of a court of appropriate juris-
34 diction or, except in the case of consumer goods, in the
35 manner and to the extent provided in the security agree-
36 ment.

**Sec. 9-208. Request for Statement of Account or List
2 of Collateral.—**(1) A debtor may sign a statement indi-
3 cating what he believes to be the aggregate amount of
4 unpaid indebtedness as of a specified date and may send
5 it to the secured party with a request that the statement
6 be approved or corrected and returned to the debtor.
7 When the security agreement or any other record kept
8 by the secured party identifies the collateral a debtor
9 may similarly request the secured party to approve or
10 correct a list of the collateral.

11 (2) The secured party must comply with such a re-
12 quest within two weeks after receipt by sending a writ-
13 ten correction or approval. If the secured party claims
14 a security interest in all of a particular type of collateral
15 owned by the debtor he may indicate that fact in his
16 reply and need not approve or correct an itemized list
17 of such collateral. If the secured party without reason-
18 able excuse fails to comply he is liable for any loss
19 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 secured 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 obligation 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 successor 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 dollars 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 Unperfected 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 perfected;

(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 perfected;

(d) in the case of accounts, contract rights, and general 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-

22 chase money security interest before or within ten days
23 after the collateral comes into possession of the debtor,
24 he takes priority over the rights of a transferee in bulk
25 or of a lien creditor which arise between the time the
26 security interest attaches and the time of filing.

27 (3) A "lien creditor" means a creditor who has ac-
28 quired a lien on the property involved by attachment,
29 levy or the like and includes an assignee for benefit of
30 creditors from the time of assignment, and a trustee in
31 bankruptcy from the date of the filing of the petition
32 or a receiver in equity from the time of appointment.
33 Unless all the creditors represented had knowledge of
34 the security interest such a representative of creditors
35 is a lien creditor without knowledge even though he
36 personally has knowledge of the security interest.

Sec. 9-302. When Filing Is Required to Perfect Security
2 **Interest; Security Interests to Which Filing Provisions of**
3 **This Article Do Not Apply.**—(1) A financing statement
4 must be filed to perfect all security interests except the
5 following:

6 (a) a security interest in collateral in possession of
7 the secured party under Section 9-305;

8 (b) a security interest temporarily perfected in in-
9 struments or documents without delivery under Section
10 9-304 or in proceeds for a ten day period under Section
11 9-306;

12 (c) a purchase money security interest in farm
13 equipment having a purchase price not in excess of \$2500;
14 but filing is required for a fixture under Section 9-313
15 or for a motor vehicle required to be licensed;

16 (d) a purchase money security interest in consumer
17 goods; but filing is required for a fixture under Section
18 9-313 or for a motor vehicle required to be licensed;

19 (e) an assignment of accounts or contract rights
20 which does not alone or in conjunction with other assign-
21 ments to the same assignee transfer a significant part
22 of the outstanding accounts or contract rights of the
23 assignor;

24 (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 nation-
35 al 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 indica-
43 tion 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; Conti-
2 **nuity of Perfection.**—(1) A security interest is perfected
3 when it has attached and when all of the applicable steps
4 required for perfection have been taken. Such steps are
5 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 Instru-
2 **ments, Documents, and Goods Covered by Documents;**
3 **Perfection by Permissive Filing; Temporary Perfection**
4 **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

7 (other than instruments which constitute part of chattel
8 paper) can be perfected only by the secured party's tak-
9 ing possession, except as provided in subsections (4) and
10 (5).

11 (2) During the period that goods are in the possession
12 of the issuer of a negotiable document therefor, a security
13 interest in the goods is perfected by perfecting a security
14 interest in the document, and any security interest in the
15 goods otherwise perfected during such period is subject
16 thereto.

17 (3) A security interest in goods in the possession of a
18 bailee other than one who has issued a negotiable docu-
19 ment therefor is perfected by issuance of a document in
20 the name of the secured party or by the bailee's receipt
21 of notification of the secured party's interest or by filing
22 as to the goods.

23 (4) A security interest in instruments or negotiable
24 documents is perfected without filing or the taking of pos-
25 session for a period of 21 days from the time it attaches
26 to the extent that it arises for new value given under a
27 written security agreement.

28 (5) A security interest remains perfected for a period
29 of 21 days without filing where a secured party having a
30 perfected security interest in an instrument, a negotiable
31 document or goods in possession of a bailee other than one
32 who has issued a negotiable document therefor

33 (a) makes available to the debtor the goods or docu-
34 ments representing the goods for the purpose of ultimate
35 sale or exchange or for the purpose of loading, unloading,
36 storing, shipping, transshipping, manufacturing, process-
37 ing or otherwise dealing with them in a manner prelimi-
38 nary to their sale or exchange; or

39 (b) delivers the instrument to the debtor for the pur-
40 pose of ultimate sale or exchange or of presentation, col-
41 lection, renewal or registration of transfer.

42 (6) After the 21 day period in subsections (4) and (5)
43 perfection depends upon compliance with applicable pro-
44 visions of this article.

Sec. 9-305. When Possession by Secured Party Perfects
2 **Security Interest without Filing.**—A security interest in

3 letters of credit and advices of credit (subsection (2)
4 (a) of Section 5-116), goods, instruments, negotiable
5 documents or chattel paper may be perfected by the se-
6 cured party's taking possession of the collateral. If such
7 collateral other than goods covered by a negotiable doc-
8 ument is held by a bailee, the secured party is deemed
9 to have possession from the time the bailee receives
10 notification of the secured party's interest. A security
11 interest is perfected by possession from the time pos-
12 session is taken without relation back and continues only
13 so long as possession is retained, unless otherwise speci-
14 fied in this article. The security interest may be other-
15 wise perfected as provided in this article before or after
16 the period of possession by the secured party.

Sec. 9-306. "Proceeds"; Secured Party's Rights on Dis-
2 **position of Collateral.**—(1) "Proceeds" includes whatever
3 is received when collateral or proceeds is sold, exchanged,
4 collected or otherwise disposed of. The term also in-
5 cludes the account arising when the right to payment is
6 earned under a contract right. Money, checks and the
7 like are "cash proceeds". All other proceeds are "non-
8 cash proceeds".

9 (2) Except where this article otherwise provides,
10 a security interest continues in collateral notwithstand-
11 ing sale, exchange or other disposition thereof by the
12 debtor unless his action was authorized by the secured
13 party in the security agreement or otherwise, and also
14 continues in any identifiable proceeds including collec-
15 tions received by the debtor.

16 (3) The security interest in proceeds is a continuous-
17 ly perfected security interest if the interest in the origi-
18 nal collateral was perfected but it ceases to be a perfected
19 security interest and becomes unperfected ten days after
20 receipt of the proceeds by the debtor unless

21 (a) a filed financing statement covering the original
22 collateral also covers proceeds; or

23 (b) the security interest in the proceeds is perfected
24 before the expiration of the ten day period.

25 (4) In the event of insolvency proceedings instituted
26 by or against a debtor, a secured party with a perfected

27 security interest in proceeds has a perfected security
28 interest

29 (a) in identifiable non-cash proceeds;

30 (b) in identifiable cash proceeds in the form of money
31 which is not commingled with other money or deposited
32 in a bank account prior to the insolvency proceedings;

33 (c) in identifiable cash proceeds in the form of checks
34 and the like which are not deposited in a bank account
35 prior to the insolvency proceedings; and

36 (d) in all cash and bank accounts of the debtor, if
37 other cash proceeds have been commingled or deposited
38 in a bank account, but the perfected security interest
39 under this paragraph (d) is

40 (i) subject to any right of set-off; and

41 (ii) limited to an amount not greater than the
42 amount of any cash proceeds received by the debtor
43 within ten days before the institution of the insolvency
44 proceedings and commingled or deposited in a bank
45 account prior to the insolvency proceedings less the
46 amount of cash proceeds received by the debtor and paid
47 over to the secured party during the ten day period.

48 (5) If a sale of goods results in an account or chattel
49 paper which is transferred by the seller to a secured
50 party, and if the goods are returned to or are repossessed
51 by the seller or the secured party, the following rules
52 determine priorities:

53 (a) If the goods were collateral at the time of sale
54 for an indebtedness of the seller which is still unpaid,
55 the original security interest attaches again to the goods
56 and continues as a perfected security interest if it was
57 perfected at the time when the goods were sold. If the
58 security interest was originally perfected by a filing
59 which is still effective, nothing further is required to
60 continue the perfected status; in any other case, the se-
61 cured party must take possession of the returned or
62 repossessed goods or must file.

63 (b) An unpaid transferee of the chattel paper has
64 a security interest in the goods against the transferor.
65 Such security interest is prior to a security interest
66 asserted under paragraph (a) to the extent that the

67 transferee of the chattel paper was entitled to priority
68 under Section 9-308.

69 (c) An unpaid transferee of the account has a security
70 interest in the goods against the transferor. Such secu-
71 rity interest is subordinate to a security interest asserted
72 under paragraph (a).

73 (d) A security interest of an unpaid transferee as-
74 serted under paragraph (b) or (c) must be perfected
75 for protection against creditors of the transferor and
76 purchasers of the returned or repossessed goods.

Sec. 9-307. Protection of Buyers of Goods.—(1) A buyer
2 in ordinary course of business (subsection (9) of Section
3 1-201) other than a person buying farm products from a
4 person engaged in farming operations takes free of a se-
5 curity interest created by his seller even though the secu-
6 rity interest is perfected and even though the buyer
7 knows of its existence.

8 (2) In the case of consumer goods and in the case of
9 farm equipment having an original purchase price not in
10 excess of \$2500 (other than fixtures, see Section 9-313), a
11 buyer takes free of a security interest even though per-
12 fected if he buys without knowledge of the security in-
13 terest, for value and for his own personal, family or house-
14 hold purposes or his own farming operations unless prior
15 to the purchase the secured party has filed a financing
16 statement covering such goods.

Sec. 9-308. Purchase of Chattel Paper and Non-Nego-
2 **tiable Instruments.**—A purchaser of chattel paper or a
3 non-negotiable instrument who gives new value and takes
4 possession of it in the ordinary course of his business and
5 without knowledge that the specific paper or instrument
6 is subject to a security interest has priority over a secu-
7 rity interest which is perfected under Section 9-304 (per-
8 missive filing and temporary perfection). A purchaser
9 of chattel paper who gives new value and takes possession
10 of it in the ordinary course of his business has priority
11 over a security interest in chattel paper which is claimed
12 merely as proceeds of inventory subject to a security in-
13 terest (Section 9-306), even though he knows that the
14 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 possessory 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-

16 314 on security interests in accessions as against interest
17 in goods; Section 9-315 on conflicting security interests
18 where goods lose their identity or become part of a pro-
19 duct; and Section 9-316 on contractual subordination.

20 (2) A perfected security interest in crops for new
21 value given to enable the debtor to produce the crops dur-
22 ing the production season and given not more than three
23 months before the crops become growing crops by plant-
24 ing or otherwise takes priority over an earlier perfected
25 security interest to the extent that such earlier interest
26 secures obligations due more than six months before the
27 crops become growing crops by planting or otherwise,
28 even though the person giving new value had knowledge
29 of the earlier security interest.

30 (3) A purchase money security interest in inventory
31 collateral has priority over a conflicting security interest
32 in the same collateral if

33 (a) the purchase money security interest is perfected
34 at the time the debtor receives possession of the collat-
35 eral; and

36 (b) any secured party whose security interest is
37 known to the holder of the purchase money security in-
38 terest or who, prior to the date of the filing made by the
39 holder of the purchase money security interest, had filed
40 a financing statement covering the same items or type of
41 inventory, has received notification of the purchase money
42 security interest before the debtor receives possession of
43 the collateral covered by the purchase money security
44 interest; and

45 (c) such notification states that the person giving the
46 notice has or expects to acquire a purchase money secur-
47 ity interest in inventory of the debtor, describing such in-
48 ventory by item or type.

49 (4) A purchase money security interest in collateral
50 other than inventory has priority over a conflicting secu-
51 rity interest in the same collateral if the purchase money
52 security interest is perfected at the time the debtor re-
53 ceives possession of the collateral or within ten days there-
54 after.

55 (5) In all cases not governed by other rules stated in

56 this section (including cases of purchase money security
57 interests which do not qualify for the special priorities set
58 forth in subsections (3) and (4) of this section), priority
59 between conflicting security interests in the same collat-
60 eral shall be determined as follows:

61 (a) in the order of filing if both are perfected by filing,
62 regardless of which security interest attached first under
63 Section 9-204(1) and whether it attached before or after
64 filing;

65 (b) in the order of perfection unless both are per-
66 fected by filing, regardless of which security interest at-
67 tached first under Section 9-204(1) and, in the case of a
68 filed security interest, whether it attached before or after
69 filing; and

70 (c) in the order of attachment under Section 9-204(1)
71 so long as neither is perfected.

72 (6) For the purpose of the priority rules of the im-
73 mediately preceding subsection, a continuously perfected
74 security interest shall be treated at all times as if per-
75 fected by filing if it was originally so perfected and it shall
76 be treated at all times as if perfected otherwise than by
77 filing if it was originally perfected otherwise than by fil-
78 ing.

Sec. 9-313. Priority of Security Interests in Fixtures.—

2 (1) The rules of this section do not apply to goods incor-
3 porated into a structure in the manner of lumber, bricks,
4 tile, cement, glass, metal work and the like and no secu-
5 rity interest in them exists under this article unless the
6 structure remains personal property under applicable law.
7 The law of this state other than this chapter determines
8 whether and when other goods become fixtures. This
9 article does not prevent creation of an encumbrance upon
10 fixtures or real estate pursuant to the law applicable to
11 real estate.

12 (2) A security interest which attaches to goods before
13 they become fixtures takes priority as to the goods over
14 the claims of all persons who have an interest in the real
15 estate except as stated in subsection (4).

16 (3) A security interest which attaches to goods after
17 they become fixtures is valid against all persons subse-

18 quently 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
21 interest attaches to the goods who has not in writing con-
22 sented to the security interest or disclaimed an interest in
23 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

5 of all persons to the whole except as stated in subsection
6 (3) and subject to Section 9-315(1).

7 (2) A security interest which attaches to goods after
8 they become part of a whole is valid against all persons
9 subsequently acquiring interests in the whole except as
10 stated in subsection (3) but is invalid against any person
11 with an interest in the whole at the time the security in-
12 terest attaches to the goods who has not in writing con-
13 sented to the security interest or disclaimed an interest in
14 the goods as part of the whole.

15 (3) The security interests described in subsections (1)
16 and (2) do not take priority over

17 (a) a subsequent purchaser for value of any interest in
18 the whole; or

19 (b) a creditor with a lien on the whole subsequently
20 obtained by judicial proceedings; or

21 (c) a creditor with a prior perfected security interest
22 in the whole to the extent that he makes subsequent ad-
23 vances

24 if the subsequent purchase is made, the lien by judicial
25 proceedings obtained or the subsequent advance under
26 the prior perfected security interest is made or contracted
27 for without knowledge of the security interest and before
28 it is perfected. A purchaser of the whole at a foreclosure
29 sale other than the holder of a perfected security interest
30 purchasing at his own foreclosure sale is a subsequent
31 purchaser within this section.

32 (4) When under subsections (1) or (2) and (3) a se-
33 cured party has an interest in accessions which has prior-
34 ity over the claims of all persons who have interests in
35 the whole, he may on default subject to the provisions of
36 Part 5 remove his collateral from the whole but he must
37 reimburse any encumbrancer or owner of the whole who
38 is not the debtor and who has not otherwise agreed for the
39 cost of repair of any physical injury but not for any di-
40 minution in value of the whole caused by the absence of
41 the goods removed or by any necessity for replacing them.
42 A person entitled to reimbursement may refuse permis-
43 sion to remove until the secured party gives adequate se-
44 curity for the performance of this obligation.

Sec. 9-315. Priority When Goods Are Commingled or

2 **Processed.**—(1) If a security interest in goods was per-
3 fected and subsequently the goods or a part thereof have
4 become part of a product or mass, the security interest
5 continues in the product or mass if

6 (a) the goods are so manufactured, processed, assem-
7 bled or commingled that their identity is lost in the pro-
8 duct or mass; or

9 (b) a financing statement covering the original goods
10 also covers the product into which the goods have been
11 manufactured, processed or assembled.

12 In a case to which paragraph (b) applies, no separate se-
13 curity interest in that part of the original goods which has
14 been manufactured, processed or assembled into the pro-
15 duct may be claimed under Section 9-314.

16 (2) When under subsection (1) more than one secu-
17 rity interest attaches to the product or mass, they rank
18 equally according to the ratio that the cost of the goods
19 to which each interest originally attached bears to the
20 cost of the total product or mass.

Sec. 9-316. Priority Subject to Subordination.—Nothing

2 in this article prevents subordination by agreement by
3 any person entitled to priority.

Sec. 9-317. Secured Party Not Obligated on Contract of

2 **Debtor.**—The mere existence of a security interest or
3 authority given to the debtor to dispose of or use collat-
4 eral does not impose contract or tort liability upon the
5 secured party for the debtor's acts or omissions.

Sec. 9-318. Defenses Against Assignee; Modification of

2 **Contract After Notification of Assignment; Term Pro-**
3 **hibiting Assignment Ineffective; Identification and Proof**
4 **of Assignment.**—(1) Unless an account debtor has made
5 an enforceable agreement not to assert defenses or claims
6 arising out of a sale as provided in Section 9-206 the rights
7 of an assignee are subject to

8 (a) all the terms of the contract between the account
9 debtor and assignor and any defense or claim arising
10 therefrom; and

11 (b) any other defense or claim of the account debtor

12 against the assignor which accrues before the account
13 debtor receives notification of the assignment.

14 (2) So far as the right to payment under an assigned
15 contract right has not already become an account, and
16 notwithstanding notification of the assignment, any modi-
17 fication of or substitution for the contract made in good
18 faith and in accordance with reasonable commercial stand-
19 ards is effective against an assignee unless the account
20 debtor has otherwise agreed but the assignee acquires
21 corresponding rights under the modified or substituted
22 contract. The assignment may provide that such modifi-
23 cation or substitution is a breach by the assignor.

24 (3) The account debtor is authorized to pay the as-
25 signor until the account debtor receives notification that
26 the account has been assigned and that payment is to be
27 made to the assignee. A notification which does not rea-
28 sonably identify the rights assigned is ineffective. If re-
29 quested by the account debtor, the assignee must season-
30 ably furnish reasonable proof that the assignment has
31 been made and unless he does so the account debtor may
32 pay the assignor.

33 (4) A term in any contract between an account debtor
34 and an assignor which prohibits assignment of an account
35 or contract right to which they are parties is ineffective.

PART 4. FILING

**Sec. 9-401. Place of Filing; Erroneous Filing; Removal
2 of Collateral.—**(1) The proper place to file in order to
3 perfect a security interest is as follows:

4 (a) when the collateral is equipment used in farm-
5 ing operations, or farm products, or accounts, contract
6 rights or general intangibles arising from or relating
7 to the sale of farm products by a farmer, or consumer
8 goods, then in the office of the county clerk in the county
9 of the debtor's residence or if the debtor is not a resi-
10 dent of this state then in the office of the county clerk
11 in the county where the goods are kept, and in addition
12 when the collateral is crops in the office of the county
13 clerk in the county where the land on which the crops
14 are growing or to be grown is located;

15 (b) when the collateral is goods which at the time
16 the security interest attaches are or are to become fix-
17 tures, then in the office where a mortgage on the real
18 estate concerned would be filed or recorded;

19 (c) in all other cases, in the office of the secretary
20 of state and in addition, if the debtor has a place of
21 business in only one county of this state, also in the
22 office of the county clerk of such county, or, if the debtor
23 has no place of business in this state, but resides in the
24 state, also in the office of the county clerk of the county
25 in which he resides.

26 (2) A filing which is made in good faith in an im-
27 proper place or not in all of the places required by this
28 section is nevertheless effective with regard to any col-
29 lateral as to which the filing complied with the require-
30 ments of this article and is also effective with regard to
31 collateral covered by the financing statement against
32 any person who has knowledge of the contents of such
33 financing statement.

34 (3) A filing which is made in the proper county con-
35 tinues effective for four months after a change to an-
36 other county of the debtor's residence or place of busi-
37 ness or the location of the collateral, whichever con-
38 trolled the original filing. It becomes ineffective there-
39 after unless a copy of the financing statement signed by
40 the secured party is filed in the new county within said
41 period. The security interest may also be perfected in
42 the new county after the expiration of the four-month
43 period; in such case perfection dates from the time of
44 perfection in the new county. A change in the use of
45 the collateral does not impair the effectiveness of the
46 original filing.

47 (4) If collateral is brought into this state from an-
48 other jurisdiction, the rules stated in Section 9-103 de-
49 termine whether filing is necessary in this state.

Sec. 9-402. Formal Requisites of Financing Statement;

2 **Amendments.**—(1) A financing statement is sufficient if
3 it is signed by the debtor and the secured party, gives
4 an address of the secured party from which information
5 concerning the security interest may be obtained, gives

6 a mailing address of the debtor and contains a state-
7 ment indicating the types, or describing the items, of
8 collateral. A financing statement may be filed before a
9 security agreement is made or a security interest other-
10 wise attaches. When the financing statement covers
11 crops growing or to be grown or goods which are or are
12 to become fixtures, the statement must also contain a
13 description of the real estate concerned. A copy of the
14 security agreement is sufficient as a financing statement
15 if it contains the above information and is signed by
16 both parties.

17 (2) A financing statement which otherwise complies
18 with subsection (1) is sufficient although it is signed
19 only by the secured party when it is filed to perfect a
20 security interest in

21 (a) collateral already subject to a security interest
22 in another jurisdiction when it is brought into this state.
23 Such a financing statement must state that the collateral
24 was brought into this state under such circumstances.

25 (b) proceeds under Section 9-306 if the security in-
26 terest in the original collateral was perfected. Such a
27 financing statement must describe the original collateral.

28 (3) A form substantially as follows is sufficient to
29 comply with subsection (1):

30 Name of debtor (or assignor)

31 Address

32 Name of secured party (or assignee)

33 Address

34 1. This financing statement covers the following types
35 (or items) of property:

36 (Describe)

37 2. (If collateral is crops) The above described crops
38 are growing or are to be grown on:

39 (Describe Real Estate)

40 3. (If collateral is goods which are or are to become
41 fixtures) The above described goods are affixed or to be
42 affixed to:

43 (Describe Real Estate)

44 4. (If proceeds or products of collateral are claimed)

45 Proceeds—Products of the collateral are also covered.

46 Signature of Debtor (or Assignor)

47 Signature of Secured Party (or Assignee)

48 (4) The term “financing statement” as used in this
49 article means the original financing statement and any
50 amendments but if any amendment adds collateral, it
51 is effective as to the added collateral only from the filing
52 date of the amendment.

53 (5) A financing statement substantially complying
54 with the requirements of this section is effective even
55 though it contains minor errors which are not seriously
56 misleading.

**Sec. 9-403. What Constitutes Filing; Duration of Filing;
2 Effect of Lapsed Filing; Duties of Filing Officer.**—(1) Pre-
3 sentation for filing of a financing statement and tender
4 of the filing fee or acceptance of the statement by the
5 filing officer constitutes filing under this article.

6 (2) A filed financing statement which states a matur-
7 ity date of the obligation secured of five years or less is
8 effective until such maturity date and thereafter for a
9 period of sixty days. Any other filed financing state-
10 ment is effective for a period of five years from the date
11 of filing. The effectiveness of a filed financing state-
12 ment lapses on the expiration of such sixty day period
13 after a stated maturity date or on the expiration of such
14 five year period, as the case may be, unless a continu-
15 ation statement is filed prior to the lapse. Upon such
16 lapse the security interest becomes unperfected. A filed
17 financing statement which states that the obligation se-
18 cured is payable on demand is effective for five years
19 from the date of filing.

20 (3) A continuation statement may be filed by the
21 secured party (i) within six months before and sixty
22 days after a stated maturity date of five years or less,
23 and (ii) otherwise within six months prior to the ex-
24 piration of the five year period specified in subsection
25 (2). Any such continuation statement must be signed
26 by the secured party, identify the original statement by
27 file number and state that the original statement is still
28 effective. Upon timely filing of the continuation state-

29 ment, the effectiveness of the original statement is con-
30 tinued for five years after the last date to which the filing
31 was effective whereupon it lapses in the same manner
32 as provided in subsection (2) unless another continu-
33 ation statement is filed prior to such lapse. Succeeding
34 continuation statements may be filed in the same man-
35 ner to continue the effectiveness of the original state-
36 ment. Unless a statute on disposition of public records
37 provides otherwise, the filing officer may remove a lapsed
38 statement from the files and destroy it.

39 (4) A filing officer shall mark each statement with a
40 consecutive file number and with the date and hour of
41 filing and shall hold the statement for public inspection.
42 In addition the filing officer shall index the statements
43 according to the name of the debtor and shall note in the
44 index the file number and the address of the debtor
45 given in the statement.

46 (5) The uniform fee for filing, indexing and furnish-
47 ing filing data for an original or a continuation state-
48 ment shall be \$1.00.

Sec. 9-404. Termination Statement.—(1) Whenever
2 there is no outstanding secured obligation and no com-
3 mitment to make advances, incur obligations or other-
4 wise give value, the secured party must on written de-
5 mand by the debtor send the debtor a statement that he
6 no longer claims a security interest under the financing
7 statement, which shall be identified by file number. A
8 termination statement signed by a person other than
9 the secured party of record must include or be accom-
10 panied by the assignment or a statement by the secured
11 party of record that he has assigned the security interest
12 to the signer of the termination statement. The uni-
13 form fee for filing and indexing such an assignment or
14 statement thereof shall be \$1.00. If the affected secured
15 party fails to send such a termination statement within
16 ten days after proper demand therefor he shall be liable
17 to the debtor for one hundred dollars, and in addition
18 for any loss caused to the debtor by such failure.

19 (2) On presentation to the filing officer of such a
20 termination statement he must note it in the index. The

21 filing officer shall remove from the files, mark "terminated"
22 and send or deliver to the secured party the
23 financing statement and any continuation statement,
24 statement of assignment or statement of release pertaining
25 thereto.

26 (3) The uniform fee for filing and indexing a termination
27 statement including sending or delivering the
28 financing statement shall be \$1.00.

Sec. 9-405. Assignment of Security Interest; Duties of

2 **Filing Officer; Fees.**—(1) A financing statement may dis-
3 close an assignment of a security interest in the collateral
4 described in the statement by indication in the statement
5 of the name and address of the assignee or by an assign-
6 ment itself or a copy thereof on the face or back of the
7 statement. Either the original secured party or the as-
8 signee may sign this statement as the secured party. On
9 presentation to the filing officer of such a financing state-
10 ment the filing officer shall mark the same as provided in
11 Section 9-403(4). The uniform fee for filing, indexing
12 and furnishing filing data for a financing statement so in-
13 dicating an assignment shall be \$1.00.

14 (2) A secured party may assign of record all or a part
15 of his rights under a financing statement by the filing of
16 a separate written statement of assignment signed by the
17 secured party of record and setting forth the name of the
18 secured party of record and the debtor, the file number
19 and the date of filing of the financing statement and the
20 name and address of the assignee and containing a de-
21 scription of the collateral assigned. A copy of the as-
22 signment is sufficient as a separate statement if it com-
23 plies with the preceding sentence. On presentation to the
24 filing officer of such a separate statement, the filing officer
25 shall mark such separate statement with the date and
26 hour of the filing. He shall note the assignment on the
27 index of the financing statement. The uniform fee for
28 filing, indexing and furnishing filing data about such a
29 separate statement of assignment shall be \$1.00.

30 (3) After the disclosure or filing of an assignment un-
31 der this section, the assignee is the secured party of rec-
32 ord.

Sec. 9-406. Release of Collateral; Duties of Filing Officer;

2 **Fees.**—A secured party of record may by his signed state-
3 ment release all or a part of any collateral described in a
4 filed financing statement. The statement of release is suf-
5 ficient if it contains a description of the collateral being
6 released, the name and address of the debtor, the name
7 and address of the secured party, and the file number of
8 the financing statement. Upon presentation of such a
9 statement to the filing officer he shall mark the statement
10 with the hour and date of filing and shall note the same
11 upon the margin of the index of the filing of the financing
12 statement. The uniform fee for filing and noting such a
13 statement of release shall be \$1.00.

PART 5. DEFAULT**Sec. 9-501. Default; Procedure When Security Agree-**
2 **ment Covers Both Real and Personal Property.**—(1) When

3 a debtor is in default under a security agreement, a se-
4 cured party has the rights and remedies provided in this
5 part and except as limited by subsection (3) those pro-
6 vided in the security agreement. He may reduce his
7 claim to judgment, foreclose or otherwise enforce the se-
8 curity interest by any available judicial procedure. If
9 the collateral is documents the secured party may pro-
10 ceed either as to the documents or as to the goods covered
11 thereby. A secured party in possession has the rights,
12 remedies and duties provided in Section 9-207. The rights
13 and remedies referred to in this subsection are cumula-
14 tive.

15 (2) After default, the debtor has the rights and rem-
16 edies provided in this part, those provided in the security
17 agreement and those provided in Section 9-207.

18 (3) To the extent that they give rights to the debtor
19 and impose duties on the secured party, the rules stated
20 in the subsections referred to below may not be waived
21 or varied except as provided with respect to compulsory
22 disposition of collateral (subsection (1) of Section 9-505)
23 and with respect to redemption of collateral (Section 9-
24 506) but the parties may by agreement determine the
25 standards by which the fulfillment of these rights and

26 duties is to be measured if such standards are not mani-
27 festly unreasonable:

28 (a) subsection (2) of Section 9-502 and subsection (2)
29 of Section 9-504 insofar as they require accounting for
30 surplus proceeds of collateral;

31 (b) subsection (3) of Section 9-504 and subsection (1)
32 of Section 9-505 which deal with disposition of collateral;

33 (c) subsection (2) of Section 9-505 which deals with
34 acceptance of collateral as discharge of obligation;

35 (d) Section 9-506 which deals with redemption of col-
36 lateral; and

37 (e) subsection (1) of Section 9-507 which deals with
38 the secured party's liability for failure to comply with this
39 part.

40 (4) If the security agreement covers both real and
41 personal property, the secured party may proceed under
42 this part as to the personal property or he may proceed as
43 to both the real and the personal property in accordance
44 with his rights and remedies in respect of the real prop-
45 erty in which case the provisions of this part do not apply.

46 (5) When a secured party has reduced his claim to
47 judgment the lien of any levy which may be made upon
48 his collateral by virtue of any execution based upon the
49 judgment shall relate back to the date of the perfection
50 of the security interest in such collateral. A judicial sale,
51 pursuant to such execution, is a foreclosure of the security
52 interest by judicial procedure within the meaning of this
53 section, and the secured party may purchase at the sale
54 and thereafter hold the collateral free of any other re-
55 quirements of this article.

Sec. 9-502. Collection Rights of Secured Party.—(1)

2 When so agreed and in any event on default the secured
3 party is entitled to notify an account debtor or the
4 obligor on an instrument to make payment to him
5 whether or not the assignor was theretofore making
6 collections on the collateral, and also to take control of
7 any proceeds to which he is entitled under Section 9-306.

8 (2) A secured party who by agreement is entitled
9 to charge back uncollected collateral or otherwise to full

10 or limited recourse against the debtor and who under-
11 takes to collect from the account debtors or obligors
12 must proceed in a commercially reasonable manner and
13 may deduct his reasonable expenses of realization from
14 the collections. If the security agreement secures an
15 indebtedness, the secured party must account to the
16 debtor for any surplus, and unless otherwise agreed, the
17 debtor is liable for any deficiency. But, if the under-
18 lying transaction was a sale of accounts, contract rights,
19 or chattel paper, the debtor is entitled to any surplus
20 or is liable for any deficiency only if the security agree-
21 ment so provides.

Sec. 9-503. Secured Party's Right to Take Possession
2 **After Default.**—Unless otherwise agreed a secured party
3 has on default the right to take possession of the col-
4 lateral. In taking possession a secured party may pro-
5 ceed without judicial process if this can be done without
6 breach of the peace or may proceed by action. If the
7 security agreement so provides the secured party may
8 require the debtor to assemble the collateral and make
9 it available to the secured party at a place to be desig-
10 nated by the secured party which is reasonably con-
11 venient to both parties. Without removal a secured
12 party may render equipment unusable, and may dispose
13 of collateral on the debtor's premises under Section 9-504.

**Sec. 9-504. Secured Party's Right to Dispose of Collat-
2 eral After Default; Effect of Disposition.**—(1) A secured
3 party after default may sell, lease or otherwise dispose
4 of any or all of the collateral in its then condition or
5 following any commercially reasonable preparation or
6 processing. Any sale of goods is subject to the Article
7 on Sales (Article 2). The proceeds of disposition shall
8 be applied in the order following to

9 (a) the reasonable expenses of retaking, holding,
10 preparing for sale, selling and the like and, to the extent
11 provided for in the agreement and not prohibited by law,
12 the reasonable attorneys' fees and legal expenses in-
13 curred by the secured party;

14 (b) the satisfaction of indebtedness secured by the
15 security interest under which the disposition is made;

16 (c) the satisfaction of indebtedness secured by any
17 subordinate security interest in the collateral if written
18 notification of demand therefor is received before dis-
19 tribution of the proceeds is completed. If requested by
20 the secured party, the holder of a subordinate security
21 interest must seasonably furnish reasonable proof of
22 his interest, and unless he does so, the secured party
23 need not comply with his demand.

24 (2) If the security interest secures an indebtedness,
25 the secured party must account to the debtor for any
26 surplus, and, unless otherwise agreed, the debtor is liable
27 for any deficiency. But if the underlying transaction was
28 a sale of accounts, contract rights, or chattel paper, the
29 debtor is entitled to any surplus or is liable for any
30 deficiency only if the security agreement so provides.

31 (3) Disposition of the collateral may be by public or
32 private proceedings and may be made by way of one or
33 more contracts. Sale or other disposition may be as a
34 unit or in parcels and at any time and place and on any
35 terms but every aspect of the disposition including the
36 method, manner, time, place and terms must be com-
37 mercially reasonable. Unless collateral is perishable or
38 threatens to decline speedily in value or is of a type
39 customarily sold on a recognized market, reasonable
40 notification of the time and place of any public sale or
41 reasonable notification of the time after which any pri-
42 vate sale or other intended disposition is to be made
43 shall be sent by the secured party to the debtor, and ex-
44 cept in the case of consumer goods to any other person
45 who has a security interest in the collateral and who
46 has duly filed a financing statement indexed in the name
47 of the debtor in this state or who is known by the se-
48 cured party to have a security interest in the collateral.
49 The secured party may buy at any public sale and if the
50 collateral is of a type customarily sold in a recognized
51 market or is of a type which is the subject of widely dis-
52 tributed standard price quotations he may buy at private
53 sale.

54 (4) When collateral is disposed of by a secured party
55 after default the disposition transfers to a purchaser for

56 value all of the debtor's rights therein, discharges the
57 security interest under which it is made and any se-
58 curity interest or lien subordinate thereto. The pur-
59 chaser takes free of all such rights and interests even
60 though the secured party fails to comply with the re-
61 quirements of this part or of any judicial proceedings

62 (a) in the case of a public sale, if the purchaser has
63 no knowledge of any defects in the sale and if he does
64 not buy in collusion with the secured party, other bid-
65 ders or the person conducting the sale; or

66 (b) in any other case, if the purchaser acts in good
67 faith.

68 (5) A person who is liable to a secured party under
69 a guaranty, indorsement, repurchase agreement or the
70 like and who receives a transfer of collateral from the
71 secured party or is subrogated to his rights has there-
72 after the rights and duties of the secured party. Such
73 a transfer of collateral is not a sale or disposition of the
74 collateral under this article.

**Sec. 9-505. Compulsory Disposition of Collateral; Ac-
2 ceptance of the Collateral as Discharge of Obligation.—**

3 (1) If the debtor has paid sixty per cent of the cash
4 price in the case of a purchase money security interest
5 in consumer goods or sixty per cent of the loan in the
6 case of another security interest in consumer goods, and
7 has not signed after default a statement renouncing or
8 modifying his rights under this part a secured party
9 who has taken possession of collateral must dispose of
10 it under Section 9-504 and if he fails to do so within
11 ninety days after he takes possession the debtor at his
12 option may recover in conversion or under Section 9-
13 507 (1) on secured party's liability.

14 (2) In any other case involving consumer goods or
15 any other collateral a secured party in possession may,
16 after default, propose to retain the collateral in satis-
17 faction of the obligation. Written notice of such pro-
18 posal shall be sent to the debtor and except in the case
19 of consumer goods to any other secured party who has
20 a security interest in the collateral and who has duly
21 filed a financing statement indexed in the name of the

22 debtor in this state or is known by the secured party
23 in possession to have a security interest in it. If the
24 debtor or other person entitled to receive notification
25 objects in writing within thirty days from the receipt
26 of the notification or if any other secured party objects in
27 writing within thirty days after the secured party ob-
28 tains possession the secured party must dispose of the
29 collateral under Section 9-504. In the absence of such
30 written objection the secured party may retain the col-
31 lateral in satisfaction of the debtor's obligation.

Sec. 9-506. Debtor's Right to Redeem Collateral.—At
2 any time before the secured party has disposed of collat-
3 eral or entered into a contract for its disposition under
4 Section 9-504 or before the obligation has been discharged
5 under Section 9-505 (2) the debtor or any other secured
6 party may unless otherwise agreed in writing after de-
7 fault redeem the collateral by tendering fulfillment of
8 all obligations secured by the collateral as well as the
9 expenses reasonably incurred by the secured party in
10 retaking, holding and preparing the collateral for dis-
11 position, in arranging for the sale, and to the extent
12 provided in the agreement and not prohibited by law,
13 his reasonable attorneys' fees and legal expenses.

**Sec. 9-507. Secured Party's Liability for Failure to
2 Comply with This Part.**—(1) If it is established that the
3 secured party is not proceeding in accordance with the
4 provisions of this part disposition may be ordered or re-
5 strained on appropriate terms and conditions. If the
6 disposition has occurred the debtor or any person en-
7 titled to notification or whose security interest has been
8 made known to the secured party prior to the disposition
9 has a right to recover from the secured party any loss
10 caused by a failure to comply with the provisions of
11 this part. If the collateral is consumer goods, the debtor
12 has a right to recover in any event an amount not less
13 than the credit service charge plus ten per cent of the
14 principal amount of the debt or the time price differen-
15 tial plus ten per cent of the cash price.

16 (2) The fact that a better price could have been ob-
17 tained by a sale at a different time or in a different meth-

18 od from that selected by the secured party is not of it-
19 self sufficient to establish that the sale was not made in
20 a commercially reasonable manner. If the secured party
21 either sells the collateral in the usual manner in any
22 recognized market therefor or if he sells at the price
23 current in such market at the time of his sale or if he
24 has otherwise sold in conformity with reasonable com-
25 mercial practices among dealers in the type of property
26 sold he has sold in a commercially reasonable manner.
27 The principles stated in the two preceding sentences
28 with respect to sales also apply as may be appropriate
29 to other types of disposition. A disposition which has
30 been approved in any judicial proceeding or by any bona
31 fide creditors' committee or representative of creditors
32 shall conclusively be deemed to be commercially reason-
33 able, but this sentence does not indicate that any such
34 approval must be obtained in any case nor does it indi-
35 cate that any disposition not so approved is not com-
36 mercially reasonable.

Article 10. Effective Date and Repealer

Section

10-101. Effective date.

10-102. Specific repealer; provisions for transition.

10-103. General repealer.

10-104. Laws not repealed.

Section 10-101. Effective Date.—This chapter applies to
2 transactions entered into and events occurring after the
3 effective date thereof.

Sec. 10-102. Specific Repealer; Provisions for Transi-
2 **tion.**—(1) The following acts and all other acts and parts
3 of acts inconsistent herewith are hereby repealed:
4 (a) the Uniform Negotiable Instruments Act;
5 (b) the Uniform Warehouse Receipts Act;
6 (c) the Uniform Stock Transfer Act;
7 (d) the Uniform Conditional Sales Act;
8 (e) the Uniform Trust Receipts Act.
9 (2) Transactions validly entered into before the effec-
10 tive date specified in Section 10-101 and the rights, duties
11 and interest flowing from them remain valid thereafter
12 and may be terminated, completed, consummated or en-

13 forced as required or permitted by any statute or other
14 law amended or repealed by this chapter as though such
15 repeal or amendment had not occurred.

Sec. 10-103. General Repealer.—Except as provided in
2 the following section, all acts and parts of acts inconsis-
3 tent with this chapter are hereby repealed.

Sec. 10-104. Laws Not Repealed.—(1) The Article on
2 Documents of Title (Article 7) does not repeal or modify
3 any laws prescribing the form or contents of documents
4 of title or the services or facilities to be afforded by bail-
5 ees, or otherwise regulating bailees' businesses in respects
6 not specifically dealt with herein; but the fact that such
7 laws are violated does not affect the status of a document
8 of title which otherwise complies with the definition of a
9 document of title (Section 1-201).

10 (2) This chapter does not repeal Article 4D of Chap-
11 ter 31 cited as the Uniform Act for the Simplification of
12 Fiduciary Security Transfers, and if in any respect there
13 is any inconsistency between that article and the article
14 of this chapter on investment securities (Article 8) the
15 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, chapter 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 bequest 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

2 Power of Appointment.—A devise or bequest shall extend
3 to any real or personal estate which the testator has pow-
4 er to appoint as he may think proper, and to which it
5 would apply if the estate were his own property, and shall
6 be construed to operate as an exercise of such power with
7 respect to such property unless a contrary intention shall
8 appear by the will of said testator, or unless:

9 (a) The instrument creating said power of appointment
10 (whether said instrument was executed before or after
11 the effective date of this section) provides that such pow-
12 er must be specifically referred to and expressly exer-
13 cised; and

14 (b) The instrument creating said power of appointment
15 contains a provision disposing of said real or personal es-
16 tate in the event of the failure of the donee of the power
17 to so exercise said power.

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:

Article 1. General Administrative Provisions.

Section

1. Director of workmen's compensation; appointment; oath; bond; compensation; official seal; legal services; reference to commissioner deemed to mean director.

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

34 copies of orders, proceedings or records in the office of the
35 West Virginia director of workmen's compensation, shall
36 be equal to the original in evidence.

37 The attorney general shall perform all legal services
38 required by the director under the provisions of this
39 chapter: *Provided, however,* That in any case in which
40 an application for review is prosecuted from any final
41 decision of the workmen's compensation appeal board to
42 the supreme court of appeals, as provided by section four,
43 article five of this chapter, or in any court proceedings,
44 including a proceeding before the workmen's compensa-
45 tion appeal board, in which such representation shall ap-
46 pear to the director to be desirable, he may designate a
47 regular employee of his office, qualified to practice before
48 such court, to represent him upon such appeal or proceed-
49 ing, and in no case shall the person so appearing for the
50 director before the court receive remuneration therefor
51 other than his regular salary.

52 Wherever in this chapter or elsewhere in law reference
53 is made to "workmen's compensation commissioner" or
54 "compensation commissioner" such reference shall hence-
55 forth be construed and understood to mean "director of
56 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, improvement, 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.
9. Powers.
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.
21. Provisions severable.

Section 1. Board of Education Authorized to Create.—

- 2 The board of education of the county of Braxton is hereby
- 3 authorized to create and establish a public agency to be
- 4 known as the "Braxton County Four-H Club Development
- 5 Authority" (hereinafter called the authority) for the pur-
- 6 poses and in the manner hereinafter set forth.

Sec. 2. Purposes.—The authority is hereby authorized
2 and empowered to acquire, equip, construct, improve,
3 maintain and operate Four-H Club camps and facilities
4 with all usual and convenient appurtenances, including
5 but not limited to recreational facilities, such as swim-
6 ming pools, tennis courts, golf courses and horse riding
7 stables; and to operate, either directly or on a concession
8 basis, any activity that is necessary or convenient, cus-
9 tomary or desirable, and related or incidental to the
10 above-mentioned camps and recreational facilities in-
11 cluding but not limited to hotels, restaurants and gift
12 shops.

Sec. 3. Members of the Authority.—The management
2 and control of the authority, its property, operations,
3 business and affairs, shall be lodged in a board of five
4 persons who shall be known as "Members of the Author-
5 ity," each of whom shall be appointed for a term of five
6 years, except that as to the first five appointed to the first
7 board appointed, the term of one member shall expire
8 on the first day of July next ensuing and the term of the
9 next member shall expire on the first day of July two
10 years thereafter, the term of another member shall ex-
11 pire on the first day of July three years thereafter, the
12 term of another member shall expire on the first day of
13 July four years thereafter, and the term of the remaining
14 member shall expire on the first day of July five years
15 thereafter.

16 All members shall be appointed by the board of educa-
17 tion of the county of Braxton and no more than three
18 shall be members of the same political party, nor shall
19 they hold any political office of any nature.

20 The members of the authority shall be removable only
21 for cause.

Sec. 4. Removal of Member.—If the board of education
2 of the county of Braxton desires to remove a member
3 of the authority it shall notify said member in writing,
4 stating the reasons for the board of education of the
5 county of Braxton desiring said removal. Within ten
6 days of the receipt by the member of the authority of
7 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;

9 (3) To enter into contracts with any person, govern-
10 mental department, firm or corporation, including both
11 public and private corporations, and generally to do any
12 and all things necessary or convenient for the purpose
13 of acquiring, equipping, constructing, maintaining, im-
14 proving, extending, financing and operating Four-H
15 camps and recreational facilities and all usual and con-
16 venient appurtenant activities and facilities in Braxton
17 county, West Virginia, including but not limited to those
18 enumerated in section two hereof;

19 (4) To delegate any authority given to it by law to
20 any of its officers, committees, agents or employees;

21 (5) To apply for, receive and use grants in aid, dona-
22 tions and contributions from any source or sources, in-
23 cluding but not limited to the federal government and
24 any agency thereof, and the state of West Virginia, and
25 to accept and use bequests, devises, gifts and donations
26 from any person, firm or corporation;

27 (6) To acquire lands and hold title thereto in its own
28 name;

29 (7) To purchase, own, hold, sell and dispose of per-
30 sonal property and to sell, lease or otherwise dispose of
31 any real estate which it may own;

32 (8) To borrow money and execute and deliver nego-
33 tiable notes, mortgage bonds, other bonds, debentures,
34 and other evidences of indebtedness therefor, and give
35 such security therefor as shall be requisite, including
36 giving a mortgage or deed of trust on its property and
37 facilities in connection with the issuance of mortgage
38 bonds;

39 (9) To raise funds by the issuance and sale of revenue
40 bonds in the manner provided by the applicable pro-
41 visions of article four-a, chapter eight of the code of West
42 Virginia, one thousand nine hundred thirty-one, as
43 amended, it being hereby expressly provided that the
44 authority is a "municipal authority" within the definition
45 of that term as used in said article four-a, chapter eight
46 of the code; and

47 (10) To expend its funds in the execution of the
48 powers and authority herein given.

Sec. 10. Indebtedness of the Authority.—The authority
2 may incur any proper indebtedness and issue any obli-
3 gations and give any security therefor which it may
4 deem necessary or advisable in connection with carry-
5 ing out its purposes as hereinbefore mentioned. No
6 statutory limitation with respect to the nature or amount
7 of indebtedness which may be incurred by municipalities
8 or other public bodies shall apply to indebtedness of the
9 authority. No indebtedness of any nature of the authority
10 shall constitute an indebtedness of the county court of
11 the county of Braxton, nor of said county nor of said
12 board of education, or a charge against any property of
13 said county or board. No obligation incurred by the au-
14 thority shall give any right against any member of the
15 county court of the county of Braxton or any member
16 of the said board of education or any member of the board
17 of authority. The rights of creditors of the authority
18 shall be solely against the authority as a corporate body
19 and shall be satisfied only out of property held by it in
20 its corporate capacity.

**Sec. 11. Agreements in Connection with Obtaining
2 Funds.**—The authority may, in connection with obtaining
3 funds for its purposes, enter into any agreement with any
4 person, firm or corporation, including the federal govern-
5 ment, or any agency or subdivision thereof, containing
6 such provisions, covenants, terms and conditions as the
7 authority may deem advisable.

**Sec. 12. Property, Bonds and Obligations of Authority
2 Exempt From Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or
4 any subdivisions thereof or to any officer or employee
5 of the state or of any subdivisions thereof. The property
6 of the authority shall be exempt from all local and mu-
7 nicipal taxes. Bonds, notes, debentures and other evi-
8 dence of indebtedness of the authority are declared to
9 be issued for a public purpose and to be public instru-
10 mentalities and, together with interest thereon, shall be
11 exempt from taxes.

**Sec. 13. County Commissioners Authorized to Convey
2 Properties and Facilities to the Authority.**—The county

3 court of the county of Braxton is hereby authorized to
4 convey to the authority property owned by the county
5 of Braxton, together with all the appurtenances and
6 facilities therewith, such conveyance to be without con-
7 sideration or for such price and upon such terms and
8 conditions as the county court of the county of Braxton
9 shall deem proper.

Sec. 14. Property and Facilities May Be Leased to the
2 **County Court of the County of Braxton, the Board of Edu-**
3 **cation of Braxton County or Others.**—The authority may
4 lease the property on which such camp or camps and fa-
5 cilities are situated, in whole or in part, and all the appur-
6 tenances and facilities therewith, to the county court of
7 the county of Braxton, to said board of education of
8 Braxton county or to any other available lessee or lessees
9 at such rental and upon such terms and conditions as
10 the authority shall deem proper. If the authority de-
11 termines to lease the property and its appurtenances and
12 facilities, as a whole, it shall first offer the same to the
13 county court of the county of Braxton upon an annual
14 lease and it shall not lease said property and its appur-
15 tenances and facilities as a whole to any other lessee
16 until the county court of the county of Braxton has
17 notified the authority that it does not desire to lease
18 said properties, which notice shall be given within thirty
19 days after notice by the authority of a desire on its
20 part to lease the property as a whole. The county court
21 of the county of Braxton is hereby authorized to enter
22 into a lease with the authority for said property and
23 appurtenances and facilities at such rental and upon
24 such terms and conditions as it shall deem proper, and
25 the county court of the county of Braxton is hereby
26 authorized to levy taxes as provided by law for the
27 purpose of paying the rent for said property, appur-
28 tenances and facilities. The authority, however, may
29 lease one or more portions of its property without first
30 offering the same to the county court of the county of
31 Braxton. Such lease shall be for some purpose asso-
32 ciated with recreational or other related activities.

Sec. 15. Disposition of Surplus of Authority.—If the au-

2 thority should realize a surplus, whether from operating
3 the property or leasing it for operation, over and above
4 the amount required for the maintenance, improvement
5 and operation thereof and for meeting all required pay-
6 ments on its obligations, it shall set aside such reserve
7 for future operations, improvements and contingencies
8 as it shall deem proper and shall then apply the residue
9 of such surplus, if any, to the payment of any recognized
10 and established obligations not then due; and after all
11 such recognized and established obligations have been
12 paid off and discharged in full, the authority shall, at
13 the end of each fiscal year, set aside the reserve for
14 future operations, improvements and contingencies, as
15 aforesaid, and then pay the residue of such surplus, if
16 any, to the county court of the county of Braxton to
17 be used by said county court for general county pur-
18 poses, or to the board of education of Braxton county
19 for educational purposes as the authority may deem
20 proper.

2 **Sec. 16. Contributions to Authority; Funds and Ac-**
3 **counts; Publication of Annual Report.**—Contributions
4 may be made to the authority from time to time by the
5 county court of the county of Braxton, the board of educa-
6 tion of Braxton county and by any persons, firms or cor-
7 porations that shall desire so to do. All such funds and all
8 other funds received by the authority shall be deposited
9 in such bank or banks as the authority may direct and
10 shall be withdrawn therefrom in such manner as the
11 authority may direct. The authority shall keep strict
12 account of all its receipts and expenditures and shall
13 each quarter make a report to the board of educa-
14 tion of the county of Braxton containing an itemized
15 account of its receipts and disbursements during the
16 preceding quarter. Such report shall be made within
17 sixty days after the termination of the quarter. Within
18 sixty days after the end of each fiscal year, the authority
19 shall make an annual report containing an itemized state-
20 ment of its receipts and disbursements for the preceding
21 year and such annual report shall be published once a
22 week for two successive weeks in two newspapers of
 opposite politics published in Braxton county, West Vir-

23 ginia, and of general circulation in Braxton county, West
24 Virginia, if there be two such papers, or otherwise in any
25 newspaper of general circulation in said county. The
26 books, records and accounts of the authority shall be
27 subject to audit and examination by the office of the state
28 tax commissioner of West Virginia and by any other
29 proper public official or body in the manner provided by
30 law.

Sec. 17. Employees to Be Covered by Workmen's Com-
2 **pensation.**—All employees of the authority eligible there-
3 under shall be deemed to be within the workmen's com-
4 pensation act of West Virginia and premiums shall be
5 paid by the authority to the workmen's compensation
6 fund as required by law.

Sec. 18. Dissolution of Authority.—The authority may
2 at any time pay off and discharge in full all of its in-
3 debtedness, obligations and liabilities, convey its prop-
4 erties, appurtenances and facilities to the board of educa-
5 tion of the county of Braxton and be dissolved. Before
6 making such conveyance of its properties, the authority
7 shall first publish notice of its intention so to do and of
8 its intention to be dissolved, once a week for four suc-
9 cessive weeks in two newspapers of opposite politics
10 published in, and of general circulation in Braxton county,
11 West Virginia, if there be two such papers, or otherwise
12 in any newspaper of general circulation in said county.
13 Certificates from the publishers of the papers or paper
14 showing such publication shall be filed with the board
15 of education of the county of Braxton on or before the
16 deed conveying said properties is delivered. Any funds
17 remaining in the hands of the authority at the time of the
18 conveyance of said properties shall be by the authority
19 paid over to the board of education of the county of
20 Braxton to be used by it for purposes in connection with
21 said properties. Upon the payment of its indebtedness,
22 obligations and liabilities, the publishing of the notices
23 aforesaid, the conveyance of its properties and the pay-
24 ing over to the board of education of the county of Brax-
25 tion of any funds remaining in its hands, the authority
26 shall cause a certificate showing its dissolution to be

27 executed under its name and seal and to be recorded in
28 the office of the clerk of the county court of Braxton
29 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 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. 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 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 board of education and the county court of the county of Braxton under any constitutional 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 nevertheless 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 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, 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 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 forty-nine, as amended by section twenty-four, chapter one hundred seventy-nine, acts of the Legislature, regular session, one thou-

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.
24. Salary of judge.

Section 1. Common Pleas Court of Cabell County

2 **Established.**—The common pleas court of Cabell county,
3 as created and established by chapter ninety, acts of the
4 Legislature, regular session, one thousand nine hundred
5 seventeen, by amending chapter twenty-eight, acts of the
6 Legislature, regular session, one thousand eight hundred
7 ninety-three, is hereby established and created for the in-
8 tent and purpose of being a court of limited jurisdiction
9 with common and concurrent jurisdiction with the circuit
10 court of Cabell county, within said county, in criminal
11 and civil actions and causes.

Sec. 2. Jurisdiction; Supervision, Etc., of Criminal and

2 **Civil Cases before Justices, Etc.**—That said court shall
3 have jurisdiction within said county, common and con-
4 current with the circuit court, of all felonies and misde-
5 meanors committed within said county, and shall have
6 the supervision and control of criminal and civil proceed-
7 ings before justices of said county, the police judge or
8 mayor of any incorporated city, town or village therein,
9 by appeal, mandamus, prohibition and certiorari; the said
10 court shall have original jurisdiction within said county
11 concurrent with the circuit court of Cabell county of all
12 suits and proceedings, and of all civil actions or proceed-
13 ings at law, except where it shall appear from the plead-
14 ings that the matter in controversy exceeds the value of
15 twenty-five thousand dollars; and also appellate juris-
16 diction in all cases, civil and criminal, from judgments of
17 justices of the peace in said county, police judge or
18 mayor of any incorporated city, town or village, or of any
19 inferior tribunal therein, wherein an appeal, writ of error,
20 supersedeas or writ of certiorari may be allowed; subject
21 to the right to proceed by appeal, writ of error, super-
22 sedeas or certiorari in all matters to the circuit court of
23 Cabell county, as provided in section fifteen, chapter

24 twenty-eight, acts of the Legislature, regular session, one
25 thousand eight hundred ninety-three, and section twenty-
26 six, chapter ninety, acts of the Legislature, regular session,
27 one thousand nine hundred seventeen.

Sec. 24. Salary of Judge.—The judge of the common
2 pleas court of Cabell County shall receive for his services
3 thirteen thousand five hundred dollars annually, payable
4 monthly in installments beginning on the first day of July,
5 one thousand nine hundred sixty-three, which amount
6 shall be provided for and paid by the county court, out of
7 the treasury of said county, which provision as to salary
8 shall not repeal the existing provision until the said first
9 day of July, one thousand nine hundred sixty-three.
10 All acts or parts of acts inconsistent or in conflict with
11 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 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, 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.
2. Jurisdiction.
4. Salary of judge.

Section 1. Cabell County Domestic Relations Court

2 **Created.**—There is hereby created and established in and
3 for the county of Cabell, with authority and jurisdiction
4 coextensive with the county, a court to be known as the
5 “Domestic Relations Court” of Cabell county, for the
6 trial of annulment of marriages, separate maintenance
7 suits, divorces, alimony causes, the care and disposition
8 of delinquent, defective, neglected and dependent chil-
9 dren, and desertion and nonsupport of wives and legiti-
10 mate and illegitimate children, reciprocal dependency,
11 adoption, change of name, and for the enforcement of
12 the general school laws, arising within the said county
13 or coming within the jurisdiction of the court as provided
14 by the general laws of this state and as hereinafter pro-
15 vided; and independent of the foregoing for the trial of
16 certain causes heretofore recognized as being in chancery
17 and as hereinafter limited and defined, it being the intent
18 and purpose of this act to create a court of limited juris-
19 diction for the purposes herein set forth.

Sec. 2. Jurisdiction.—The said domestic relations
2 court shall have jurisdiction within the said county
3 of Cabell, concurrent with the circuit court, of all
4 matters and causes arising out of or pertaining

5 to annulment of marriages, separate maintenance
6 suits, divorce, alimony, the custody and mainten-
7 ance of children of litigants and the adjudication
8 of property rights arising out of the same, and all
9 other matters and causes coming within the pur-
10 view of chapter forty-eight of the code of West
11 Virginia, one thousand nine hundred thirty-one, and all
12 amendments and reenactments thereof concerning do-
13 mestic relations; of all matters and causes coming within
14 the purview of chapter forty-nine of the code of West
15 Virginia, one thousand nine hundred thirty-one, as en-
16 acted by chapter one, acts of the Legislature of West
17 Virginia, one thousand nine hundred thirty-six, and of
18 all amendments and reenactments thereof commonly
19 known as the child welfare law; of all matters and causes
20 coming within the purview of chapter eighteen of the
21 code of West Virginia, one thousand nine hundred
22 thirty-one, and all amendments and reenactments thereof,
23 commonly called the general school law; of all matters
24 and causes coming within the purview of chapter forty-
25 eight of the code of West Virginia, one thousand nine
26 hundred thirty-one, and of all amendments and reenact-
27 ments thereof, commonly known as the reciprocal de-
28 pendency law; of all matters and causes coming within
29 the purview of chapter forty-eight of the code of West
30 Virginia, one thousand nine hundred thirty-one, and all
31 amendments and reenactments thereof commonly known
32 as the adoption law; and of all matters and causes coming
33 within the purview of chapter forty-eight of the code
34 of West Virginia, one thousand nine hundred thirty-one,
35 and of all amendments and reenactments thereof,
36 commonly known as the change of name law; and of all
37 matters and causes coming within the purview of chap-
38 ter forty-eight of the code of West Virginia, one thousand
39 nine hundred thirty-one, and of all amendments and re-
40 enactments thereof, commonly known as the mainten-
41 ance of illegitimate children law; and of all matters and
42 causes coming within the purview of all other or future
43 acts of the Legislature touching the subject matter and
44 of any and all said laws, laws and acts of the amend-
45 ments and reenactments thereof, and of the common law

46 of said state relating to the subject matter thereof. Inde-
47 pendently of any of the foregoing matters, the said do-
48 mestic relations court shall also have and is hereby given
49 what was heretofore recognized as general equity juris-
50 diction concurrent with the circuit court, excepting in
51 cases involving the enforcement of criminal laws and
52 labor disputes, and excepting cases where it shall appear
53 from the pleadings that matter or thing in controversy
54 exceeds in value the sum of one hundred fifty thousand
55 dollars. The proceedings and modes of procedure and
56 power and jurisdiction conferred by law upon the circuit
57 court or the common pleas court in any and all of said
58 matters and causes are hereby conferred upon and shall
59 be exercised by said domestic relations court.

Sec. 4. Salary of Judge.—The judge of the domestic
2 relations court of Cabell county shall receive for his
3 services thirteen thousand five hundred dollars, annually,
4 payable monthly in installments beginning on the first
5 day of July, one thousand nine hundred sixty-three,
6 which amount shall be provided for and paid by the
7 county court, out of the treasury of said county, which
8 provision as to salary shall not repeal the existing provi-
9 sion until the said first day of July, one thousand nine
10 hundred sixty-three.

11 All acts or parts of acts inconsistent or in conflict with
12 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 re-transfer 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.
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.
3. Cabell county court authorized to expend special building and improvement fund.
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 Expend 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

6 deemed necessary by the court for the construction, im-
7 provement, renovation, reconstruction, remodeling, or
8 equipping of the Cabell county courthouse.

Sec. 4. Retransfer of Funds.—In cases of emergency
2 or as may from time to time be deemed necessary, the
3 county court of Cabell county, by a two-thirds vote
4 thereof, shall be empowered to retransfer funds from the
5 special building and improvement fund herein created
6 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.
8. Provisions severable.

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

20 of education; family services, inc.; Ona parent-teachers
21 association; Cabell county department of welfare; and
22 the juvenile division of the Huntington police depart-
23 ment.

24 The terms of the first four hereinabove named shall
25 expire on the thirtieth day of June, one thousand nine
26 hundred sixty-three; the terms of the second group of
27 four hereinabove named shall expire on the thirtieth
28 day of June, one thousand nine hundred sixty-four; and
29 the terms of all the remaining members hereinabove
30 named shall expire on the thirtieth day of June, one
31 thousand nine hundred sixty-five. Upon the expiration
32 of the terms specifically set out hereinabove, each per-
33 son thereafter shall be appointed for a term of three
34 years, except that any person appointed to fill a vacancy
35 occurring prior to the expiration of the term for which
36 his predecessor was chosen, shall be chosen only for the
37 remainder of such term. Members shall be eligible to
38 succeed themselves.

39 The mayor of the city of Huntington, or someone
40 designated by him, the mayors of the towns of Barbours-
41 ville and of Milton, the sheriff of Cabell county, or a
42 deputy sheriff designated by him, and the Cabell county
43 agricultural agent shall be ex officio members of said
44 board of supervisors with voting privileges equal to
45 that of each and every other member.

46 The board of supervisors shall serve without compen-
47 sation except they may be reimbursed for any expenses
48 incurred in the performance of their duties.

49 Each regular member of the board of supervisors shall
50 be a bona fide citizen and resident of said county and
51 any regular member thereof who shall cease to be a
52 bona fide citizen and resident of said county shall thereby
53 be disqualified as a member of the board, and his office
54 shall thereupon become vacant.

55 Any regular member of the board of supervisors may
56 be removed from office for dishonesty, incompetency or
57 neglect of duty in office in the same manner and for the
58 same reasons as, by the constitution and statutes of this
59 state, are made and provided for the removal of general
60 county officers.

61 Prior to entering upon their duties each member of
62 the board of supervisors shall take an oath in writing to
63 support the constitution of the United States and of the
64 state of West Virginia and to faithfully perform the
65 duties of a member of said board. Said oaths shall be
66 filed in the office of the clerk of the county court of
67 Cabell county.

68 The board shall designate one of its members as presi-
69 dent, another as vice president, and shall select a secre-
70 tary from the board membership or otherwise. It shall
71 fix the time and place of its meetings: *Provided, how-*
72 *ever,* That it shall hold at least one meeting each calendar
73 month, and six members present shall constitute a
74 quorum.

75 The board of supervisors shall provide for the employ-
76 ment of an executive director whose duties shall be to
77 execute the orders of the board of supervisors and
78 direct the overall management of the youth center. The
79 board shall also have the power to employ and fix the
80 compensation of any and all persons as in its opinion
81 may be necessary for the operation, maintenance, admin-
82 istration and management of the property under its
83 control, limited however, by the authority vested in the
84 West Virginia department of welfare by section four
85 hereof, and limited further by the appropriation of funds
86 for such purposes by the county court of Cabell county.
87 The board of supervisors shall have the power to make
88 rules and regulations and to enforce same, as may be
89 necessary for the management and control of the youth
90 center and each of its integral parts.

Sec. 3. Medium Security School.—The medium secu-
2 rity school of the Cabell county youth center shall be
3 maintained at the Cabell county farm at Ona, West Vir-
4 ginia, by the board of supervisors as one of the divisions
5 of the Cabell county youth center. It may be used for
6 the detention of juveniles pending hearing before the
7 juvenile court of Cabell county within the discretion
8 of the judge of said court; and it shall be used for the
9 training of juveniles who have been adjudged delinquent
10 and committed thereto by said court. It shall not be

11 deemed a penal institution, a jail or a prison. It shall
12 be conducted and respected as comparable to a "school
13 away from home." There shall be maintained at the
14 school, or in close proximity thereto, by the board of
15 supervisors, sufficient class rooms and equipment for
16 the proper education and training during the regular
17 nine months school period, of all juveniles residing in
18 said medium security school. The board of education
19 of Cabell county, at its own expense, shall furnish
20 sufficient teachers of proper qualifications to adequately
21 staff said class rooms and to furnish proper educational
22 training for all those committed to said school, to the
23 end that those so committed shall be allowed and
24 required to progress in education and in spiritual and
25 moral development in preparation for a return to a
26 normal life.

27 The juveniles while residing in the medium security
28 school shall be kept separate and apart from the youth
29 using the facilities of the two other divisions of said
30 youth center, or with other youth in the public schools
31 of the county. Nothing herein contained, however, shall
32 prevent the residents of the medium security school
33 from being assigned to outdoor work in and about the
34 farm, at proper times, so long as they are not in company
35 with other juveniles who are not committed to the
36 school.

37 The board of supervisors may appoint an assistant
38 director in charge of the medium security school who
39 shall be answerable to the executive director and to
40 the board. The assistant director in charge of the medium
41 security school shall be provided with such other person-
42 nel as to the board may seem necessary to assist in
43 maintaining the school, securing the custody of the
44 juveniles therein, and carrying out general supervision
45 of the school to the end that order and discipline shall
46 be maintained. Compensation to be paid the assistant
47 director and all personnel of said school shall be fixed
48 by the board and paid as hereinafter provided.

49 The board of supervisors, shall, within its discretion,
50 have the power and authority to accept juveniles upon
51 commitment by the juvenile courts of other counties in

52 West Virginia, and to make arrangements with the
53 county court of such counties for the payment of the
54 fair per capita, per diem cost for each juvenile so
55 committed, and which payments shall be credited to the
56 fiscal account of the Cabell county youth center.

57 The procedure for the release of juveniles committed
58 to the medium security school shall be as follows:

59 After a juvenile has been committed to the school
60 for at least six months he shall be advised by the execu-
61 tive director of his right to apply in writing for release.
62 He shall be afforded and may sign a petition in which
63 he shall state the reasons he thinks are grounds for his
64 release. The executive director shall then call a meeting
65 with the assistant director, the teachers and all other
66 paid employees who have had personal contact with
67 and supervision of said juvenile and said staff shall then
68 review the petition and shall make such recommenda-
69 tions as they deem proper to the next meeting of the
70 board of supervisors. After review of the juvenile's
71 petition and record the board may take such action as
72 to it may seem proper. If the board be of opinion to
73 recommend the release of the juvenile, it shall then
74 submit such recommendation to the juvenile court over
75 the signature of the executive director, the president
76 of the board and the teacher that last had the juvenile
77 in school.

78 Within a reasonable time thereafter the juvenile
79 court shall review the case history of the juvenile and
80 after considering the recommendations of the staff and
81 the board, shall enter such order as to the court may
82 seem to be in the best interest of the juvenile.

Sec. 4. Foster Homes Division.—The foster homes
2 division of the Cabell county youth center shall be
3 erected and maintained at the Cabell county farm at Ona,
4 West Virginia, as homes for Cabell county children who
5 are orphans, homeless, neglected or deserted, or who, if
6 permitted to run ungoverned or undisciplined, are apt
7 to become delinquent, and which said children are within
8 the age prescribed by the statutes of this state for
9 juveniles.

10 The board of supervisors of the Cabell county youth
11 center shall cause to be erected and maintained at said
12 farm sufficient cottages and of capacity to comfortably
13 house in each cottage not more than twenty children.
14 Each cottage when children are housed therein shall
15 have as "cottage parents" a husband and wife team in
16 charge, both of whom shall be persons of good moral
17 character, experienced in child care, having proper under-
18 standing of children and temperamentally fit to care
19 and rear them. Each cottage shall be conducted com-
20 parable to a well-ordered home, with proper supervision
21 and understanding discipline maintained by the "cottage
22 parents." The children therein housed shall be treated
23 as members of a well-ordered family where there is
24 proper intellectual, physical, spiritual and exemplary
25 moral training. Each child shall be given a home therein
26 so long as its need therefor exists and it remains a
27 juvenile or until a satisfactory permanent home has been
28 found or it is placed for adoption.

29 The foster homes division shall be made available for
30 any and all Cabell county children now or hereafter to
31 be under the control of the state or county department
32 of welfare, all Cabell county children cared for by any
33 of the other welfare agencies, youth or child centers,
34 private homes or institution within the county.

35 Both the West Virginia and Cabell county departments
36 of welfare, at the earliest practicable time after the facili-
37 ties hereinabove provided have been made ready to re-
38 ceive said children, shall appear before the juvenile court
39 of Cabell county and bring to the court's attention the
40 name of each and every child then in Cabell county and
41 in the custody of both of the said departments, the where-
42 abouts of each child, and all facts and circumstances
43 which to the department or the court may appear perti-
44 nent with relation to each child, and all of which the
45 court shall consider, and having so considered shall then
46 enter an order committing said child to the foster homes
47 division, or releasing it to the department as to the court
48 may seem just and proper, and the court may from time
49 to time make such other and further orders for the dispo-
50 sition of said child or children as may be just or proper:

51 *Provided, however,* That the above procedure shall apply
52 only to children of school age. All children of pre-school
53 age may be maintained at said foster homes division or
54 elsewhere, within the sound discretion of the departments
55 of welfare, but wherein children of pre-school age are
56 placed in said foster division, then such placement shall
57 be by order of the juvenile court of Cabell county in
58 the same manner as hereinabove provided for all other
59 children.

60 For the support and maintenance of the children placed
61 in said foster homes division by the departments of wel-
62 fare, they shall contribute the standard amount paid by
63 the departments to private foster homes in other counties
64 of the state. The money so contributed shall be paid to
65 the county court of Cabell county and by that court set
66 aside for the use of said foster homes division.

67 The "cottage parents" and all other personnel required
68 for the efficient operation of said cottages in which chil-
69 dren are maintained shall be carefully selected by the
70 West Virginia department of welfare. Said "cottage
71 parents," under the guidance and supervision of the West
72 Virginia department of welfare, shall be responsible for
73 the supervision and training of all the children committed
74 to their care; for keeping them in school during school
75 terms and hours; for teaching them to do a reasonable
76 amount of work, and for making each cottage as nearly
77 self-supporting as possible. The husband member of the
78 "cottage parents" shall lead and teach the older male
79 children under his care, at reasonable times and seasons,
80 in agricultural practices and methods, which may include
81 gardening, truck farming, fruit growing, poultry raising,
82 dairying, and like occupations, and upon such land as
83 may be assigned by the board of supervisors for such pur-
84 poses. The wife member of the "cottage parents" shall
85 lead and teach the older female children under her care,
86 at reasonable times, in the art and practices of home
87 making which may include cooking, laundering, cleaning,
88 and the like.

89 The children residing in said foster homes shall be
90 required, when within school age, and when their health
91 and physical condition permits, to attend the public

92 schools. The board of education of said county shall
93 make provisions for them in the public school at Ona,
94 West Virginia, or if any one or more of them be in a
95 grade higher than is taught at Ona, then provision there-
96 for shall be made in a school wherein such grade is
97 taught.

98 Complete supervision of the foster homes division,
99 together with the employment and discharge of any
100 and all personnel including "cottage parents" shall
101 be under the West Virginia department of welfare.
102 The salary of each person so employed shall be reason-
103 able and be determined by the department, and when
104 approved by the board of supervisors shall be certi-
105 fied for payment as is provided in section six hereof.
106 In advance of the submission by the board of
107 supervisors of the estimate of all monetary needs of
108 the Cabell county youth center to the county court
109 as provided in section six hereof, the West Virginia
110 department of welfare shall furnish to the board of
111 supervisors an estimate of all reasonable monetary
112 needs of the foster homes division for the next fiscal
113 year, said estimate shall cover all anticipated costs for
114 services for all employees and personnel employed in
115 the reasonable operation of said foster homes, and all
116 other reasonable expenses incident thereto, and which
117 said estimate shall be certified to the board of super-
118 visors and by that board included in the estimate ren-
119 dered to the county court of Cabell county as required
120 by section six, paragraph one, hereof.

Sec. 5. Recreation Division; Recreational Facilities;
2 **Operating Personnel.**—The board of supervisors is author-
3 ized to maintain a place for recreation for the youth of
4 Cabell county at the Cabell county farm at Ona, West
5 Virginia. The board is hereby authorized to erect, at
6 said farm, such playgrounds, swimming pools, tennis
7 courts, ball parks, golf courses, and such other facilities
8 as to the board may seem advisable, where Cabell county
9 youth may assemble, under proper adult supervision for
10 play, sport, entertainment, recreation or instruction. The
11 board is also authorized to erect and maintain as the

12 needs require, cottages, assembly halls, kitchens, mess
13 halls, and camping quarters, which may be leased at
14 terms and rates as to the board may appear proper. It
15 is the intent hereof to provide a place for assembly of
16 youth groups from churches, scouts, clubs or any other
17 worthy youth organizations, for purposes hereinabove
18 set out and to the end that the recreation division may
19 be used as a preventive of delinquency in youth and
20 for the building of strong bodies and strong characters.

21 The board of supervisors is authorized to employ a
22 camp manager and such other personnel as may be re-
23 quired to operate said facilities and to the end that the
24 greatest possible value may accrue to youth and that
25 same may be as nearly self-supporting as possible. The
26 manager and personnel shall be answerable to the board,
27 and under the direct supervision of the executive director.

**Sec. 6. Estimate of Construction, Maintenance and
2 Operating Costs; County Court to Provide Funds; Pay-
3 ment of Expenses; Special Fund; Gifts and Bequests.—**
4 The board of supervisors shall annually prepare and sub-
5 mit to the county court of Cabell county, in advance of the
6 levy term of said court, an estimate of all the monetary
7 needs of the Cabell county youth center and each of its
8 integral parts, for the next fiscal year, said estimate shall
9 cover anticipated costs for construction, maintenance and
10 operation of buildings, and all anticipated expenses rela-
11 tive to the operation of said youth center for the ensuing
12 fiscal year. The county court of Cabell county shall re-
13 ceive said estimate and provide in the annual budget of
14 the county, for the reasonable requirements of said youth
15 center as set forth in said estimate and for each of its
16 divisions. But no obligations shall be incurred or debts
17 contracted by the board of supervisors in excess of said
18 budget, without prior consent of the county court.

19 All current expenses for salaries, supplies and such
20 other things as are required for the efficient operation of
21 the said youth center, including construction costs, shall
22 be certified for payment at the end of each calendar
23 month to the county court of Cabell county by the presi-
24 dent and secretary of the board of supervisors, in writing,
25 and signed by each of them. Thereupon the county court

26 shall cause same to be paid out of the separate fund
27 created for said Cabell county youth center, and other-
28 wise to be paid in the same manner as general current
29 county expenses are paid.

30 The county court of Cabell county shall have the power
31 and authority to transfer moneys from inactive funds,
32 special unused funds, or the general county fund to a
33 separate fund for the use of the Cabell county youth
34 center, as needs may require. The county court of Cabell
35 county is further authorized and empowered to receive
36 and expend for the purposes herein provided, gifts,
37 bequests and donations from any person, corporation,
38 firm or association.

Sec. 7. Acquisition of Land by Purchase; Condemna-
2 **tion Proceedings.**—The county court of Cabell county,
3 upon request of the board of supervisors of the Cabell
4 county youth center, shall have the right to purchase real
5 estate including the power of eminent domain to institute
6 proper proceedings to condemn land for the use and bene-
7 fit of the Cabell county youth center. Reasonable requests
8 by the board of supervisors for the purchase or con-
9 demnation of land for the use and benefit of the Cabell
10 county youth center shall be complied with by the county
11 court of Cabell county.

Sec. 8. Provisions Severable.—The several sections
2 and provisions of this act are severable. If any section or
3 provision hereof shall be held unconstitutional all the re-
4 maining sections and provisions of the act shall neverthe-
5 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-

26 ized and empowered to appoint and discharge such addi-
27 tional officers, probation officers, counselors, psycholo-
28 gists, and such medical, clerical and secretarial assistance
29 as shall enable the court to discharge all the duties re-
30 quired of it under the provisions of this act and the
31 general laws of the state, and such personnel shall be
32 paid by the county court monthly such sums as are
33 annually appropriated by the county court, plus reim-
34 bursement by the county court of his or her necessary
35 expenses actually incurred monthly in the performance
36 of official duties, including mileage, as fixed by the judge
37 and approved by the county court, for his or her auto-
38 mobile driven in the performance of official duties. The
39 county court shall make provisions for payment and pay
40 the salaries of said appointees, as shown by the order of
41 appointment, in equal monthly installments. Expenses
42 and mileage accounts of said appointees shall be itemized,
43 verified and presented to and paid by the county court,
44 provided such accounts are approved in writing by the
45 judge.

CHAPTER 204

(House Bill No. 462—By Mr. Ghiz 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 trans-
fer 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.

**Section 1. Logan County Dog Tax Fund; Transfer of
2 Funds.**—The county court of Logan county shall have
3 authority to transfer from the unexpended balances in
4 the dog tax fund to the general fund the sum of three
5 thousand five hundred dollars.

CHAPTER 205

(House Bill No. 7—By Mr. Watson)

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

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.
2. Finding of moral obligation.

**Section 1. Marion County Court Authorized to Pay
2 Claim of Ruth Wilderman.**—The county court of Marion

3 county is hereby authorized, as in its discretion it may see
4 fit, to pay the sum of twenty-two hundred dollars to Ruth
5 Wilderman to compensate her for her personal injuries
6 suffered and to reimburse her for medical, hospital and
7 other expenses incurred as a result of the defective door-
8 handle at the Marion county library coming loose and
9 causing her to fall.

Sec. 2. Finding of Moral Obligation.—It is hereby
2 declared to be the finding of the Legislature based upon its
3 conclusions of fact, that the authorization set forth in
4 section one of this act for compensation of Ruth Wilder-
5 man for personal injuries sustained and to reimburse her
6 for medical, hospital and other expenses incurred as a
7 result of said personal injuries resulting from the defective
8 condition of the public premises under the jurisdiction of
9 and maintained and operated by, the county court of
10 Marion county, West Virginia, is in satisfaction of a moral
11 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-nine, 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 Legislature, 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

8 may select, and for such uses and at such rental fees as the
9 county court may deem proper.

10 All rentals or proceeds derived from such leases or
11 rentals shall be placed to the credit of the general county
12 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

5 invest and reinvest the special fund herein authorized
6 in such interest bearing United States government bonds,
7 general obligation bonds of the state of West Virginia
8 or any local subdivision thereof, or with the state sink-
9 ing fund commission of West Virginia; and to withdraw
10 all or part of said special fund so invested or reinvested
11 as from time to time may be deemed necessary or proper
12 by said county court.

**Sec. 4. Preston County Court Authorized to Expend
2 Special Building and Improvement Fund.**—The county
3 court of Preston county is hereby authorized and em-
4 powered to expend such part or all of the special build-
5 ing and improvement fund from time to time as may be
6 deemed necessary by the court for the construction, im-
7 provement, renovation, reconstruction, remodeling, major
8 repair or equipping of a new county office building or
9 other building, or existing county buildings, county farm,
10 courthouse or jail, or for the purpose of acquiring real
11 estate incident to the purposes herein contained or for
12 restocking the county farm with livestock, machinery
13 and other items of husbandry as may from time to time
14 be deemed necessary by the county court.

Sec. 5. Retransfer of Funds.—In cases of emergency
2 or as may from time to time be deemed necessary, the
3 county court of Preston county, by a two-thirds vote
4 thereof, shall be empowered to retransfer funds from the
5 special building and improvement fund herein created
6 to the county general fund.

CHAPTER 211

(House Bill No. 558—By Mr. Abrams and Mr. Covey)

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

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 authority 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 operation 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 compensation; 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; reimbursement for expenses.
8. Authority to be a public corporation.
9. Powers.
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.
16. Disposition of surplus of authority.
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.
- 22. Provisions severable.

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-

4 ber of the authority it shall notify said member in writing,
5 stating the reasons for the county court of Raleigh desiring
6 said removal. Within ten days of the receipt by the mem-
7 ber of the authority of the written notice of removal, said
8 member, if he so desires, may have a hearing before the
9 county court of the county of Raleigh, and any such hear-
10 ing shall be held within ten days of the member's re-
11 quest for said hearing. Any member so removed shall
12 have the right to petition the circuit court of Raleigh
13 county to review the action of said county court.

Sec. 5. Substitution of Members.—If any member of
2 the authority die, or resign, or be removed, or for any
3 other reason cease to be a member of the authority, the
4 county court of the county of Raleigh shall appoint an-
5 other person to fill the unexpired portion of the term of
6 such member.

Sec. 6. Qualification of Members of the Authority.—
2 All members of the board of the authority shall be citizens
3 of West Virginia, over thirty years of age, and residents
4 of Raleigh county: *Provided, however,* That no person
5 representing any person, partnership or corporation doing
6 business with the authority shall be eligible for member-
7 ship on the board.

Sec. 7. Members of Authority to Serve without Compens-
2 **ation; Reimbursement for Expenses.**—No member of the
3 board of the authority shall receive any compensation,
4 whether in form of salary, per diem allowances or other-
5 wise, for or in connection with his services as member.
6 Each member shall, however, be entitled to reimburse-
7 ment by the authority for any necessary expenditures in
8 connection with the performance of his general duties as
9 such member.

Sec. 8. Authority to Be a Public Corporation.—The
2 authority when created, and the members thereof, shall
3 constitute and be a public corporation under the name of
4 "Lake Stephens Tourist Development Authority" and as
5 such shall have perpetual succession, may contract and
6 be contracted with, sue and be sued, plead and be im-
7 pleaded, 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;

9 (3) To enter into contracts with any person, govern-
10 mental department, firm or corporation, including both
11 public and private corporations, and generally to do any
12 and all things necessary or convenient for the purpose
13 of acquiring, equipping, constructing, maintaining, im-
14 proving, extending, financing and operating public tourist
15 facilities and all usual and convenient appurtenant ac-
16 tivities and facilities in Raleigh county, West Virginia;

17 (4) To delegate any authority given to it by law to
18 any of its officers, committees, agents or employees;

19 (5) To apply for, receive and use grants-in-aid, do-
20 nations and contributions from any source or sources,
21 including but not limited to the federal government and
22 any agency thereof, excluding the state of West Virginia,
23 and to accept and use bequests, devices, gifts and dona-
24 tions from any person, firm or corporation;

25 (6) To acquire lands and hold title thereto in its
26 own name;

27 (7) To purchase, own, hold, sell and dispose of per-
28 sonal property and to sell, lease or otherwise dispose of
29 any real estate which it may own;

30 (8) To borrow money and execute and deliver nego-
31 tiable notes, mortgage bonds, other bonds, debentures,
32 and other evidences of indebtedness therefor, and give
33 such security therefor as shall be requisite, including
34 giving a mortgage or deed of trust on its Lake Stephens
35 property and facilities in connection with the issuance
36 of mortgage bonds;

37 (9) To raise funds by the issuance and sale of revenue
38 bonds in the manner provided by the applicable provi-
39 sions of article four-a, chapter eight of the code of West

40 Virginia, one thousand nine hundred thirty-one, as
41 amended, it being hereby expressly provided that the
42 authority is a "municipal authority" within the defini-
43 tion of that term as used in said article four-a, chapter
44 eight of the code; and

45 (10) To expend its funds in the execution of the
46 powers and authority herein given.

Sec. 10. Indebtedness of the Authority.—The authority
2 may incur any proper indebtedness and issue any ob-
3 ligations and give any security therefor which it may
4 deem necessary or advisable in connection with carrying
5 out its purposes as hereinbefore mentioned. No statutory
6 limitation with respect to the nature or amount of in-
7 debtedness which may be incurred by municipalities
8 or other public bodies shall apply to indebtedness of
9 the authority. No indebtedness of any nature of the
10 authority shall constitute an indebtedness of the county
11 court of the county of Raleigh, nor of said county, or a
12 charge against any property of said county. No obliga-
13 tion incurred by the authority shall give any right against
14 any member of the county court of the county of Raleigh
15 or any member of the board of the authority. The rights
16 of creditors of the authority shall be solely against the
17 authority as a corporate body and shall be satisfied only
18 out of property held by it in its corporate capacity.

Sec. 11. Agreements in Connection with Obtaining
2 **Funds.**—The authority may, in connection with obtaining
3 funds for its purposes, enter into any agreement with
4 any person, firm or corporation, including the federal
5 government, or any agency or subdivision thereof, con-
6 taining such provisions, covenants, terms and conditions
7 as the authority may deem advisable.

Sec. 12. Right of Eminent Domain.—The authority
2 herein created shall not have the power to exercise the
3 right of eminent domain.

Sec. 13. Property, Bonds and Obligations of Authority
2 **Exempt from Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or any
4 subdivisions thereof or to any officer or employee of the

5 state or of any subdivisions thereof. The property of
6 the authority shall be exempt from all local and municipi-
7 pal taxes. Bonds, notes, debentures and other evidence
8 of indebtedness of the authority are declared to be issued
9 for a public purpose and to be public instrumentalities,
10 and, together with interest thereon, shall be exempt from
11 taxes.

**Sec. 14. County Commissioners Authorized to Convey
2 Present Stephens Lake Properties and Facilities to the
3 Authority.**—The county court of the county of Raleigh is
4 hereby authorized to convey to the authority the pres-
5 ent property owned by the county of Raleigh, situate in
6 the Trap Hill district of said county comprising two
7 thousand four hundred acres, more or less, on which is
8 located an artificial body of water known as Lake Ste-
9 phens, together with all the appurtenances and facili-
10 ties therewith, such conveyance to be without considera-
11 tion or for such price and upon such terms and conditions
12 as the county court of the county of Raleigh shall deem
13 proper.

**Sec. 15. Authority May Lease Lake and Facilities to
2 the County Court of the County of Raleigh or Other Les-
3 see.**—The authority may lease Lake Stephens and the
4 property on which it is situated, in whole or in part, all
5 the appurtenances and facilities therewith to the county
6 court of the county of Raleigh or to any other available
7 lessee or lessees at such rental and upon such terms and
8 conditions as to the authority shall seem proper. If the
9 authority determines to lease the property and its ap-
10 purtenances and facilities, as a whole, it shall first offer
11 the same to the county court of the county of Raleigh up-
12 on an annual lease, and it shall not lease said property
13 and its appurtenances and facilities, as a whole, to any oth-
14 er lessee until the county court of the county of Raleigh
15 has notified the authority that it does not desire to lease
16 said properties, which notice shall be given within thirty
17 days after notice by the authority of a desire on its part
18 to lease the property as a whole. The county court of the
19 county of Raleigh is hereby authorized to enter into a
20 lease with the authority for said property and appurten-

21 ances and facilities at such rental and upon such terms
22 and conditions as it shall deem proper, and the county
23 court of the county of Raleigh is hereby authorized to
24 levy taxes as provided by law for the purpose of paying
25 the rent for said property, appurtenances and facilities.
26 The authority, however, may lease one or more portions
27 of said property and lake situated thereon without first
28 offering the same to the county court of the county of
29 Raleigh. Such lease shall be for some purpose associated
30 with tourist accommodations, recreation or other related
31 ties.

Sec. 16. Disposition of Surplus of Authority.—If the
2 authority should realize a surplus, whether from operat-
3 ing the property or leasing it for operation, over and
4 above the amount required for the maintenance, improve-
5 ment and operation thereof and for meeting all required
6 payments on its obligations, it shall set aside such reserve
7 for future operations, improvements and contingencies as
8 it shall deem proper and shall then apply the residue of
9 such surplus, if any, to the payment of any recognized
10 and established obligations not then due; and after all
11 such recognized and established obligations have been
12 paid off and discharged in full, the authority shall, at
13 the end of each fiscal year, set aside the reserve for fu-
14 ture operations, improvements and contingencies, as
15 aforesaid, and then pay the residue of such surplus, if
16 any, to the county court of the county of Raleigh, to be
17 used by said county court for general county purposes.

**Sec. 17. Contributions to Authority by the County
2 Court of the County of Raleigh and Others; Funds and Ac-
3 counts of the Authority.**—Contributions may be made to
4 the authority from time to time by the county court of
5 the county of Raleigh and by any persons, firms or cor-
6 porations that shall desire so to do. All such funds and
7 all other funds received by the authority shall be de-
8 posited in such bank or banks as the authority may di-
9 rect and shall be withdrawn therefrom in such manner
10 as the authority may direct. The authority shall keep
11 strict account of all its receipts and expenditures and shall
12 each quarter make a quarterly report to the county court

13 of the county of Raleigh containing an itemized account
14 of its receipts and disbursements during the preceding
15 quarter. Such report shall be made within sixty days
16 after the termination of the quarter. Within sixty days
17 after the end of each fiscal year, the authority shall make
18 an annual report containing an itemized statement of its
19 receipts and disbursements for the preceding year, and
20 such annual report shall be published once a week for two
21 successive weeks in two newspapers of opposite politics
22 published in Raleigh county, West Virginia, and of general
23 circulation in Raleigh County, West Virginia. The books,
24 records and accounts of the authority shall be subject to
25 audit and examination by the office of the state tax com-
26 missioner of West Virginia and by any other proper pub-
27 lic official or body in the manner provided by law.

Sec. 18. Employees to Be Covered by Workmen's Com-
2 **pensation.**—All employees of the authority eligible there-
3 under shall be deemed to be within the workmen's com-
4 pensation act of West Virginia, and premiums shall be
5 paid by the authority to the workmen's compensation
6 fund as required by law.

Sec. 19. Dissolution of Authority.—The authority may
2 at any time pay off and discharge in full all of its indebt-
3 edness, obligations and liabilities, reconvey its properties,
4 appurtenances and facilities to the county court of the
5 county of Raleigh and be dissolved. Before making such
6 reconveyance of its properties, the authority shall first
7 publish notice of its intention so to do and of its intention
8 to be dissolved, once a week for four successive weeks in
9 two newspapers of opposite politics published in, and of
10 general circulation in Raleigh county, West Virginia. Cer-
11 tificates from the publishers of the papers showing such
12 publication shall be filed with the county court of the
13 county of Raleigh on or before the deed reconveying said
14 properties is delivered. Any funds remaining in the hands
15 of the authority at the time of the reconveyance of said
16 properties shall be by the authority paid over to the
17 county court of the county of Raleigh to be used by it for
18 purposes in connection with said properties. Upon the
19 payment of its indebtedness, obligations and liabilities,

20 the publishing of the notices aforesaid, the reconveyance
21 of its properties, and the paying over to the county court
22 of the county of Raleigh of any funds remaining in its
23 hands, the authority shall cause a certificate showing its
24 dissolution to be executed under its name and seal and to
25 be recorded in the office of the clerk of the county court of
26 Raleigh county, and thereupon its dissolution shall be
27 complete.

Sec. 20. Automatic Termination of the Right to Establish the Authority.—If on or before the first day of July,
2 one thousand nine hundred sixty-three, the county court
3 of the county of Raleigh shall not have appointed the
4 members of the authority who are to constitute the board
5 for management of its business and affairs, as provided in
6 section three hereof, all right to create and establish said
7 authority under this act shall automatically terminate.
8

Sec. 21. Liberal Construction of Act.—It is the purpose
2 of this act to provide for the acquisition, construction, im-
3 provement, extension, maintenance and operation of pub-
4 lic tourist facilities and appurtenant facilities in a pru-
5 dent and economical manner, and this act shall be lib-
6 erally construed as giving to the authority full and com-
7 plete power reasonably required to give effect to the pur-
8 poses hereof. The provisions of this act are in addition
9 to and not in derogation of any power existing in the
10 county court of the county of Raleigh under any consti-
11 tutional or statutory provisions which it may now have,
12 or may hereafter acquire.

Sec. 22. Provisions Severable.—The several sections
2 and provisions of this act are severable, and if any section
3 or provision hereof shall be held unconstitutional, all the
4 remaining sections and provisions of this act shall never-
5 theless remain valid.

CHAPTER 212

(House Bill No. 476—By Mr. Abrams and Mrs. Withrow)

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

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.
9. Powers.
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.
16. Disposition of surplus of authority.
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.
22. Provisions severable.

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.

19 All members shall be appointed by the county court of

20 the county of Raleigh: *Provided, however,* That one mem-
21 ber of the authority shall be a member of the county
22 court of the county of Raleigh: *Provided further,* That of
23 the remaining four members of the authority no more than
24 two shall be members of the same political party, nor shall
25 they hold any political office of any nature.

Sec. 4. Removal of Members.—The members of the
2 authority shall serve at the will and pleasure of the
3 county court of the county of Raleigh: *Provided, however,*
4 That if the county court of the county of Raleigh desires
5 to remove a member of the authority it shall notify said
6 member in writing, stating the reasons for the county
7 court of the county of Raleigh desiring said removal.
8 Within ten days of the receipt by the member of the
9 authority of the written notice of removal, said member,
10 if he so desires, may have a hearing before the county
11 court of the county of Raleigh, and any such hearing
12 shall be held within ten days of the member's request for
13 said hearing.

Sec. 5. Substitution of Members.—If any member of
2 the authority die, or resign, or be removed, or for any
3 other reason cease to be a member of the authority, the
4 county court of the county of Raleigh shall appoint an-
5 other person to fill the unexpired portion of the term of
6 such member.

Sec. 6. Qualification of Members of the Authority.—
2 All members of the board of the authority shall be citi-
3 zens of West Virginia, over thirty years of age, and resi-
4 dents of Raleigh county.

Sec. 7. Compensation of Members of the Authority.—
2 No member of the board of the authority shall receive
3 any compensation, whether in form of salary, per diem
4 allowances or otherwise, for or in connection with his
5 services as such member. Each member shall, however,
6 be entitled to reimbursement by the authority for any
7 necessary expenditures in connection with the perform-
8 ance of his general duties as such member.

Sec. 8. Authority to Be a Public Corporation.—The
2 authority when created, and the members thereof, shall

3 constitute and be a public corporation under the name
4 of "Raleigh County Airport Authority", and as such
5 shall have perpetual succession, may contract and be
6 contracted with, sue and be sued, plead and be impleaded,
7 and have and use a common seal.

Sec. 9. Powers.—The Raleigh county airport authority
2 is hereby given power 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;

9 (3) To enter into contracts with any person, govern-
10 mental department, firm or corporation, including both
11 public and private corporations, and generally to do any
12 and all things necessary or convenient for the purpose of
13 acquiring, equipping, constructing, maintaining, improv-
14 ing, extending, financing and operating a public airport
15 in Raleigh county, West Virginia;

16 (4) To delegate any authority given to it by law to
17 any of its officers, committees, agents or employees;

18 (5) To apply for, receive and use grants-in-aid, dona-
19 tions and contributions from any source or sources, in-
20 cluding but not limited to the federal government and
21 any agency thereof, and the state of West Virginia, and
22 to accept and use bequests, devises, gifts and donations
23 from any person, firm or corporation;

24 (6) To acquire lands and hold title thereto in its own
25 name;

26 (7) To purchase, own, hold, sell and dispose of per-
27 sonal property and to sell, lease or otherwise dispose of
28 any real estate which it may own;

29 (8) To borrow money and execute and deliver nego-
30 tiable notes, mortgage bonds, other bonds, debentures,
31 and other evidences of indebtedness therefor, and give
32 such security therefor as shall be requisite, including
33 giving a mortgage or deed of trust on its airport proper-

34 ties and facilities in connection with the issuance of mort-
35 gage bonds;

36 (9) To raise funds by the issuance and sale of revenue
37 bonds in the manner provided by the applicable pro-
38 visions of article four-a, chapter eight of the code of West
39 Virginia, one thousand nine hundred thirty-one, as
40 amended, it being hereby expressly provided that the
41 Raleigh county airport authority is a "municipal author-
42 ity" within the definition of that term as used in said
43 article four-a, chapter eight of the code; and

44 (10) To expend its funds in the execution of the
45 powers and authority herein given.

Sec. 10. Indebtedness of the Authority.—The authority
2 may incur any proper indebtedness and issue any obliga-
3 tions and give any security therefor which it may deem
4 necessary or advisable in connection with carrying out
5 its purposes as hereinbefore mentioned. No statutory
6 limitation with respect to the nature or amount of in-
7 debtedness which may be incurred by municipalities or
8 other public bodies shall apply to indebtedness of the
9 authority. No indebtedness of any nature of the authority
10 shall constitute an indebtedness of the county court of
11 the county of Raleigh, nor of said county, or a charge
12 against any property of said county. No obligation in-
13 curred by the authority shall give any right against any
14 member of the county court of the county of Raleigh
15 or any member of the board of the authority. The rights
16 of creditors of the authority shall be solely against
17 the authority as a corporate body and shall be satisfied
18 only out of property held by it in its corporate capacity.

Sec. 11. Agreements in Connection with Obtaining
2 **Funds.**—The authority may, in connection with obtaining
3 funds for its purposes, enter into any agreement with
4 any person, firm or corporation, including the federal
5 government, or any agency or subdivision thereof, con-
6 taining such provisions, covenants, terms and conditions
7 as the authority may deem advisable.

Sec. 12. Authority to Have Right of Eminent Domain.
2 —Whenever it shall be deemed necessary by the author-

3 ity in connection with the exercise of its powers herein
4 conferred, to take or acquire any lands, structures or
5 buildings or other rights, either in fee or as easements,
6 for the purposes herein set forth, the authority may purchase the same directly or through its agents from the
7 owner or owners thereof, or failing to agree with the
8 owner or owners thereof, the authority may exercise the
9 power of eminent domain in the manner provided for
10 condemnation proceedings in chapter fifty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as heretofore and hereafter amended, and
13 such purposes are hereby declared to be public uses for
14 which private property may be taken or damaged.

Sec. 13. Property, Bonds and Obligations of Authority

2 **Exempt from Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or any
4 subdivisions thereof or to any officer or employee of the
5 state or of any subdivisions thereof. The property of the
6 authority shall be exempt from all local and municipal
7 taxes. Bonds, notes, debentures and other evidence of
8 indebtedness of the authority are declared to be issued
9 for a public purpose and to be public instrumentalities,
10 and, together with interest thereon, shall be exempt from
11 taxes.

Sec. 14. County Commissioners Authorized to Convey

2 **Present Airport Properties and Facilities to the Authority.**—The county court of the county of Raleigh is hereby
3 authorized to convey to the authority the present airport property owned by the county of Raleigh, situate
4 in Raleigh county, together with all the appurtenances
5 and facilities therewith, such conveyance to be without
6 consideration or for such price and upon such terms and
7 conditions as the county court of the county of Raleigh
8 shall deem proper.

Sec. 15. Authority May Lease Airport and Facilities

2 **to the County Court of the County of Raleigh or Other**
3 **Lessee.**—The authority may lease its airport and all the
4 appurtenances and facilities therewith to the county
5 court of the county of Raleigh or to any other available
6 lessee at such rental and upon such terms and conditions

7 as to the authority shall seem proper. If the authority
8 determines to lease the airport and its appurtenances
9 and facilities, as a whole, it shall first offer the same to
10 the county court of the county of Raleigh upon an
11 annual lease, and it shall not lease the airport and its
12 appurtenances and facilities as a whole to any other
13 lessee until the county court of the county of Raleigh
14 has notified the authority that it does not desire to lease
15 said properties, which notice shall be given within thirty
16 days after notice by the authority of a desire on its
17 part to lease the airport as a whole. The county court
18 of the county of Raleigh is hereby authorized to enter
19 into a lease with the authority for said airport and appur-
20 tenances and facilities at such rental and upon such terms
21 and conditions as it shall deem proper, and the county
22 court of the county of Raleigh is hereby authorized to
23 levy taxes as provided by law for the purpose of paying
24 the rent for said airport, appurtenances and facilities.
25 The authority, however, may lease one or more portions
26 of said airport, not including runways and taxiways,
27 without first offering the same to the county court of
28 the county of Raleigh. Such lease shall be for some pur-
29 pose associated with airport activities.

Sec. 16. Disposition of Surplus of Authority.—If the
2 authority should realize a surplus, whether from oper-
3 ating the airport or leasing it for operation, over and
4 above the amount required for the maintenance, im-
5 provement and operation of the airport and for meeting
6 all required payments on its obligations, it shall set aside
7 such reserve for future operations, improvements and
8 contingencies as it shall deem proper and shall then apply
9 the residue of such surplus, if any, to the payment of any
10 recognized and established obligations not then due; and
11 after all such recognized and established obligations have
12 been paid off and discharged in full, the authority shall,
13 at the end of each fiscal year, set aside the reserve for
14 future operations, improvements and contingencies, as
15 aforesaid, and then pay the residue of such surplus, if any,
16 to the county court of the county of Raleigh, to be used by
17 said county court for general county purposes.

Sec. 17. Contributions to Authority by the County

2 **Court of the County of Raleigh and Others; Funds and**
3 **Accounts of the Authority.**—Contributions may be made
4 to the authority from time to time by the county court
5 of the county of Raleigh and by any persons, firms or
6 corporations that shall desire so to do. All such funds
7 and all other funds received by the authority shall be
8 deposited in such bank or banks as the authority may
9 direct and shall be withdrawn therefrom in such manner
10 as the authority may direct. The authority shall keep
11 strict account of all its receipts and expenditures and
12 shall each quarter make a quarterly report to the county
13 court of the county of Raleigh containing an itemized
14 account of its receipts and disbursements during the
15 preceding quarter. Such report shall be made within
16 sixty days after the termination of the quarter. Within
17 sixty days after the end of each fiscal year, the authority
18 shall make an annual report containing an itemized
19 statement of its receipts and disbursements for the pre-
20 ceding year, and such annual report shall be published
21 once a week for two successive weeks in two newspapers
22 of opposite politics published in, and of general cir-
23 culation in Raleigh county, West Virginia. The books,
24 records and accounts of the authority shall be subject to
25 audit and examination by the office of the state tax com-
26 missioner of West Virginia and by any other proper public
27 official or body in the manner provided by law.

Sec. 18. Employees to Be Covered by Workmen's Com-

2 **pensation.**—All employees of the authority eligible there-
3 under shall be deemed to be within the workmen's
4 compensation act of West Virginia, and premiums shall
5 be paid by the authority to the workmen's compensation
6 fund as required by law.

Sec. 19. Dissolution of Authority.—The authority may

2 at any time pay off and discharge in full all of its indebted-
3 ness, obligations and liabilities, reconvey the airport
4 properties, appurtenances and facilities to the county
5 court of the county of Raleigh and be dissolved. Before
6 making such reconveyance of its properties, the authority
7 shall first publish notice of its intention so to do and of

8 its intention to be dissolved, once a week for four suc-
9 cessive weeks in two newspapers of opposite politics
10 published in, and of general circulation in Raleigh county,
11 West Virginia. Certificates from the publishers of the
12 papers showing such publication shall be filed with the
13 county court of the county of Raleigh on or before the
14 deed reconveying said properties is delivered. Any funds
15 remaining in the hands of the authority at the time of the
16 reconveyance of said properties shall be by the authority
17 paid over to the county court of the county of Raleigh
18 to be used by it for purposes in connection with said
19 airport. Upon the payment of its indebtedness, obliga-
20 tions and liabilities, the publishing of the notices afore-
21 said, the reconveyance of its properties, and the paying
22 over to the county court of the county of Raleigh of any
23 funds remaining in its hands, the authority shall cause
24 a certificate showing its dissolution to be executed under
25 its name and seal and to be recorded in the office of the
26 clerk of the county court of Raleigh county, and there-
27 upon its dissolution shall be complete.

Sec. 20. Automatic Termination of the Right to Estab-
2 **lish the Authority.**—If on or before the first day of July,
3 one thousand nine hundred sixty-three, the county court
4 of the county of Raleigh shall not have appointed the
5 members of the authority who are to constitute the board
6 for management of its business and affairs, as provided
7 in section three thereof, all right to create and establish
8 said Raleigh county airport authority under this act
9 shall automatically terminate.

Sec. 21. Liberal Construction of Act.—It is the purpose
2 of this act to provide for the acquisition, construction,
3 improvement, extension, maintenance and operation of
4 a public airport in a prudent and economical manner,
5 and this act shall be liberally construed as giving to the
6 authority full and complete power reasonably required
7 to give effect to the purposes hereof. The provisions of
8 this act are in addition to and not in derogation of any
9 power existing in the county court of the county of
10 Raleigh under any constitutional or statutory provisions
11 which it may now have, or may hereafter acquire.

- Sec. 22. Provisions Severable.**—The several sections 2 and provisions of this act are severable, and if any section 3 or provision hereof shall be held unconstitutional, 4 all the remaining sections and provisions of this act 5 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.
2. Retransfer of funds.

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

6 and credit shall be given to the records of the court and
7 certificates of its judge or clerk in like manner and with
8 the same effect as if the same were records of the circuit
9 court similarly authenticated. The county court of Wood
10 county shall likewise furnish such rooms, furniture and
11 equipment for the proper conduct and administration of
12 said court and shall, through annual levy and appropri-
13 ations, make provision for the payment for all such rooms,
14 supplies and equipment. It shall be the duty of the county
15 court of Wood county to pay the salary of a full-time
16 secretary in the office of the judge of said court, to be
17 appointed by him, whose compensation shall be not less
18 than two thousand five hundred dollars nor more than
19 four thousand dollars annually, to be determined by the
20 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 unexpended 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.

CHAPTER 218

(House Bill No. 398—By Mr. Buck and Mr. Michels)

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

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.
2. Geographic and territorial limits of the authority.
3. Public corporation's authority.
4. Government, operation and management of the authority.
5. Compensation of directors.
6. Authority to be a public corporation.
7. Powers.
8. Indebtedness of the authority.
9. Agreement in connection with obtaining funds.
10. Property, bonds and obligations of authority exempt from taxation.
11. Participation and appropriations authorized.
12. Funds and accounts of the authority.
13. Sale or lease of property.
14. Employees to be covered by workmen's compensation.
15. Liberal construction of act.
16. Provisions severable.

Section 1. Middle Island Creek Development Authority

- 2 **Authorized.**—There is hereby created a public corporation, to be known and designated as the Middle Island
3 Creek Development Authority, for the purposes and with
4 the authority hereinafter set forth.
5

Sec. 2. Geographic and Territorial Limits of the Author-

2 **ity.**—The authority is hereby authorized to do and perform
3 all acts, consistent with the purposes as hereinafter set
4 forth, within that portion of the watershed basin of Middle
5 Island Creek and its tributaries located within the bounda-
6 ries of the counties of Doddridge, Pleasants and Tyler.

Sec. 3. Public Corporation's Authority.—The authority

2 is authorized to develop the watershed basin of Middle
3 Island Creek for any of the following purposes:

- 4 a. Recreational areas and recreation.
- 5 b. Tourist facilities and promotion of tourism within
6 the area.
- 7 c. Preventing floods.
- 8 d. Arresting erosion.
- 9 e. Regulating the flow of streams and conserving the
10 water thereof.
- 11 f. Regulating stream channels by changing, widening
12 and deepening the same.

Sec. 4. Government, Operation and Management of the

2 **Authority.**—The government, management and operation
3 of the authority, its property, operations, business and af-
4 fairs, shall be lodged in a board of directors composed of
5 three persons, one each appointed by the county courts of
6 Doddridge, Pleasants and Tyler counties, who shall be res-
7 idents of the respective counties. Within thirty days after
8 the effective date of this act, the county court of Dodd-
9 ridge county shall appoint one of said directors for a term
10 of three years; the county court of Pleasants county shall
11 appoint one of said directors for a term of five years;
12 and the county court of Tyler county shall appoint one
13 of said directors for a term of seven years. At the
14 expiration of their respective terms of office, appoint-
15 ments shall be made by the county court whose appointee
16 is vacating his office for terms of five years. Any vacancy
17 shall be filled forthwith by the respective county court
18 who originally filled the office for which the vacancy
19 exists, for the unexpired term. A member may be re-
20 appointed for such additional term or terms as the county
21 court may deem proper. Members in office at the expira-

22 tion of their respective terms shall continue to serve
23 until their successors shall have been appointed and
24 qualified. The county court may at any time remove
25 its appointee to said board of directors for good cause
26 shown, and may appoint a successor member for said
27 removed member. No member of the board of direc-
28 tors shall be a public officer, public official, candidate
29 for public office, or employee of any public officer or
30 public official, and any board member shall automati-
31 cally vacate his office when he belongs to one of the above
32 prohibited classifications.

Sec. 5. Compensation of Directors.—No member of the
2 board of directors shall receive any compensation, wheth-
3 er in form of salary, per diem allowance or otherwise,
4 for or in connection with his services as such member,
5 but each member shall be entitled to reimbursement
6 for any necessary expenditures in connection with the
7 performance of his general duties as such member.

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

Sec. 7. Powers.—The development authority is hereby
2 given power and authority as follows: (1) To make and
3 adopt all necessary by-laws, rules and regulations for
4 its organization and operations not inconsistent with
5 law; (2) to elect its own officers, to appoint committees
6 and to employ and fix compensation for personnel
7 necessary for its operation; (3) to enter into contracts
8 with any person, agency, governmental department, firm
9 or corporation, including both public and private cor-
10 porations, and generally to do any and all things neces-
11 sary or convenient for the purpose of promoting, de-
12 veloping and advancing the recreational facilities of the
13 counties in which it is intended to operate; (4) to dele-
14 gate any authority given to it by law to any of its offi-
15 cers, committees, agents or employees; (5) to apply for,

16 receive and use grants-in-aid, donations and contribu-
17 tions from any source or sources, and to accept and use
18 bequests, devises, gifts and donations from any person,
19 firm or corporation; (6) to acquire lands and hold title
20 thereto in its own name; (7) to purchase, own, hold,
21 sell and dispose of personal property and to sell, lease
22 or otherwise dispose of any real estate which it may own;
23 (8) to borrow money and execute and deliver negotiable
24 notes, mortgages, bonds, debentures, and other evidences
25 of indebtedness therefor, and give such security there-
26 for as shall be requisite, including giving a mortgage
27 or deed of trust on its real or personal property and
28 facilities in connection with the issuance of mortgage
29 bonds; (9) to raise funds by the issuance and sale of
30 revenue bonds in the manner provided by the applicable
31 provisions of article four-a, chapter eight of the code
32 of West Virginia, one thousand nine hundred thirty-one,
33 as amended, it being hereby expressly provided that a
34 development authority created under this act is a "mu-
35 nicipal authority" within the definitions of that term
36 as used in said article four-a, chapter eight of the code;
37 and (10) to expend its funds in the execution of the
38 powers and authority herein given.

Sec. 8. Indebtedness of the Authority.—The authority
2 may incur any proper indebtedness and issue any obliga-
3 tions and give any security therefor which it may deem
4 necessary or advisable in connection with carrying out
5 its purposes as hereinbefore mentioned. No statutory
6 limitation with respect to the nature or amount of indebt-
7 edness which may be incurred by municipalities or other
8 public bodies shall apply to indebtedness of the authority.
9 No indebtedness of any nature of the authority shall con-
10 stitute an indebtedness of the county courts of the coun-
11 ties in which the commission is intended to operate or any
12 municipality situate therein, or a charge against any
13 property of any of the county courts, municipalities, or
14 other appointing agencies. The rights of creditors of the
15 authority shall be solely against the authority as a cor-
16 porate body and shall be satisfied only out of property
17 held by it in its corporate capacity.

Sec. 9. Agreement in Connection with Obtaining Funds.

2 —The authority may, in connection with obtaining funds
3 for its purposes, enter into any agreement with any per-
4 son, firm or corporation, including the federal govern-
5 ment, or any agency or subdivision thereof, containing
6 such provisions, covenants, terms and conditions as the
7 authority may deem advisable.

Sec. 10. Property, Bonds and Obligations of Authority

2 **Exempt from Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or
4 any subdivision thereof or to any officer or employee
5 of the state or other subdivision thereof. The property
6 of the authority shall be exempt from all local and
7 municipal taxes. Bonds, notes, debentures and other
8 evidences of indebtedness of the authority are declared
9 to be issued for a public purpose and to be public in-
10 strumentalities, and shall be exempt from taxes.

Sec. 11. Participation and Appropriations Authorized.—

2 The county courts of the counties of Doddridge, Pleas-
3 ants and Tyler are hereby authorized and empowered
4 to appoint members of the said authority and such county
5 courts and any municipalities therein, or any one or
6 more of them, jointly and severally, are hereby author-
7 ized and empowered to contribute by appropriation from
8 their respective general funds not otherwise appropri-
9 ated to the cost of the operation and projects of the
10 authority.

11 Such county courts or municipal corporations there-
12 in are hereby authorized and empowered to transfer and
13 convey to the said authority property of any kind here-
14 tofore acquired by said county courts or municipal cor-
15 porations for or adaptable to use in industrial and eco-
16 nomic development, such transfers or conveyances to be
17 without consideration or for such price and upon such
18 terms and conditions as said county courts or municipal
19 corporations shall deem proper.

Sec. 12. Funds and Accounts of the Authority.—

2 Contributions made to the authority from time to time by the
3 county courts of the counties of Doddridge, Pleasants

4 and Tyler, or any municipal corporation therein, and by
5 any persons, firms or corporations which shall desire
6 to do so, and all other funds received by the authority,
7 shall be deposited in such bank or banks as the authority
8 may direct and shall be withdrawn therefrom in such
9 manner as the authority may direct. The authority shall
10 keep strict account of all its receipts and expenditures
11 and shall each quarter make a quarterly report to the
12 county courts of such counties containing an itemized
13 statement of its receipts and disbursements during the
14 preceding quarter. Within sixty days after the end of
15 each fiscal year, the authority shall make an annual
16 report containing an itemized statement of its receipts
17 and disbursements for the preceding year, and such
18 annual report shall be published once a week for two
19 successive weeks in two newspapers of opposite politics
20 of general circulation in such counties. The books, rec-
21 ords and accounts of the authority shall be subject to
22 audit and examination by the office of the state tax
23 commissioner of West Virginia and by any other proper
24 public official or body in the manner provided by law.

Sec. 13. Sale or Lease of Property.—In the event the
2 board of the authority shall so determine, the authority
3 may lease or sell all of its property and equipment on
4 such terms and conditions as the authority may fix
5 and determine. Upon dissolution of the authority, all
6 of its assets and property shall revert to and become
7 the property of the counties for which said authority
8 was created.

Sec. 14. Employees to Be Covered by Workmen's Com-
2 **pensation.**—All eligible employees of the authority shall
3 be deemed to be within the workmen's compensation
4 act of West Virginia, and premiums on their compensa-
5 tion shall be paid by the authority as required by law.

Sec. 15. Liberal Construction of Act.—It is the purpose
2 of this act to provide for the promotion, development
3 and advancement of the business prosperity and economic
4 welfare of the counties of Doddridge, Pleasants and Tyler,
5 and this act shall be liberally construed to effect such
6 purpose.

Sec. 16. Provisions Severable.—The several sections 2 and provisions of this act are severable, and if any 3 section or provision hereof shall be held unconstitutional, all the remaining sections and provisions of this 4 act shall nevertheless remain valid. 5

CHAPTER 219

(House Bill No. 86—By Mr. Speaker, Mr. Singleton,
and Mr. Boiarsky)

[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 2 of this act, there is hereby created a special revenue 3 fund entitled "The West Virginia Centennial Fund," which 4 fund shall remain in existence only to the end of the 5 fiscal year, one thousand nine hundred sixty-four. 6

7 The commission shall have the duty of administering, 8 managing and controlling said fund and shall make ex- 9 penditures therefrom in accordance with the provisions 10 of article three, chapter twelve of the code of West Vir- 11 ginia, one thousand nine hundred thirty-one, as amended. 12 Requisitions for expenditures from said fund shall be 13 signed by either the chairman or vice chairman of the 14 commission, secretary, treasurer or comptroller. All such

15 requisitions shall require the signature of two such
16 officers.

17 The commission is authorized to receive annual
18 appropriations from the Legislature of West Virginia
19 and from counties and municipalities within the
20 state. County courts and municipalities are hereby
21 authorized and empowered to make appropriations
22 to the commission as a budget expenditure; and, not-
23 withstanding the provisions of section twenty-six, article
24 eight, chapter eleven of the code of West Virginia, one
25 thousand nine hundred thirty-one, as amended, or any
26 other law which may be to the contrary, county courts
27 and municipalities are hereby authorized to appropriate
28 to the commission funds in excess of the amount needed
29 for the purpose for which such funds were raised:
30 *Provided*, That under no circumstances shall a county
31 court or municipality expend money in excess of the funds
32 available for current expenses. The commission is em-
33 powered to allow such annual appropriations to accumu-
34 late until such time as it becomes necessary to make
35 expenditures therefrom. The commission is further
36 authorized and empowered to solicit, encourage and re-
37 quest tax-deductible donations, gifts and contributions
38 from any source, both private and public.

39 All money so appropriated or received shall be turned
40 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.

HOUSE CONCURRENT RESOLUTION NO. 19

(By Mr. Boiarsky)

[Adopted February 28, 1963.]

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 6, 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.

COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 10

(Originating in the Senate Committee on the Judiciary)

[Adopted March 2, 1963.]

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 retirement 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 thereunder through arrangements with nonprofit hospital, medical, and dental service corporations organized and operating under the provisions of article twenty-four, chapter 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 assistance 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 administration of the medical assistance for the aged program, which time has been diverted from the public assistance program; and

WHEREAS, Three or four states have recently established limited programs providing medical and hospital assistance to their residents through arrangements with hospital and medical 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 corporations 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 present law and regulations promulgated thereunder through arrangements with nonprofit hospital, medical and dental service 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 Legislature in the year one thousand nine hundred sixty-four submit 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.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1963

FIRST EXTRAORDINARY SESSION

(May 6-7, 1963)

CHAPTER 1

(Senate Bill No. 1—By Mr. Carson, Mr. President,
and Mr. McCourt)

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

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.

Section 1. Supplementary Appropriation.—In addition
2 and as a supplement to the appropriations made to the
3 state department of welfare for the fiscal year ending
4 June thirtieth, one thousand nine hundred sixty-three,
5 by chapter one, acts of the Legislature, regular session,
6 one thousand nine hundred sixty-two, and by section
7 three, title II, chapter twelve, acts of the Legislature,
8 regular session, one thousand nine hundred sixty-three,
9 there is hereby appropriated from the state fund, gen-
10 eral revenue, to the state department of welfare, condi-
11 tionally upon the fulfillment of the provisions set forth
12 in chapter one hundred thirty-two, acts of the Legislature,
13 regular session, one thousand nine hundred sixty-one, the
14 following additional sums of money for expenditure dur-

15 ing the fiscal year ending June thirtieth, one thousand
16 nine hundred sixty-three, for the purposes hereinafter
17 stated:

18 *Department of Welfare*

19 *Acct. No. 405*

20 Public Assistance Grant (Classified Aid)\$457,000.00

21 This supplementary appropriation is based upon a de-
22 termination by the board of public works, embodied in a
23 statement submitted to the Legislature under date of the
24 sixth day of May, one thousand nine hundred sixty-three,
25 that there is unappropriated revenue available for the
26 current fiscal year in excess of the amount appropriated
27 by this act.

28 It is the purpose of this supplementary appropriation
29 to provide additional funds to the state department of
30 welfare that it may continue, without reduction, the aid
31 to dependent children and work and training programs.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1964

REGULAR SESSION

CHAPTER 1

(Senate Bill No. 30—Originating in the Senate Committee
on the Judiciary)

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

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.**
- 2. Public Records.**
- 3. Rule Making.**
- 4. Declaratory Rulings and Declaratory Judgments.**
- 5. Contested Cases.**
- 6. Appeals.**
- 7. General Provisions.**

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.

Article 2. Public Records.

Section

1. Filing rules.
2. Making orders and records available.

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-

19 sued by the secretary of state under the authority of this
20 section shall become effective thirty days after such rules
21 have been included in the permanent register main-
22 tained by the secretary of state in accordance with this
23 section. The secretary of state may refuse to accept for
24 filing any rules which do not comply with this chapter
25 or with his rules pertaining to size, format and number-
26 ing.

Sec. 2. Making Orders and Records Available.—Every
2 agency shall publish or, pursuant to rules adopted in ac-
3 cordance with the provisions of this chapter, make avail-
4 able to public inspection all final orders, decisions and
5 opinions in the adjudication of contested cases except
6 those required for good cause to be held confidential and
7 not cited as precedents. Save as otherwise required by
8 statute, matters of official record shall, pursuant to rules
9 adopted in accordance with the provisions of this chapter,
10 be made available for public inspection.

Article 3. Rule Making.

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.
6. Petition for adoption of rules.
7. Publication of rules.

Section 1. Rules of Procedure Required.—In addition
2 to other rule-making requirements imposed by law:

3 (a) Each agency shall adopt rules governing the for-
4 mal and informal procedures prescribed or authorized by
5 this chapter. Such rules shall include rules of practice
6 before the agency, together with forms and instructions.

7 (b) To assist interested persons dealing with it, each
8 agency shall so far as deemed practicable supplement its
9 rules with descriptive statements of its procedures.

Sec. 2. Notice Must Be Given.—On and after the effec-
2 tive date of this chapter, no agency shall make any rule un-
3 less and until notice thereof has been given to all persons
4 who, in the manner hereinafter provided in this section,
5 have requested notice of any proposed rule. The notice

6 shall either contain the express terms of the proposed rule,
7 or shall contain an informative summary thereof. The no-
8 tice shall be given by mail as specified in section two,
9 article seven of this chapter. The notice shall include a
10 statement of the time, date and place at which interested
11 persons may submit data, objections, suggested amend-
12 ments, views, evidence and arguments orally or in writing
13 concerning the proposed rule, and such notice must be
14 given not less than thirty nor more than sixty days prior
15 to the date fixed. The request by any person to receive
16 notice shall be in writing and shall request the agency to
17 notify him of any rule proposed by such agency during
18 the calendar year in which the request is made. Each
19 agency by rule may prescribe the form of such written
20 request for notification, and may require an annual fee
21 in an amount not to exceed one dollar to accompany each
22 such written request. All such fees shall be deposited in
23 the state treasury to the credit of the state general fund.
24 An agency may, in its discretion, also publish the re-
25 quired notice, at the expense of the agency, in one news-
26 paper of general circulation in the state, or, if the rule
27 has only local application, in one newspaper of general
28 circulation in the locality to which it applies. If an
29 agency determines to give notice also by publication, the
30 publication shall appear at least once. No rule hereafter
31 adopted is valid unless adopted in substantial compliance
32 with the provisions of this section.

Sec. 3. Submission of Data, etc., Concerning Proposed
2 **Rule.**—On the date and at the time and place specified in
3 the notice required by section two of this article an
4 opportunity shall be afforded all interested persons to
5 submit data, objections, suggested amendments, views,
6 evidence and arguments orally or in writing concerning
7 the proposed rule. The proposed rule may be adopted
8 in the form in which it was proposed, or as amended
9 after the submission of such data, etc., providing the
10 amendments do not alter the main purpose of the rule
11 as proposed.

Sec. 4. Effective Date of Rules.—After the effective
2 date of this chapter, each rule lawfully adopted by any

3 agency after notice and after affording interested persons
4 an opportunity to submit data, etc., as required by sections
5 two and three of this article, shall not become effective
6 unless and until two certified copies of such rule have
7 been on file in the office of the secretary of state for
8 thirty consecutive days.

Sec. 5. **Emergency Rules.**—If, in an emergency, the
2 adoption of a rule is necessary for the immediate preser-
3 vation of the public peace, health, safety or welfare, an
4 agency may promulgate the necessary rule, in which
5 event the rule shall, notwithstanding the provisions of
6 sections two, three and four of this article, become effec-
7 tive immediately. The agency's finding of an emergency
8 and a brief statement of the reasons therefor shall be
9 filed with the rule. Notice of any such emergency rule
10 shall forthwith be given as prescribed in section two of
11 this article. No such rule shall remain in effect longer
12 than ninety days unless there is compliance with all the
13 provisions of sections two and three of this article.

Sec. 6. **Petition for Adoption of Rules.**—Any interested
2 person may petition an agency requesting the promulga-
3 tion, amendment or repeal of any rule. Each agency may
4 prescribe by rule the form for such petitions and the pro-
5 cedure for their submission, consideration and disposi-
6 tion.

Sec. 7. **Publication of Rules.**—(a) The secretary of
2 state shall, as soon as practicable after January one, one
3 thousand nine hundred sixty-five, publish as to each
4 agency, in pamphlet form, all rules adopted by such
5 agency and on file in his office. All such pamphlets shall
6 be supplemented or revised as often as necessary.

7 (b) The secretary of state shall publish a quarterly
8 bulletin in which he shall set forth the text of all rules
9 filed during the preceding quarter, excluding rules in
10 effect on January one, one thousand nine hundred sixty-
11 five.

12 (c) The secretary of state may in his discretion omit
13 from the publication in pamphlet form or the quarterly
14 bulletins rules the publication of which would be unduly

15 cumbersome, expensive or otherwise inexpedient, if such
16 rules are made available in printed or processed form on
17 application to the adopting agency, and if the publication
18 in pamphlet form or the quarterly bulletins contain a
19 statement stating the general subject matter of the rules
20 so omitted and stating how copies thereof may be ob-
21 tained.

22 (d) The quarterly bulletins and the pamphlet publi-
23 cations shall be made available upon request to officials
24 of this state free of charge, and to other persons at a
25 price fixed by the secretary of state to cover the cost
26 thereof and mailing costs. All moneys so received shall
27 be deposited in the state treasury to the credit of the state
28 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-
2 **cies.**—On petition of any interested person, an agency
3 may issue a declaratory ruling with respect to the ap-
4 plicability to any person, property or state of facts of
5 any rule or statute enforceable by it. A declaratory rul-
6 ing, if issued after argument and stated to be binding,
7 is binding between the agency and the petitioner on the
8 state of facts alleged, unless it is altered or set aside by
9 a court, but it shall not be binding on any other person.
10 Such ruling is subject to review before the court and
11 in the manner hereinafter provided for the review of
12 orders or decisions in contested cases. Each agency may
13 prescribe by rule the form for such petitions and the
14 procedure for their submission, consideration and dis-
15 position.

Sec. 2. Declaratory Judgment on Validity of Rule.—
2 (a) Any person, except the agency promulgating the rule,
3 may have the validity of any rule determined by insti-
4 tuting an action for a declaratory judgment in the circuit
5 court of Kanawha county, West Virginia, when it appears
6 that the rule, or its threatened application, interferes
7 with or impairs or threatens to interfere with or impair,

8 the legal rights or privileges of the plaintiff or plaintiffs.
9 The agency shall be made a party to the proceeding. The
10 declaratory judgment may be rendered whether or not
11 the plaintiff or plaintiffs has or have first requested the
12 agency to pass upon the validity of the rule in question.

13 (b) The court shall declare the rule invalid if it finds
14 that the rule violates constitutional provisions or ex-
15 ceeds the statutory authority or jurisdiction of the
16 agency or was adopted without compliance with statutory
17 rule-making procedures or is arbitrary or capricious, or
18 that, in the case of a rule adopted pursuant to section
19 five, article three of this chapter, action under said sec-
20 tion five was not justified.

21 (c) When the invalidity of a rule has been so declared,
22 the agency shall, within thirty days after such declaratory
23 judgment has been entered, acquiesce therein and modify
24 or rescind such invalidated rule in accord with the re-
25 quirement of such declaratory judgment unless the
26 agency promptly, and in any event within such thirty-day
27 period, notifies the plaintiff or plaintiffs of its intention to
28 apply for an appeal to the supreme court of appeals from
29 such declaratory judgment pursuant to section one, article
30 six of this chapter. In the event such agency shall there-
31 after make timely application for such appeal, the ac-
32 quiescence of the agency in the invalidity of such rule shall
33 not be required until thirty days after timely applications
34 for such appeal have been refused or within thirty days
35 after the appeal has been dismissed or otherwise disposed
36 of in the supreme court of appeals by an affirmance of the
37 judgment invalidating said rule.

Article 5. Contested Cases.

Section

1. Notice required; hearing; subpoenas; records.
2. Rules of evidence; official notice.
3. Orders or decisions.
4. Judicial review of contested cases.
5. Exceptions.

Section 1. Notice Required; Hearing; Subpoenas; Rec-
2 **ords.—**(a) In any contested case all parties shall be
3 afforded an opportunity for hearing after at least ten
4 days' written notice. The notice shall contain the date,
5 time and place of the hearing and a short and plain state-

6 ment of the matters asserted. If the agency is unable to
7 state the matters in detail at the time the notice is served,
8 the initial notice may be limited to a statement of the
9 issues involved. Thereafter, upon application a more
10 definite and detailed statement shall be furnished. An
11 opportunity shall be afforded all parties to present evi-
12 dence and argument with respect to the matters and
13 issues involved. The required notice must be given as
14 specified in section two, article seven of this chapter.
15 All of the testimony and evidence at any such hearing
16 shall be reported by stenographic notes and characters
17 or by mechanical means. All rulings on the admissibility
18 of testimony and evidence shall also be reported. The
19 agency shall prepare an official record, which shall in-
20 clude reported testimony and exhibits in each contested
21 case, and all agency staff memoranda and data used in
22 consideration of the case, but it shall not be necessary
23 to transcribe the reported testimony unless required for
24 purposes of rehearing or judicial review. Informal dis-
25 position may also be made of any contested case by stip-
26 ulation, agreed settlement, consent order or default. Each
27 agency shall adopt appropriate rules of procedure for
28 hearing in contested cases.

29 (b) For the purpose of conducting a hearing in any
30 contested case, any agency which now has or may be
31 hereafter expressly granted by statute the power to issue
32 subpoenas or *subpoenas duces tecum* or any member of
33 the body which comprises such agency may exercise
34 such power in the name of the agency. Any such agency
35 or any member of the body which comprises any such
36 agency may exercise such power in the name of the
37 agency for any party upon request. Under no circumstan-
38 ces shall this chapter be construed as granting the power
39 to issue subpoenas or *subpoenas duces tecum* to any
40 agency or to any member of the body of any agency which
41 does not now by statute expressly have such power.
42 When such power exists, the provisions of this section
43 shall apply. Every such subpoena and *subpoena duces*
44 *tecum* shall be served at least five days before the return
45 date thereof, either by personal service made by any
46 person over eighteen years of age or by registered or

47 certified mail, but a return acknowledgment signed by
48 the person to whom the subpoena or *subpoena duces*
49 *tecum* is directed shall be required to prove service by
50 registered or certified mail. All subpoenas and *subpoenas*
51 *duces tecum* shall be issued in the name of the agency,
52 as aforesaid, but any party requesting their issuance
53 must see that they are properly served. Service of sub-
54 poenas and *subpoenas duces tecum* issued at the instance
55 of the agency shall be the responsibility of the agency.
56 Any person who serves any such subpoena or *subpoena*
57 *duces tecum* shall be entitled to the same fee as sheriffs
58 who serve witness subpoenas for the circuit courts of
59 this state; and fees for the attendance and travel of wit-
60 nesses shall be the same as for witnesses before the cir-
61 cuit courts of this state. All such fees shall be paid by
62 the agency if the subpoena or *subpoena duces tecum*
63 were issued, without the request of an interested party,
64 at the instance of the agency. All such fees related to
65 any subpoena or *subpoena duces tecum* issued at the
66 instance of an interested party shall be paid by the party
67 who asks that such subpoena or *subpoena duces tecum*
68 be issued. All requests by interested parties for sub-
69 poenas and *subpoenas duces tecum* shall be in writing
70 and shall contain a statement acknowledging that the
71 requesting party agrees to pay such fees. Any such
72 agency may compel the attendance of witnesses and the
73 production of books, records or papers in response to
74 such subpoenas and *subpoenas duces tecum*. Upon motion
75 made promptly and in any event before the time speci-
76 fied in a *subpoena duces tecum* for compliance therewith,
77 the circuit court of the county in which the hearing is
78 to be held, or the circuit court in which the *subpoena*
79 *duces tecum* was served, or the judge of either such
80 court in vacation, may grant any relief with respect to
81 such *subpoena duces tecum* which either such court,
82 under the West Virginia rules of civil procedure for trial
83 courts of record, could grant, and for any of the same
84 reasons, with respect to a *subpoena duces tecum* issued
85 from either such court. In case of disobedience or neglect
86 of any subpoena or *subpoena duces tecum* served on any
87 person, or the refusal of any witness to testify to any mat-

88 ter regarding which he may be lawfully interrogated,
89 the circuit court of the county in which the hearing is
90 being held, or the judge thereof in vacation, upon ap-
91 plication by such agency or any member of the body
92 which comprises such agency, shall compel obedience
93 by attachment proceedings for contempt as in the case
94 of disobedience of the requirements of a subpoena or
95 *subpoena duces tecum* issued from such circuit court
96 or a refusal to testify therein. Witnesses at such hearings
97 shall testify under oath or affirmation.

98 (c) Evidentiary depositions may be taken and read
99 as in civil actions in the circuit courts of this state.

100 (d) All hearings shall be conducted in an impartial
101 manner. The agency, any member of the body which
102 comprises the agency, or any hearing examiner or other
103 person permitted by statute to hold any such hearing
104 for such agency, and duly authorized by such agency
105 so to do, shall have the power to: (1) Administer oaths
106 and affirmations, (2) rule upon offers of proof and re-
107 ceive relevant evidence, (3) regulate the course of the
108 hearing, (4) hold conferences for the settlement or
109 simplification of the issues by consent of the parties, (5)
110 dispose of procedural requests or similar matters, and
111 (6) take any other action authorized by a rule adopted
112 by the agency in accordance with the provisions of article
113 three of this chapter.

114 (e) Except where otherwise provided by statute, the
115 hearing in any contested case shall be held in the county
116 selected by the agency.

117 (f) Notwithstanding the provisions of subparagraph
118 (a) of this section, upon request to the agency from any
119 party to the hearing all reported testimony and evidence
120 at such hearing shall be transcribed, and a copy thereof
121 furnished to such party at his expense. The agency shall
122 have the responsibility for making arrangements for the
123 transcription of the reported testimony and evidence,
124 and such transcription shall be accomplished with all
125 dispatch.

Sec. 2. Rules of Evidence; Official Notice.—(a) In
2 contested cases irrelevant, immaterial, or unduly repeti-

3 tious evidence shall be excluded. The rules of evidence
4 as applied in civil cases in the circuit courts of this state
5 shall be followed. When necessary to ascertain facts not
6 reasonably susceptible of proof under those rules, evi-
7 dence not admissible thereunder may be admitted, ex-
8 cept where precluded by statute, if it is of a type com-
9 monly relied upon by reasonably prudent men in the con-
10 duct of their affairs. Agencies shall be bound by the rules
11 of privilege recognized by law. Objections to evidentiary
12 offers shall be noted in the record. Any party to any such
13 hearing may vouch the record as to any excluded testi-
14 mony or other evidence.

15 (b) All evidence, including papers, records, agency
16 staff memoranda and documents in the possession of the
17 agency, of which it desires to avail itself, shall be offered
18 and made a part of the record in the case, and no other
19 factual information or evidence shall be considered in the
20 determination of the case. Documentary evidence may be
21 received in the form of copies or excerpts or by incorpo-
22 ration by reference.

23 (c) Every party shall have the right of cross-exami-
24 nation of witnesses who testify, and shall have the right
25 to submit rebuttal evidence.

26 (d) Agencies may take notice of judicially cognizable
27 facts. All parties shall be notified either before or during
28 hearing, or by reference in preliminary reports or other-
29 wise, of the material so noticed, and they shall be afforded
30 an opportunity to contest the facts so noticed.

31 (e) Upon motion in writing served by any party as
32 notice may be served pursuant to section two, article
33 seven of this chapter and therein assigning error or omis-
34 sion in any part of any transcript of the proceedings had
35 and testimony taken at any such hearing, the agency shall
36 settle all differences arising as to whether such transcript
37 truly discloses what occurred at the hearing and shall
38 direct that the transcript be corrected and revised in
39 the respects designated by the agency, so as to make it
40 conform to the whole truth.

Sec. 3. Orders or Decisions.—Every final order or de-
2 cision rendered by an agency in a contested case shall

3 be in writing or stated in the record and shall be accom-
4 panied by findings of fact and conclusions of law. Prior
5 to the rendering of any final order or decision, any party
6 may propose findings of fact and conclusions of law. If
7 proposed, all other parties shall be given an opportunity
8 to except to such proposed findings and conclusions, and
9 the final order or decision shall include a ruling on each
10 proposed finding. Findings of fact, if set forth in statu-
11 tory language, shall be accompanied by a concise and ex-
12 plicit statement of the underlying facts supporting the
13 findings. A copy of the order or decision and accompany-
14 ing findings and conclusions shall be served upon each
15 party and his attorney of record, if any, in person or by
16 registered or certified mail.

Sec. 4. Judicial Review of Contested Cases.—(a) Any
2 party adversely affected by a final order or decision in a
3 contested case is entitled to judicial review thereof under
4 this chapter, but nothing in this chapter shall be deemed
5 to prevent other means of review, redress or relief pro-
6 vided by law.

7 (b) Proceedings for review shall be instituted by filing
8 a petition, at the election of the petitioner, in either the
9 circuit court of Kanawha county, West Virginia, or with
10 the judge thereof in vacation, or in the circuit court of
11 the county in which the petitioner or any one of the
12 petitioners resides or does business, or with the judge
13 thereof in vacation, within thirty days after the date
14 upon which such party received notice of the final order
15 or decision of the agency. A copy of the petition shall
16 be served upon the agency and all other parties of record
17 by registered or certified mail. The petition shall state
18 whether the appeal is taken on questions of law or ques-
19 tions of fact, or both. No appeal bond shall be required
20 to effect any such appeal.

21 (c) The filing of the petition shall not stay enforce-
22 ment of the agency order or decision or act as a super-
23 sedeas thereto, but the agency may stay such enforce-
24 ment, and the appellant, at any time after the filing of
25 his petition, may apply to such circuit court for a stay of

26 or supersedeas to such final order or decision. Pending
27 the appeal, the court may grant a stay or supersedeas
28 upon such terms as it deems proper.

29 (d) Within fifteen days after receipt of a copy of the
30 petition by the agency, or within such further time as
31 the court may allow, the agency shall transmit to such
32 circuit court the original or a certified copy of the entire
33 record of the proceeding under review, including a tran-
34 script of all testimony and all papers, motions, docu-
35 ments, evidence and records as were before the agency,
36 all agency staff memoranda submitted in connection with
37 the case, and a statement of matters officially noted; but,
38 by stipulation of all parties to the review proceeding, the
39 record may be shortened. The expense of preparing such
40 record shall be taxed as a part of the costs of the appeal.
41 The appellant shall provide security for costs satisfac-
42 tory to the court. Any party unreasonably refusing to
43 stipulate to limit the record may be taxed by the court for
44 the additional costs involved. Upon demand by any
45 party to the appeal, the agency shall furnish, at the cost
46 of the party requesting same, a copy of such record. In
47 the event the complete record is not filed with the court
48 within the time provided for in this section, the appellant
49 may apply to the court to have the case docketed, and the
50 court shall order such record filed.

51 (e) Appeals taken on questions of law, fact or both,
52 shall be heard upon assignments of error filed in the
53 cause or set out in the briefs of the appellant. Errors
54 not argued by brief may be disregarded, but the court
55 may consider and decide errors which are not assigned
56 or argued. The court or judge shall fix a date and time
57 for the hearing on the petition, but such hearing, unless
58 by agreement of the parties, shall not be held sooner than
59 ten days after the filing of the petition, and notice of
60 such date and time shall be forthwith given to the
61 agency.

62 (f) The review shall be conducted by the court with-
63 out a jury and shall be upon the record made before the
64 agency, except that in cases of alleged irregularities in
65 procedure before the agency, not shown in the record,

66 testimony thereon may be taken before the court. The
67 court may hear oral arguments and require written briefs.

68 (g) The court may affirm the order or decision of the
69 agency or remand the case for further proceedings. It
70 shall reverse, vacate or modify the order or decision of
71 the agency if the substantial rights of the petitioner or
72 petitioners have been prejudiced because the adminis-
73 trative findings, inferences, conclusions, decision or order
74 are:

75 (1) In violation of constitutional or statutory pro-
76 visions; or

77 (2) In excess of the statutory authority or jurisdiction
78 of the agency; or

79 (3) Made upon unlawful procedures; or

80 (4) Affected by other error of law; or

81 (5) Clearly wrong in view of the reliable, probative
82 and substantial evidence on the whole record; or

83 (6) Arbitrary or capricious or characterized by abuse
84 of discretion or clearly unwarranted exercise of discre-
85 tion.

86 (h) The judgment of the circuit court shall be final
87 unless reversed, vacated or modified on appeal to the su-
88 preme court of appeals of this state in accordance with
89 the provisions of section one, article six of this chapter.

2 **Sec. 5. Exceptions.**—The provisions of this article shall
3 not apply to the workmen's compensation fund, the de-
4 partment of employment security, the state tax commis-
5 sioner, the state road commissioner, the state road com-
mission, and the teacher's retirement board.

Article 6. Appeals.

Section

1. Supreme court of appeals.

2 **Section 1. Supreme Court of Appeals.**—Any party
3 adversely affected by the final judgment of the circuit
4 court under this chapter may seek review thereof by
5 appeal to the supreme court of appeals of this state, and
6 jurisdiction is hereby conferred upon such court to hear
and entertain such appeals upon application made there-

- 7 for in the manner and within the time provided by law
8 for civil appeals generally.

Article 7. General Provisions.

Section

1. Limitations on certain administrative powers.
2. Notice generally.
3. Repeal.
4. Construction and effect; severability of provisions.

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

6 prior to the effective date of this chapter. If any provision
7 of this chapter or the application thereof to any person or
8 circumstance is held invalid, such invalidity shall not
9 affect other provisions or applications of the chapter
10 which can be given effect without the invalid provision
11 or its application, and to this end the provisions of this
12 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

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

Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.

Section 1. General Policy.—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred sixty-five.

Sec. 2. Definitions.—For the purpose of this act:
2 "Board" shall mean the Board of Public Works;
3 "Spending unit" shall mean the department, agency or
4 institution to which an appropriation is made;

5 The "fiscal year one thousand nine hundred 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.

Section

1. Appropriations from general revenue.

AGRICULTURE	Page
Department of agriculture—Acct. No. 510	1261
Department of agriculture (agricultural awards)—Acct. No. 515	1262
Department of agriculture (marketing and research)— Acct. No. 513	1262
Department of agriculture (soil conservation committee)— Acct. No. 512	1262
BUSINESS AND INDUSTRIAL RELATIONS	
Bureau of labor and department of weights and measures— Acct. No. 450	1258, 1286
Commission on interstate cooperation—Acct. No. 472	1259
Department of banking—Acct. No. 480	1260
Department of commerce—Acct. No. 465	1259
Department of mines—Acct. No. 460	1259
Interstate commission on Potomac river basin—Acct. No. 473	1260
Ohio river valley water sanitation commission—Acct. No. 474	1260
Southern interstate nuclear board—Acct. No. 471	1259
Southern regional education board—Acct. No. 475	1260
State commission on manpower, technology and training— Acct. No. 470	1259
West Virginia air pollution commission—Acct. No. 476	1260
West Virginia historic commission—Acct. No. 477	1260
West Virginia non-intoxicating beer commissioner—Acct. No. 490	1261
West Virginia racing commission—Acct. No. 495	1261
West Virginia state aeronautics commission—Acct. No. 485	1261
CHARITIES AND CORRECTION	
Andrew S. Rowan memorial home—Acct. No. 384	1253
Forestry camp for boys—Acct. No. 371	1252
Medium security prison—Acct. No. 376	1253
West Virginia children's home—Acct. No. 380	1253
West Virginia industrial home for girls—Acct. No. 372	1252, 1286
West Virginia industrial school for boys—Acct. No. 370	1251, 1285
West Virginia penitentiary—Acct. No. 375	1252
West Virginia state prison for women—Acct. No. 374	1252

	Page
CONSERVATION AND DEVELOPMENT	
Department of natural resources—Acct. No. 565	1263, 1286
Department of veterans affairs—Acct. No. 564	1263
Geological and economic survey commission—Acct. No. 520	1263
EDUCATIONAL	
Archives and history—Acct. No. 340	1251
Bluefield state college—Acct. No. 329	1250
Concord college—Acct. No. 325	1249
Department of education (aid for exceptional children)— Acct. No. 296	1246
Department of education (textbook aid)—Acct. No. 297	1246
Fairmont state college—Acct. No. 321	1248
FFA-FHA camp and conference center—Acct. No. 336	1251
Glenville state college—Acct. No. 322	1248
Marshall university—Acct. No. 320	1248
Potomac state college of West Virginia university—Acct. No. 315	1248
Shepherd college—Acct. No. 324	1249
State board of education (vocational division)—Acct. No. 294	1245
State board of school finance (state aid to schools)—Acct. No. 295	1246
State commission on higher education—Acct. No. 299	1247
Teachers retirement board—Acct. No. 298	1247
West Liberty state college—Acct. No. 323	1249
West Virginia institute of technology—Acct. No. 327	1249
West Virginia library commission—Acct. No. 350	1251
West Virginia schools for the deaf and blind—Acct. No. 333	1250
West Virginia state college—Acct. No. 328	1250
West Virginia state college (4-H camp)—Acct. No. 330	1250
West Virginia university—Acct. No. 300	1247
EXECUTIVE	
Board of probation and parole—Acct. No. 123	1241
Governor's office—Acct. No. 120	1241
FISCAL	
Auditor's office (general administration)—Acct. No. 150	1242
Board of public works—Acct. No. 220	1244
Department of finance and administration—Acct. No. 210	1243, 1285
Sinking fund commission—Acct. No. 170	1242
State board of insurance—Acct. No. 225	1244
State commissioner of public institutions—Acct. No. 190	1243
State tax commissioner—Acct. No. 180	1242
State tax commissioner (property appraisal)—Acct. No. 185	1243
Treasurer's office—Acct. No. 160	1242
INCORPORATING AND RECORDING	
Secretary of state—Acct. No. 250	1245
LEGAL	
Attorney general—Acct. No. 240	1244
Commission on uniform state laws—Acct. No. 245	1245
HEALTH AND WELFARE	
Barboursville state hospital—Acct. No. 424	1256
Berkeley Springs sanitarium—Acct. No. 436	1258
Commission on mental retardation—Acct. No. 411	1255
Denmar state hospital—Acct. No. 432	1258
Department of mental health—Acct. No. 410	1255
Department of veterans affairs—Acct. No. 404	1254

	Page
Department of welfare—Acct. No. 405	1254, 1286
Fairmont emergency hospital—Acct. No. 425	1257
Hopemont sanitarium—Acct. No. 430	1257
Huntington state hospital—Acct. No. 422	1256
Lakin state hospital—Acct. No. 423	1256
Pinecrest sanitarium—Acct. No. 431	1257
Spencer state hospital—Acct. No. 421	1256
State agency on aging—Acct. No. 406	1255
State board of education (rehabilitation division)—Acct. No. 440	1258
State health department—Acct. No. 400	1253
Welch emergency hospital—Acct. No. 426	1257
Weston state hospital—Acct. No. 420	1255
West Virginia training school—Acct. No. 419	1255, 1286

JUDICIAL

Auditor's office—Acct. No. 111	1240, 1285
Judicial council—Acct. No. 118	1241
State law library—Acct. No. 114	1240
Supreme court of appeals—Acct. No. 110	1240

LEGISLATIVE

House of Delegates—Acct. No. 102	1238
Joint expenses—Acct. No. 103	1239
Senate—Acct. No. 101	1237

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of accountancy—Acct. No. 586	1267
Board of architects—Acct. No. 595	1268
Board of dental examiners—Acct. No. 589	1267
Board of embalmers and funeral directors—Acct. No. 593	1268
Board of examiners for practical nurses—Acct. No. 587	1267
Board of examiners for registered nurses—Acct. No. 588	1267
Board of law examiners—Acct. No. 597	1269
Board of optometry—Acct. No. 592	1268
Board of osteopathy—Acct. No. 591	1268
Board of pharmacy—Acct. No. 590	1267
Board of professional foresters—Acct. No. 5895	1267, 1287
Board of registration for professional engineers—Acct. No. 594	1268
Board of sanitarians—Acct. No. 599	1269
Board of veterinarians—Acct. No. 596	1268
Human rights commission—Acct. No. 598	1269
State road commission—Acct. No. 641	1270
West Virginia public employees retirement board—Acct. No. 614	1269

PROTECTION

Adjutant general (state militia)—Acct. No. 580	1265
Auditor's office (social security)—Acct. No. 582	1265
Commissioner of public institutions (insurance)—Acct. No. 585	1266
Department of civil and defense mobilization—Acct. No. 581	1265
Department of mental health (insurance)—Acct. No. 583	1266
Department of public safety—Acct. No. 570	1264, 1287
State board of education (insurance)—Acct. No. 584	1266

2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 812	1275
Department of agriculture—Acct. No. 818	1276
Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814	1276
Department of natural resources—Acct. No. 830	1279

	Page
Department of public safety (inspection fees)—Acct. No. 835	1280
Insurance commissioner—Acct. No. 826	1277, 1287
Insurance commissioner (fire marshal)—Acct. No. 827	1278
Public service commission—Acct. No. 828	1278
Public service commission (motor carrier division)— Acct. No. 829	1279
Real estate commission—Acct. No. 801	1274
State board of education (special capital improvement fund)— Acct. No. 854	1283
State committee of barbers and beauticians—Acct. No. 822	1277
West Virginia civil service system—Acct. No. 840	1280
West Virginia liquor control commissioner—Acct. No. 837	1280
West Virginia racing commission—Acct. No. 808	1275
West Virginia university (special capital improvement fund)— Acct. No. 853	1282

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671	1271, 1287
State road commission (general administration and engineering)— Acct. No. 670	1270
State tax commissioner (gasoline tax division)—Acct. No. 672	1271

PAYABLE FROM GENERAL SCHOOL FUND

Department of education—Acct. No. 703	1272
Department of education (salaries of county superintendents)— Acct. No. 706	1273
Department of education (scholarships for teacher training)— Acct. No. 715	1274
Department of education (school lunch program)—Acct. No. 705	1273
Department of education (state aid to children's home)— Acct. No. 707	1274
Department of education (veterans education)—Acct. No. 702	1272
State board of education—Acct. No. 700	1271
State board of education (vocational division)—Acct. No. 701	1272
State board of school finance—Acct. No. 704	1273
State tax commissioner (cigarette sales tax)—Acct. No. 713	1274
State tax commissioner (store and general licenses division)— Acct. No. 712	1274

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900	1285
---	------

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.
9. Appropriations for refunding erroneous payments.
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

	<i>Fiscal Year</i> 1964-65
1 Salaries of Members	\$ 51,000.00
2 Compensation and per diem of officers and	
3 attaches	75,000.00
4 Mileage of Members	3,000.00
5 Current Expenses and Contingent Fund.....	115,000.00
6 To pay Clerk of the Senate for compiling	
7 and publishing the West Virginia Blue	
8 Book, the distribution of which shall be	
9 made by the office of the Clerk of the Senate	
10 and shall include seventy-five copies for each	
11 member of the Legislature and two copies to	
12 each classified and approved High and Jun-	
13 ior High School and one to each Elementary	
14 School within the state	10,000.00
15 To pay cost of printing the 1964 edition of Blue	
16 Book	46,000.00
17 Drafting Service	9,000.00
18 The appropriations for the Senate for the fiscal	
19 year 1963-64 are to remain in full force and	
20 effect, and are hereby reappropriated to	
21 June 30, 1965.	
22 Any balances so reappropriated may be trans-	
23 ferred and credited to the 1964-65 accounts.	
24 Upon the written request of the Clerk of the	
25 Senate the State Auditor shall transfer	

26 amounts between items of the total appro-
 27 priation in order to protect or increase the
 28 efficiency of the service.

29 The Clerk of the Senate is authorized to draw
 30 his requisitions upon the Auditor, payable
 31 out of the contingent fund of the Senate, for
 32 any bills for supplies and services that may
 33 have been incurred by the Senate and not
 34 included in the appropriation bill, and for
 35 bills for supplies and services incurred after
 36 adjournment, and for the necessary opera-
 37 tion of the Senate offices, the requisition for
 38 same to be accompanied by the bills to be
 39 filed with the Auditor.

2—House of Delegates

Acct. No. 102

1 Salaries of Members	\$ 159,000.00
2 Compensation and per diem of officers and	
3 attaches	162,300.00
4 Mileage of Members	7,500.00
5 Current Expenses and Contingent Fund	50,000.00
6 Drafting Service	5,000.00

7 The appropriations for the House of Delegates
 8 for the fiscal year 1963-64 are to remain in
 9 full force and effect, and are hereby re-
 10 appropriated to June 30, 1965.

11 Any balances so reappropriated may be trans-
 12 ferred and credited to the 1964-65 accounts.

13 Upon the written request of the Clerk of the
 14 House of Delegates the State Auditor shall
 15 transfer amounts between items of the total
 16 appropriation in order to protect or increase
 17 the efficiency of the service.

18 The Clerk of the House of Delegates, with ap-
 19 proval of the Speaker, is authorized to draw
 20 his requisitions upon the Auditor, payable
 21 out of the contingent fund of the House of
 22 Delegates, for any bills for supplies and ser-

23 vices that may have been incurred by the
 24 House of Delegates, and not included in the
 25 appropriation bill, for bills for services and
 26 supplies incurred in preparation for the
 27 opening of the session and after adjourn-
 28 ment, and for the necessary operation of the
 29 House of Delegates offices, the requisition
 30 for same to be accompanied by bills to be
 31 filed with the Auditor.

32 For duties imposed by law and by the House
 33 of Delegates, including the salary allowed by
 34 law as keeper of the rolls, the Clerk of the
 35 House of Delegates shall be paid a salary of
 36 \$950.00 per month, payable from the contin-
 37 gent fund of the House of Delegates, and the
 38 Clerk may employ a secretary and a clerk
 39 at a salary to be determined by the Speaker
 40 of the House of Delegates.

3—Joint Expenses

Acct. No. 103

1 To pay the cost of legislative printing and	
2 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	
7 fiscal year 1963-64 are to remain in full force	
8 and effect, and are hereby reappropriated to	
9 June 30, 1965.	
10 Any balances so reappropriated may be trans-	
11 ferred and credited to the 1964-65 accounts.	
12 Upon the written request of the Clerk of the	
13 Senate and the Clerk of the House of	
14 Delegates the State Auditor shall transfer	
15 amounts between items of the total appro-	
16 priation in order to protect or increase the	
17 efficiency of the service.	

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	112,500.00
2	Other Personal Services		134,410.00
3	Current Expenses		23,000.00
4	Equipment		3,000.00
5	Total	\$	272,910.00

5—*Judicial—Auditor's Office*

Acct. No. 111

1	Salaries of Judges	\$	390,000.00
2	Other Personal Services		91,000.00
3	Current Expenses		26,000.00
4	Judges' Retirement System		43,000.00
5	Criminal Charges		282,000.00
6	Total	\$	832,000.00

7 This appropriation shall be administered by
 8 the State Auditor who shall draw his re-
 9 quisition for warrants in payment of salaries
 10 in the form of payrolls, making deductions
 11 therefrom as required by law, for taxes and
 12 other items. The appropriation for Judges'
 13 Retirement System is to be transferred to
 14 the Judges' Retirement Fund, in accordance
 15 with the law relating thereto, upon requisition
 16 of the State Auditor.

6—*State Law Library*

Acct. No. 114

1	Personal Services	\$	24,180.00
2	Current Expenses		2,000.00
3	Equipment		18,500.00
4	Total	\$	44,680.00

7—*Judicial Council*

Acct. No. 118

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

8—*Governor's Office*

Acct. No. 120

1 Salary of Governor	\$ 20,999.00
2 Other Personal Services	90,540.00
3 Current Expenses	25,000.00
4 Equipment	5,000.00
5 Civil Contingent Fund	175,000.00
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

1 Personal Services	\$ 204,960.00
2 Current Expenses	101,310.00
3 Equipment	3,000.00
4 Total	\$ 309,270.00

FISCAL

10—Auditor's Office—General Administration

Acct. No. 150

1	Salary of State Auditor	\$ 14,265.00
2	Other Personal Services	374,780.00
3	Current Expenses	119,600.00
4	Equipment	15,000.00
5	Microfilm Program	7,000.00
6	Total	\$ 530,645.00

11—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer	\$ 14,032.00
2	Other Personal Services	125,230.00
3	Current Expenses	20,050.00
4	Equipment	10,000.00
5	Total	\$ 169,312.00

12—Sinking Fund Commission

Acct. No. 170

1	Personal Services	\$ 21,900.00
2	Current Expenses	1,000.00
3	Total	\$ 22,900.00

13—State Tax Commissioner

Acct. No. 180

1	Personal Services	\$ 1,496,430.00
2	Current Expenses	500,760.00
3	Equipment	23,000.00
4	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	
4	fiscal year 1963-64 is hereby reappropriated	
5	for expenditure during the fiscal year	
6	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
9	The Workmen's Compensation Commission,	
10	Department of Welfare, Public Service Com-	
11	mission, Department of Natural Resources,	
12	Department of Motor Vehicles, State	
13	Road Commission, State Health Department	
14	and State Tax Commission—Income Tax	
15	Division, shall reimburse the Postage appro-	
16	priation of the Department of Finance and	
17	Administration monthly for all meter serv-	
18	ice. Any spending unit operating from	

19 Special Revenue or receiving reimbursement
 20 for postage costs from the Federal Govern-
 21 ment shall refund to the "Postage Account"
 22 of the Department of Finance and Admin-
 23 istration such amounts. Should this appro-
 24 priation for postage be insufficient to meet
 25 the mailing requirements of the state spend-
 26 ing units as set out above, any excess post-
 27 age meter service requirements shall be a
 28 proper charge against the units, and each
 29 spending unit shall refund to the Postage
 30 appropriation of the Department of Finance
 31 and Administration any amounts required
 32 for that Department for postage in excess
 33 of this appropriation.

34 Any unexpended balance remaining in the
 35 "Postage Account" at the close of the fiscal
 36 year 1963-64 is hereby reappropriated for
 37 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		
3	\$5,000.00 shall be used for study for forestry		
4	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	
6	the State in controversies or legal proceed-	
7	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
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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 |
| <hr/> | |
| 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
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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
 14 Services, the sum of \$8,500.00 shall be used
 15 only for the employment of a Spray Spe-
 16 cialist who shall be stationed only at West
 17 Virginia University Farm at Kearneysville,
 18 and \$7,200.00 for the employment of a Labor
 19 Specialist.

29—*Potomac State College of West Virginia University*

Acct. No. 315

1	Personal Services	\$ 413,902.00
2	Current Expenses	65,385.00
3	Repairs and Alterations	41,400.00
4	Equipment	35,300.00
5	Total	\$ 555,987.00

30—*Marshall University*

Acct. No. 320

1	Personal Services	\$ 2,787,272.00
2	Current Expenses	261,817.00
3	Repairs and Alterations	86,903.00
4	Equipment	123,515.00
5	Flood Wall Assessment	3,200.00
6	Experimental Projects in Teacher Education	29,000.00
7	Total	\$ 3,291,707.00

31—*Fairmont State College*

Acct. No. 321

1	Personal Services	\$ 877,897.00
2	Current Expenses	92,832.00
3	Repairs and Alterations	41,580.00
4	Equipment	60,119.00
5	Total	\$ 1,072,428.00

32—*Glenville State College*

Acct. No. 322

1	Personal Services	\$ 566,208.00
2	Current Expenses	75,101.00
3	Repairs and Alterations	45,340.00
4	Equipment	38,535.00
5	Community Development and Research	13,000.00
6	Total	\$ 738,184.00

33—*West Liberty State College*

Acct. No. 323

1 Personal Services	\$ 731,709.00
2 Current Expenses	89,500.00
3 Repairs and Alterations	46,000.00
4 Equipment	40,000.00
5 Total	\$ 907,209.00

34—*Shepherd College*

Acct. No. 324

1 Personal Services	\$ 546,831.00
2 Current Expenses	80,500.00
3 Repairs and Alterations	36,815.00
4 Equipment	51,200.00
5 Community Development and Research	15,000.00
6 Total	\$ 730,346.00

35—*Concord College*

Acct. No. 325

1 Personal Services	\$ 971,781.00
2 Current Expenses	114,962.00
3 Repairs and Alterations	26,407.00
4 Equipment	65,688.00
5 Total	\$ 1,178,838.00

36—*West Virginia Institute of Technology*

Acct. No. 327

1 Personal Services	\$ 773,494.00
2 Current Expenses	89,839.00
3 Repairs and Alterations	54,883.00
4 Equipment	98,956.00
5 Total	\$ 1,017,172.00

37—*West Virginia State College*

Acct. No. 328

1	Personal Services	\$ 1,200,569.00
2	Current Expenses	166,600.00
3	Repairs and Alterations	89,484.00
4	Equipment	61,000.00
		<hr/>
5	Total	\$ 1,517,653.00

38—*Bluefield State College*

Acct. No. 329

1	Personal Services	\$ 419,124.00
2	Current Expenses	63,116.00
3	Repairs and Alterations	38,488.00
4	Equipment	57,625.00
5	Renovation of Girls' Dormitory	15,000.00
		<hr/>
6	Total	\$ 593,353.00

39—*West Virginia State College—4-H Camp*

Acct. No. 330

1	Personal Services	\$ 13,740.00
2	Current Expenses	5,270.00
3	Repairs and Alterations	6,160.00
4	Equipment	1,120.00
		<hr/>
5	Total	\$ 26,290.00

40—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

1	Personal Services	\$ 570,485.00
2	Current Expenses	160,330.00
3	Repairs and Alterations	40,700.00
4	Equipment	20,850.00
		<hr/>
5	Total	\$ 792,365.00

41—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

1	Personal Services	\$	32,380.00
2	Current Expenses		8,175.00
3	Repairs and Alterations		7,050.00
4	Equipment		8,500.00
5	Total	\$	56,105.00

42—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$	38,300.00
2	Current Expenses		7,205.00
3	Equipment		8,000.00
4	Total	\$	53,505.00

43—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$	87,500.00
2	Current Expenses		5,000.00
3	Equipment		1,000.00
4	Books and Periodicals		43,500.00
5	Library Services for the Blind		5,000.00
6	Total	\$	142,000.00

CHARITIES AND CORRECTION

44—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	258,340.00
2	Current Expenses		121,450.00
3	Repairs and Alterations		39,200.00
4	Equipment		22,250.00
5	Total	\$	441,240.00

45—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$ 85,990.00
2	Current Expenses	83,700.00
3	Repairs and Alterations	10,900.00
4	Equipment	13,650.00
5	Total	\$ 194,240.00

46—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$ 136,360.00
2	Current Expenses	75,545.00
3	Repairs and Alterations	12,900.00
4	Equipment	7,450.00
5	Vocational Training	5,000.00
6	Total	\$ 237,255.00

47—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$ 41,854.00
2	Current Expenses	31,390.00
3	Repairs and Alterations	11,050.00
4	Equipment	1,400.00
5	Total	\$ 85,694.00

48—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$ 667,360.00
2	Current Expenses	508,200.00
3	Repairs and Alterations	38,600.00
4	Equipment	33,200.00
5	Total	\$ 1,247,360.00

49—*Medium Security Prison*

Acct. No. 376

1	Personal Services	\$ 341,800.00
2	Current Expenses	170,804.00
3	Repairs and Alterations	20,000.00
4	Equipment	11,300.00
5	Total	\$ 543,904.00

50—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$ 50,065.00
2	Current Expenses	39,280.00
3	Repairs and Alterations	4,400.00
4	Equipment	4,250.00
5	Total	\$ 97,995.00

51—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$ 211,933.00
2	Current Expenses	165,903.00
3	Repairs and Alterations	34,400.00
4	Equipment	8,275.00
5	Total	\$ 420,511.00

HEALTH AND WELFARE

52—*State Health Department*

Acct. No. 400

1	Personal Services	\$ 393,496.00
2	Current Expenses	74,833.00
3	Equipment	4,500.00
4	Cancer Control and Treatment	125,000.00
5	Tuberculosis Field Clinic and Nursing Service	10,580.00
6	Out-Patient Pneumothorax Treatment	20,000.00
7	Local Health Services	550,000.00
8	Dental Clinics	15,000.00

9	Heart Disease Control	15,000.00
10	Maternal and Child Health-	
11	mobile Medical Examination Clinic	25,000.00
12	Total	\$ 1,233,409.00

53—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services	\$ 178,100.00
2	Current Expenses	46,950.00
3	Equipment	5,786.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	chapter thirty-nine, acts of the Legislature,	
7	1943	15,000.00
8	Total	\$ 245,836.00

9 Any unexpended balance remaining in the
 10 appropriation "To Provide Educational Op-
 11 portunities for Children of War Veterans"
 12 at the close of the fiscal year 1963-64 is
 13 hereby reappropriated for expenditure dur-
 14 ing the fiscal year 1964-65.

54—*Department of Welfare*

Acct. No. 405

1	Personal Services	\$ 3,672,168.00
2	Current Expenses	1,497,489.00
3	Equipment	34,290.00
4	Public Assistance Grants (Classified Aid)	8,415,591.00
5	Aid to Crippled Children	470,000.00
6	Medical Services and M.A.A.	2,000,000.00
7	Conservation of Vision and Prevention of	
8	Blindness	40,000.00
9	Child Welfare Services	171,600.00
10	General Relief and Boarding Care	650,954.00
11	Social Security Matching Fund	122,627.00
12	Total	\$17,074,719.00

55—*State Agency on Aging*

Acct. No. 406

1	Total	\$	3,000.00
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56—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$	239,704.00
2	Current Expenses		33,435.00
3	Equipment		4,000.00
4	Research and Training		25,000.00
5	Civil Service Costs		59,250.00
6	Division of Alcoholism		59,000.00
7	Total	\$	420,389.00

57—*Commission on Mental Retardation*

Acct. No. 411

1	Total	\$	10,000.00
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58—*West Virginia Training School*

Acct. No. 419

1	Personal Services	\$	828,456.00
2	Current Expenses		296,200.00
3	Repairs and Alterations		53,100.00
4	Equipment		19,000.00
5	Total	\$	1,196,756.00

59—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$	1,632,407.00
2	Current Expenses		750,000.00
3	Repairs and Alterations		48,000.00
4	Equipment		25,000.00
5	Total	\$	2,455,407.00

60—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$ 750,388.00
2	Current Expenses	383,000.00
3	Repairs and Alterations	49,000.00
4	Equipment	22,500.00
5	Total	<hr/> \$ 1,204,888.00

61—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$ 1,190,664.00
2	Current Expenses	605,000.00
3	Repairs and Alterations	42,000.00
4	Equipment	38,200.00
5	Total	<hr/> \$ 1,875,864.00

62—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$ 482,784.00
2	Current Expenses	199,000.00
3	Repairs and Alterations	44,500.00
4	Equipment	48,000.00
5	Total	<hr/> \$ 774,284.00

63—*Barboursville State Hospital*

Acct. No. 424

1	Personal Services	\$ 339,200.00
2	Current Expenses	130,426.00
3	Repairs and Alterations	29,000.00
4	Equipment	5,500.00
5	Total	<hr/> \$ 504,126.00

64—*Fairmont Emergency Hospital*

Acct. No. 425

1 Personal Services	\$ 143,075.00
2 Current Expenses	75,445.00
3 Repairs and Alterations	8,300.00
4 Equipment	6,300.00
5 Total	\$ 233,120.00

65—*Welch Emergency Hospital*

Acct. No. 426

1 Personal Services	\$ 191,420.00
2 Current Expenses	140,000.00
3 Repairs and Alterations	55,000.00
4 Equipment	17,000.00
5 Total	\$ 403,420.00

66—*Hopemont Sanitarium*

Acct. No. 430

1 Personal Services	\$ 438,220.00
2 Current Expenses	313,540.00
3 Repairs and Alterations	15,000.00
4 Equipment	9,250.00
5 Total	\$ 776,010.00

67—*Pinecrest Sanitarium*

Acct. No. 431

1 Personal Services	\$ 629,010.00
2 Current Expenses	462,940.00
3 Repairs and Alterations	26,600.00
4 Equipment	32,020.00
5 Total	\$ 1,150,570.00

68—*Denmar State Hospital*

Acct. No. 432

1	Personal Services	\$ 401,295.00
2	Current Expenses	149,470.00
3	Repairs and Alterations	38,730.00
4	Equipment	8,850.00
5	Total	\$ 598,345.00

69—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$ 33,685.00
2	Current Expenses	6,900.00
3	Repairs and Alterations	9,700.00
4	Equipment	3,700.00
5	Total	\$ 53,985.00

70—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$ 192,530.00
2	Current Expenses	39,432.00
3	Rehabilitation Center	203,929.00
4	Case Services	335,000.00
5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind	16,658.00
7	Training and Special Projects	20,000.00
8	Social Security Matching Fund	16,000.00
9	Total	\$ 823,549.00

BUSINESS AND INDUSTRIAL RELATIONS

71—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

1	Personal Services	\$ 307,000.00
2	Current Expenses	92,624.00

3	Equipment	8,500.00
4	Total	\$ 408,124.00

*72—Department of Mines**Acct. No. 460*

1	Personal Services	\$ 741,580.00
2	Current Expenses	163,500.00
3	Equipment	31,000.00
4	Total	\$ 936,080.00

*73—Department of Commerce**Acct. No. 465*

1	Personal Services	\$ 440,505.00
2	Current Expenses	311,380.00
3	Equipment	26,983.00
4	Mt. State Forest Festival	20,000.00
5	Governor's Conference on Wood Utilization....	3,000.00
6	Total	\$ 801,868.00

*74—State Commission on Manpower, Technology and Training**Acct. No. 470*

1	Total	\$ 3,000.00
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*75—Southern Interstate Nuclear Board**Acct. No. 471*

1	Total	\$ 3,000.00
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*76—Commission on Interstate Cooperation**Acct. No. 472*

1	Total	\$ 10,000.00
2	Out of the above appropriation the sum of	
3	\$7,500.00 may be made available for West	
4	Virginia's membership in The Council of	
5	State Governments.	

77—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Interstate		
2	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		
2	Valley Water Sanitation Commission	\$	14,755.00

79—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern Re-		
2	gional Education Board	\$	36,000.00
3	To be expended upon requisition of the Gov-		
4	ernor.		

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

3	Equipment	2,550.00
4	Total	\$ 147,235.00

83—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services	\$ 15,396.00
2	Current Expenses	13,395.00
3	Equipment	2,415.00
4	Aerial Markers	1,000.00
5	Civil Air Patrol Expenses	8,000.00
6	Total	\$ 40,206.00

84—*West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$ 95,820.00
2	Current Expenses	45,700.00
3	Equipment	3,128.00
4	Total	\$ 144,648.00

85—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 74,575.00
2	Current Expenses	27,420.00
3	Equipment	500.00
4	Total	\$ 102,495.00

AGRICULTURE

86—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$ 13,799.00
2	Other Personal Services	186,027.00
3	Current Expenses	77,375.00
4	Equipment	15,000.00

5	Eradication and Control of White Pine Blister	16,995.00
6	Eradication and Prevention of Livestock Dis-	
7	eases	182,160.00
8	Eradication and Control of Japanese Beetle	
9	and other plant pests	16,945.00
10	Aid to Dairy Development Program	87,345.00
11	Eradication and Control of Oak Wilt	93,595.00
12	Plant Pest Control	26,000.00
13	Laboratory Operation	10,000.00
14	Slaughterhouse and Meat Packing Inspection	25,000.00
15	Total	\$ 750,241.00
16	The appropriation "Eradication and Control	
17	of Oak Wilt" may be transferred to Special	
18	Revenue Funds for the purpose of match-	
19	ing Federal Funds.	

87—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$ 64,995.00
2	Current Expenses	34,900.00
3	Total	\$ 99,895.00

88—*Department of Agriculture—Marketing and Research*

Acct. No. 513

1	For cooperation with the Federal Government	
2	in a program of marketing and research	\$ 115,000.00
3	Any part or all of this appropriation may be	
4	transferred to Special Revenue Fund for	
5	the purpose of matching Federal Funds for	
6	the above named program.	

89—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	West Virginia State Fair	\$ 25,000.00
2	Agricultural Awards	43,000.00
3	Walnut Festival	3,500.00
4	Total	\$ 71,500.00

CONSERVATION AND DEVELOPMENT

90—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services	\$ 122,656.00
2	Current Expenses	41,081.00
3	Equipment	5,000.00
4	Cooperative Mapping Program	60,000.00
5	Total	\$ 228,737.00
6	Of the above appropriations for Current Ex-	
7	penses, the sum of \$15,000.00 may be used	
8	to cooperate with the United States Geologi-	
9	cal Survey in Ground Waters Resources	
10	Study.	
11	Of the above appropriation for Cooperative	
12	Mapping Program the sum of \$10,000.00	
13	may be used for preparation of accurate	
14	geographic and political maps of West Vir-	
15	ginia.	

91—*Department of Veterans Affairs*

Acct. No. 564

1	In aid of Veterans Day Patriotic Exercises	\$ 2,000.00
2	To be expended subject to the approval of the	
3	Department of Veterans Affairs upon pres-	
4	entation of satisfactory plans by the Grafton	
5	G.A.R. Post, American Legion, Veterans of	
6	Foreign Wars and Sons of Veterans.	

92—*Department of Natural Resources*

Acct. No. 565

1	Personal Services	\$ 1,143,620.00
2	Current Expenses	393,061.00
3	Repairs and Alterations	119,900.00
4	Equipment	99,215.00
5	Clarke-McNary—Fire Prevention	120,000.00
6	Area Redevelopment Administration	20,000.00
7	Water Resources Board	2,000.00
8	Total	\$ 1,897,796.00

9 Out of the above appropriation for Current
10 Expenses, subsistence for conservation
11 officers shall be paid at the rate of two
12 dollars and fifty cents per calendar day to
13 the chief conservation officer and to each
14 full-time uniformed conservation officer, under
15 his direct supervision, whose primary
16 duties and responsibilities are law enforcement.
17

18 Any unexpended balance remaining in the
19 appropriation "Clarke-McNary — Fire Prevention"
20 at the close of the fiscal year
21 1963-64 is hereby reappropriated for expenditures
22 during the fiscal year 1964-65.

23 Any unexpended balance remaining in the
24 1962-63 appropriation "For planning, improvements
25 and construction on Natural Resources properties
26 and facilities; land requisition and impoundments"
27 at the close of the fiscal year 1962-63 and reappropriated
28 for the fiscal year 1963-64, is hereby reappropriated
29 for expenditure during the fiscal year 1964-65 and
30 out of this amount reappropriated there is hereby
31 appropriated \$100,000.00 for acquisition of land and
32 development of new or existing Natural Resource
33 facilities in Pendleton County.
34
35

PROTECTION

93—Department of Public Safety

Acct. No. 570

1	Personal Services	\$ 1,630,956.00
2	Current Expenses	829,444.00
3	Repairs and Alterations	38,400.00
4	Equipment	169,808.00
5	Total	<hr/> \$ 2,668,608.00

94—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
4	Equipment	6,300.00
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances...	66,900.00
7	Property Maintenance	41,245.00
8	State Armory Board	828,588.00
9	Total	<u>\$ 1,101,666.00</u>

95—Department of Civil and Defense Mobilization

Acct. No. 581

1	Personal Services	\$ 35,340.00
2	Current Expenses	11,045.00
3	Equipment	4,300.00
4	Total	<u>\$ 50,685.00</u>

96—Auditor's Office—Social Security

Acct. No. 582

1	To match contributions of state employees for	
2	social security	\$ 1,139,675.00
3	The above appropriation is intended to	
4	cover the state's share of social security	
5	costs for those spending units operating	
6	from General Revenue Fund and General	
7	School Fund appropriations. The State	
8	Road Commission, Department of Motor	
9	Vehicles, Workmen's Compensation Com-	
10	mission, Public Service Commission, and	
11	other departments operating from Special	
12	Revenue Funds and/or Federal Funds	
13	shall pay their proportionate share of the	
14	social security cost for their respective di-	
15	visions.	
16	Any unexpended balance remaining in this	
17	appropriation at the close of the fiscal year	

18 1963-64 is hereby reappropriated for ex-
19 penditure 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 Depart-		
3	ment of Mental Health and on buildings at		
4	state institutions under supervision of the		
5	Department of Mental Health.		
6	The above appropriation is for premiums for		
7	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		
3	at state colleges and institutions under		
4	the supervision of the State Board of		
5	Education.		
6	The above appropriation is for premiums for		
7	a three-year period.		
8	To insure contents of buildings	\$	8,000.00
9	To insure contents of non-revenue producing		
10	buildings. Third annual installment due		
11	on policy covering a five-year period end-		
12	ing July 1, 1967.		
13	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		
3	state institutions under the supervision		
4	of Commissioner of Public Institutions.		
5	The above appropriation is for premiums for		
6	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		
2 general expenses	\$	1,000.00
3 From Collections		1,000.00

107—*State Board of Optometry*

Acct. No. 592

1 To pay the per diem of members and other		
2 general expenses	\$	2,500.00
3 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		
2 general expenses	\$	10,000.00
3 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		
2 general expenses	\$	20,000.00
3 From Collections		20,000.00

110—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses	\$	4,000.00
3 From Collections		4,000.00

111—*State Veterinary Board*

Acct. No. 596

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

112—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 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		
2 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
5 the state's share of the West Virginia Pub-
6 lic Employees Retirement cost in accord-
7 ance with Senate Bill No. 22, (1961 Legis-
8 lature) for those departments operating
9 from General Revenue Fund and General
10 School Fund appropriations. The State
11 Road Commission, Department of Motor
12 Vehicles, State Tax Commissioner—Gasoline
13 Tax Division, Workmen's Compensation
14 Commission, Public Service Commission,
15 and other departments operating from

16 Special Revenue Funds and/or Federal
 17 Funds shall pay their proportionate share
 18 of the retirement costs for their respective
 19 divisions. When specific appropriations are
 20 not made such payments may be made from
 21 the balances in the various Special Revenue
 22 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
 3 aid in payment of interest and principal on
 4 outstanding road bonds and may be trans-
 5 ferred to the state road fund upon the
 6 requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the
 2 funds designated there is hereby appropriated condition-
 3 ally upon the fulfillment of the provisions set forth in
 4 chapter one hundred thirty-two, acts of the Legislature,
 5 regular session, one thousand nine hundred sixty-one, the
 6 following amounts, as itemized, for expenditure during the
 7 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	<u>\$ 702,055.00</u>

5 In addition to the foregoing appropriations
 6 and claims as authorized by this act or by
 7 law to be paid from the state road fund, the
 8 balance or residue of the annual receipts of

9 the state road fund is hereby appropriated
 10 first for the payment of interest on and prin-
 11 cipal of outstanding road bonds, and there-
 12 after for maintenance, construction and re-
 13 construction of state roads, in accordance
 14 with the provisions of chapter seventeen,
 15 code of West Virginia, one thousand nine
 16 hundred thirty-one, as amended.

118—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$ 891,700.00
2 Current Expenses	349,104.00
3 Equipment	42,040.00
4 Purchase of License Plates	234,200.00
5 Social Security Matching Fund	32,237.00
6 Employees Retirement Matching Fund	44,595.00
<hr/>	
7 Total	\$ 1,593,876.00

119—*State Tax Commissioner—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$ 180,000.00
2 Current Expenses	73,795.00
3 Equipment	4,000.00
4 Social Security Matching Fund	6,525.00
<hr/>	
5 Total	\$ 264,320.00

120—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services	\$ 39,932.00
2 Current Expenses	13,680.00
3 Equipment	800.00
<hr/>	
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 "Vo-	
7	cational Aid" at the close of the fiscal year	
8	1963-64 is hereby reappropriated for ex-	
9	penditure 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	
5	exceed the amount to be reimbursed by the	
6	Federal Government.	
7	Federal funds in excess of the amounts hereby	
8	appropriated may be made available by	
9	budget amendment upon request of the	
10	State Superintendent of Schools and ap-	
11	proval of the Board of Public Works for	
12	any emergency which might arise in the	
13	operation of this division during the fiscal	
14	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

3	Current Expenses	84,085.00
4	Equipment	5,943.00
5	National Defense Education Act	145,000.00
6	Statewide Testing Program	176,000.00
7	Experimental Projects	15,000.00
8	Total	\$ 768,247.00
9	Any part or all of the appropriation for "Na-	
10	tional Defense Education Act" may be	
11	transferred to a Special Revenue Fund for	
12	the purpose of matching Federal Funds for	
13	this program.	

124—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 18,540.00
2	Current Expenses	3,110.00
3	Total	\$ 21,650.00

125—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 58,904.00
2	Current Expenses	18,000.00
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches	300,000.00
5	Total	\$ 376,904.00

126—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$ 63,000.00
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127—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home	\$	25,000.00
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 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
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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

3	Equipment	2,000.00
4	Social Security Matching Fund	885.00
5	Public Employees Retirement Matching Fund	1,485.00
		<hr/>
6	Total	\$ 50,514.00
7	The total amount of this appropriation shall be	
8	paid from Special Revenue Fund out of col-	
9	lections 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	
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.	

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	
3	be paid from Special Revenue Fund out of	
4	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.	

134—*Department of Finance and Administration*
Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 82,300.00
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	4,115.00
6	Total	\$ 111,490.00

7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund as pro-
9 vided by chapter one hundred thirty-two,
10 acts of the Legislature, regular session one
11 thousand nine hundred and sixty-one.
12 The above appropriation includes salaries and
13 operating expenses.
14 There is hereby appropriated from this fund,
15 in addition to the above appropriation,
16 the necessary amount for the purchase of
17 supplies for resale.

135—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 167,960.00
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
6	Total	\$ 228,160.00

7 The total amount of this appropriation shall be
8 paid from Special Revenue Fund out of col-
9 lections made by the Department of Agri-

10 culture as provided by law. It is the inten-
 11 tion that special funds in excess of the
 12 amounts hereby appropriated shall be made
 13 available by budget amendments upon re-
 14 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
 8 paid from Special Revenue Fund out of
 9 collections made by the State Committee of
 10 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
 8 paid from Special Revenue Fund out of col-
 9 lections for license and report fees as pro-
 10 vided by law.

138—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	120,350.00
2	Current Expenses		30,595.00
3	Repairs and Alterations		1,700.00
4	Equipment		5,580.00
5	Social Security Matching Fund		4,000.00
6	Public Employees Retirement Matching Fund		5,620.00
7	Total	\$	167,845.00

8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of col-
 10 lections of the special tax of one half of one
 11 percent premium receipts of fire insur-
 12 ance companies as provided by law.

139—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	30,000.00
2	Other Personal Services		399,284.00
3	Current Expenses		55,000.00
4	Equipment		11,500.00
5	Social Security Matching Fund		9,500.00
6	Public Employees Retirement Matching Fund		19,716.00
7	Total	\$	525,000.00

8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of col-
 10 lections for special license fees from public
 11 service corporations as provided by law. Out
 12 of the above appropriation \$5,000.00 may
 13 be transferred to the State Water Resources
 14 Commission of the Department of Natural
 15 Resources for use in cooperation with the
 16 U. S. Geological Survey in a program of
 17 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		
8	be paid from Special Revenue Fund out of		
9	receipts collected for or by the Public Service		
10	Commission pursuant to and in the exercise		
11	of regulatory authority over motor carriers		
12	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		
7	paid from Special Revenue Fund out of fees		
8	collected by the Department of Natural Resources.		
9	Expenditures shall be limited to the		
10	amounts appropriated except for Federal		
11	Funds received and Special Funds collected		
12	at state parks. Special Funds in excess of		
13	the amounts hereby appropriated may be		
14	made available by budget amendment upon		
15	request of the Department of Natural Resources.		

- 16 sources and approval of the Board of Public
 17 Works for any emergency which might arise
 18 in the operation of this Division during the
 19 fiscal year.

142—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 104,352.00
2	Current Expenses	70,304.00
3	Repairs and Alterations	7,100.00
4	Equipment	18,000.00
5	Social Security Matching Fund	633.00
6	Total	<hr/> \$ 200,389.00

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

- 11 Special Funds in excess of the amounts
 12 hereby appropriated may be made available
 13 by budget amendment upon request of the
 14 Department of Public Safety and approval
 15 of the Board of Public Works for the pur-
 16 pose of repairs to, or construction of police
 17 barracks, not to exceed one hundred thou-
 18 sand dollars in any one fiscal year.

143—*West Virginia Liquor Control Commission*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$ 10,000.00
2	Other Personal Services	2,968,790.00
3	Current Expenses	863,000.00
4	Repairs and Alterations	35,000.00
5	Equipment	60,000.00

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.

145—*West Virginia University—Special Capital
Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Forestry Building	\$ 300,000.00
2 Debt Service	300,000.00
3 Chemistry Building Modernization	1,000,000.00
4 Property Acquisition	500,000.00
5 Miscellaneous Small Projects	250,000.00
6 Total	\$ 2,350,000.00
7 Creative Arts Center	4,500,000.00
8 Appalachian Center	1,500,000.00
9 Law Center	1,500,000.00
10 Potomac State Auditorium	700,000.00
11 Utilities, Roads, Parking, Etc.	1,800,000.00

12 As required by law, the above projects are
 13 listed in a stated order of priority. The costs
 14 of projects one through five are to be paid
 15 on a cash basis, and the costs of projects
 16 seven through eleven are to be paid from
 17 the proceeds of revenue bonds issued as
 18 authorized by law. It is intended that only
 19 complete and useable units or projects be
 20 constructed and then only in the listed
 21 order of priority: *Provided, however,* That
 22 whenever the amount in the Capital Im-
 23 provement Fund, including both cash col-
 24 lections and the proceeds of bond sales, shall
 25 be sufficient to cover all capital expendi-
 26 tures authorized above, then the listed pro-
 27 jects shall be considered of equal priority
 28 and all of them, or any one or more, may
 29 be constructed as soon as plans can be pre-
 30 pared and contracts let therefor.

31 Out of the above appropriation "Creative
 32 Arts Center" the sum of \$500,000.00 may
 33 be expended for the purchase or construc-

34 tion of educational T. V. and/or radio
35 facilities.

36 The total amount of this appropriation shall
37 be paid from the non-revolving Capital Im-
38 provement Fund created by the 1959 Legis-
39 lature, amended by the 1963 Legislature.

40 Any unexpended balance remaining in this
41 appropriation at the close of the fiscal year
42 1963-64 is hereby reappropriated for ex-
43 penditure 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	<i>Marshall University</i>	
4	Maintenance Building	250,000.00
5	<i>West Virginia Institute of Technology</i>	
6	Physical Education Building and Land	1,400,000.00
7	<i>West Liberty State College</i>	
8	Fine Arts and Classroom Building	1,200,000.00
9	<i>Bluefield State College</i>	
10	Addition to Technical Science Facilities	44,000.00
11	<i>Glenville State College</i>	
12	Maintenance Building	140,000.00
13	<i>Concord College</i>	
14	Maintenance Building and Land	160,000.00
15	<i>West Virginia State College</i>	
16	Fine Arts and Classroom Building	1,200,000.00
17	<i>Fairmont State College</i>	
18	Fine and Applied Arts Classroom Building	1,600,000.00
19	<i>Glenville State College</i>	
20	Addition to Library and New Classrooms....	500,000.00
21	<i>Bluefield State College</i>	
22	Physical Education Building	1,300,000.00

23	<i>Concord College</i>	
24	Fine Arts and Classroom Building	1,650,000.00
25	<i>West Virginia State College</i>	
26	Maintenance Building	175,000.00
27	<i>Shepherd College</i>	
28	Land and Maintenance Building	50,000.00
29	<i>West Virginia Institute of Technology</i>	
30	Engineering Building and Land	1,100,000.00

31 As required by law, the above projects are
32 listed in a stated order of priority. The ap-
33 propriation on lines 1 and 2 is to be paid
34 on a cash basis, and the costs of projects on
35 lines 3 through 30 are to be paid from the
36 proceeds of revenue bonds issued as author-
37 ized by law. It is intended that only com-
38 plete and useable units or projects be con-
39 structed and then only in the listed order
40 of priority: *Provided, however,* That when-
41 ever the amount in the Capital Improve-
42 ment Fund, including both cash collections
43 and the proceeds of bonds sales, shall be
44 sufficient to cover all capital expenditures
45 authorized above, then the listed projects
46 shall be considered of equal priority and
47 all of them, or any one or more, may be
48 constructed as soon as plans can be pre-
49 pared and contracts let therefor.

50 The total amount of this appropriation shall
51 be paid from the non-revolving Capital Im-
52 provement Fund created by the 1959 Leg-
53 islature, amended by the 1963 Legislature.

54 Any unexpended balance remaining in this
55 appropriation at the close of the fiscal year
56 1963-64 is hereby reappropriated for ex-
57 penditure during the fiscal year 1964-65,
58 and from the unexpended balance the sum
59 of \$60,000.00 made available from date of
60 passage of this act for the purchase of land
61 at West Virginia Institute of Technology.

147—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND.

1	Personal Services	\$ 778,380.00
2	Current Expenses	289,162.00
3	Equipment	15,440.00
4	Social Security Matching Fund	28,000.00
5	Public Employees Retirement Matching Fund	39,700.00
6	Total	\$ 1,150,682.00
7	There is hereby authorized to be paid out of	
8	the above appropriation for Current Ex-	
9	penses the amount necessary for the premi-	
10	ums on bonds given by the State Treasurer	
11	and bond custodian for the protection of the	
12	Workmen's Compensation Fund.	

Sec. 3. Supplemental and Deficiency Appropriations.—

2 From the State Fund, General Revenue, except as other-
 3 wise provided, there are hereby appropriated the following
 4 amounts, as itemized, for expenditure during the fiscal year
 5 one thousand nine hundred sixty-four to supplement the
 6 1963-64 appropriations, and to be available for expenditure
 7 upon date of passage.

148—*Judicial Auditor's Office*

Acct. No. 111

1	Salaries of Judges	\$ 6,000.00
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149—*Department of Finance and Administration*

Acct. No. 210

1	Current Expenses	\$ 42,500.00
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150—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$ 2,670.00
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151—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	1,900.00
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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
<hr/>			
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
<hr/>			
4	Total	\$	92,835.00

154—*Department of Labor*

Acct. No. 450

1	Current Expenses	\$	13,600.00
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155—*Department of Natural Resources*

Acct. No. 565

1	Clarke-McNary—Fire Prevention	\$	75,000.00
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156—*Department of Public Safety*

Acct. No. 570

1	Current Expenses	\$	40,100.00
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157—*State Board of Professional Foresters*

Acct. No. 5895

1	To pay the per diem of members and other		
2	general expenses		500.00
3	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
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Claim versus State Board of Education

TO BE PAID FROM GENERAL REVENUE FUND

1 Dana Teaforde	\$	10,000.00
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Claims versus State Tax Commissioner

TO BE PAID FROM GENERAL REVENUE FUND

1 Harold H. Shaffer	\$	953.20
2 L. H. Schwartz		451.50
3 G. G. Priestley		1,001.57

Claim versus Vocational Rehabilitation

TO BE PAID FROM GENERAL REVENUE FUND

1 West Virginia Newspaper Company	\$	17.10
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Claim versus Department of Welfare

TO BE PAID FROM GENERAL REVENUE FUND

1 Charles G. and Esther T. Peters	\$	405.00
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Claims versus State Road Commission

TO BE PAID FROM STATE ROAD FUND

1 Board of Education of McDowell County	\$	502.34
2 Mrs. John Hanchock		69.27
3 Frank L. Adkins		1,263.52
4 Ambrose Ellis		102.49
5 Sallie Adkins		141.16
6 Ward Wylie		4,000.00
7 Otter Eagle Coal Company		13,630.83
8 Lee Payne		700.00
9 Floyd Haught		10,500.00
10 John I. Beach		745.97
11 Percy R. Schultz		75.00
12 Leota Mills Tyree		271.32
13 Willard C. Gardner		5,500.00
14 Paul H. Groves		2,134.88
15 Harold Hughes		500.00
16 Frank Adkins Garage		225.00
17 Mary Collins, Administratrix of the Estate of		
18 Carnegie Dora Skidmore, deceased		3,500.00
19 Frances Helen Ward		15,000.00
20 W. L. Price		58.44
21 Marie Hatfield		41.00

22	George L. Ferguson	221.46
23	Charles W. Caldwell	250.00
24	Henry Lowry	1,000.00
25	Howard McClanahan	2,500.00
26	W. and J. Motor Sales	299.00
27	Morris Meadows	2,000.00
28	Harry Jordan	277.06
29	Edna Ferrell	99.16
30	Ruth Ferguson	154.49
31	Hobart E. Smith	23.44
32	Alexander Unkovic	1,332.90
33	Gilbert Bachmann	626.63

Claim versus Department of Education

TO BE PAID FROM GENERAL SCHOOL FUND

1	Thomas Edward Marion	\$	325.00
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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 reappropri-
18 ated, may be used for storm windows and screens for
19 Gore Hospital and annex, new smoke stack for nurses'
20 home, repairs to roadways and spouting, and construction
21 of garage.

22 Item XXVI—Pinecrest Sanitarium, as herein reappropri-
23 ated, may be used for repairs to electrical and plumbing
24 system and repairs to roofs on A, B and D Units and the
25 nursing home.

Sec. 6. Appropriations from Surplus Revenues.—The fol-
2 lowing items are appropriated from the General Revenue
3 Fund, subject to the following terms and conditions:

4 (a) The following items are hereby appropriated and are
5 to be available for expenditures only out of the surplus
6 in the Treasury, subject to the approval of the board of
7 Public Works.

8 (b) The Board of Public Works shall review the revenues
9 of the state from the date that appropriations hereunder
10 are expected to be made available for expenditure, and
11 determine whether, in its opinion, revenues then in pros-
12 pect or on hand will be sufficient to meet all appropri-
13 ations under the 1963 Budget Act, and make a finding
14 with respect thereof. In the event that such finding shall
15 show sufficient revenues on hand or in prospect to meet
16 all other appropriations and reappropriations made by
17 the 1963 Budget Act, and subject to the foregoing condi-
18 tions, any or all of the following items may be released
19 for expenditure by the Board of Public Works from the
20 date of passage of this act and such appropriation shall
21 remain in full force and effect until June 30, 1965.

22 Item 1. *Department of Mental Health*\$ 150,000.00
23 For purchase of drugs for distribution to
24 mental institutions under their control.

25 Item 2. *West Virginia University* 125,000.00
26 For purchase of land.

27 Item 3. *Marshall University* 35,000.00
28 For University Heights project.

29	Item 4. <i>West Virginia Industrial School for</i>	
30	<i>Boys</i>	45,000.00
31	To complete water system.	
32	Item 5. <i>Department of Commerce</i>	350,000.00
33	For construction and operation of	
34	New York World's Fair Building.	
35	Item 6. <i>Andrew S. Rowan Memorial Home</i>	25,000.00
36	To construct boiler house.	
37	Item 7. <i>Department of Natural Resources</i>	50,000.00
38	For equipment and cost of operating	
39	Rhododendron River Boat.	
40	Item 8. <i>West Virginia Schools for the Deaf</i>	
41	<i>and Blind</i>	10,000.00
42	For Braille writers and tape recorders.	
43	Item 9. <i>West Virginia Industrial School for</i>	
44	<i>Girls</i>	4,700.00
45	To replace and repair lock system.	
46	Item 10. <i>Department of Welfare</i>	450,000.00
47	For equipment.	
48	Item 11. <i>Department of Public Safety</i>	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. <i>Department of Finance and Ad-</i>	
55	<i>ministration</i>	53,500.00
56	For repairs to Office Building 3	28,500.00
57	For air conditioning of museum	25,000.00
58	Item 13. <i>West Virginia University</i>	100,000.00
59	Center for Appalachian Studies and	
60	Development.	
61	Item 14. <i>Marshall University</i>	150,000.00
62	For major repairs to eliminate fire and	
63	safety hazards.	

64	Item 15. <i>Department of Natural Resources</i>	300,000.00
65	For improvements at Kanawha State Forest.	
66	Item 16. <i>Secretary of State</i>	15,000.00
67	For equipment.	
68	Item 17. <i>Department of Natural Resources</i>	355,000.00
69	For improvements at Tygart Lake State	
70	Park.	
71	Item 18. <i>West Liberty State College</i>	50,000.00
72	For paving of parking areas and sidewalks.	
73	Item 19. <i>Shepherd College</i>	65,000.00
74	To purchase land.	
75	Item 20. <i>Concord College</i>	25,000.00
76	To purchase library books.	
77	Item 21. <i>Department of Natural Resources</i>	30,000.00
78	For Sutton Reservoir for engineering,	
79	planning, and recreation development.	
80	Item 22. <i>State Board of School Finance</i>	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. <i>Department of Natural Resources</i>	30,000.00
85	For Summersville Reservoir for engineering,	
86	planning, and recreation development.	
87	Item 24. <i>Department of Natural Resources</i>	25,000.00
88	For improvements at North Bend State	
89	Park.	
90	Item 25. <i>Department of Agriculture—Soil</i>	
91	<i>Conservation Committee</i>	50,000.00
92	For Watershed Development Program.	
93	Item 26. <i>Department of Education</i>	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	

100	and/or library books, and said allocation	
101	and expenditure to be over and above	
102	that provided by the county during the	
103	school year of 1962-63.	
104	The above items shall be released in the	
105	priority as listed and shall be released	
106	prior to the items listed hereafter.	
107	Item 27. <i>Department of Natural Resources</i>	50,000.00
108	For bridge at entrance to Watoga State	
109	Park.	
110	Item 28. <i>Public Land Corporation</i>	125,000.00
111	To purchase, restore, and/or renovate	
112	Old Custom House—Wheeling.	
113	Item 29. <i>Department of Agriculture</i>	30,000.00
114	For improvements to existing Farmers'	
115	Market—Beckley.	
116	Item 30. <i>Bluefield State College</i>	30,000.00
117	For purchase of land and paving parking	
118	areas.	
119	Item 31. <i>State Tax Commissioner</i>	500,000.00
120	For property appraisal.	
121	Item 32. <i>Department of Finance and Ad-</i>	
122	<i>ministration</i>	8,000.00
123	For purchase and installation of parking	
124	meters.	
125	Item 33. <i>Department of Natural Resources</i>	20,000.00
126	For improvements at Cedar Creek State	
127	Park.	
128	Item 34. <i>Department of Natural Resources</i>	40,000.00
129	For improvements at Babcock State Park.	
130	Item 35. <i>Department of Natural Resources</i>	15,000.00
131	For improvements at Pinnacle Rock.	
132	Item 36. <i>Department of Commerce</i>	35,000.00
133	To supplement operation cost of historical	
134	drama.	

135	Item 37. <i>Department of Natural Resources</i>	10,000.00
136	For water supply improvement at	
137	Spring Run Hatchery.	
138	Item 38. <i>Department of Natural Resources</i>	25,000.00
139	For rabies control.	
140	Item 39. <i>West Virginia Children's Home</i>	100,000.00
141	To construct and equip school building.	
142	Item 40. <i>West Virginia Industrial School for</i>	
143	Boys	40,000.00
144	To complete swimming pool.	
145	Item 41. <i>Department of Natural Resources</i>	25,000.00
146	For improvements at Chief Logan Recre-	
147	ation Area.	
148	Item 42. <i>Department of Natural Resources</i>	25,000.00
149	For improvements at Fork Creek Recre-	
150	ation 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

3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of article
6 three, chapter twelve of the code of West Virginia, one
7 thousand nine hundred thirty-one, as amended.

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

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

Sec. 10. Sinking Fund Deficiencies.—There is hereby ap-
2 propriated to the Board of Public Works a sufficient
3 amount to meet a deficiency that may arise in the funds of
4 the State Sinking Fund Commission because of the failure
5 of any state agency for either general obligation or revenue
6 bonds or any local taxing district for general obligation
7 bonds to remit funds necessary for the payment of interest
8 and sinking fund requirements. The Board of Public Works
9 is authorized to transfer from time to time such amounts to
10 the State Sinking Fund Commission as may be necessary
11 for this purpose.

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

Sec. 11. Appropriations from Taxes and License Fees.—
2 There is hereby appropriated from the cigarette tax for ad-
3 ministration and enforcement of the law relating to said tax
4 a sum not to exceed one and one-half per cent of the tax
5 collected or stamps sold. There is hereby appropriated from
6 the soft drink tax revenues for administration and enforce-

7 ment of the law relating to said tax, a sum not to exceed
8 two and one-half per cent of the total revenues collected.
9 All such salaries and expenses, authorized by law as afore-
10 said, shall be paid by the Tax Commissioner through the
11 state treasurer out of gross collections.

**Sec. 12. Appropriations to Pay Costs of Publication of
2 Delinquent Corporations.**—There is hereby appropriated
3 out of the state fund, general revenue, out of funds not
4 otherwise appropriated to be paid upon requisition of the
5 Auditor and/or the Governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent corpo-
7 rations as provided by sections seventy-five and seventy-
8 seven, article twelve, chapter eleven of the code of West
9 Virginia, one thousand nine hundred thirty-one, as
10 amended.

Sec. 13. Appropriations for Local Governments.—There
2 is hereby appropriated for payment to counties, districts,
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district, and municipal cor-
5 porations and which have been paid into the treasury:
6 (a) For the redemption of lands;
7 (b) By public service corporations;
8 (c) For tax forfeitures.

Sec. 14. 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. 15. 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 appropriated
4 for expenditure in accordance with section six, article nine,
5 chapter eighteen of the code of West Virginia, one thou-
6 sand nine hundred thirty-one, as amended.

Title 3. Administration.

Section

1. Appropriations conditional.
2. Constitutionality.

Section 1. Appropriations Conditional.—The expendi-
2 ture 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

25 Board" (hereinafter called the board). The board shall
26 be composed of one member from each party state design-
27 nated or appointed in accordance with the law of the
28 state which he represents and serving and subject to re-
29 moval in accordance with such law. Any member of the
30 board may provide for the discharge of his duties and
31 the performance of his functions thereon (either for the
32 duration of his membership or for any lesser period of
33 time) by a deputy or assistant, if the laws of his state
34 make specific provision therefor. The federal government
35 may be represented without vote if provision is made by
36 federal law for such representation.

37 (b) The board members of the party states shall each
38 be entitled to one vote on the board. No action of the
39 board shall be binding unless taken at a meeting at which
40 a majority of all members representing the party states
41 are present and unless a majority of the total number of
42 votes on the board are cast in favor thereof.

43 (c) The board shall have a seal.

44 (d) The board shall elect annually, from among its
45 members, a chairman, a vice chairman, and a treasurer.
46 The board shall appoint an executive director who shall
47 serve at its pleasure and who shall also act as secretary,
48 and who, together with the treasurer, shall be bonded in
49 such amounts as the board may require.

50 (e) The executive director, with the approval of the
51 board, shall appoint and remove or discharge such per-
52 sonnel as may be necessary for the performance of the
53 board's functions irrespective of the civil service, per-
54 sonnel or other merit system laws of any of the party
55 states.

56 (f) The board may establish and maintain, independ-
57 ently or in conjunction with any one or more of the party
58 states, a suitable retirement system for its full-time em-
59 ployees. Employees of the board shall be eligible for
60 social security coverage in respect of old age and sur-
61 vivors insurance provided that the board takes such
62 steps as may be necessary pursuant to federal law to
63 participate in such program of insurance as a govern-
64 mental agency or unit. The board may establish and

65 maintain or participate in such additional programs of
66 employee benefits as may be appropriate.

67 (g) The board may borrow, accept, or contract for the
68 services of personnel from any state or the United States
69 or any subdivision or agency thereof, from any inter-
70 state agency, or from any institution, person, firm or
71 corporation.

72 (h) The board may accept for any of its purposes and
73 functions under this compact any and all donations, and
74 grants of money, equipment, supplies, materials, and
75 services (conditional or otherwise) from any state or the
76 United States or any subdivision or agency thereof, or
77 interstate agency, or from any institution, person, firm
78 or corporation, and may receive, utilize and dispose of
79 the same.

80 (i) The board may establish and maintain such facili-
81 ties as may be necessary for the transacting of its busi-
82 ness. The board may acquire, hold, and convey real and
83 personal property and any interest therein.

84 (j) The board shall adopt by-laws, rules, and regulations
85 for the conduct of its business, and shall have the power to
86 amend and rescind these by-laws, rules, and regulations.
87 The board shall publish its by-laws, rules and regulations
88 in convenient form and shall file a copy thereof, and shall
89 also file a copy of any amendment thereto, with the appro-
90 priate agency or officer in each of the party states.

91 (k) The board annually shall make to the governor
92 of each party state, a report covering the activities of the
93 board for the preceding year, and embodying such recom-
94 mendations as may have been adopted by the board,
95 which report shall be transmitted to the legislature of
96 said state. The board may issue such additional reports
97 as it may deem desirable.

98 **Article III. Finances**

99 (a) The board shall submit to the executive head or
100 designated officer or officers of each party state a budget
101 of its estimated expenditures for such period as may be
102 required by the laws of that jurisdiction for presentation
103 to the legislature thereof.

104 (b) Each of the board's budgets of estimated expendi-
105 tures shall contain specific recommendations of the
106 amount or amounts to be appropriated by each of the
107 party states. One half of the total amount of each budget
108 of estimated expenditures shall be apportioned among
109 the party states in equal shares; one quarter of each such
110 budget shall be apportioned among the party states in
111 accordance with the ratio of their populations to the total
112 population of the entire group of party states based on the
113 last decennial federal census; and one quarter of each
114 such budget shall be apportioned among the party states
115 on the basis of the relative average per capita income of
116 the inhabitants in each of the party states based on the
117 latest computations published by the federal census-
118 taking agency. Subject to appropriation by their respec-
119 tive legislatures, the board shall be provided with such
120 funds by each of the party states as are necessary to
121 provide the means of establishing and maintaining facili-
122 ties, a staff of personnel, and such activities as may be
123 necessary to fulfill the powers and duties imposed upon
124 and entrusted to the board.

125 (c) The board may meet any of its obligations in
126 whole or in part with funds available to it under article
127 two(h) of this compact, provided that the board takes
128 specific action setting aside such funds prior to the in-
129 currence of any obligation to be met in whole or in part in
130 this manner. Except where the board makes use of funds
131 available to it under article two(h) thereof, the board
132 shall not incur any obligation prior to the allotment of
133 funds by the party jurisdictions adequate to meet the
134 same.

135 (d) Any expenses and any other costs for each mem-
136 ber of the board in attending board meetings shall be
137 met by the board.

138 (e) The board shall keep accurate accounts of all re-
139 cepts and disbursements. The receipts and disburse-
140 ments of the board shall be subject to the audit and ac-
141 counting procedures established under its by-laws. How-
142 ever, all receipts and disbursements of funds handled by
143 the board shall be audited yearly by a qualified public

144 accountant and the report of the audit shall be included
145 in and become part of the annual report of the board.

146 (f) The accounts of the board shall be open at any
147 reasonable time for inspection.

148 **Article IV. Advisory Committees**

149 The board may establish such advisory and technical
150 committees as it may deem necessary, membership on
151 which to include but not be limited to private citizens,
152 expert and lay personnel, representatives of industry,
153 labor, commerce, agriculture, civic associations, medicine,
154 education, voluntary health agencies, and officials of local,
155 state and federal government, and may cooperate with
156 and use the services of any such committees and the or-
157 ganizations which they represent in furthering any of its
158 activities under this compact.

159 **Article V. Powers**

160 The board shall have power to:

161 (a) Ascertain and analyze on a continuing basis the
162 position of the south with respect to nuclear and related
163 industries.

164 (b) Encourage the development and use of nuclear
165 energy, facilities, installations, and products as part of a
166 balanced economy.

167 (c) Collect, correlate, and disseminate information re-
168 lating to civilian uses of nuclear energy, materials, and
169 products.

170 (d) Conduct, or cooperate in conducting, programs of
171 training for state and local personnel engaged in any
172 aspect of:

173 (1) Nuclear industry, medicine, or education or the
174 promotion or regulation thereof.

175 (2) The formulation or administration of measures
176 designed to promote safety in any matter related to the
177 development, use or disposal of nuclear energy, materials,
178 products, installations, or wastes.

179 (e) Organize and conduct, or assist and cooperate in
180 organizing and conducting, demonstrations of nuclear

181 product, material, or equipment use and disposal and of
182 proper techniques or processes for the application of nu-
183 clear resources to the civilian economy or general wel-
184 fare.

185 (f) Undertake such non-regulatory functions with re-
186 spect to non-nuclear sources of radiation as may promote
187 the economic development and general welfare of the
188 region.

189 (g) Study industrial, health, safety, and other stan-
190 dards, laws, codes, rules, regulations, and administrative
191 practices in or related to nuclear fields.

192 (h) Recommend such changes in, or amendments or
193 additions to the laws, codes, rules, regulations, admini-
194 strative procedures and practices or ordinances of the
195 party states in any of the fields of its interest and com-
196 petence as in its judgment may be appropriate. Any such
197 recommendation shall be made through the appropriate
198 state agency with due consideration of the desirability of
199 uniformity but shall also give appropriate weight to any
200 special circumstance which may justify variations to
201 meet local conditions.

202 (i) Prepare, publish and distribute (with or without
203 charge) such reports, bulletins, newsletters or other ma-
204 terial as it deems appropriate.

205 (j) Cooperate with the atomic energy commission or
206 any agency successor thereto, any other officer or agency
207 of the United States and any other governmental unit or
208 agency or officer thereof, and with any private persons or
209 agencies in any of the fields of its interest.

210 (k) Act as licensee of the United States government
211 or any party state with respect to the conduct of any re-
212 search activity requiring such license and operate such
213 research facility or undertake any program pursuant
214 thereto.

215 (1) Ascertain from time to time such methods, prac-
216 tices, circumstances, and conditions as may bring about
217 the prevention and control of nuclear incidents in the
218 area comprising the party states, to coordinate the nu-
219 clear incident prevention and control plans and the work

220 relating thereto of the appropriate agencies of the party
221 states and to facilitate the rendering of aid by the party
222 states to each other in coping with nuclear incidents. The
223 board may formulate and, in accordance with need from
224 time to time, revise a regional plan or regional plans for
225 coping with nuclear incidents within the territory of the
226 party states as a whole or within any subregion or sub-
227 regions of the geographic area covered by this compact.

228 **Article VI. Supplementary Agreements**

229 (a) To the extent that the board has not undertaken
230 an activity or project which would be within its power
231 under the provisions of article five of this compact, any
232 two or more of the party states (acting by their duly
233 constituted administrative officials) may enter into sup-
234plementary agreements for the undertaking and continu-
235ance of such an activity or project. Any such agreement
236shall specify its purpose or purposes; its duration and
237the procedure for termination thereof or withdrawal
238therefrom; the method of financing and allocating the
239costs of the activity or project; and such other matters
240as may be necessary or appropriate. No such supplemen-
241tary agreement entered into pursuant to this article shall
242become effective prior to its submission to and approval
243by the board. The board shall give such approval unless
244it finds that the supplementary agreement or the activity
245or project contemplated thereby is inconsistent with the
246provisions of this compact or a program or activity con-
247ducted by or participated in by the board.

248 (b) Unless all of the party states participate in a sup-
249plementary agreement, any cost or costs thereof shall be
250borne separately by the states party thereto. However,
251the board may administer or otherwise assist in the op-
252eration of any supplementary agreement.

253 (c) No party to a supplementary agreement entered
254into pursuant to this article shall be relieved thereby of
255any obligation or duty assumed by said party state under
256or pursuant to this compact, except that timely and proper
257performance of such obligation or duty by means of
258the supplementary agreement may be offered as per-
259formance pursuant to the compact.

260 Article VII. Other Laws and Relationships

261 Nothing in this compact shall be construed to:

262 (a) Permit or require any person or other entity to
263 avoid or refuse compliance with any law, rule, regula-
264 tion, order or ordinance of a party state or subdivision
265 thereof now or hereafter made, enacted or in force.

266 (b) Limit, diminish, or otherwise impair jurisdiction
267 exercised by the atomic energy commission, any agency
268 successor thereto, or any other federal department,
269 agency or officer pursuant to and in conformity with any
270 valid and operative act of Congress.

271 (c) Alter the relations between and respective in-
272 ternal responsibilities of the government of a party state
273 and its subdivisions.

274 (d) Permit or authorize the board to exercise any
275 regulatory authority or to own or operate any nuclear
276 reactor for the generation of electric energy; nor shall
277 the board own or operate any facility or installation for
278 industrial or commercial purposes.

**279 Article VIII. Eligible Parties, Entry into Force and
280 Withdrawal**

281 (a) Any or all of the states of Alabama, Arkansas,
282 Delaware, Florida, Georgia, Kentucky, Louisiana, Mary-
283 land, Mississippi, Missouri, North Carolina, Oklahoma,
284 South Carolina, Tennessee, Texas, Virginia, and West
285 Virginia shall be eligible to become party to this com-
286 pact.

287 (b) As to any eligible party state this compact shall
288 become effective when its legislature shall have enacted
289 the same into law: *Provided*, That it shall not become
290 initially effective until enacted into law by seven states.

291 (c) Any party state may withdraw from this com-
292 pact by enacting a statute repealing the same, but no
293 such withdrawal shall become effective until the gov-
294 ernor of the withdrawing state shall have sent formal
295 notice in writing to the governor of each other party
296 state informing said governors of the action of the leg-
297 islature in repealing the compact and declaring an in-
298 tention 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.

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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:

Article 14. State Commission on Aging.

Section

1. Members.
2. Citizen representatives.
3. Office space; officers; meetings.
4. Expenses.
5. Director.
6. Personnel.
7. Advisory committees.
8. Purposes; actions.
9. Demonstration programs.
10. Designated state agency.
11. Donations.
12. Records and files.
13. Reports.

Section 1. Members.—There is hereby created the
2 "State Commission on Aging," hereinafter referred to as
3 the "commission." The commission shall consist of seven-
4 teen members, as follows: Seven members, herein re-
5 ferred to as government representatives, who shall be
6 the state superintendent of schools, the director of health,
7 the director of mental health, the commissioner of public
8 institutions, the commissioner of welfare, the director of
9 the West Virginia division of vocational rehabilitation,
10 and the commissioner of the West Virginia department
11 of employment security; and ten additional citizens of the
12 state, herein referred to as citizen representatives, no
13 more than five of whom shall belong to the same political
14 party, who have demonstrated an interest in and knowl-
15 edge of the problems of the aging. The governor shall
16 appoint the ten citizen representatives of the commission
17 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

11 such expenses shall be accompanied by a sworn and item-
12 ized statement which shall be filed with the auditor.

Sec. 6. Personnel.—The director shall, with the advice
2 and consent of the commission, appoint such other per-
3 sonnel as the commission deems to be necessary for the
4 efficient performance of the duties prescribed by this
5 article. Within the limits of funds available, and with the
6 approval of the board of public works, the commission
7 may fix the compensation of such other personnel, and
8 may incur other expenses necessary to the effective dis-
9 charge of its powers and duties.

Sec. 7. Advisory Committees.—The commission may
2 create whatever advisory committees it deems necessary
3 in such fields as health and mental health; income main-
4 tenance; employment and vocational rehabilitation; edu-
5 cation; recreation and library services; social services;
6 state and local community organization and leadership
7 development, and may use funds appropriated or avail-
8 able for such purposes to defray the expense of such ad-
9 visory committees. It shall, where feasible, designate a
10 commission member having special competence in a field
11 as chairman of any advisory committee it may create in
12 that field. The commission may, in its discretion, also
13 create such local or regional advisory committees. All
14 such advisory committees shall report to the commission
15 with regard to their activities and findings. Members of
16 all such advisory committees may be entitled to receive
17 out of funds appropriated or available for such purposes
18 travel and other necessary expenses actually incurred in
19 the performance of their official duties under the provi-
20 sions of this article. Requisition for such expenses shall
21 be accompanied by a sworn and itemized statement which
22 shall be filed with the auditor.

Sec. 8. Purposes; Actions.—The commission through its
2 director shall take action to carry out the following pur-
3 poses:

- 4 (a) Conduct, and encourage other organizations to con-
5 duct, studies of the problems of the state's older people;
- 6 (b) Encourage, promote and aid in the establishment

7 of local programs and services for the aging. The com-
8 mission may assist local governmental and other agencies
9 by designing surveys that could be used locally to deter-
10 mine needs of older people; by recommending the creation
11 of such services and facilities as appear to be needed; by
12 serving as a clearing house for the collection and distribu-
13 tion of information on aging; and by assisting organiza-
14 tions and communities in such other ways as the com-
15 mission may deem appropriate;

16 (c) Conduct programs of public education on the prob-
17 lems of the aging;

18 (d) Review existing state programs for the aging, and
19 annually make recommendations to the governor and the
20 Legislature for improvements in and additions to such
21 programs;

22 (e) Encourage and assist governmental and private
23 agencies to coordinate their efforts on behalf of the aging
24 in order that such efforts be effective and the duplication
25 and wasting of effort be eliminated;

26 (f) Represent the state's concern for its senior citizens
27 by collecting, analyzing and disseminating information
28 about the aged and aging; and coordinate statewide local
29 and voluntary efforts to serve the aging and make use of
30 their wisdom and capacities, with due regard to the de-
31 velopment of programs at the local level.

Sec. 9. Demonstration Programs.—The commission may
2 establish, under the administration of the director, in
3 selected areas and local communities of the state, demon-
4 stration programs of services for the aging. Particular
5 emphasis shall be given to services designed to foster
6 continued participation of older people in family and
7 community life and to prevent, insofar as possible, the
8 onset of dependency and the need for long-term institu-
9 tional care. The programs shall be established to demon-
10 strate their value and to stimulate local agencies to con-
11 tinue the programs and to create new services where
12 needed. Any appropriations made for such demonstration
13 programs may be made contingent upon local appropria-
14 tions or gifts in money or in kind for the support of such
15 programs. The county court of any county or governing

16 body of any city, village or municipality in this state may
17 furnish and appropriate money for establishing a demon-
18 stration program.

Sec. 10. Designated State Agency.—The commission
2 shall constitute the designated state agency for handling
3 all programs of the federal government relating to the
4 aging requiring action within the state, which are not
5 the specific responsibility of another state agency under
6 the provisions of federal law or which have not been
7 specifically entrusted to another state agency by the
8 Legislature.

Sec. 11. Donations.—The commission may receive on
2 behalf of the state any grant or gift and accept the same,
3 so that the title shall pass to the state. All moneys from
4 grants or gifts shall be deposited with the state treasurer
5 in a special fund and shall be used for the purposes set
6 forth in the grant or gift, if the purposes are within the
7 powers conferred on the commission. The commission
8 shall be empowered to comply with all regulations and
9 requirements to qualify for federal grants and to adminis-
10 ter such federal funds.

Sec. 12. Records and Files.—All records, files and other
2 property belonging to the state commission on problems
3 of the aging pursuant to appropriation made and funds
4 available under the provisions of senate concurrent reso-
5 lution number four heretofore adopted on the twenty-
6 eighth day of February, one thousand nine hundred fifty-
7 seven, and senate committee substitute for house concur-
8 rent resolution number five heretofore adopted on the
9 twelfth day of March, one thousand nine hundred fifty-
10 nine, shall be turned over to the commission on aging
11 herein created and shall be continued as part of the rec-
12 ords, files and other property thereof.

Sec. 13. Reports.—The commission shall submit a prog-
2 ress report to the governor and to the members of the
3 Legislature on or before January first of each year, in
4 addition to such other recommendations, studies and
5 plans as it may submit from time to time.

CHAPTER 5

(Com. Sub. for Senate Bill No. 9—Originating in the Senate
Committee on the Judiciary)

[Passed February 5, 1964; in effect 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 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
2 “State Commission on Mental Retardation,” hereinafter
3 referred to as the “commission.” The commission shall
4 consist of seven members, who, ex officio, shall be the
5 state superintendent of schools, the director of health,
6 the director of mental health, the commissioner of public
7 institutions, the commissioner of welfare, the director of
8 the West Virginia division of vocational rehabilitation
9 and the commissioner of the West Virginia department
10 of employment security.

Sec. 2. Quorum; Officers; Meetings.—A majority of
2 the members of the commission shall constitute a quorum

3 for the transaction of business. The commission shall
4 elect a chairman, a vice chairman, and such other officers
5 as it shall deem necessary. The commission shall meet
6 at least two times each year. Meetings will be held upon
7 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
2 such personnel as in its judgment may be necessary to
3 carry out the work of the commission, and to fix the
4 salaries for such employees. The commission may, within
5 the limits of funds available, incur traveling and other
6 expenses necessary to the effective discharge of its powers
7 and duties. Requisition for such expenses shall be ac-
8 companied by a sworn and itemized statement which shall
9 be filed with the auditor.
10

Sec. 4. Advisory Committee.—There is hereby created
2 an advisory committee to the commission to consist of
3 fifteen members, who shall be appointed by the governor,
4 by and with the advice and consent of the senate, to serve
5 for three years; except that of the first appointments
6 made pursuant to this article, five shall be made for
7 a one-year term, five shall be made for a two-year term
8 and five shall be made for a three-year term. Terms
9 shall commence on the first day of July and shall end on
10 the thirtieth day of June. In case of a vacancy due to
11 death or resignation of a member, or otherwise, the gover-
12 nor may fill the unexpired term.

13 The advisory committee shall meet at least once a year
14 with the commission and shall act in an advisory capacity
15 to the commission.

16 Members of the advisory committee, when their attend-
17 ance is requested by the chairman of the commission, may
18 be reimbursed for actual expenses incident to the per-
19 formance of their duties in an amount not to exceed
20 twenty-five dollars per day plus an allowance of ten cents
21 per mile for every mile actually traveled to and from
22 such meetings.

Sec. 5. Purposes.—The commission shall take action
2 to carry out the following purposes:

3 (a) Plan for and take other steps leading to compre-
4 hensive state and community action to combat mental
5 retardation.

6 (b) Determine what action is needed to combat men-
7 tal retardation in the state and the resources available
8 for this purpose.

9 (c) Develop public awareness of the mental retarda-
10 tion problem and of the need for combating it.

11 (d) Coordinate state and local activities relating to
12 the various aspects of mental retardation and its pre-
13 vention, treatment, or amelioration.

14 (e) Consult with and advise the governor and Legis-
15 lature on all aspects of mental retardation.

16 (f) Consult with and advise state agencies, boards or
17 departments with mental retardation responsibilities rela-
18 tive to the effective discharge of such responsibilities.

Sec. 6. State Agency for Federal Mental Retardation

2 **Program.**—The commission is hereby designated and
3 established as the sole state agency for receiving appropri-
4 ations under and carrying out the purposes of section five
5 of Public Law 88-156, eighty-eighth Congress, approved
6 October 24, 1963, and any law amending, revising, supple-
7 menting or superseding section five of said Public Law
8 88-156.

9 The commission shall constitute the designated state
10 agency for handling all programs of the federal govern-
11 ment relating to mental retardation requiring action
12 within the state which are not the specific responsibility
13 of another state agency under the provisions of federal
14 law, rules or regulations, or which have not been specifi-
15 cally entrusted to another state agency by the Legislature.

Sec. 7. Donations and Grants.—The commission may

2 accept for any of its purposes and functions under this
3 article any and all donations, any grants of money, equip-
4 ment, supplies, materials, and services (conditional or
5 otherwise) from the United States or any agency thereof,
6 or from any institution, person, firm or corporation, and
7 may receive, utilize, administer and dispose of the same.
8 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, chap-
ter 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 steno-
graphic help; additional compensation from counties; payments
therefor.

**Section 6. Allowances to Circuit Judges for Stationery,
2 Postage and Stenographic Help; Additional Compensa-
3 tion from Counties; Payments Therefor.**—Each judge of
4 the circuit court shall be allowed an amount not to exceed
5 two hundred fifty dollars per month for the payment of
6 stenographic help necessary in the discharge of the duties
7 of his office, and each judge shall be allowed an amount
8 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.

- 4 For the county of Hardy, on the third Tuesday in Feb-
5 ruary, June and October.
6 For the county of Pendleton, on the third Tuesday in
7 March, the fourth Tuesday in July, and the first Tuesday
8 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
2 **against the Adjutant General; Department of Education;**
3 **Department of Finance and Administration; Department**
4 **of Mental Health; Department of Public Institutions;**
5 **Racing Commission; State Road Commission; State Tax**
6 **Commissioner; State Board of Education, Division of Vo-**
7 **cational Rehabilitation; Workmen's Compensation Fund;**
8 **Department of Welfare and the State Board of Education,**
9 **to Be Moral Obligations of the State, and Directing Pay-**
10 **ment Thereof.**—The Legislature has considered the find-
11 ings of fact and recommendations reported to it by the
12 attorney general concerning various claims against the
13 state and agencies thereof, and in respect to each of the
14 following claims the Legislature adopts those findings of

15 fact as its own, and hereby declares it to be the moral
16 obligation of the state to pay to each such claim in the
17 amount specified below, and directs the auditor to issue
18 warrants for the payment thereof out of any fund appro-
19 priated and available for the purpose.

20 (a) Claims versus the Adjutant General:

21	(1) C. F. Nichols	\$ 750.00
22	(2) A. A. Booth	110.82
23	(3) William Roth	84.45
24	(4) Julius Corbin	180.03
25	(5) Tri-City Traction Company	84.08
26	(6) Ernie and Avanell Williams	600.00
27	(7) Daniel Huisjack	93.46

28 (b) Claim versus Department of Education:

29	(1) Thomas Edward Marion	325.00
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30 (c) Claims versus Department of Finance and
31 Administration:

32	(1) United Fuel Gas Company	10,052.70
33	(2) West Virginia Heating & Plumb-	
34	ing Company	469.90

35 (d) Claims versus Department of Mental
36 Health:

37	(1) Woodrums'	700.00
38	(2) Kraus Brothers	1,171.12
39	(3) Kanawha Banking & Trust Com-	
40	pany, Administrator C. T. A.	
41	of Estate of Rader W. Haworth,	
42	deceased	800.00

43 (e) Claims versus Department of Public
44 Institutions:

45	(1) County Court of Raleigh County	350.00
46	(2) Lelia Hall, et al	1,377.89
47	(3) Capitol Restaurant Equipment	
48	Company	1,250.00
49	(4) Ada Poole	5,000.00

50 (f) Claim versus Racing Commission:

51	(1) Harry D. Keith	938.32
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52	(g)	Claims versus State Road Commis-	
53		sion:	
54	(1)	Board of Education of McDowell	
55		County _____	502.34
56	(2)	Mrs. John Hanchock _____	69.27
57	(3)	Frank L. Adkins _____	1,263.52
58	(4)	Ambrose Ellis _____	102.49
59	(5)	Sallie Adkins _____	141.16
60	(6)	Ward Wylie _____	4,000.00
61	(7)	Otter Eagle Coal	
62		Company _____	13,630.83
63	(8)	Lee Payne _____	700.00
64	(9)	Floyd Haught _____	10,500.00
65	(10)	John I. Beach _____	745.97
66	(11)	Percy R. Schultz _____	75.00
67	(12)	Leota Mills Tyree _____	271.32
68	(13)	Willard C. Gardner _____	5,500.00
69	(14)	Paul H. Groves _____	2,134.88
70	(15)	Harold Hughes _____	500.00
71	(16)	Frank Adkins Garage _____	225.00
72	(17)	Mary Collins, Administratrix of	
73		the Estate of Carnegie Dora	
74		Skidmore, deceased _____	3,500.00
75	(18)	Frances Helen Ward _____	15,000.00
76	(19)	W. L. Price _____	58.44
77	(20)	Marie Hatfield _____	41.00
78	(21)	George L. Ferguson _____	221.46
79	(22)	Charles W. Caldwell _____	250.00
80	(23)	Henry Lowry _____	1,000.00
81	(24)	Howard McClanahan _____	2,500.00
82	(25)	W. & J. Motor Sales Company _____	299.00
83	(26)	Morris Meadows _____	2,000.00
84	(27)	Harry Jordan _____	277.06
85	(28)	Edna Ferrell _____	99.16
86	(29)	Ruth Ferguson _____	154.49
87	(30)	Hobart E. Smith _____	23.44
88	(31)	Alexander Unkovic _____	1,332.90
89	(32)	Gilbert Bachmann _____	626.63
90	(h)	Claims versus State Tax Commissioner:	
91	(1)	Harold H. Shaffer _____	953.20

92	(2) L. H. Schwartz	451.50
93	(3) G. G. Priestley	1,001.57
94	(i) Claim versus State Board of Education,	
95	Division of Vocational Rehabilitation:	
96	(1) West Virginia Newspaper Company	17.10
97	(j) Claims versus Workmen's Compensation	
98	Fund:	
99	(1) Kessler Institute of Rehabilitation..	6,754.92
100	(2) W. Dean DeLaMater	67.74
101	(k) Claim versus Department of Welfare:	
102	(1) Charles G. and Esther T. Peters...	405.00
103	(l) Claim versus State Board of Education:	
104	(1) Dana Teaforde	10,000.00

CHAPTER 9

(House Bill No. 39—By Mr. Myles and Mr. Vickers)

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

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.

Section 12. Fees of Constables in Criminal Cases.—

2 Every constable shall be entitled to the following fees in
3 criminal cases:

4 1. For an arrest in case of felony..... 3.50

5 2. For an arrest in cases other than felony..... 3.00

- 6 3. For serving a subpoena..... .50
7 4. For executing a search warrant..... 2.50
8 5. For summoning a jury in criminal action..... 1.50
9 6. Witness fee constable..... .50
10 7. In addition to above fees, constables shall be allowed
11 five cents for each mile of necessary travel in the per-
12 formance of their duties, and ten cents per mile for
13 transporting prisoners, if such mileage fees shall exceed
14 the sum of one dollar.
15 8. In cases of search warrants and proceedings under
16 article one, chapter sixty-two of this code, the fees of the
17 constable shall be chargeable to the county, shall be
18 audited and paid as other claims of like nature by the
19 county court.
20 9. In criminal cases, other than felony, such fees shall
21 be charged and paid as provided in section fifteen, article
22 five, chapter seven of this code, and section eight, article
23 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-(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; and to amend and reenact section five, sections five-(one) through five-(fifty-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.

Article 1. County Courts Generally.

Section

5. Duties of county commissioners and payment for services other than services in court.

5-(1) to 5-(54). Salaries of county commissioners of the various counties of the state.

Section 5. Duties of County Commissioners and Pay-

ment 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 pris-
oners therein, and to investigate the conditions of the
poor within their county, not housed within such insti-
tutions; 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 deter-
ioration thereof; to supervise and control the maintenance
and operation of airport or airports owned and/or oper-
ated by the county court; and to supervise and control
the purchase, erection and maintenance of airport facil-

ities; to supervise and control the purchase of furniture, fixtures and equipment, and janitors' and other supplies, for their county; to attend the annual meeting of county assessors, and such district meetings as may be called by the state tax commissioner, on matters pertaining to the work of the county assessors and the county courts as boards of review and equalization; to review and equalize the assessments made by the assessors; to inspect and review the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and to point 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; to call 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; to cooperate with the county public assistance council and supervise the general management of the fiscal affairs and business of each county; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect public parks, playgrounds and recreational facilities, to purchase, lease or rent equipment therefor, and to employ qualified recreational directors and personnel; to construct new Four-H camps on county property; to operate stone quarries and sand deposits on county-owned or leased property; to construct buildings for or aid in constructing and/or equipping civilian defense buildings on sites approved by state office of civilian defense; and to operate 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; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect county mental health clinics and engage in any program designed for the betterment of the mental and physical well-being of the residents of their county, and

60 to cooperate with any public or private agency for these
61 purposes.

62 Compensation shall be allowed and paid out of the
63 county treasury, in the same manner as salaries are paid,
64 to each county commissioner of each county (except as
65 otherwise provided by law for the county of Ohio), for
66 services performed for such county concerning the visit-
67 ing of the poor, inspection of jails, bridges and bridge ap-
68 proaches, and for visiting detention homes for children;
69 and for providing for and supervising the repair and
70 maintenance of the county courthouse, jails, houses for
71 the poor and other county property; for supervising and
72 controlling the maintenance and operation of airport or
73 airports owned and/or operated by the county court,
74 and supervising and controlling the purchase, erection
75 and maintenance of airport facilities; and for supervising
76 and controlling the purchase of furniture, fixtures and
77 equipment and janitors' and other supplies of their
78 county; and for attending the annual meeting of assessors
79 and such district meetings as may be called by the state
80 tax commissioner, on matters pertaining to the work of
81 assessors and county courts as boards of review and equal-
82 ization; for reviewing and equalizing the assessments
83 made by the assessors; for inspecting and reviewing the
84 lists of property, both real and personal, made up by the
85 assessor and his deputies for taxable purposes, and for
86 pointing out to the assessor any property, real or personal,
87 which the said assessors of their respective counties may
88 have overlooked or omitted to place on said tax lists; for
89 calling to the attention of the assessor all real estate or
90 personal property belonging to churches, lodges, schools
91 or other charitable institutions which may have been
92 overlooked or omitted by the assessor or his deputies in
93 making up his lists of property for entry on the land and
94 personal property books; and for duties of the county
95 commissioners in cooperating with the county public as-
96 sistance council; for purchasing, leasing, renting, control-
97 ling, supervising, inspecting, maintaining and erecting
98 public parks, playgrounds, and recreational facilities, and
99 the purchasing, leasing or renting the equipment there-
100 for, and employing qualified recreational directors and

101 personnel therefor; for constructing new Four-H camps
102 on county property; operating stone quarries and sand
103 deposits on county-owned or leased property; constructing
104 buildings for or aiding in construction and/or equipping
105 civilian defense buildings on sites approved by state of-
106 fice of civilian defense; operating dog pounds for county-
107 municipalities; and to purchase, lease, rent, control, su-
108 pervise, inspect, maintain and erect public markets and
109 to purchase, rent or lease equipment therefor, and to em-
110 ploy qualified personnel to operate such public markets;
111 for constructing fall-out shelters and aiding individuals
112 to construct fall-out shelters through furnishing available
113 information; for purchasing, leasing, renting, controlling,
114 supervising, inspecting, maintaining and/or erecting
115 county mental health clinics and/or engaging in programs
116 for the betterment of the mental and/or physical well-
117 being of the residents of their county; and for supervising
118 the general management of the fiscal affairs and business
119 of each county, within their counties, and other business
120 by such commissioners, in addition to compensation for
121 services in court, the sums of money hereinafter provided
122 in the following sections five-(one) to five-(fifty-four),
123 inclusive.

Sec. 5-(1). Compensation of County Commissioners—
2 **Barbour County.**—For the county of Barbour, one hun-
3 dred twenty-five dollars per month.

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

Sec. 5-(3). Same—Boone County.—For the county of
2 Boone, one hundred fifty dollars per month.

Sec. 5-(4). Same—Braxton County.—For the county
2 of Braxton, the president of the court eighty-five dollars
3 and the other members of the court seventy-five dollars
4 per month.

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

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

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

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

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

2 **Sec. 5-(10). Same—Fayette County.**—For the county
2 of Fayette, two hundred fifty dollars per month.

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

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

2 **Sec. 5-(13). Same—Greenbrier County.**—For the
2 county of Greenbrier, one hundred twenty-five dollars
3 per month.

2 **Sec. 5-(14). Same—Hampshire County.**—For the
2 county of Hampshire, the president of the court one hun-
3 dred dollars and the other members of the court seventy-
4 five dollars per month.

2 **Sec. 5-(15). Same—Hancock County.**—For the county
2 of Hancock, the president of the court three hundred dol-
3 lars and the other members of the court two hundred
4 fifty dollars per month.

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

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

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

2 **Sec. 5-(19). Same—Jefferson County.**—For the county
2 of Jefferson, the president of the court one hundred
3 twenty-five dollars and the other members of the court
4 one hundred dollars per month.

2 **Sec. 5-(20). Same—Kanawha County.**—For the county
of Kanawha, six hundred twenty dollars per month.

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

2 **Sec. 5-(22). Same—Lincoln County.**—For the county
of Lincoln, the president of the court one hundred sev-
3 enty-five dollars and the other members of the court one
4 hundred fifty dollars per month.

2 **Sec. 5-(23). Same—Logan County.**—For the county of
Logan, the president of the court three hundred fifty
3 dollars and the other members of the court two hundred
4 seventy-five dollars per month.

2 **Sec. 5-(24). Same—Marion County.**—For the county
of Marion, four hundred dollars per month.

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

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

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

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

2 **Sec. 5-(29). Same—Mineral County.**—For the county
of Mineral, the president of the court one hundred twenty-
3 five dollars and the other members of the court one hun-
4 dred dollars per month.

2 **Sec. 5-(30). Same—Mingo County.**—For the county of
Mingo, not less than two hundred twenty-five dollars nor
3 more than three hundred dollars per month.

2 **Sec. 5-(31). Same—Morgan County.**—For the county of
Morgan, eighty-five dollars per month.

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

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

2 **Sec. 5-(34). Same—Nicholas County.**—For the county
2 of Nicholas, seventy-five dollars per month.

2 **Sec. 5-(35). Same—Pendleton County.**—For the county
2 of Pendleton, the president of the court sixty-five dollars
3 and the other members of the court forty-five dollars per
4 month.

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

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

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

2 **Sec. 5-(39). Same—Putnam County.**—For the county
2 of Putnam, one hundred fifty dollars per month.

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

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

2 **Sec. 5-(42). Same—Ritchie County.**—For the county
2 of Ritchie, ninety dollars per month.

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

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

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

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

2 **Sec. 5-(47). Same—Tyler County.**—For the county of
2 Tyler, the president of the court ninety-five dollars and
3 other members of the court eighty-five dollars per month.

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

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

2 **Sec. 5-(50). Same—Webster County.**—For the county
2 of Webster, one hundred dollars per month.

2 **Sec. 5-(51). Same—Wetzel County.**—For the county
2 of Wetzel, one hundred sixty dollars per month.

2 **Sec. 5-(52). Same—Wirt County.**—For the county of
2 Wirt, fifty dollars per month.

2 **Sec. 5-(53). Same—Wood County.**—For the county of
2 Wood, three hundred fifty dollars per month.

2 **Sec. 5-(54). Same—Wyoming County.**—For the county
2 of Wyoming, the president of the court two hundred fifty
3 dollars and the other members of the court two hundred
4 twenty-five dollars per month.

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

1. Salaries of sheriffs.
1-(1) to 1-(55). Salaries of sheriffs of the various counties of the state.
5. Salaries of prosecuting attorneys.
5-(1) to 5-(55). Salaries of prosecuting attorneys of the various counties of the state.
6. Assistants, stenographers and clerks for prosecuting attorney; salaries; when court may appoint attorney to prosecute.
6-(1) to 6-(55). Salaries of assistants, stenographers and clerks for prosecuting attorneys of the various counties of the state.

2 **Section 1. Salaries of Sheriffs.**—The annual compensa-
2 tion of the sheriff of each county shall, on and after Janu-
3 ary first, one thousand nine hundred sixty-five, be in the
4 amount set forth in sections one-(one) to one-(fifty-five),
5 inclusive, of this article.

2 **Sec. 1-(1). Salary of Sheriff—Barbour County.**—For
2 the county of Barbour, four thousand two hundred dollars.

2 **Sec. 1-(2). Same—Berkeley County.**—For the county
2 of Berkeley, five thousand four hundred dollars.

2 **Sec. 1-(3). Same—Boone County.**—For the county of
2 Boone, five thousand five hundred dollars.

Sec. 1-(4). Same—Braxton County.—For the county
2 of Braxton, five thousand dollars.

Sec. 1-(5). Same—Brooke County.—For the county of
2 Brooke, five thousand dollars.

Sec. 1-(6). Same—Cabell County.—For the county of
2 Cabell, seven thousand five hundred dollars.

Sec. 1-(7). Same—Calhoun County.—For the county
2 of Calhoun, three thousand seven hundred dollars.

Sec. 1-(8). Same—Clay County.—For the county of
2 Clay, four thousand dollars.

Sec. 1-(9). Same—Doddridge County.—For the county
2 of Doddridge, four thousand two hundred dollars.

Sec. 1-(10). Same—Fayette County.—For the county
2 of Fayette, seven thousand five hundred dollars.

Sec. 1-(11). Same—Gilmer County.—For the county
2 of Gilmer, four thousand eight hundred dollars.

Sec. 1-(12). Same—Grant County.—For the county of
2 Grant, three thousand dollars.

Sec. 1-(13). Same—Greenbrier County.—For the
2 county of Greenbrier, six thousand five hundred dollars.

Sec. 1-(14). Same—Hampshire County.—For the
2 county of Hampshire, three thousand six hundred dollars.

Sec. 1-(15). Same—Hancock County.—For the county
2 of Hancock, four thousand eight hundred dollars.

Sec. 1-(16). Same—Hardy County.—For the county of
2 Hardy, three thousand five hundred dollars.

Sec. 1-(17). Same—Harrison County.—For the county
2 of Harrison, eight thousand dollars.

Sec. 1-(18). Same—Jackson County.—For the county
2 of Jackson, four thousand six hundred dollars.

Sec. 1-(19). Same—Jefferson County.—For the county
2 of Jefferson, five thousand dollars.

Sec. 1-(20). Same—Kanawha County.—For the county
2 of Kanawha, nine thousand dollars.

Sec. 1-(21). Same—Lewis County.—For the county of
2 Lewis, four thousand five hundred dollars.

Sec. 1-(22). Same—Logan County.—For the county of
2 Logan, eight thousand four hundred dollars.

Sec. 1-(23). Same—Lincoln County.—For the county
2 of Lincoln, five thousand two hundred dollars.

Sec. 1-(24). Same—Marion County.—For the county
2 of Marion, eight thousand dollars.

Sec. 1-(25). Same—Marshall County.—For the county
2 of Marshall, six thousand dollars.

Sec. 1-(26). Same—Mason County.—For the county of
2 Mason, four thousand two hundred dollars.

Sec. 1-(27). Same—Mercer County.—For the county
2 of Mercer, seven thousand dollars.

Sec. 1-(28). Same—Mineral County.—For the county
2 of Mineral, five thousand dollars.

Sec. 1-(29). Same—Mingo County.—For the county of
2 Mingo, seven thousand two hundred dollars.

Sec. 1-(30). Same—Monongalia County.—For the
2 county of Monongalia, seven thousand two hundred dol-
3 lars.

Sec. 1-(31). Same—Monroe County.—For the county
2 of Monroe, three thousand six hundred dollars.

Sec. 1-(32). Same—McDowell County.—For the county
2 of McDowell, seven thousand five hundred dollars.

Sec. 1-(33). Same—Morgan County.—For the county
2 of Morgan, three thousand six hundred dollars.

Sec. 1-(34). Same—Nicholas County.—For the county
2 of Nicholas, four thousand eight hundred dollars.

Sec. 1-(35). Same—Ohio County.—For the county of
2 Ohio, five thousand dollars.

Sec. 1-(36). Same—Pendleton County.—For the county
2 of Pendleton, three thousand six hundred dollars.

Sec. 1-(37). Same—Pleasants County.—For the county
2 of Pleasants, four thousand two hundred dollars.

Sec. 1-(38). Same — Pocahontas County.—For the
2 county of Pocahontas, three thousand four hundred dol-
3 lars.

Sec. 1-(39). Same—Preston County.—For the county
2 of Preston, five thousand five hundred dollars.

Sec. 1-(40). Same—Putnam County.—For the county
2 of Putnam, four thousand eight hundred dollars.

Sec. 1-(41). Same—Raleigh County.—For the county
2 of Raleigh, seven thousand eight hundred dollars.

Sec. 1-(42). Same—Randolph County.—For the county
2 of Randolph, six thousand dollars.

Sec. 1-(43). Same—Ritchie County.—For the county
2 of Ritchie, four thousand two hundred dollars.

Sec. 1-(44). Same—Roane County.—For the county of
2 Roane, four thousand six hundred dollars.

Sec. 1-(45). Same—Summers County.—For the county
2 of Summers, four thousand two hundred dollars.

Sec. 1-(46). Same—Taylor County.—For the county of
2 Taylor, not less than four thousand two hundred dollars
3 nor more than four thousand five hundred dollars.

Sec. 1-(47). Same—Tucker County.—For the county
2 of Tucker, three thousand six hundred dollars.

Sec. 1-(48). Same—Tyler County.—For the county of
2 Tyler, four thousand two hundred dollars.

Sec. 1-(49). Same—Upshur County.—For the county
2 of Upshur, three thousand nine hundred dollars.

Sec. 1-(50). Same—Wayne County.—For the county of
2 Wayne, six thousand three hundred dollars.

Sec. 1-(51). Same—Webster County.—For the county
2 of Webster, four thousand two hundred dollars.

Sec. 1-(52). Same—Wetzel County.—For the county of
2 Wetzel, five thousand dollars.

Sec. 1-(53). Same—Wirt County.—For the county of
2 Wirt, three thousand six hundred dollars.

2 **Sec. 1-(54). Same—Wood County.**—For the county of
2 Wood, six thousand dollars.

2 **Sec. 1-(55). Same—Wyoming County.**—For the county
2 of Wyoming, seven thousand dollars.

2 **Sec. 5. Salaries of Prosecuting Attorneys.**—The annual
2 compensation of the prosecuting attorney in each county,
3 including the compensation provided by law for his serv-
4 ices as attorney for boards of education and other admin-
5 istrative boards and officers in the county, shall, on and
6 after January one, one thousand nine hundred sixty-five,
7 be in the amounts set forth in sections five-(one) to five-
8 (fifty-five), inclusive, of this article.

2 **Sec. 5-(1). Salary of Prosecuting Attorney—Barbour**
2 **County.**—For the county of Barbour, three thousand eight
3 hundred dollars.

2 **Sec. 5-(2). Same—Berkeley County.**—For the county
2 of Berkeley, six thousand dollars.

2 **Sec. 5-(3). Same—Boone County.**—For the county of
2 Boone, five thousand five hundred dollars.

2 **Sec. 5-(4). Same—Braxton County.**—For the county
2 of Braxton, four thousand dollars.

2 **Sec. 5-(5). Same—Brooke County.**—For the county of
2 Brooke, four thousand four hundred dollars.

2 **Sec. 5-(6). Same—Cabell County.**—For the county of
2 Cabell, seven thousand dollars.

2 **Sec. 5-(7). Same—Calhoun County.**—For the county
2 of Calhoun, three thousand dollars.

2 **Sec. 5-(8). Same—Clay County.**—For the county of
2 Clay, three thousand dollars.

2 **Sec. 5-(9). Same—Doddridge County.**—For the county
2 of Doddridge, three thousand six hundred dollars.

2 **Sec. 5-(10). Same—Fayette County.**—For the county
2 of Fayette, six thousand five hundred dollars.

2 **Sec. 5-(11). Same—Gilmer County.**—For the county
2 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
2 of Mineral, five thousand dollars.

Sec. 5-(30). Same—Mingo County.—For the county of
2 Mingo, seven thousand two hundred dollars.

Sec. 5-(31). Same—Monongalia County.—For the
2 county of Monongalia, seven thousand five hundred dol-
3 lars.

Sec. 5-(32). Same—Monroe County.—For the county
2 of Monroe, one thousand eight hundred dollars.

Sec. 5-(33). Same—Morgan County.—For the county
2 of Morgan, two thousand six hundred dollars.

Sec. 5-(34). Same—Nicholas County.—For the county
2 of Nicholas, four thousand four hundred dollars.

Sec. 5-(35). Same—Ohio County.—For the county of
2 Ohio, seven thousand five hundred dollars.

Sec. 5-(36). Same—Pendleton County.—For the county
2 of Pendleton, one thousand eight hundred dollars.

Sec. 5-(37). Same—Pleasants County.—For the county
2 of Pleasants, three thousand dollars.

Sec. 5-(38). Same—Pocahontas County.—For the
2 county of Pocahontas, three thousand dollars.

Sec. 5-(39). Same—Preston County.—For the county
2 of Preston, five thousand dollars.

Sec. 5-(40). Same—Putnam County.—For the county
2 of Putnam, four thousand two hundred dollars.

Sec. 5-(41). Same—Raleigh County.—For the county
2 of Raleigh, eight thousand dollars.

Sec. 5-(42). Same—Randolph County.—For the county
2 of Randolph, six thousand dollars.

Sec. 5-(43). Same—Ritchie County.—For the county
2 of Ritchie, three thousand dollars.

Sec. 5-(44). Same—Roane County.—For the county of
2 Roane, three thousand six hundred dollars.

Sec. 5-(45). Same—Summers County.—For the county
2 of Summers, three thousand six hundred dollars.

2 **Sec. 5-(46). Same—Taylor County.**—For the county of
2 Taylor, three thousand eight hundred dollars.

2 **Sec. 5-(47). Same—Tucker County.**—For the county
2 of Tucker, three thousand two hundred dollars.

2 **Sec. 5-(48). Same—Tyler County.**—For the county of
2 Tyler, two thousand eight hundred dollars.

2 **Sec. 5-(49). Same—Upshur County.**—For the county
2 of Upshur, three thousand dollars.

2 **Sec. 5-(50). Same—Wayne County.**—For the county of
2 Wayne, seven thousand two hundred dollars.

2 **Sec. 5-(51). Same—Webster County.**—For the county
2 of Webster, four thousand dollars.

2 **Sec. 5-(52). Same—Wetzel County.**—For the county of
2 Wetzel, four thousand eight hundred dollars.

2 **Sec. 5-(53). Same—Wirt County.**—For the county of
2 Wirt, one thousand eight hundred dollars.

2 **Sec. 5-(54). Same—Wood County.**—For the county of
2 Wood, seven thousand five hundred dollars.

2 **Sec. 5-(55). Same—Wyoming County.**—For the county
2 of Wyoming, six thousand six hundred dollars.

2 **Sec. 6. Assistants, Stenographers and Clerks for Pros-**
2 **ecuting Attorney; Salaries; When Court May Appoint**
3 **Attorney to Prosecute.**—The prosecuting attorneys of the
4 several counties of the state may, with the assent of
5 the county courts of their respective counties, entered
6 of record, appoint to assist them in the discharge of their
7 official duties for and during their respective terms of
8 office, the number of practicing attorneys, stenographers
9 and clerks set forth in sections six-(one) through six-
10 (fifty-five), inclusive, of this article. Each such assistant
11 prosecuting attorney shall take the same oath and may
12 perform the same duties as his principal. Each assistant
13 shall serve at the will and pleasure of his principal and
14 may be removed from office by the circuit court of the
15 county in which he is appointed for any cause for which
16 his principal might be removed.

17 If in any case the prosecuting attorney and his assist-
18 ant be unable to act, or if in the opinion of the court
19 it would be improper for him or his assistant to act, the
20 court shall appoint some competent practicing attorney to
21 act in such case. The court shall certify to the county
22 court the performance of such service when completed
23 and recommend to the county court a reasonable allow-
24 ance for such attorney for such service, and such sum,
25 when allowed by the county court, shall be paid out of the
26 county treasury. No provision of this section shall be con-
27 strued to prohibit the employment by any person of a
28 competent attorney or attorneys to assist in the prosecu-
29 tion of any person or corporation charged with crime.

30 The county courts of the several counties shall compen-
31 sate the assistant prosecuting attorneys, stenographers and
32 clerks of their respective counties in accordance with the
33 following annual salary provisions:

34 (1) In counties for which definite salaries are fixed by
35 provisions of section six- (one) through six- (fifty-five), in-
36 clusive, of this article, such definite salaries shall be paid.

37 (2) In counties for which minimum and maximum
38 salary limits are fixed by provisions of sections six- (one)
39 through six- (fifty-five), inclusive, of this article, the sal-
40 aries shall be fixed and paid within such limits.

41 (3) In the counties for which salaries are not fixed
42 and limited by provisions of sections six- (one) through
43 six- (fifty-five), inclusive, of this article, reasonable sal-
44 aries shall be fixed and paid by the respective county
45 courts.

46 Such salaries and compensation shall be paid monthly,
47 semi-monthly or otherwise as provided by law. In any
48 case wherein provision is not made in this article for
49 payment of the salary of an assistant prosecuting attor-
50 ney, the principal shall pay and compensate such assist-
51 ant for services rendered. The compensation and salaries
52 to be paid assistant attorneys as provided in this article
53 shall include compensation provided by law for such
54 assistant's services as attorney for the county board of
55 education and other administrative boards and officers of
56 his county.

Sec. 6-(1). Same—Barbour County.—For the county
2 of Barbour, one assistant attorney, one thousand dollars;
3 one stenographer, two thousand four hundred dollars.

Sec. 6-(2). Same—Berkeley County.—For the county
2 of Berkeley, one assistant attorney, not less than three
3 thousand four hundred dollars nor more than four thou-
4 sand dollars; one stenographer, not less than three thou-
5 sand four hundred dollars nor more than four thousand
6 dollars.

Sec. 6-(3). Same—Boone County.—For the county of
2 Boone, one assistant attorney, three thousand eight hun-
3 dred dollars; one stenographer at three thousand one hun-
4 dred dollars.

Sec. 6-(4). Same—Braxton County.—For the county
2 of Braxton, one assistant attorney; one stenographer, not
3 more than two thousand four hundred dollars.

Sec. 6-(5). Same—Brooke County.—For the county of
2 Brooke, one assistant attorney, three thousand eight hun-
3 dred dollars; one stenographer, two thousand seven hun-
4 dred dollars.

Sec. 6-(6). Same—Cabell County.—For the county of
2 Cabell, three assistant attorneys, not more than six
3 thousand five hundred dollars each; two stenographers.
4 not more than four thousand dollars each.

Sec. 6-(7). Same—Calhoun County.—For the county
2 of Calhoun, one assistant attorney, three hundred dol-
3 lars; one stenographer, at not more than one thousand
4 seven hundred dollars.

Sec. 6-(8). Same—Clay County.—For the county of
2 Clay, one assistant attorney; one clerk or stenographer
3 or in lieu thereof one practicing attorney, not less than
4 two thousand two hundred nor more than two thousand
5 four hundred dollars.

Sec. 6-(9). Same—Doddridge County.—For the county
2 of Doddridge, one assistant attorney; one stenographer,
3 not more than two thousand four hundred dollars.

Sec. 6-(10). Same—Fayette County.—For the county

2 of Fayette, one assistant attorney, five thousand five hun-
3 dred dollars; one stenographer at a salary to be fixed by
4 the county court.

Sec. 6-(11). Same—Gilmer County.—For the county
2 of Gilmer, one assistant attorney; one stenographer, not
3 more than one thousand eight hundred dollars.

Sec. 6-(12). Same—Grant County.—For the county of
2 Grant, one assistant attorney; one stenographer or clerk,
3 not more than one thousand five hundred dollars.

Sec. 6-(13). Same — Greenbrier County.—For the
2 county of Greenbrier, one assistant attorney; one stenog-
3 rapher, not less than four thousand two hundred nor
4 more than four thousand five hundred dollars.

Sec. 6-(14). Same — Hampshire County.—For the
2 county of Hampshire, one assistant attorney; one stenog-
3 rapher, two thousand two hundred dollars.

Sec. 6-(15). Same—Hancock County.—For the county
2 of Hancock, one assistant attorney, not less than three
3 thousand nor more than three thousand nine hundred
4 dollars; one stenographer, not more than three thousand
5 dollars.

Sec. 6-(16). Same—Hardy County.—For the county of
2 Hardy, one assistant attorney; one stenographer or one
3 clerk at a salary fixed by the prosecuting attorney, not
4 to exceed one thousand eight hundred dollars.

Sec. 6-(17). Same—Harrison County.—For the county
2 of Harrison, first assistant attorney, seven thousand eight
3 hundred dollars; second assistant attorney, six thousand
4 dollars; two stenographers, not less than nine hundred
5 dollars nor more than three thousand six hundred dollars
6 for each.

Sec. 6-(18). Same—Jackson County.—For the county
2 of Jackson, one assistant attorney, not less than six hun-
3 dred nor more than one thousand two hundred dollars;
4 one stenographer, not less than one thousand six hundred
5 dollars nor more than two thousand two hundred dollars.

Sec. 6-(19). Same—Jefferson County.—For the county

2 of Jefferson, the prosecuting attorney may employ a
3 stenographer for his office at a salary of not less than
4 one thousand eight hundred dollars nor more than two
5 thousand eight hundred dollars per annum, payable out
6 of the county treasury to be fixed by the said prosecuting
7 attorney of said county of Jefferson.

Sec. 6-(20). Same—Kanawha County.—For the county
2 of Kanawha, first assistant attorney, not less than six
3 thousand nor more than nine thousand six hundred dol-
4 lars, three assistant attorneys, not less than six thousand
5 nor more than nine thousand dollars each, and stenog-
6 raphers and clerks at a salary to be fixed by the county
7 court payable out of the county treasury of said county
8 of Kanawha.

Sec. 6-(21). Same—Lewis County.—For the county of
2 Lewis, one assistant attorney, not more than one thou-
3 sand eight hundred dollars; one stenographer, not less
4 than six hundred nor more than one thousand eight
5 hundred dollars.

Sec. 6-(22). Same—Lincoln County.—For the county
2 of Lincoln, one assistant attorney, not more than three
3 thousand dollars; one stenographer or clerk, not more
4 than three thousand six hundred dollars.

Sec. 6-(23). Same—Logan County.—For the county of
2 Logan, one assistant attorney, at six thousand five hun-
3 dred dollars; one stenographer, not more than three
4 thousand nine hundred dollars; second stenographer, not
5 more than three thousand three hundred dollars.

Sec. 6-(24). Same—Marion County.—For the county
2 of Marion, first assistant attorney, six thousand dollars;
3 second assistant attorney, five thousand four hundred
4 dollars; one stenographer, not more than three thousand
5 eight hundred dollars.

Sec. 6-(25). Same—Marshall County.—For the county
2 of Marshall, one assistant attorney, at two thousand four
3 hundred dollars; one stenographer or clerk, not less than
4 two thousand eight hundred nor more than three thou-
5 sand six hundred dollars.

Sec. 6-(26). Same—Mason County.—For the county of
2 Mason, one assistant attorney, not less than one thousand
3 five hundred nor more than two thousand dollars; one
4 stenographer, two thousand dollars.

Sec. 6-(27). Same—McDowell County.—For the county
2 of McDowell, first assistant attorney, not less than three
3 thousand nor more than five thousand four hundred dol-
4 lars; second assistant attorney, not less than three thou-
5 sand nor more than five thousand dollars; one stenog-
6 rapher, not less than three thousand three hundred nor
7 more than three thousand six hundred dollars.

Sec. 6-(28). Same—Mercer County.—For the county
2 of Mercer, one assistant attorney, at six thousand dol-
3 lars; one stenographer or clerk, not more than three
4 thousand nine hundred dollars.

Sec. 6-(29). Same—Mineral County.—For the county
2 of Mineral, one assistant attorney, not more than one
3 thousand two hundred dollars; one stenographer, not more
4 than three thousand dollars.

Sec. 6-(30). Same—Mingo County.—For the county of
2 Mingo, one assistant attorney, not more than six thousand
3 dollars; one stenographer, not more than four thousand
4 two hundred dollars.

Sec. 6-(31). Same — Monongalia County.—For the
2 county of Monongalia, one assistant attorney, not less than
3 four thousand dollars nor more than five thousand dol-
4 lars; one stenographer, not less than two thousand four
5 hundred nor more than three thousand six hundred dol-
6 lars.

Sec. 6-(32). Same—Monroe County.—For the county
2 of Monroe, one assistant attorney; one stenographer, not
3 more than six hundred dollars.

Sec. 6-(33). Same—Morgan County.—For the county
2 of Morgan, one assistant attorney.

Sec. 6-(34). Same—Nicholas County.—For the county
2 of Nicholas, one assistant attorney, not more than one
3 thousand two hundred dollars; one stenographer or clerk,
4 at a salary to be fixed by the county court.

Sec. 6-(35). Same—Ohio County.—For the county of
2 Ohio, first assistant attorney, at five thousand dollars;
3 second assistant attorney, at four thousand five hundred
4 dollars; third assistant attorney, at four thousand dollars;
5 one stenographer, not more than three thousand three
6 hundred dollars; second stenographer, not more than one
7 thousand two hundred dollars.

Sec. 6-(36). Same—Pendleton County.—For the county
2 of Pendleton, one assistant attorney; one stenographer
3 or clerk, not more than one thousand five hundred dol-
4 lars.

Sec. 6-(37). Same—Pleasants County.—For the county
2 of Pleasants, one stenographer, not more than two thou-
3 sand four hundred dollars.

Sec. 6-(38). Same — Pocahontas County. — For the
2 county of Pocahontas, one assistant attorney; one stenog-
3 rapher, not more than two thousand one hundred dollars.

Sec. 6-(39). Same—Preston County.—For the county
2 of Preston, one assistant attorney at a salary not ex-
3 ceeding three thousand six hundred dollars; one stenog-
4 rapher, not more than three thousand six hundred dol-
5 lars.

Sec. 6-(40). Same—Putnam County.—For the county
2 of Putnam, one assistant attorney, not more than three
3 thousand dollars; one stenographer, not more than three
4 thousand six hundred dollars.

Sec. 6-(41). Same—Raleigh County.—For the county
2 of Raleigh, one assistant attorney, at six thousand dollars;
3 one stenographer, not more than three thousand six hun-
4 dred dollars.

Sec. 6-(42). Same—Randolph County.—For the county
2 of Randolph, one assistant attorney, not more than three
3 thousand six hundred dollars; one stenographer, not less
4 than two thousand seven hundred nor more than three
5 thousand six hundred dollars.

Sec. 6-(43). Same—Ritchie County.—For the county
2 of Ritchie, one assistant attorney; one stenographer, not

3 less than one thousand six hundred dollars nor more than
4 two thousand four hundred dollars.

Sec. 6-(44). Same—Roane County.—For the county of
2 Roane, one assistant attorney; one stenographer, not less
3 than one thousand five hundred nor more than two thou-
4 sand four hundred dollars.

Sec. 6-(45). Same—Summers County.—For the county
2 of Summers, one assistant attorney, not less than one
3 thousand nor more than two thousand dollars; one ste-
4 nographer, not less than one thousand five hundred nor
5 more than three thousand dollars.

Sec. 6-(46). Same—Taylor County.—For the county of
2 Taylor, one assistant attorney; one stenographer, not less
3 than one thousand two hundred nor more than three thou-
4 sand dollars.

Sec. 6-(47). Same—Tucker County.—For the county
2 of Tucker, one assistant attorney.

Sec. 6-(48). Same—Tyler County.—For the county of
2 Tyler, one assistant attorney; one stenographer, not more
3 than one thousand eight hundred dollars.

Sec. 6-(49). Same—Upshur County.—For the county
2 of Upshur, one assistant attorney, not more than one
3 thousand two hundred dollars; one stenographer, not more
4 than one thousand two hundred dollars.

Sec. 6-(50). Same—Wayne County.—For the county of
2 Wayne, one assistant attorney, at five thousand dollars;
3 one stenographer, three thousand six hundred dollars.

Sec. 6-(51). Same—Webster County.—For the county
2 of Webster, one stenographer, two thousand four hun-
3 dred dollars.

Sec. 6-(52). Same—Wetzel County.—For the county of
2 Wetzel, one assistant attorney, not less than nine hundred
3 dollars nor more than one thousand two hundred dollars;
4 one stenographer, not more than three thousand nine
5 hundred eighty dollars.

Sec. 6-(53). Same—Wirt County.—For the county of
2 Wirt, one stenographer or clerk at not more than nine
3 hundred dollars.

Sec. 6-(54). Same—Wood County.—For the county of
2 Wood, one assistant attorney, who shall maintain offices
3 in the courthouse, at not more than five thousand four
4 hundred dollars; one stenographer, at three thousand six
5 hundred dollars; and in addition thereto, the prosecuting
6 attorney may, with the consent of the county court, ap-
7 point one additional assistant attorney at not more than
8 two thousand four hundred dollars, and additional ste-
9 nographers at salaries to be fixed by the county court.

Sec. 6-(55). Same—Wyoming County.—For the county
2 of Wyoming, one assistant attorney, not less than two
3 thousand six hundred nor more than four thousand eight
4 hundred dollars; one stenographer at salary fixed by the
5 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
2 salary of the assessor in each county shall, on and after
3 January one, one thousand nine hundred sixty-five, be
4 in the amounts set forth in sections five-(one) to five-
5 (fifty-five), inclusive, of this article.

Sec. 5-(1). Salary of Assessor—Barbour County.—For
2 the county of Barbour, three thousand six hundred dollars.

Sec. 5-(2). Same—Berkeley County.—For the county
2 of Berkeley, five thousand dollars.

Sec. 5-(3). Same—Boone County.—For the county of
2 Boone, five thousand five hundred dollars.

Sec. 5-(4). Same—Braxton County.—For the county
2 of Braxton, three thousand six hundred dollars.

Sec. 5-(5). Same—Brooke County.—For the county of
2 Brooke, four thousand eight hundred dollars.

Sec. 5-(6). Same—Cabell County.—For the county of
2 Cabell, seven thousand two hundred dollars.

2 **Sec. 5-(7). Same—Calhoun County.**—For the county
2 of Calhoun, three thousand dollars.

2 **Sec. 5-(8). Same—Clay County.**—For the county of
2 Clay, three thousand six hundred dollars.

2 **Sec. 5-(9). Same—Doddridge County.**—For the county
2 of Doddridge, three thousand six hundred dollars.

2 **Sec. 5-(10). Same—Fayette County.**—For the county
2 of Fayette, five thousand five hundred dollars.

2 **Sec. 5-(11). Same—Gilmer County.**—For the county
2 of Gilmer, three thousand six hundred dollars.

2 **Sec. 5-(12). Same—Grant County.**—For the county of
2 Grant, three thousand dollars.

2 **Sec. 5-(13). Same — Greenbrier County.** — For the
2 county of Greenbrier, six thousand dollars.

2 **Sec. 5-(14). Same — Hampshire County.** — For the
2 county of Hampshire, three thousand three hundred dol-
3 lars.

2 **Sec. 5-(15). Same—Hancock County.**—For the county
2 of Hancock, six thousand dollars.

2 **Sec. 5-(16). Same—Hardy County.**—For the county of
2 Hardy, three thousand three hundred dollars.

2 **Sec. 5-(17). Same—Harrison County.**—For the county
2 of Harrison, eight thousand dollars.

2 **Sec. 5-(18). Same—Jackson County.**—For the county
2 of Jackson, four thousand dollars.

2 **Sec. 5-(19). Same—Jefferson County.**—For the county
2 of Jefferson, four thousand eight hundred dollars.

2 **Sec. 5-(20). Same—Kanawha County.**—For the county
2 of Kanawha, seven thousand five hundred dollars.

2 **Sec. 5-(21). Same—Lewis County.**—For the county
2 of Lewis, four thousand dollars.

2 **Sec. 5-(22). Same—Lincoln County.**—For the county
2 of Lincoln, four thousand eight hundred dollars.

2 **Sec. 5-(23). Same—Logan County.**—For the county of
2 Logan, eight thousand one hundred dollars.

Sec. 5-(24). Same—Marion County.—For the county
2 of Marion, seven thousand dollars.

Sec. 5-(25). Same—Marshall County.—For the county
2 of Marshall, five thousand two hundred dollars.

Sec. 5-(26). Same—Mason County.—For the county of
2 Mason, four thousand two hundred dollars.

Sec. 5-(27). Same — McDowell County. — For the
2 county of McDowell, six thousand dollars.

Sec. 5-(28). Same—Mercer County.—For the county of
2 Mercer, six thousand two hundred fifty dollars.

Sec. 5-(29). Same—Mineral County.—For the county
2 of Mineral, four thousand two hundred dollars.

Sec. 5-(30). Same—Mingo County.—For the county of
2 Mingo, seven thousand two hundred dollars.

Sec. 5-(31). Same — Monongalia County. — For the
2 county of Monongalia, five thousand five hundred dollars.

Sec. 5-(32). Same—Monroe County.—For the county
2 of Monroe, three thousand dollars.

Sec. 5-(33). Same—Morgan County.—For the county
2 of Morgan, three thousand six hundred dollars.

Sec. 5-(34). Same—Nicholas County.—For the county
2 of Nicholas, four thousand dollars.

Sec. 5-(35). Same—Ohio County.—For the county of
2 Ohio, seven thousand nine hundred dollars.

Sec. 5-(36). Same—Pendleton County.—For the county
2 of Pendleton, three thousand two hundred dollars.

Sec. 5-(37). Same—Pleasants County.—For the county
2 of Pleasants, three thousand six hundred dollars.

Sec. 5-(38). Same — Pocahontas County. — For the
2 county of Pocahontas, two thousand eight hundred dol-
3 lars.

Sec. 5-(39). Same—Preston County.—For the county
2 of Preston, four thousand eight hundred dollars.

2 **Sec. 5-(40). Same—Putnam County.**—For the county
2 of Putnam, four thousand two hundred dollars.

2 **Sec. 5-(41). Same—Raleigh County.**—For the county
2 of Raleigh, seven thousand dollars.

2 **Sec. 5-(42). Same—Randolph County.**—For the county
2 of Randolph, five thousand eight hundred dollars.

2 **Sec. 5-(43). Same—Ritchie County.**—For the county of
2 Ritchie, four thousand dollars.

2 **Sec. 5-(44). Same—Roane County.**—For the county of
2 Roane, four thousand four hundred dollars.

2 **Sec. 5-(45). Same—Summers County.**—For the county
2 of Summers, three thousand six hundred dollars.

2 **Sec. 5-(46). Same—Taylor County.**—For the county of
2 Taylor, three thousand eight hundred dollars.

2 **Sec. 5-(47). Same—Tucker County.**—For the county
2 of Tucker, three thousand two hundred dollars.

2 **Sec. 5-(48). Same—Tyler County.**—For the county of
2 Tyler, three thousand six hundred dollars.

2 **Sec. 5-(49). Same—Upshur County.**—For the county
2 of Upshur, three thousand two hundred dollars.

2 **Sec. 5-(50). Same—Wayne County.**—For the county
2 of Wayne, five thousand seven hundred dollars.

2 **Sec. 5-(51). Same—Webster County.**—For the county
2 of Webster, three thousand eight hundred dollars.

2 **Sec. 5-(52). Same—Wetzel County.**—For the county of
2 Wetzel, five thousand dollars.

2 **Sec. 5-(53). Same—Wirt County.**—For the county of
2 Wirt, three thousand dollars.

2 **Sec. 5-(54). Same—Wood County.**—For the county of
2 Wood, five thousand dollars.

2 **Sec. 5-(55). Same—Wyoming County.**—For the county
2 of Wyoming, seven thousand dollars.

3 The salaries now set forth in the code shall remain in
4 full force and effect until the effective dates herein set
5 out.

CHAPTER 11

(House Bill No. 32—By Mr. Cann and Mr. Keister)

[Passed February 1, 1964; in effect January 1, 1967. Approved by the Governor.]

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.
- 2-(28). Salary of county clerk, Mingo county.
- 2-(52). Salary of county clerk, Wyoming county.
- 3-(14). Salary of circuit clerk, Hancock county.
- 3-(15). Salary of circuit clerk, Harrison county.
- 3-(28). Salary of circuit clerk, Mingo county.
- 3-(52). Salary of circuit clerk, Wyoming county.

Section 2-(15). Salary of County Clerk — Harrison
2 **County.**—For the county of Harrison, eight thousand
3 dollars.

Sec. 2-(28). Same—Mingo County.—For the county of
2 Mingo, seven thousand two hundred dollars.

Sec. 2-(52). Same—Wyoming County.—For the county
2 of Wyoming, six thousand six hundred dollars.

Sec. 3-(14). Salary of Circuit Clerk—Hancock County.
2 —For the county of Hancock, six thousand five hundred
3 four dollars.

Sec. 3-(15). Same—Harrison County.—For the county
2 of Harrison, eight thousand dollars.

Sec. 3-(28). Same—Mingo County.—For the county of
2 Mingo, seven thousand two hundred dollars.

Sec. 3-(52). Same—Wyoming County.—For the county
2 of Wyoming, six thousand six hundred dollars.

3 The foregoing officials shall receive the salaries now
4 fixed by law until the provisions of this act applicable
5 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

- 2 **Business on Sunday.**—On the first day of the week, com-
- 3 monly known and designated as Sunday, it shall be un-
- 4 lawful for any person to engage in work, labor or busi-
- 5 ness, or to employ any person to engage in work, labor
- 6 or business, except in household or other work of neces-
- 7 sity or charity. Except as hereinafter provided the ex-
- 8 emption for works of necessity or charity contained in
- 9 the preceding sentence shall not be deemed to include
- 10 selling at retail or wholesale or by auction, or offering or
- 11 attempting to sell on Sunday any of the following: Jew-
- 12 elry; precious and semiprecious stones; silverware;
- 13 watches; clocks; luggage; musical instruments; record-
- 14 ings; toys; clothing and wearing apparel; clothing acces-
- 15 sories; footwear; textile yardgoods; housewares; china;
- 16 kitchenware; home, business, office or outdoor furniture,
- 17 furnishings and appliances; sporting goods (excluding
- 18 sales or rental of bathing, boating and fishing parapher-
- 19 nalia and equipment, and sales or rental on the premises
- 20 where sports, athletic games and events or recreational
- 21 facilities are located or conducted of equipment essential
- 22 to the normal use or operation of such premises for the
- 23 purposes specified); pets, pet equipment or supplies;
- 24 photographic supplies (excluding cameras, film and flash
- 25 bulbs); hardware (excluding light bulbs, batteries and
- 26 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-

32 toric and educational facilities and activities in connec-
33 tion therewith.

34 (9) Advertising the sale of property or services.

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

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

39 (12) The showing of real estate or mobile homes.

40 (13) The operation of a retail outlet for the exclusive
41 sale of its products by an industry located in West Vir-
42 ginia.

43 (14) The sale of farm produce; the repair and oper-
44 ation of farm and orchard implements and equipment,
45 and the spraying and dusting of farm crops by airplane.

46 (15) The sale of flowers or floral wreaths and ar-
47 rangements.

48 (16) The sale at retail of hunting and fishing licenses
49 and the sale of ammunition to persons possessing a valid
50 hunting license.

51 (17) The sale of magazines, books, periodicals and
52 newspapers.

53 (18) An isolated sale made to meet what the seller
54 believes in good faith to be an unexpected emergency in
55 which the health or property of some person is in jeop-
56 ardy.

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

Sec. 27. Punishment for Violation.—Any person vio-
2 lating the provisions of section twenty-five of this article
3 shall, for the first offense, be guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined not less than
5 twenty-five nor more than one hundred dollars. Any per-
6 son violating the provisions of section twenty-five of this
7 article shall, for the second offense occurring within one
8 year of the first offense, be guilty of a misdemeanor and,
9 upon conviction thereof, shall be fined not less than two
10 hundred and fifty dollars nor more than five hundred
11 dollars and, in the discretion of the court, may be con-
12 fined in jail for a period not exceeding thirty days. Any

13 person violating the provisions of section twenty-five
14 of this article shall, for the third or any subsequent
15 offense occurring within two years of the previous offense,
16 be guilty of a misdemeanor and, upon conviction thereof,
17 shall be fined not less than five hundred nor more than
18 one thousand dollars and, in the discretion of the court,
19 may be confined in jail for a period not exceeding six
20 months.

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

25 Justices of the peace shall have concurrent jurisdic-
26 tion with circuit and criminal courts of any such offense
27 or offenses.

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

**Sec. 28. Local Option Election; Form of Petition
2 Therefor; Election Procedure; Form of Ballot; Effect of
3 Such Election.**—The county court of any county is hereby
4 authorized to call a local option election for the purpose of
5 determining the will of the voters as to whether the pro-
6 visions of section twenty-five of this article shall continue
7 in effect in said county.

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

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

18 Each of the undersigned certifies that he or she is a

19 person residing in County, West Virginia,
20 and is duly qualified to vote in said county under the laws
21 of the state, and that his or her name, address and the
22 date of signing this petition are correctly set forth below.

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

29	Name	Address	Date
----	------	---------	------

30	.....	.....	.....
31	.....	.....	.....

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

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

47 Each person qualified to vote in said county at said
48 primary or general election shall likewise be qualified
49 to vote at the local option election. The election officers
50 appointed and qualified to serve as such at said primary
51 or general election shall conduct said local option election
52 in connection with and as a part of said primary or gen-
53 eral election. The ballots in said local option election
54 shall be counted and returns made by the election officers
55 and the results certified by the commissioners of election
56 to said county court which shall canvass the ballots, all
57 in accordance with the laws of the state of West Virginia
58 relating to primary and general elections insofar as the

59 same are applicable. The county court shall, without de-
60 lay, canvass the ballots cast at said local option election
61 and certify the result thereof.

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

64 "Shall the Sunday Closing Law continue in effect in
65County of West Virginia?

66 ☐ Yes ☐ No

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

68 If a majority of the voters voting at any such local
69 option election vote no on the foregoing question, the
70 provisions of section twenty-five, article ten, chapter
71 sixty-one of the code of West Virginia, one thousand nine
72 hundred thirty-one, as amended, shall no longer continue
73 in effect in said county.

Sec. 29. Separability of Provisions of Article.—If sec-
2 tion twenty-five, twenty-six, twenty-seven or twenty-
3 eight of this article or any part of any one or more of said
4 sections is declared unconstitutional by a court of compe-
5 tent jurisdiction, such decision shall not affect the valid-
6 ity of the remaining provisions of this article or the
7 article in its entirety.

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 Vir-
ginia, 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 thou-
sand 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.
2. State commission on higher education; members; qualifications.
3. Powers and duties of the state commission on higher education.
4. Meetings; quorum.

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

23 appoint a chairman selected from the representatives of
24 the public at large.

25 The members shall serve for a term of six years, except
26 that the original appointments shall be as follows: Three
27 members to serve two years, three members to serve four
28 years, and three members to serve six years: *Provided,*
29 *however,* That the eligibility of the members representing
30 the West Virginia board of education, the board of gov-
31 ernors of West Virginia university, and the boards of
32 trustees of the nonpublic institutions, to serve as a mem-
33 ber of the state commission on higher education, shall
34 cease when their membership upon their respective
35 boards terminates. The governor shall appoint a member
36 to fill any vacancy, which member shall serve for the
37 unexpired term of the vacating member. All shall be
38 eligible for reappointment.

39 The members of the commission shall serve without
40 compensation, but shall be reimbursed for their neces-
41 sary expenses actually incurred in the performance of
42 their duties not to exceed twenty-five dollars per day
43 plus an allowance of ten cents per mile for every mile
44 actually traveled to and from such meetings.

Sec. 3. Powers and Duties of the State Commission on
2 **Higher Education.**—The state commission on higher edu-
3 cation shall have the power, (1) to apply for, receive and
4 administer, subject to any applicable regulations or laws
5 of the federal government or any agency thereof, any
6 federal grants, appropriations, allocations, and programs
7 for the development of academic facilities on behalf of
8 the state of West Virginia, or any institution of higher
9 education, public or private, within the state; (2) to de-
10 velop, alter, amend and submit to the federal gov-
11 ernment state plans for participation in federal grants,
12 appropriations, allocations and programs for the devel-
13 opment of academic facilities and to make regulations,
14 criteria, methods, forms, procedures, and to do all other
15 things which may be necessary to make possible the par-
16 ticipation of the state in such federal grants, appropria-
17 tions, allocations and programs for the development of
18 academic facilities; (3) to hold hearings, and render

19 decisions as to the priority assigned to any project, or as
20 to any other matter or determination affecting any ap-
21 plicant for federal grants, appropriations, allocations and
22 programs for the development of academic facilities; (4)
23 to hire personnel, purchase materials, make studies and
24 reports, enter into contracts, and do all other things nec-
25 essary to accomplish the duties as set forth in this section
26 within the limits of the funds available; (5) to adopt rules
27 of procedure and to prescribe regulations for the sub-
28 mission to it of all matters within its jurisdiction; (6) to
29 make a continuing study of the total program of higher
30 education in the state, and from time to time make rec-
31 ommendations to the governing bodies of all institutions
32 of higher education, in order to achieve the maximum
33 and most effective utilization of the federal aid hereto-
34 fore mentioned; and (7) to submit annually, to the gov-
35 ernor, on or before the first Monday of December, a re-
36 port of its proceedings during that year, together with
37 such recommendations as the commission shall deem
38 necessary.

Sec. 4. Meetings; Quorum.—A meeting of the commis-
2 sion shall be held within sixty days after the effective
3 date of this article, in the state capitol, and thereafter the
4 commission shall meet at least four times annually upon
5 the call of the chairman. Five members of the commis-
6 sion shall constitute a quorum, and a majority vote of
7 the quorum shall be necessary to pass upon matters be-
8 fore 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, chap-
ter three of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to filing an-
nouncements of candidacies for the Legislature, and pro-
viding 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

20 in said state; that I am eligible to hold the said office;
21 that I am a member of and affiliated with said political
22 party; that I am a candidate for said office in good faith.

23

24

Candidate

25 Signed and acknowledged before me this ----- day of
26 -----, 19-----.

27

28

Signature and official title

29

of person before whom signed.

30 Such announcement shall be signed and acknowledged
31 by the candidate before some officer qualified to admin-
32 ister oaths, who shall certify the same.

33 No person may be a candidate for nomination for office
34 in any political party unless it be openly known that
35 such person is a bona fide member of such party.

36 Such certificate shall be filed with the secretary of
37 state or the clerk of the circuit court, as the case may be,
38 not earlier than the first Monday in January next pre-
39 ceding the primary election day, and not later than the
40 first Saturday of February next preceding the primary
41 election day, and must be received before midnight,
42 eastern standard time, of that day or, if mailed, shall be
43 postmarked before that hour: *Provided*, That during
44 the calendar year of one thousand nine hundred sixty-
45 four, in event (a) that section one and section two, or
46 either of them (in whole or in part), of article two of
47 chapter one of the code of West Virginia, one thousand
48 nine hundred thirty-one, as amended, said article two
49 having been enacted by chapter one hundred fifty-eight
50 of the acts of the Legislature of West Virginia, for the
51 year one thousand nine hundred sixty-three, regular ses-
52 sion, relating to the apportionment of membership in the
53 Legislature, are declared unconstitutional by the supreme
54 court of appeals of West Virginia, and (b) that there-
55 after the Legislature enacts legislation reapportioning
56 said Legislature prior to the primary election for the year
57 one thousand nine hundred sixty-four, the announce-
58 ments of candidacies for membership in the state Senate
59 and membership in the House of Delegates which were
60 properly filed on or before February one, one thousand

61 nine hundred sixty-four, by any persons under the pro-
62 visions of this section, shall be considered valid and
63 sufficient announcements of candidacies for such offices
64 in the counties or districts wherein such candidates reside
65 at the time said certificates of candidacies were filed for
66 membership in the Legislature representing the particu-
67 lar counties, delegate districts or senatorial districts for
68 which filed, as the case may be, or which are created
69 in such apportionment legislation as may hereafter be
70 adopted during the year one thousand nine hundred
71 sixty-four, prior to the primary election: *Provided, how-*
72 *ever,* That in event such apportionment legislation is
73 hereafter adopted during the year one thousand nine
74 hundred sixty-four prior to the primary election where-
75 in delegate districts are established, the circuit clerks of
76 all counties within such established delegate districts
77 shall immediately transfer all certificates of candidacy
78 for membership in the House of Delegates, together with
79 the filing fees therefor, to the secretary of state: *Provided*
80 *further,* That notwithstanding the provisions of section
81 nine, article five of this chapter and any other provision
82 of this chapter requiring an earlier date or time, the
83 secretary of state shall arrange the names of all candi-
84 dates who have filed announcements with him and who
85 are entitled to have their names printed on any political
86 party ballot for the offices of state senator and member
87 of the House of Delegates and shall certify the same
88 to the several clerks of the circuit courts prior to the
89 week next following the second Saturday in the month
90 of March, in the year one thousand nine hundred sixty-
91 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:

Article 25. Health Care Corporations.

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.
11. Rules and regulations.
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.

1 **Sec. 2. Definitions.**—For the purpose of this article,
2 unless the context otherwise indicates:

3 (a) "Health care corporation or corporation" shall
4 mean a corporation organized and licensed under the
5 provisions of this article.

6 (b) Direct health care services shall, subject to the
7 limitations contained in this article, include all such
8 services as are designed to preserve or restore a person's
9 health.

10 (c) "Subscriber" shall mean a person (including, as
11 the case may be, the members of his family) who sub-
12 scribes to the direct health care plan of a corporation.

13 (d) "Commissioner" means the insurance commis-
14 sioner of the state of West Virginia.

Sec. 3. Incorporation; Purposes; Name; Limitations.—
2 Any law to the contrary notwithstanding, nonprofit,
3 non-stock corporations may be organized in accordance
4 with the provisions of article one, chapter thirty-one of
5 the code of West Virginia, for the sole purpose of pro-
6 viding any or all of the following direct health care
7 services, at the expense of the corporation, to its mem-
8 bers and subscribers through contracts with duly licensed
9 physicians and surgeons, osteopathic physicians and
10 surgeons, chiropractors, chiropodists, nurses, dentists,
11 optometrists and pharmacists, and any others who are
12 licensed to engage in the practice of the healing arts, as
13 well as hospitals, clinics, convalescent centers, nursing
14 homes, and any other persons, corporations, associations,
15 and institutions engaged in the business of providing
16 facilities, appliances, supplies and services incidental to
17 such health care.

18 No such corporation shall include in its name the words
19 "insurance," "casualty," "surety," "health and accident,"
20 "accident and sickness," "mutual," or any other words,
21 which in the opinion of the commissioner are descriptive
22 of the insurance, casualty or surety business, or decep-
23 tively similar to the name or description of any insurance
24 or surety corporation doing business in the state.

25 A corporation shall provide only direct health care
26 services to the subscribers to its health care plan and

27 shall not provide for the payment of any cash or cash
28 indemnity to or on behalf of a subscriber: *Provided*,
29 That a corporation may provide a cash reimbursement
30 to a subscriber who employs or obtains in the event of
31 an emergency the health care services of any person,
32 corporation, association or institution named or referred
33 to in this section and located outside the territorial
34 boundaries within which the corporation is licensed to
35 operate.

Sec. 4. Board of Directors.—The board of directors of
2 any corporation organized under this article shall con-
3 sist of seven members, all of whom shall be residents
4 of the state of West Virginia, four of whom shall be
5 subscribers to its services, one of whom shall be a person
6 licensed to practice medicine under the laws of the state
7 of West Virginia, one of whom shall be a person con-
8 nected with the healing arts, and one of whom shall be
9 a member of the general public not connected with any
10 contracting party. The members of the board shall serve
11 without compensation but may be reimbursed for ex-
12 penses incurred in carrying out their duties as members
13 of the board.

Sec. 5. Exemptions.—Every such corporation is hereby
2 declared to be a charitable, scientific, nonprofit institu-
3 tion and as such exempt from the payment of all prop-
4 erty and other taxes.

**Sec. 6. Supervision and Regulation by Insurance Com-
missioner.**—Corporations organized under this article
2 shall be subject to supervision and regulation by the in-
3 surance commissioner. Any provisions of this chapter or
4 of any other law to the contrary notwithstanding, such
5 corporation shall not be subject to the insurance laws of
6 this state now in force nor to any law hereafter enacted
7 relating to insurance and corporations engaged in the
8 business of insurance unless otherwise provided in this
9 article or unless such other law specifically and in exact
10 terms applies to such voluntary, nonprofit health care
11 corporations as are organized under this article.
12

Sec. 7. Licenses.—(a) Before it may issue any con-
2 tract to a subscriber, a corporation desiring to establish,

3 maintain, and operate a direct health care plan must
4 first obtain from the commissioner a license as provided
5 in this section.

6 (b) Applications for an original license shall be made
7 on forms prescribed and furnished by the commissioner
8 and shall be accompanied by the following documents
9 and information: (1) Certificate of incorporation; (2) by-
10 laws; (3) list of names and residence addresses of all
11 officers and board of directors of the corporation; (4) con-
12 tracts between the corporation and persons, firms, corpo-
13 rations or associations to render direct health care serv-
14 ices; (5) proposed contracts to be issued to subscribers
15 setting forth in detail the direct health care services to
16 which subscribers are entitled and the table of rates to
17 be charged for such services; (6) financial statement
18 showing the assets and liabilities of the corporation, the
19 amount of contributions paid, or agreed to be paid, to
20 the corporation for working capital, the names or name
21 of each contributor and the terms of each contribution;
22 and (7) such additional information as the commissioner
23 may require.

24 (c) Within thirty days after receipt of an application,
25 the commissioner shall, upon payment to him of a license
26 fee of one hundred dollars, issue a license authorizing the
27 corporation to transact business in this state in the area
28 to be served by it, if he is satisfied (1) that the applicant
29 is incorporated in this state under the provisions of article
30 one, chapter thirty-one of the code of West Virginia as a
31 bona fide, nonprofit corporation, (2) that the health care
32 plan which the corporation proposes to operate, as well
33 as the forms of all contracts which it proposes to issue
34 under such health care plan, are based upon sound busi-
35 ness principles and will be in every respect equitable,
36 just and fair to the subscriber, (3) that the working capi-
37 tal available to the corporation will be sufficient to pay all
38 operating expenses during the subscription period, and
39 (4) that the proposed plan will adequately serve the best
40 interests of all the people of the area in which the corpo-
41 ration intends to operate, regardless of their race, color
42 or religion.

43 (d) The commissioner may refuse to license a corpo-
44 ration when he determines that such corporation has not
45 complied with the laws of this state, or that it is not in
46 the best interest of the people of the state that such cor-
47 poration be licensed, or that such corporation would trans-
48 act business in this state in an improper, illegal, or unjust
49 manner. In such event, the commissioner shall enter an
50 order refusing such license and the applicant therefor
51 may have a hearing and judicial review in accordance
52 with the applicable provisions of article two of this chap-
53 ter relating to hearings before and judicial review of
54 orders entered by the commissioner.

55 (e) All licenses issued under the provisions of this
56 article shall expire at midnight on March thirty-first next
57 following the date of issuance. The commissioner shall
58 renew annually the license of all corporations which
59 qualify and make application therefor upon a form pre-
60 scribed by the commissioner upon payment to the com-
61 missioner of a renewal fee of one hundred dollars.

62 (f) The commissioner shall, after notice and hearing,
63 refuse to renew or shall revoke or suspend the license of
64 a corporation, if the corporation: (1) Violates any pro-
65 vision of this article; (2) fails to comply with any lawful
66 rule, regulation or order of the commissioner; (3) is trans-
67 acting its business in an illegal, improper or unjust man-
68 ner, or is operating in contravention of its articles of in-
69 corporation or any amendments thereto, of its by-laws,
70 or of its health care plan; (4) is found by the commis-
71 sioner to be in an unsound condition or in such condition
72 as to jeopardize its obligations to subscribers and those
73 with whom it has contracted; (5) compels subscribers to
74 its health care program to accept less than the obligation
75 due them under their contracts or agreements with the
76 corporation; (6) refuses to be examined or to produce its
77 accounts, records and files for examination by the com-
78 missioner when required; (7) fails to pay any final judg-
79 ment rendered against it in West Virginia within thirty
80 days after the judgment became final or time for appeal
81 expired, whichever is later; (8) fails to pay when due to
82 the state of West Virginia any fees, charges, or penalties
83 required by this chapter.

84 In those cases where the commissioner has the right
85 to revoke, suspend or terminate the license or any renewal
86 thereof of said corporation, the commissioner shall, by
87 order, require the corporation to pay to the state of West
88 Virginia a penalty in the sum not exceeding one thousand
89 dollars, and on the failure of the corporation to pay such
90 penalty within thirty days after notice thereof, the com-
91 missioner shall revoke or suspend the license of such cor-
92 poration.

93 When any license has been revoked, suspended or ter-
94 minated, the commissioner may reinstate such license
95 when he is satisfied that the conditions causing such revo-
96 cation, suspension or termination have ceased to exist and
97 are unlikely to recur.

98 In the event the commissioner revokes, suspends or
99 terminates a license, the corporation may demand a hear-
100 ing in the manner provided in article two of this chapter.

**Sec. 8. Supervision by Commissioner; Approval of
2 Contracts, Forms, Rates and Fees.—**(a) It shall be the
3 duty of the commissioner to enforce the provisions of
4 this article.

5 (b) No such corporation shall deliver or issue for
6 delivery any subscriber's contract, changes in the terms
7 of such contract, application, rider or endorsement until
8 a copy thereof and the rates pertaining thereto have
9 been filed with and approved by the commissioner. All
10 such forms filed with the commissioner shall be deemed
11 approved after the expiration of thirty days from the
12 date of such filing unless the commissioner shall have
13 disapproved the same, stating his reasons for such dis-
14 approval in writing, except that such period may be ex-
15 tended for an additional period not to exceed fifteen days
16 upon written notice thereof from the commissioner to
17 the applicant. Such forms may be used prior to the ex-
18 piration of such periods if written approval thereof has
19 been received from the commissioner.

20 (c) No rates to be charged subscribers shall be used
21 or established by any such corporation unless and until
22 the same have been filed with the commissioner and ap-
23 proved by him. The procedure for such filing and ap-

24 proval shall be the same as that prescribed in paragraph
25 (b) of this section for the approval of forms. The com-
26 missioner shall approve all such rates which are not ex-
27 cessive, inadequate, or unfairly discriminatory.

28 (d) The commissioner shall pass upon the actuarial
29 soundness of all direct health care services plans.

30 (e) The corporation shall accumulate a fund to be
31 derived from a minimum of two per cent of every sub-
32 scriber's monthly premium which shall be known as a
33 contingency and liability reserve fund except that the
34 same shall not exceed an amount equal to three months'
35 average obligation of said corporation, nor shall it fall
36 below a minimum of one month's average obligation of
37 said corporation. Said fund shall be expended by the
38 corporation according to rules and regulations to be
39 promulgated by the commissioner.

40 In addition to the above requirements, every sub-
41 scriber shall pay into the corporation a membership fee
42 equal to one monthly premium. The membership fee
43 shall be collected in full by said corporation within ninety
44 days of said subscriber's application for membership.

Sec. 9. Reports by Corporations to the Commissioner.—

2 Every corporation shall annually on or before the first
3 day of March, file, with its application for renewal license,
4 a report, verified by an officer of the corporation, with
5 the commissioner, showing its condition on the last day
6 of the preceding calendar year, on forms prescribed by
7 the commissioner, which report shall include:

8 (a) A financial statement of such corporation, in-
9 cluding its balance sheet and its receipts and disburse-
10 ments for the preceding calendar year;

11 (b) A list of the names and residence addresses of all
12 its officers and directors, and the total amount of expense
13 reimbursement to all officers and directors during the
14 preceding calendar year;

15 (c) The number of subscribers' contracts issued by
16 such corporation and outstanding;

17 (d) The names of those persons (other than sub-
18 scribers), corporations, associations, and institutions with
19 which such corporation has agreements;

- 20 (e) Number and type of services currently covered
21 under the health care plan of the corporation.

Sec. 10. Examination of Corporation; Access to Books;

2 **Records, etc.**—(a) The commissioner or his accredited ex-
3 aminers may at any reasonable time and shall, at least
4 once each year, visit each health care corporation and
5 thoroughly examine its financial condition and methods of
6 doing business and ascertain whether it has complied
7 with all of the laws and regulations of this state. All ex-
8 penses of each such examination conducted shall be borne
9 by such corporation. The commissioner shall make a full
10 written report of each such examination of the corpo-
11 ration, certified to by the commissioner or the examiner
12 in charge of such examinations. The commissioner shall
13 furnish a copy of the report to the corporation examined
14 not less than ten days prior to filing the same in his
15 office. If such corporation so requests in writing, within
16 such ten-day period, the commissioner shall consider the
17 objections of such corporation to the report as proposed,
18 and shall not so file the report until after such modifi-
19 cations, if any, have been made therein as the commis-
20 sioner deems proper. The report, when filed, shall be
21 admissible in evidence in any action or proceeding
22 brought by the commissioner against the corporation ex-
23 amined, or its officers or agents, and shall be prima facie
24 evidence of the facts stated therein. The commissioner
25 or his examiners may at any time testify and offer other
26 proper evidence as to information secured during the
27 course of an examination, whether or not a written re-
28 port of the examination has at that time been either
29 made, served or filed in the commissioner's office.

30 (b) For such purposes the commissioner, his deputies
31 and employees shall have free access to all books, rec-
32 ords, papers, documents and correspondence of any such
33 corporation and such books, records, papers, documents
34 and records shall be and remain in the state of West Vir-
35 ginia. The licenses of said corporation shall be auto-
36 matically revoked if such books, records, papers, docu-
37 ments and records are taken outside the state of West
38 Virginia without the prior written approval of the com-
39 missioner.

40 (c) The commissioner shall revoke the license of any
41 such corporation which refuses to submit to such ex-
42 amination.

Sec. 11. Rules and Regulations.—The commissioner is
2 authorized to promulgate and adopt such rules and regu-
3 lations relating to health care corporations as are neces-
4 sary to discharge his duties and exercise his powers and
5 to effectuate the provisions of this article and to protect
6 and safeguard the interests of subscribers and the public
7 of this state.

Sec. 12. Required Provisions in Contracts Made by the
2 **Corporation with Physicians, Dentists, etc., Hospitals and**
3 **Other Health Agencies.**—Each contract made by the cor-
4 poration with any person (other than subscribers), cor-
5 poration, association and institution, named or referred
6 to in section three of this article shall contain the follow-
7 ing provisions:

8 (a) That the person, corporation, association or in-
9 stitution will render to any subscriber such service as he
10 may be entitled to under the terms and conditions of the
11 contract issued to the subscriber by the corporation;

12 (b) That the person, corporation, association or in-
13 stitution will accept as full payment for services con-
14 tracted for subscribers such compensation as is set forth
15 in the contract between such persons, corporation, as-
16 sociation or institution and the corporation;

17 (c) That in the event a surplus remains after an an-
18 nual accounting of the financial condition of the corpo-
19 ration, such surplus may be used by the corporation,
20 upon an affirmative vote of a majority of its board of
21 directors for the following purposes, in the order of pri-
22 ority stated below:

23 (1) To liquidate on a pro rata basis any obligation
24 due any such person, corporation, association or institu-
25 tion in previous years;

26 (2) To return the original contributions for working
27 capital, or any part thereof, on a pro rata basis;

28 (3) To reduce rates charged subscribers, or to ex-
29 pand the services rendered them.

Sec. 13. Contracts to Be Furnished to Subscribers;

2 **Contracts with Needy Persons.**—(a) Every such corpo-
3 ration shall deliver to each subscriber to its health care
4 plan a copy of the contract.

5 (b) A corporation may not accept from private agencies,
6 corporations, associations, groups or individuals, payment
7 for or on behalf of any subscriber of all or any part
8 of the cost of subscriptions for direct health care services
9 to be rendered: *Provided, however,* That no employer or
10 sponsor may deduct the proportionate share of such pay-
11 ment attributable to any employee or subscriber from that
12 employee's or subscriber's wages or salary, without the
13 prior written consent of the employee or subscriber. It
14 shall be unlawful for any governmental agency to pay
15 subscriptions for or on behalf of any subscriber.

Sec. 14. Advancement of Sums of Money to a Corpo-

2 ration.—Any person may advance to such corporation
3 any sums of money necessary for its business or to enable
4 it to comply with any requirements of law. Such ad-
5 vances and such interest thereon not exceeding six per
6 cent per annum, as may be agreed upon, shall not be a
7 liability or a claim against the corporation or any of its
8 assets, except as provided in this section and shall be
9 reimbursed only out of the surplus earnings of such cor-
10 poration. This section does not affect the power to borrow
11 money which any such corporation possesses under other
12 laws. No commissions or promotion expenses shall be
13 paid by the corporation in connection with the advance
14 of any such money to the corporation. The amount of any
15 such advance that has not been repaid shall be reported
16 in each annual statement of the corporation.

Sec. 15. Investments.—The funds of any such corpo-

2 ration shall be invested only in the following: Corporate
3 obligations of West Virginia corporations, building and
4 savings and loan shares of West Virginia corporations
5 and state or national bank shares, deposits or certificates
6 of banks located in West Virginia, preferred or guaran-
7 teed stock of any West Virginia corporation, real property
8 located in West Virginia, and revenue bonds and govern-
9 ment 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.

5. Chairman; meetings.
6. Executive secretary; personnel; salary and expenses.
7. Recommendations to departments; information to be furnished by departments.
8. Studies by other departments.
9. Commission duties and functions.
10. Authority to accept grants.
11. Records, public; confidential information.
12. Contracts or agreements by the commission.
13. Annual report to governor and Legislature.

Section 1. Declaration of Legislative Policy and Intent.

- 2 —The Legislature hereby finds and declares that experi-
3 ence has shown that automation and other forms of rapid
4 technological change can cause industrial and government-
5 tal displacement and unemployment which seriously de-
6 press the morale and productive capacity of the work force
7 of the state; that many of those displaced or not hired be-
8 cause of such developments find that there is no longer a
9 market, or a very limited market, for their skills; that such
10 developments generate demands for new and different
11 skills and capabilities from those possessed by the work
12 force; that current and prospective manpower surpluses
13 and shortages generated by rapid technological change
14 should be identified and appropriate steps be taken to
15 plan for their amelioration; that advance knowledge of
16 impending changes in work processes and their conse-
17 quent manpower requirements should be secured as a
18 basis for the planning of corrective measures; that the
19 effectiveness of public and private training and educa-
20 tional resources should be reappraised continuously to
21 evaluate their capacity to produce the skills needed in a
22 changing technology; that the steps being taken by labor
23 and management to adjust to these changes should be
24 identified and made known; and that it is in the interest
25 of the state of West Virginia that such appraisals of the
26 impact of automation and technological development on
27 the skills required in the work force and the job oppor-
28 tunities available to them be made and continuously re-
29 appraised, and that the information and knowledge so
30 gained be made available to labor, employers and public
31 agencies as a basis for the planning of programs and ac-
32 tions to develop the skills of our work force for a chang-
33 ing technology, to deal more effectively with the problems
34 of unemployment and to further the economic growth

35 and development of the state and the well-being of its
36 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 design-

2 nate one of the members of the commission as the chair-
3 man of the commission. A majority of the members of the
4 commission shall constitute a quorum for the transaction
5 of business. The commission shall meet at least twice a
6 year; other meetings may be held upon the call of the
7 chairman or of a majority of its members.

Sec. 6. Executive Secretary; Personnel; Salary and Ex-
2 **penses.**—The commission is hereby authorized to employ
3 an executive secretary and such other personnel as in
4 its judgment may be necessary in carrying out the work
5 of the commission, and is further authorized to fix the
6 salaries for such employees and incur other expenses
7 necessary to the effective discharge of its powers and
8 duties within the limits of funds available.

9 The commission may utilize personnel of the depart-
10 ments, agencies and boards of the state whenever such
11 utilization is consistent with the laws, rules and regula-
12 tions under which such departments, agencies and boards
13 operate.

14 The commission may utilize personnel of the govern-
15 ment of the United States to the extent permissible by
16 law.

Sec. 7. Recommendations to Departments; Information
2 **to Be Furnished by Departments.**—The commission may
3 make recommendations to any department, board, agency
4 or officer of the state government for the purpose of imple-
5 menting the findings of the commission. Every depart-
6 ment, board, agency and officer of the state government
7 shall cooperate with the commission for the achievement
8 of the purposes of this article.

Sec. 8. Studies by Other Departments.—The state de-
2 partments of employment security, commerce, labor and
3 education shall cooperate with the commission in conduct-
4 ing studies, in making surveys and in performing similar
5 activities whenever such is authorized under the laws,
6 rules and regulations under which said departments
7 operate.

Sec. 9. Commission Duties and Functions.—The com-
2 mission shall:

3 (a) Study the introduction of modern production and
4 distribution techniques in West Virginia to determine the
5 impact of automated processes and other technological
6 advancements on employment opportunities; the skill re-
7 quirements of industry, business and governments; the
8 displacement of employees, and the obsolescence of
9 skills among members of the labor force.

10 (b) Study and analyze the processes of adjustment to
11 automation and other technological advancements in the
12 state's economy.

13 (c) Study and analyze surveys of current public and
14 private programs in the field of job training, retraining,
15 and skill developments generally to evaluate their effec-
16 tiveness in providing employable skills in reference to
17 both the changing composition of the state's labor force
18 and the changing skill requirements of industry.

19 (d) Recommend coordinated surveys in the various
20 labor markets of the state to project as best possible the
21 basic skill requirements of industry, business and govern-
22 ment sufficiently in advance of need, and in the approxi-
23 mate quantity needed, to the end that such projections
24 shall provide a body of usable information for the de-
25 velopment of functional job training, retraining, and skill
26 development programs by labor and management and
27 responsible government agencies. Such surveys shall con-
28 sider, but shall not necessarily be limited to the considera-
29 tion of, the skills presently available to industry, business
30 and government, the present skill requirements of indus-
31 try and the future skill requirements of industry.

32 (e) Encourage labor and management to undertake
33 jointly similar surveys and projections within their re-
34 spective industries and occupations to maintain a high
35 level of private initiative in meeting the skill develop-
36 ment requirements of both employees and employers.

37 (f) The commission shall cooperate with and assist
38 the national manpower advisory committee as established
39 by the United States Manpower Development and Train-
40 ing Act of 1962. The commission shall assist the appropri-
41 ate agencies to establish in each training area within the
42 state, representative advisory committees on manpower.

Sec. 10. Authority to Accept Grants.—The commission
2 may accept grants of funds from the government of the
3 United States, from any department or agency of the
4 state of West Virginia, or from any person or private
5 agency permitted by law to make such grants.

Sec. 11. Records, Public; Confidential Information.—
2 The information received from any group, firm or indi-
3 vidual in response to the commission's request shall be
4 for the confidential information of the commission insofar
5 as it relates to planning, manning, personnel, union mem-
6 bership and related matters. Otherwise, and except as
7 provided by law, the records of the commission shall
8 be open to inspection by the public during regular office
9 hours.

Sec. 12. Contracts or Agreements by the Commission.—
2 The commission may enter into agreements and contracts
3 with the United States or any agency thereof, or with
4 any state or agency thereof, or any private organization
5 or individual engaged in functions comparable to those
6 performed by the commission for the exchange of infor-
7 mation, studies and surveys, or may conduct surveys.

Sec. 13. Annual Report to Governor and Legislature.—
2 The commission shall submit annually to the governor
3 and the Legislature its findings and recommendations
4 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, chap-
ter 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,
2 the term "surface mining" shall include all industrial
3 activity for the recovery of minerals except those ac-
4 tivities subject to the provisions of articles one, two, four,

5 five and seven of chapter twenty-two of the code of West
6 Virginia, one thousand nine hundred thirty-one, as
7 amended, and, subject to such exception, shall include
8 plant and equipment used in processing said minerals.

9 For the purpose of this article, a "surface mine" shall
10 include all areas surface mined or being surface mined
11 as well as adjacent areas ancillary to the operation, to-
12 gether with preparation and processing plants, storage
13 areas and haulageways: *Provided*, That such areas are
14 sufficiently concentrated that they can be adequately
15 supervised by one foreman: *And provided further*, That
16 mines subject to the provisions of articles one, two, four,
17 five and seven of chapter twenty-two of the code of West
18 Virginia, as amended, are not "surface mines" within this
19 definition.

20 For the purpose of this article, "disturbed land" shall
21 include the area from which the overburden has been
22 removed in surface mining operations, plus the area
23 covered by the spoil, and any areas used in surface min-
24 ing operations which by virtue of their use are suscepti-
25 ble to excessive erosion.

26 For the purpose of this article, "operator" shall mean
27 any individual, a corporation, a partnership, an associa-
28 tion or a trust which is granted a permit to engage in any
29 activity covered by this article.

CHAPTER 22. MINES AND MINERALS.

Article 2-a. Surface Mining.

Section

2. Definitions.

- 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.
- 5-b. Excepting persons, firms, etc., from reclamation requirements respecting the removal of earth or stone recovered for borrow and fill material for grading in federal and state highway construction projects.

Section 2. Definitions.—For the purpose of this article,
2 the term "surface mining" shall include all industrial
3 activity for the recovery of minerals, except those activi-
4 ties subject to the provisions of articles one, two, four,
5 five and seven of chapter twenty-two of the code of

6 West Virginia, one thousand nine hundred thirty-one, as
7 amended, and, subject to such exception, shall include
8 plant and equipment used in processing said minerals.

9 For the purpose of this article, a "surface mine" shall
10 include all areas surface mined or being surface mined,
11 as well as adjacent areas ancillary to the operation, to-
12 gether with preparation and processing plants, storage
13 areas and haulageways: *Provided*, That such areas are
14 sufficiently concentrated that they can be adequately
15 supervised by one foreman: *And provided further*, That
16 mines subject to the provisions of articles one, two, four,
17 five and seven of chapter twenty-two of the code of
18 West Virginia, one thousand nine hundred thirty-one, as
19 amended, are not "surface mines" within this definition.

20 For the purpose of this article, "disturbed land" shall
21 include the area from which the overburden has been
22 removed in surface mining operations, plus the area cov-
23 ered by the spoil, plus any areas used in surface mining
24 operations which by virtue of their use are susceptible
25 to excessive erosion.

26 For the purpose of this article, "operator" shall mean
27 any individual, a corporation, a partnership, an association
28 or a trust which is granted a permit to engage in any
29 activity covered by this article.

**Sec. 5-a. Excepting Persons, Firms, etc., from Reclama-
tion 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, part-
nership, 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 opera-
tion 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

17 or sandstone shall not be subject to any minimum require-
18 ments of section five of this article. For the purpose of
19 this section, "quarry" shall mean the empty space or
20 crater from which limestone, sand or sandstone has been
21 removed or will be removed in the next ensuing one and
22 one-half years, which space or crater shall include the
23 floor or pavement and vertical walls but shall not include
24 adjacent disturbed overburdened areas.

**Sec. 5-b. Excepting Persons, Firms, etc., from Reclama-
2 tion Requirements Respecting the Removal of Earth or
3 Stone Recovered for Borrow and Fill Material for Grad-
4 ing in Federal and State Highway Construction Projects.**
5 —Any provision of this article or of article six, chapter
6 twenty of the code of West Virginia, one thousand nine
7 hundred thirty-one, as amended, to the contrary notwith-
8 standing, an individual, firm, partnership, association,
9 trust, corporation or operator shall not be subject to any
10 duty or requirement whatever with respect to reclama-
11 tion requirements when engaged in the removal for bor-
12 row and fill material for grading in federal and state high-
13 way construction projects: *Provided*, That the provisions
14 of the highway construction contract requires the fur-
15 nishing of a suitable bond which provides for reclamation
16 wherever practicable of the areas affected by such recov-
17 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, desig-
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

2 Belts.—No dealer in new or used automobiles shall sell,
3 lease, transfer or trade, at retail, any passenger automo-
4 bile which is manufactured after January one, one thou-
5 sand nine hundred sixty-five, unless such vehicle is
6 equipped with safety seat belts for the front seat, which
7 seat belts shall meet the standards set and approved by
8 the Society of Automotive Engineers, Inc.

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 Pro-
2 cedure.—Except as hereinafter provided in this section,

3 and notwithstanding the provisions of any existing mu-
4 nicipal charter, it shall not be necessary for the governing
5 body of a city to publish a proposed ordinance in a news-
6 paper prior to adoption thereof. In case of a proposed
7 ordinance to codify, reenact or enact a comprehensive
8 code of ordinances, or in case of a proposed ordinance
9 having as its principal object the raising of revenue for
10 the city, said governing body shall, at least five days be-
11 fore the meeting at which said ordinance is to be finally
12 adopted, cause notice of the proposed adoption to be pub-
13 lished in at least one newspaper of general circulation in
14 said city, stating therein the general title or titles of said
15 ordinance, the time and place of the proposed final adop-
16 tion, and the place or places where, within the city, the
17 entire ordinance will be available for public inspection;
18 a reasonable number of copies of the proposed ordinance
19 shall be kept at such place and be made available for
20 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;**
- 2 **stances into Waters Used for Domestic Purposes; Penalty;**
 - 3 **Jurisdiction of Justices.**—Any person who knowingly and
 - 4 wilfully shall throw, or cause to be thrown, any dead

5 animal, carcass or part thereof, or any putrid, nauseous
6 or offensive substances, hazardous to public health, into
7 any well, cistern, spring, brook or branch of running
8 water, which is used for domestic purposes, shall be guilty
9 of a misdemeanor, and, upon conviction thereof, shall be
10 punished by a fine of not less than twenty dollars nor
11 more than five hundred dollars, or by imprisonment in
12 the county jail for a period not to exceed six months, or,
13 in the discretion of the court, by both such fine and im-
14 prisonment, and, moreover, shall be liable to the party
15 injured in a civil action for damages.

16 Justices of the peace shall have concurrent jurisdiction
17 with the circuit, criminal and intermediate courts of the
18 state for the enforcement of the criminal penalties of this
19 section.

Sec. 3. Depositing Dead Animals or Offensive Sub-
2 **stances in or near Waters or on or near Roads or on Pub-**
3 **lic Grounds; Penalties; Failure to Bury or Destroy Offen-**
4 **sive Substances after Conviction; Successive Offenses;**
5 **Jurisdiction of Justices.**—Any person who shall place,
6 cast, discharge, or deposit the carcass of any dead animal,
7 or part thereof, or garbage, or slop, or spoiled meat,
8 or putrid organic substances hazardous to public health,
9 or the contents of privy vaults, or septic tanks, or cess-
10 pools, into any river, creek or other stream, or upon
11 the surface of any land adjacent to such river, creek
12 or other stream in such a location that high water or
13 normal drainage conditions will cause such offensive ma-
14 terial to be washed, drained or cast into the river, creek
15 or other stream; or any person who shall place, cast, dis-
16 charge, or deposit such offensive material upon the sur-
17 face of any public road, street, alley, city or town lot, pub-
18 lic ground, market space, or common, or upon the surface
19 of any land within one hundred yards of a public street or
20 road; or any person, who, being the owner, lessee or occu-
21 pant of any such city or town lot, public ground, market
22 space, common, or land within one hundred yards of a
23 public street or road, shall knowingly permit any of the
24 offensive materials hereinbefore named to remain thereon,
25 to the annoyance of any of the citizens of this state, or
26 shall neglect or refuse to remove or abate the nuisance oc-

27 casioned thereby, within twenty-four hours after such
28 person has knowledge of the existence of such nuisance
29 upon any of the above-described premises owned, leased,
30 or occupied by him, or within twenty-four hours of serv-
31 ice of notice thereof in writing from the health officer
32 of the county, or the mayor or health officer of the mu-
33 nicipal corporation, as the case may be, in which any
34 such nuisance exists, shall be guilty of a misdemeanor,
35 and, upon conviction thereof, shall be punished by a
36 fine of not less than twenty dollars nor more than five
37 hundred dollars.

38 Upon a conviction for any such offense, the person
39 convicted shall, within twenty-four hours after such
40 conviction, bury or cause to be buried at least three feet
41 under the ground, or destroy or cause to be destroyed
42 by fire or as otherwise directed by the health officer
43 within whose jurisdiction the offense may have occurred,
44 any of the offensive materials or substances hereinbefore
45 named which the person so convicted has placed or know-
46 ingly permitted to remain upon such city or town lot,
47 public ground, market space, common, or land, contrary
48 to the provisions of this section, and his failure to do so
49 shall constitute a misdemeanor and a second offense
50 against the provisions of this section. The continued
51 failure or refusal of such convicted person to bury or
52 destroy such offensive materials and substances as pro-
53 vided herein shall constitute a separate, distinct and
54 additional offense for each successive twenty-four hour
55 period of such failure and refusal. Any person convicted
56 of any offense described in this paragraph shall be pun-
57 ished by a fine of not less than twenty dollars nor more
58 than five hundred dollars.

59 Justices of the peace shall have concurrent jurisdiction
60 with the circuit, criminal and intermediate courts of the
61 state for the enforcement of the criminal penalties of this
62 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.

Article 1. Organization and Administration.**Section**

7. Additional powers, duties and services of director.

Section 7. Additional Powers, Duties and Services of

2 **Director.**—In addition to all other powers, duties and re-
3 sponsibilities granted and assigned to the director in this
4 chapter and elsewhere by law, the director is hereby au-
5 thorized and empowered to:

6 (1) With the advice of the commission, prepare and
7 administer, through the various divisions created by this
8 chapter, a long-range comprehensive program for the
9 conservation of the natural resources of the state which
10 best effectuates the purpose of this chapter and which
11 makes adequate provisions for the natural resources laws
12 of the state;

13 (2) Sign and execute in the name of the state by the
14 "Department of Natural Resources" any contract or agree-
15 ment with the federal government or its departments or
16 agencies, subdivisions of the state, corporations, associa-
17 tions, partnerships or individuals;

18 (3) Conduct research in improved conservation meth-
19 ods and disseminate information matters to the residents
20 of the state;

21 (4) Conduct a continuous study and investigation of
22 the habits of wildlife, and for purposes of control and pro-
23 tection to classify by regulation the various species into
24 such categories as may be established as necessary;

25 (5) Prescribe the locality in which and the manner and
26 method by which the various species of wildlife may be
27 taken, or chased, unless otherwise specified by this
28 chapter;

29 (6) Fix by regulation the open seasons and the bag,
30 creel, size, age, weight and sex limits with respect to wild-
31 life in this state;

32 (7) Hold at least six meetings each year at such times
33 and at such points within the state, as in the discretion of
34 the director may appear to be necessary and proper for
35 the purpose of giving interested persons in the various
36 sections of the state an opportunity to be heard concerning
37 open seasons for their respective areas, before such sea-
38 sons and bag limits are fixed;

39 (8) Suspend open hunting seasons upon any or all
40 wildlife in any or all counties of the state with the prior
41 approval of the governor in case of an emergency such
42 as a drought, forest fire hazard or epizootic of disease
43 among wildlife. The suspension shall continue during the
44 existence of the emergency and until rescinded by the
45 director. Suspension, or reopening after such suspension,
46 of open seasons may be made upon twenty-four hours'
47 notice by delivery of a copy of the order of suspension
48 or reopening to the wire press agencies at the state capitol;

49 (9) Supervise the fiscal affairs and responsibilities of
50 the department;

51 (10) Designate such localities as he shall determine to
52 be necessary and desirable for the perpetuation of any
53 species of wildlife;

54 (11) Enter private lands to make surveys or inspec-
55 tions for conservation purposes, to investigate for viola-
56 tions of provisions of this chapter, to serve and execute
57 warrants and processes, to make arrests and to otherwise
58 effectively enforce the provisions of this chapter;

59 (12) Acquire for the state in the name of the "Depart-
60 ment of Natural Resources" by purchase, condemnation,
61 lease or agreement, or accept or reject for the state, in
62 the name of the department of natural resources, gifts,
63 donations, contributions, bequests or devises of money,
64 security or property, both real and personal, and any
65 interest in such property, including lands and waters,
66 which he deems suitable for the following purposes:

67 (a) For state forests for the purpose of growing timber,
68 demonstrating forestry, furnishing or protecting water-
69 sheds or providing public recreation;

70 (b) For state parks or recreation areas for the purpose
71 of preserving scenic, esthetic, scientific, cultural, archaeo-
72 logical or historical values or natural wonders, or pro-
73 viding public recreation;

74 (c) For public hunting, trapping, or fishing grounds or
75 waters for the purpose of providing areas in which the
76 public may hunt, trap or fish, as permitted by the pro-
77 visions of this chapter, and the rules and regulations
78 issued hereunder;

79 (d) For fish hatcheries, game farms, wildlife research
80 areas and feeding stations;

81 (e) For the extension and consolidation of lands or
82 waters suitable for the above purposes by exchange of
83 other lands or waters under his supervision;

84 (f) For such other purposes as may be necessary to
85 carry out the provisions of this chapter;

86 (13) Capture, propagate, transport, sell or exchange any
87 species of wildlife as may be necessary to carry out the
88 provisions of this chapter;

89 (14) Exercise the powers granted by this chapter for
90 the protection of forests, and regulate fires and smoking
91 in the woods or in their proximity at such times and in
92 such localities as may be necessary to reduce the danger
93 of forest fires;

94 (15) Cooperate with departments and agencies of state,
95 local and federal governments in the conservation of nat-
96 ural resources and the beautification of the state;

97 (16) Report to the governor each year all information
98 relative to the operation and functions of his department
99 and he shall make such other reports and recommenda-
100 tions as may be required by the governor, including an
101 annual financial report covering all receipts and disburse-
102 ments of the department for each fiscal year, and he shall
103 deliver such report to the governor on or before the first
104 day of December next after the end of the fiscal year so
105 covered. A copy of such report shall be delivered to each
106 house of the Legislature when convened in January next
107 following;

108 (17) Keep a complete and accurate record of all pro-
109 ceedings, record and file all bonds and contracts taken or
110 entered into, and assume responsibility for the custody
111 and preservation of all papers and documents pertaining
112 to his office, except as otherwise provided by law;

113 (18) Offer and pay, in his discretion, rewards for in-
114 formation respecting the violation, or for the apprehen-
115 sion and conviction of any violators, of any of the pro-
116 visions of this chapter;

117 (19) Require such reports as he may deem to be
118 necessary from any person issued a license or permit

119 under the provisions of this chapter, but no person shall
120 be required to disclose secret processes or confidential
121 data of competitive significance;

122 (20) Purchase as provided by law all equipment neces-
123 sary for the conduct of his department;

124 (21) Conduct and encourage research designed to fur-
125 ther new and more extensive uses of the natural resources
126 of this state and to publicize the findings of such research;

127 (22) Encourage and cooperate with other public and
128 private organizations or groups in their efforts to publi-
129 cize the attractions of the state;

130 (23) Accept and expend, without the necessity of ap-
131 propriation by the Legislature, any gift or grant of money
132 made to the department for any and all purposes specified
133 in this chapter, and he shall account for and report on all
134 such receipts and expenditures to the governor;

135 (24) Cooperate with the state historian and other ap-
136 propriate state agencies in conducting research with refer-
137 ence to the establishment of state parks and monuments
138 of historic, scenic and recreational value, and to take such
139 steps as may be necessary in establishing such monuments
140 or parks as he deems advisable.

141 (25) Maintain in his office at all times, properly in-
142 dexed by subject matter, and also in chronological se-
143 quence, all rules and regulations made or issued under
144 the authority of this chapter. Such records shall be avail-
145 able for public inspection on all business days during the
146 business hours of working days as prescribed by the state
147 board of public works.

148 (26) Delegate the powers and duties of his office, ex-
149 cept the power to execute contracts, to appointees and
150 employees of the department, who shall act under the di-
151 rection and supervision of the director and for whose acts
152 he shall be responsible;

153 (27) Conduct schools, institutes and other educational
154 programs, apart from or in cooperation with other gov-
155 ernmental agencies, for instruction and training in all
156 phases of the natural resources program of the state; and

157 (28) Promulgate rules and regulations, in accordance
158 with the provisions of chapter twenty-nine-a of this code,

159 to implement and make effective the powers and duties
160 vested in him by the provisions of this chapter and take
161 such other steps as may be necessary in his discretion for
162 the proper and effective enforcement of the provisions of
163 this chapter: *Provided*, That all rules and regulations re-
164 lating to articles five and five-a of this chapter shall be
165 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

6. Location and construction of 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

16. Severability of provisions.

PART I. GENERAL PROVISIONS.

Section 1. Water Resources Board and Division of
2 Water Resources; Duties and Functions.—The water re-
3 sources board shall have within its jurisdiction and super-
4 vision the Ohio river valley water sanitation commission
5 from the state of West Virginia and the interstate com-
6 mission on the Potomac river basin from the state of West
7 Virginia. The division of water resources, created and
8 established in article one of this chapter, shall have within

9 its jurisdiction and supervision the administration and
10 enforcement of all laws relating to slack-water dams,
11 stream and water areas beautification, and the conserva-
12 tion, development, protection, enjoyment and use of the
13 water resources of the state consistent with the provisions
14 of this chapter. The chief of the division shall be pri-
15 marily responsible for the execution and administration
16 of the provisions of this article and article five-a as an
17 integral part of the natural resources program of the state
18 and shall organize and staff his division so as to accom-
19 plish these ends in an orderly, efficient and economical
20 manner. The division chief shall give consideration to
21 other functions and services of the department and, wher-
22 ever practicable, shall coordinate the plans and programs
23 of his division with the functions and services of other
24 divisions, offices and activities of the department, and
25 other departments and agencies of state government.

Sec. 2. Definitions.—Unless the context in which used
2 clearly requires a different meaning, as used in this
3 article:

4 (a) "Director" shall mean the director of the depart-
5 ment of natural resources;

6 (b) "Board" shall mean the state water resources
7 board;

8 (c) "Chief" shall mean the chief of the division of water
9 resources of the department of natural resources;

10 (d) "Person," "persons" or "applicant" shall mean any
11 public or private corporation, institution, association, firm
12 or company organized or existing under the laws of this
13 or any other state or country; the state of West Virginia;
14 governmental agency; political subdivision; county court;
15 municipal corporation; industry; sanitary district; public
16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any other legal
20 entity whatever;

21 (e) "Water resources," "water" or "waters" shall
22 mean any and all water on or beneath the surface of the
23 ground, whether percolating, standing, diffused or flow-

24 ing, wholly or partially within this state, or bordering
25 this state and within its jurisdiction, and shall include,
26 without limiting the generality of the foregoing, natural
27 or artificial lakes, rivers, streams, creeks, branches, brooks,
28 ponds (except farm ponds, industrial settling basins and
29 ponds and waste treatment facilities), impounding reser-
30 voirs, springs, wells and watercourses;

31 (f) "Code" shall mean the code of West Virginia, one
32 thousand nine hundred thirty-one, as amended.

**Sec. 3. Water Resources Board Created; Composition
2 and Organization of Board; Others to Assist Board and
3 Division.**—The state water resources board heretofore
4 created and established as successor to the state water
5 commission and the state water resources commission is
6 hereby abolished. A new state water resources board is
7 hereby created and established as a public corporation.
8 As such the board may sue and be sued, plead and be
9 impleaded, contract and be contracted with, and shall
10 have and use a common seal.

11 The board shall be composed of five members who shall
12 be appointed by the governor with the advice and consent
13 of the senate. One member shall be truly representative
14 of the manufacturing industry of the state; one member
15 shall be truly representative of the mining industry of
16 the state; and three members shall be truly representative
17 of the public at large. The members of the board shall be
18 appointed for overlapping terms of five years, except that
19 the original appointments shall be for terms of one, two,
20 three, four and five years, respectively. Any member
21 whose term expires may be reappointed by the governor.
22 At its organizational meeting, one member of the board
23 shall be selected chairman to serve as chairman at the will
24 and pleasure of the members of the board. Members of the
25 board shall, before performing any duty, take and sub-
26 scribe to the oath required by article four, section five of
27 the constitution of West Virginia. Members of the board
28 may be removed only for the same causes and in like
29 manner as elective state officers. Any vacancy in the
30 office of a member of the board shall be filled by appoint-
31 ment by the governor for the unexpired term of the mem-

32 ber whose office shall be vacant. Each vacancy occurring
33 in the office of a member of the board shall be filled by
34 appointment within sixty days after such vacancy occurs.
35 Each member of the board shall, out of moneys appro-
36 priated for such purposes, be paid as compensation for
37 attending meetings of the board and for necessary travel
38 to and from such meetings forty dollars per day. In addi-
39 tion to such compensation, each member of the board shall
40 be reimbursed, out of moneys appropriated for such pur-
41 poses, all sums which he necessarily shall expend in the
42 discharge of his duties as a member of such board. The
43 director of the division of sanitary engineering of the state
44 department of health shall perform such services as the
45 board and the chief of the division of water resources
46 may request of him in connection with the discharge of
47 their duties, and he shall be reimbursed, out of moneys
48 appropriated for such purposes, all sums which he neces-
49 sarily shall expend in the performance of such services.
50 Nothing contained in this article or in article five-a of this
51 chapter, however, shall be construed to limit or interfere
52 with the power of the state department of health to select,
53 employ and direct the director of the division of sanitary
54 engineering of said department, or any employee thereof
55 who in any way may perform any services for the board
56 or the division of water resources. The college of engi-
57 neering at West Virginia University, under the direction
58 of the dean thereof, shall, insofar as it can, without inter-
59 fering with its usual and regular activities, aid and assist
60 the board and the division of water resources in the study
61 and research of questions connected with water pollution
62 and the control and reduction thereof in accordance with
63 the provisions of article five-a of this chapter. The dean
64 of the college of engineering shall be reimbursed, out of
65 moneys appropriated for such purposes, all sums which
66 he necessarily shall expend in the performance of any
67 services he may render to the board and the division
68 under the provisions hereof.

69 A majority of the board shall constitute a quorum for
70 the transaction of business. The board shall meet at such
71 times and places as it may determine and shall meet on
72 call of the chairman. It shall be the duty of the chairman

73 to call a meeting of the board on the written request of
74 three members thereof. The board shall keep an accurate
75 record of all of its proceedings and maintain such board
76 records and make certificates thereof or therefrom as may
77 be required by law. The board shall employ a secretary
78 and necessary clerical assistance.

Sec. 4. Functions, Services and Reports of Chief of the
2 **Division of Water Resources.**—The chief of the division
3 of water resources shall make surveys and investigations
4 of the water resources of the state and, as soon as practi-
5 cable, shall inventory the water resources of the state
6 and to the extent practicable shall divide the state into
7 watershed drainage areas in making this inventory. The
8 chief shall investigate and study the problems of agri-
9 culture, industry, conservation, health, water pollution,
10 domestic and commercial uses and allied matters as they
11 relate to the water resources of the state, and shall make
12 and formulate comprehensive plans and recommenda-
13 tions for the further development, improvement, protec-
14 tion, preservation, regulation and use of such water re-
15 sources, giving proper consideration to the hydrologic
16 cycle in which water moves. Annually, not later than
17 the first of November, he shall prepare and publish a
18 full report on his work as to the collection and evalua-
19 tion of the information which has been obtained in ac-
20 cordance with the requirements of this section and shall
21 include in this report the plans and recommendations
22 which have been formulated pursuant to the requirements
23 of this section. The report shall include his reasons for
24 such plans and recommendations, as well as any changes
25 in the law which are deemed desirable to effectuate such
26 plans and recommendations. Such report shall be made
27 available to the public at a reasonable price to be deter-
28 mined by the chief and the director.

29 The chief may request, and, upon his request, shall be
30 entitled to receive from any agency of the state or any
31 political subdivision thereof, or from any other person
32 who engages in a commercial use or controls any of the
33 water resources of the state, such necessary information
34 and data as will assist him in obtaining a complete picture

35 of the water resources of the state and the existing con-
36 trol and commercial use thereof. The chief shall reim-
37 burse such agencies, political subdivisions and other per-
38 sons for any expenses, which would not otherwise have
39 been incurred, in making such information and data
40 available to him.

**Sec. 5. General Powers and Duties of Chief of Division
2 of Water Resources and Water Resources Board with Re-
3 spect to Water Resources.—**(a) In addition to all other
4 powers and duties of the chief of the department's di-
5 vision of water resources, as prescribed in this article or
6 elsewhere by law, the chief, under the supervision of
7 the director, shall have and may exercise the following
8 powers and authority and shall perform the following
9 duties:

10 (1) To conduct, or contract for the conducting of,
11 scientific investigations, experiments and research, and
12 to collect data, concerning the water resources of the
13 state; and

14 (2) To advise all users of water resources as to the
15 availability of water resources and the most practicable
16 method of water diversion, use, development and con-
17 servation.

18 (b) In addition to all other powers and duties of the
19 water resources board, as prescribed in this article or
20 elsewhere by law, the board shall have and may exercise
21 the following powers and authority and shall perform
22 the following duties:

23 (1) To enter into compacts and agreements concerning
24 this state's share of waters in watercourses where a por-
25 tion of such waters is contained within the territorial
26 limits of this state or of a neighboring state or states,
27 subject to the approval of the Legislature;

28 (2) To cooperate with federal officers and agencies,
29 other state agencies and officers, interstate agencies, and
30 other interested persons in the conservation, improve-
31 ment and development of water resources, and to this
32 end, the board may receive moneys from such agencies,
33 officers and persons on behalf of the state: *Provided,*

34 That the board shall pay all moneys so received into a
35 special fund hereby created in the state treasury, which
36 fund shall be expended under the direction of the board
37 solely for the purpose or purposes for which the grant,
38 gift or contribution shall have been made; and

39 (3) To promulgate rules and regulations, in accordance
40 with the provisions of chapter twenty-nine-a of this code,
41 to implement and make effective the powers, duties and
42 responsibilities vested in the board and the chief by the
43 provisions of this article and otherwise by law.

44 (c) The board, any member thereof and the chief, and
45 their duly authorized representatives shall have the
46 power and authority to enter at all reasonable times upon
47 any private or public property for the purpose of making
48 surveys, examinations, investigations and studies needed
49 in the gathering of facts concerning the water resources
50 of the state and their use, subject to responsibility for any
51 damage to the property entered. Upon entering, and
52 before making any survey, examination, investigation
53 and study, such person shall immediately present himself
54 to the occupant of the property. Upon entering property
55 used in any manufacturing, mining or other commercial
56 enterprise, or by any municipality or governmental
57 agency or subdivision, and before making any survey,
58 examination, investigation and study, such person shall
59 immediately present himself to the person in charge of
60 the operation, and if he is not available, to a managerial
61 employee. All persons shall cooperate fully with the
62 person entering such property for such purposes. Upon
63 refusal of the person owning or controlling such property
64 to permit such entrance or the making of such surveys,
65 examinations, investigations and studies, the board or the
66 chief may apply to the circuit court of the county in which
67 such property is located, or to the judge thereof in va-
68 cation, for an order permitting such entrance or the mak-
69 ing of such surveys, examinations, investigations and stud-
70 ies; and jurisdiction is hereby conferred upon such court
71 to enter such order upon a showing that the relief asked
72 is necessary for the proper enforcement of this article:
73 *Provided, however,* That a dwelling occupied for residen-
74 tial purposes shall not be entered without a search warrant.

75 (d) The board is hereby authorized to hire one or more
76 individuals to serve as hearing examiners on a full or
77 part-time basis. Such individuals may be attorneys at
78 law admitted to practice before any circuit court of this
79 state. All such hearing examiners shall be individuals
80 authorized to take depositions under the laws of this state.

PART II. SLACK-WATER DAMS.

Sec. 6. Location and Construction of Slack-water Dams.

2 —The state road commissioner, in constructing public
3 highways, bridges and culverts, as provided by law, and
4 any municipal corporation constructing or improving
5 public streets, viaducts, bridges and culverts, either sev-
6 erally or jointly, upon request of the director of the de-
7 partment of natural resources and with the approval of
8 the state road commissioner, may construct and maintain
9 slack-water dams in connection with such public high-
10 ways, streets, bridges, culverts or viaducts so as to create
11 reservoirs, ponds, water parks, basins, lakes or other
12 incidental works to conserve the water supply of the
13 state.

Sec. 7. Dam Construction Initiated; Approval by Public

2 **Authority; Costs; Plans.**—The director may request the
3 public authority in charge of the construction of state
4 highways, highway bridges and culverts or municipal
5 streets, viaducts, bridges and culverts to construct slack-
6 water dams in connection with the construction of any
7 such public highway, street, bridge, viaduct, or culvert
8 whenever, in his opinion, the construction of such dams
9 is desirable and feasible for the economical creation and
10 construction of reservoirs, ponds, water parks, basins,
11 lakes or other incidental works for the conservation of
12 the water supply of the state.

13 The public authority in charge of such construction
14 may approve such request when, in its opinion, the
15 construction of such dams will not unnecessarily delay
16 or hinder the construction of the public highway, street,
17 bridge, viaduct or culvert, and will not interfere with
18 the value or use of such highway, street, bridge, viaduct
19 or culvert for highway purposes.

20 If such request is approved, the director, in cooperation
21 with the state road commissioner and the public authority
22 participating in the project, shall make a survey and
23 prepare plans, specifications and estimates for the con-
24 struction of such dams, reservoirs, ponds, water parks,
25 basins, lakes or other incidental works in connection
26 therewith.

27 Upon approval of the plans and specifications and the
28 determination to proceed with the project, the director
29 shall enter into an agreement with the public authority
30 on the distribution of the cost and expense of the con-
31 struction of such dams and incidental works in connection
32 therewith. The portion of the cost to be paid by the de-
33 partment shall be paid from any funds appropriated for
34 or paid into the department and available for such pur-
35 pose. No public authority shall proceed with the con-
36 struction of such a project until there is full compliance
37 with the other requirements of law relative to the con-
38 struction of dams and the director shall have satisfied
39 the public authority that sufficient funds are available
40 for the completion of the dam.

41 Such dams shall be constructed under and subject to
42 any and all laws governing the construction of state,
43 county or municipal highways, streets, viaducts, bridges
44 or culverts. Any public authority undertaking construc-
45 tion pursuant to this article shall proceed in the same
46 manner as provided for the construction of public high-
47 ways or street improvements.

48 Nothing herein contained shall require the public au-
49 thority so concerned to delay or postpone construction
50 of the principal public improvement, although approval
51 of the combined project may have been given.

Sec. 8. Requests to Director for Dam Construction;
2 **Costs; Procedure.**—Any department or division of the
3 state government, any county, municipal corporation,
4 park board, district, organization, club, corporation or
5 private person may petition the director for the construc-
6 tion of dams and reservoir projects in connection with
7 the construction of any public highway, bridge, culvert,
8 street or viaduct.

9 Upon receipt of such a petition and its approval by the
10 director, the director shall proceed as authorized by sec-
11 tion seven of this article. If the public authority in
12 charge of the construction of such public highway, street,
13 bridge, viaduct or culvert approves the request, then the
14 director shall enter into an agreement with the public
15 authority and those petitioning for the construction of
16 such dam or reservoir on the apportionment of the cost
17 and expense of construction. The cost and expense of
18 such dam project shall include the cost of clearing and
19 grubbing and the cost of property and the damages inci-
20 dental thereto. Such agreement shall also contain pro-
21 visions for the proper maintenance and repair of such
22 projects after completion, and shall apportion the reve-
23 nue derived therefrom between the department, the
24 public authority and the petitioner or petitioners.

Sec. 9. Payment of Dam Costs; Deficiencies and Re-
2 **funds.**—In all cases in which there is a petition for the
3 construction of a slack-water dam and reservoir project,
4 the director, as a condition precedent to the construction
5 of such project, shall require the petitioner or petitioners
6 to pay his or their share of the cost and expense of such
7 project into the hands of the treasurer of the state to be
8 kept in a separate account for each such project and to
9 be disbursed upon the order of the director.

10 If the estimated cost paid into the state treasury is
11 found to be insufficient, the deficiency shall be made up
12 by the parties bearing the cost before any further work
13 is done. If the deficiency is not made up within sixty
14 days after notice to such parties, the cost paid in, less
15 the amount of expense incurred by the director and the
16 cooperating public authorities, shall be refunded to the
17 donor. After completion of the work, any amount re-
18 maining in the state treasury to the credit of the project
19 shall likewise be refunded.

Sec. 10. Contracts for Dam Construction.—In the con-
2 struction of slack-water dams, reservoirs and other in-
3 cidental works, the state road commissioner and the pub-
4 lic authority of a municipality shall proceed as provided
5 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

12 paid into the department and available for such purpose.
13 To effectuate the purposes of the sections of this article
14 dealing with slack-water dams, the director may accept
15 contributions to such funds from individuals, associa-
16 tions, clubs, organizations and corporations.

Sec. 13. Future Plans for Road and Other Construction;

2 **Coordination.**—Upon request by the director, the state
3 road commissioner or other public authority shall advise
4 the director of any planned or contemplated construction
5 of new public highways, bridges, culverts, viaducts, or
6 streets; and thereupon, it shall become the duty of the
7 director to coordinate the plans of the department, if any,
8 with the state road commission or other public authority
9 to the end that any such slack-water dam project shall
10 not cause a delay in or interfere with the construction of
11 the principal project, and to the end that such additional
12 project shall, in all respects, be in conformity with recog-
13 nized road construction standards and practices.

PART III. HUSBANDRY OF WATER AREAS.

Sec. 14. Water Areas Beautification; Investigations;

2 **Enforcement.**—The division of water resources shall be
3 responsible for the department's program and practices
4 in the husbandry of rivers, streams, creeks, branches,
5 brooks, lakes, industrial settling basins and ponds, waste
6 treatment facilities, and other water areas (except farm
7 ponds) and the lands immediately adjacent thereto.
8 The chief of the division shall make such investi-
9 gations and surveys, conduct such schools and public
10 meetings and take such other steps as may be expedient
11 in the conservation, beautification, improvement and use
12 of all such water areas of the state. He shall cooperate
13 with the department's chief law enforcement officer in
14 enforcing the provisions of law prohibiting the disposal
15 of litter in, along and near such water areas.

Sec. 15. Litter along Streams, etc.; Violations; Evi-

2 **dence; Penalties.**—It shall be unlawful to place, deposit,
3 dump or throw, or cause to be placed, deposited, dumped
4 or thrown, any litter, garbage, refuse, trash, cans, bottles,
5 papers, ashes, carcass of any dead animal or any part

6 thereof, offal or any other offensive or unsightly matter
7 into any river, stream, creek, branch, brook, lake or pond,
8 or upon the surface of any land within one hundred yards
9 thereof, or in such location that high water or normal
10 drainage conditions will cause any such materials or sub-
11 stances to be washed into any river, stream, creek, branch,
12 brook, lake or pond.

13 No portion of this section shall be construed to restrict
14 an owner, renter or lessee in the use of his own private
15 property or rented or leased property or to prohibit the
16 disposal of any industrial and other wastes into waters of
17 this state in a manner consistent with the provisions of
18 article five-a of this chapter. But if any owner, renter
19 or lessee, private or otherwise, knowingly permits any
20 such materials or substances to be placed, deposited,
21 dumped or thrown in such location that high water or
22 normal drainage conditions will cause any such mater-
23 ials or substances to wash into any river, stream, creek,
24 branch, brook, lake or pond, it shall be deemed prima
25 facie evidence that such owner, renter or lessee intended
26 to violate the provisions of this section.

27 In addition to enforcement by the director, the chief
28 of the division of water resources, and the department's
29 chief law enforcement officer, the provisions of this sec-
30 tion may be enforced by all other proper law enforce-
31 ment agencies.

32 Any person violating any provision of this section shall
33 be guilty of a misdemeanor, and, upon conviction thereof,
34 shall be punished by a fine of not less than twenty dollars
35 nor more than five hundred dollars, or by imprisonment
36 in the county jail for a period not to exceed six months,
37 or, in the discretion of the court, by both such fine and
38 imprisonment.

PART IV. SEVERABILITY.

Sec. 16. Severability of Provisions.—If any provision of
2 this article or the application thereof to any person or
3 circumstance is held invalid, such invalidity shall not
4 affect other provisions or applications of the article which
5 can be given effect without the invalid provision or its

- 6 application, and to this end the provisions of this article
- 7 are declared to be severable.

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.
8. Orders to compel compliance with permits.

PART IV. POLLUTION ABATEMENT AND CONTROL

9. Information required.
10. Orders of chief to stop or prevent discharges or deposits or take remedial action.
11. Compliance by stopping or preventing discharges or deposits or by taking remedial action; permits.
12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.
13. Time extensions.
14. Control by state as to pollution; continuing jurisdiction.

PART V. APPEAL AND REVIEW PROCEDURES

15. Appeal to water resources board.
16. Judicial review.

PART VI. ACTIONS

17. Actions to abate nuisances; injunctive relief.
18. Priority of actions.

PART VII. VIOLATIONS AND PENALTIES

19. Violations; criminal penalties.
- 19-a. Civil liability.
20. Exceptions as to criminal liabilities.

PART VIII. SHORT TITLE; CONSTRUCTION AND SEVERABILITY

21. Short title.
22. Article for benefit of state only.
23. Conflicting provisions; departments of health.
24. Severability of provisions.

PART I. GENERAL PROVISIONS AND PUBLIC POLICY.

Section 1. Declaration of Policy.—It is declared to be
2 the public policy of the state of West Virginia to maintain
3 reasonable standards of purity and quality of the waters
4 of the state consistent with (1) public health and public
5 enjoyment thereof; (2) the propagation and protection of
6 animal, bird, fish, aquatic and plant life; and (3) the at-
7 traction, development, maintenance and expansion of
8 mining, manufacturing and other business and industry,
9 and to that end to encourage by voluntary cooperation,
10 and to require when necessary, the use of available, rea-
11 sonable, practicable and economically feasible methods to
12 control and reduce the pollution of the waters of the state
13 of West Virginia.

Sec. 2. Definitions.—Unless the context in which used
2 clearly requires a different meaning, as used in this ar-
3 ticle:

4 (a) "Director" shall mean the director of the depart-
5 ment of natural resources;

6 (b) "Board" shall mean the state water resources
7 board;

8 (c) "Chief" shall mean the chief of the division of
9 water resources of the department of natural resources;

10 (d) "Person," "persons" or "applicant" shall mean any
11 public or private corporation, institution, association, firm
12 or company organized or existing under the laws of this
13 or any other state or country; state of West Virginia;
14 governmental agency; political subdivision; county court;
15 municipal corporation; industry; sanitary district; public
16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any other legal
20 entity whatever;

21 (e) "Water resources," "water" or "waters" shall mean
22 any and all water on or beneath the surface of the ground,
23 whether percolating, standing, diffused or flowing, wholly
24 or partially within this state, or bordering this state and
25 within its jurisdiction, and shall include, without limiting

26 the generality of the foregoing, natural or artificial lakes,
27 rivers, streams, creeks, branches, brooks, ponds (except
28 farm ponds, industrial settling basins and ponds and water
29 treatment facilities), impounding reservoirs, springs,
30 wells and watercourses;

31 (f) "Pollution" shall mean the discharge or deposit,
32 directly or indirectly, of sewage, industrial wastes, or
33 other wastes, of whatever kind or character, in or near
34 any waters of the state, in such condition, manner or
35 quantity, as to (1) contaminate or substantially contribute
36 to the contamination of any of such waters, or (2) alter
37 or substantially contribute to the alteration of the physi-
38 cal, chemical or biological properties of any of such
39 waters, if such contamination or alteration, or the result-
40 ing contamination or alteration where a person only con-
41 tributes thereto, is to such an extent as to make any of
42 such waters (i) directly or indirectly detrimental to the
43 public health, or (ii) directly or indirectly and unreason-
44 ably detrimental to existing animal, bird, fish, aquatic
45 or plant life, or (iii) unreasonably unsuitable for present
46 or future domestic, commercial, industrial, agricultural,
47 recreational or other legitimate uses: *Provided*, That sew-
48 age, industrial wastes, or other wastes shall not include
49 animal or commercial fertilizer used or stored for use in
50 agriculture, horticulture or industry;

51 (g) "Sewage" shall mean water-carried human or ani-
52 mal wastes from residences, buildings, industrial estab-
53 lishments or other places, together with such ground
54 water infiltration and surface water as may be present;

55 (h) "Industrial wastes" shall mean any liquid, gaseous,
56 solid or other waste substance, or a combination thereof,
57 resulting from any process of industry, manufacturing,
58 trade or business, or from the development, processing or
59 recovery of any natural resources; and the admixture with
60 such industrial wastes of sewage, or other wastes, as
61 hereinafter defined, shall also be considered "industrial
62 wastes" within the meaning of this article;

63 (i) "Other wastes" shall mean garbage, refuse, decayed
64 wood, sawdust, shavings, bark, and other wood debris and
65 residues, sand, lime, cinders, ashes, offal, night soil, silt,

66 oil, tar, dyestuffs, acids, chemicals, and all other materials
67 and substances not sewage or industrial wastes which may
68 cause or might reasonably be expected to cause or to
69 contribute to the pollution of any of the waters of the
70 state;

71 (j) "Establishment" shall mean an industrial establish-
72 ment, mill, factory, tannery, paper or pulp mill, mine,
73 colliery, breaker or mineral processing operation, quarry,
74 refinery, and each and every industry or plant or works
75 in the operation of which industrial wastes, or other
76 wastes are produced;

77 (k) "Sewer system" shall mean pipe lines or conduits,
78 pumping stations, and force mains, and all other construc-
79 tions, facilities, devices and appliances appurtenant there-
80 to, used for collecting or conducting sewage, industrial
81 wastes, or other wastes to a point of disposal or treatment;

82 (l) "Treatment works" shall mean any plant, facility,
83 means, system, disposal field, lagoon, pumping station,
84 constructed drainage ditch or surface water intercepting
85 ditch, diversion ditch above or below the surface of the
86 ground, settling tank or pond, incinerator, area devoted
87 to sanitary landfills, or other works not specifically men-
88 tioned herein, installed for the purpose of treating, neu-
89 tralizing, stabilizing, holding or disposing of sewage, in-
90 dustrial wastes, or other wastes and/or for the purpose of
91 regulating or controlling the quantity and rate of flow
92 thereof;

93 (m) "Disposal system" shall mean a system for dis-
94 posing of sewage, industrial wastes, or other wastes, and
95 shall be construed to include sewer systems and treat-
96 ment works;

97 (n) "Outlet" shall mean the terminus of a sewer sys-
98 tem or the point of emergence of any water-carried sew-
99 age, industrial wastes, or other wastes, or the effluent
100 therefrom, into any of the waters of this state;

101 (o) "Activity" or "activities" shall mean any activity
102 or activities for which a permit is required by the pro-
103 visions of section five of this article; and

104 (p) "Code" shall mean the code of West Virginia, one
105 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

2 of Water Resources and Water Resources Board with Re-
3 spect to Water Pollution.—(a) In addition to all other
4 powers and duties of the chief of the department's division
5 of water resources, as prescribed in this article or else-
6 where by law, the chief, under the supervision of the di-
7 rector, shall have and may exercise the following powers
8 and authority and shall perform the following duties:

9 (1) To encourage voluntary cooperation by all persons
10 in controlling and reducing the pollution of the waters
11 of this state, and to advise, consult and cooperate with all
12 persons, all agencies of this state, the federal government
13 or other states, and with interstate agencies in the further-
14 ance of the purposes of this article;

15 (2) To encourage the formulation and execution of
16 plans by cooperative groups or associations of municipal
17 corporations, industries, and other users of waters of the
18 state, who, jointly or severally, are or may be the source
19 of pollution of the same waters, for the control and reduc-
20 tion of pollution;

21 (3) To encourage, participate in, or conduct or cause
22 to be conducted studies, scientific or other investigations,
23 research, experiments and demonstrations relating to
24 water pollution, and the causes, control and reduction
25 thereof, and to collect data with respect thereto, all as
26 may be deemed advisable and necessary to carry out the
27 purposes of this article;

28 (4) To study and investigate all problems concerning
29 water flow, water pollution and the control and reduction
30 of such pollution, and to make reports and recommenda-
31 tions with respect thereto;

32 (5) To collect and disseminate information relating to
33 water pollution and the control and reduction thereof;

34 (6) To develop a public education and promotion pro-
35 gram to aid and assist in publicizing the need and securing
36 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

77 West Virginia University, to conduct studies, scientific or
78 other investigations, research, experiments and demon-
79 strations in an effort to discover economical and practical
80 methods for the elimination, disposal, control and treat-
81 ment of sewage, industrial wastes, and other wastes, and
82 the control and reduction of water pollution, and to this
83 end, the board may cooperate with any public or private
84 agency and receive therefrom, on behalf of the state and
85 for deposit in the state treasury, any moneys which such
86 agency may contribute as its part of the expenses thereof,
87 and all gifts, donations or contributions received as afore-
88 said may be expended according to the requirements or
89 directions of the donor or contributor without the neces-
90 sity of an appropriation therefor, except that an account-
91 ing thereof shall be made in the fiscal reports of the board.

92 (c) The board is hereby authorized to hire one or more
93 individuals to serve as hearing examiners on a full or
94 part-time basis. Such individuals may be attorneys at law
95 admitted to practice before any circuit court of this state.
96 All such hearing examiners shall be individuals author-
97 ized to take depositions under the laws of this state.

98 (d) The board, any member thereof and the chief, and
99 their duly authorized representatives, shall have the
100 power and authority to make investigations, inspections
101 and inquiries concerning compliance with the provisions
102 of this article, any order made and entered in accordance
103 with the provisions of this article, any rule or regulation
104 promulgated by the board, and with the terms and condi-
105 tions of any permit issued in accordance with the pro-
106 visions of section seven of this article. In order to make
107 such investigations, inspections and inquiries, the board,
108 any member thereof and the chief, and their duly author-
109 ized representatives, shall have the power and authority
110 to enter at all reasonable times upon any private or public
111 property, subject to responsibility for any damage to the
112 property entered. Upon entering, and before making any
113 investigation, inspection and inquiry, such person shall
114 immediately present himself to the occupant of the prop-
115 erty. Upon entering property used in any manufacturing,
116 mining or other commercial enterprise, or by any munic-
117 ipality or governmental agency or subdivision, and be-

118 fore making any investigation, inspection and inquiry,
119 such person shall immediately present himself to the per-
120 son in charge of the operation, and if he is not available,
121 to a managerial employee. All persons shall cooperate
122 fully with the person entering such property for such
123 purposes. Upon refusal of the person owning or con-
124 trolling such property to permit such entrance or the mak-
125 ing of such inspections, investigations and inquiries, the
126 board or the chief may apply to the circuit court of the
127 county in which such property is located, or to the judge
128 thereof in vacation, for an order permitting such entrance
129 and the making of such inspections, investigations and
130 inquiries; and jurisdiction is hereby conferred upon such
131 court to enter such order upon a showing that the relief
132 asked is necessary for the proper enforcement of this
133 article: *Provided, however,* That a dwelling occupied for
134 residential purposes shall not be entered without a search
135 warrant.

136 (e) The board is hereby authorized and empowered to
137 investigate and ascertain the need and factual bases for
138 the establishment of public service districts as a means
139 of controlling and reducing pollution from unincorporated
140 communities and areas of the state, and to present reports
141 and recommendations thereon to the county court or
142 courts of the areas concerned, together with a request that
143 such county court or courts create a public service district
144 or districts, as therein shown to be needed and required
145 and as provided in article thirteen-a, chapter sixteen of
146 this code.

Sec. 4. Cooperation with Other Governments and
2 **Agencies.**—The board is hereby designated as the water
3 pollution control agency for this state for all purposes of
4 the Federal Water Pollution Control Act, Public Law
5 660, 84th Congress (70 Stat. 498), approved July ninth,
6 one thousand nine hundred fifty-six, as amended by Pub-
7 lic Law 87-88, 87th Congress (75 Stat. 204), approved
8 July twentieth, one thousand nine hundred sixty-one,
9 and subsequent amendatory provisions thereof, all here-
10 inafter called the "federal act," and is hereby authorized
11 to take all action necessary or appropriate to secure to

12 this state the benefits of said act. In carrying out the
13 purposes of this section, the board, in addition to any oth-
14 er action which may be necessary or appropriate, is here-
15 by authorized to cooperate with the surgeon general of
16 the United States public health service, other agencies
17 of the federal government, other states, interstate agen-
18 cies and other interested parties in all matters relating
19 to water pollution, including the development of programs
20 for controlling and reducing water pollution and im-
21 proving the sanitary conditions of waters; to apply for
22 and receive, on behalf of this state, funds made available
23 to the board under the aforesaid federal act by any agen-
24 cy of the federal government, on condition that all moneys
25 received from any federal agency as herein provided shall
26 be paid into the state treasury and shall be expended,
27 under the direction of the board, solely for the pur-
28 pose or purposes for which the grant or grants shall
29 have been made; to approve projects for which applica-
30 tion for loans or grants under the federal act is made
31 by any municipality (including any city, town, district
32 or other public body created by or pursuant to the laws
33 of this state and having jurisdiction over the disposal of
34 sewage, industrial wastes, or other wastes) or agency of
35 this state or by any interstate agency; and to participate
36 through its authorized representatives in proceedings un-
37 der the federal act to recommend measures for the abate-
38 ment of water pollution originating in this state. The
39 governor is hereby authorized, in his discretion, to give
40 consent on behalf of this state to requests by the secre-
41 tary of the United States department of health, education
42 and welfare to the attorney general of the United States
43 for the bringing of actions for the abatement of such pol-
44 lution. Whenever a federal law requires the approval
45 or recommendation of a state agency or any political sub-
46 division of the state in any matter relating to the water
47 resources of the state, the board, subject to approval of
48 the Legislature, is hereby designated as the sole agency
49 to give the approval or recommendation required by the
50 federal law, unless the federal law specifically requires
51 the approval or recommendation of some other state agen-
52 cy 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

39 or use such new disposal system, or to operate or use such
40 extension or modification of, or addition to, such new or
41 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 specified 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 cooperation with the chief, shall prescribe a form of application for all permits for any activity relating solely to sewage. All applications for permits for any activity relating 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, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities: *Provided, That, notwithstanding anything in this article to the contrary, where the activity is an integral part of a secret operating 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 application.*

29 A permit fee of ten dollars shall accompany the application 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 Remedial Action; Transfer of Permits.—(a) The director of the division of sanitary engineering shall promptly make

5 his determination concerning the health aspects of any
6 proposed activity relating solely to sewage. If the plans
7 and specifications of the proposed activity are in accord
8 with all reasonable requirements of the department of
9 health, the director of the division of sanitary engineering
10 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
11 certificate or permit, together with the application and
12 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
13 division of sanitary engineering shall be governed by the
14 provisions of chapter sixteen of this code and not by the
15 provisions of this article.

21 (b) The chief and his duly authorized representatives
22 shall conduct such investigation as is deemed necessary
23 and proper in order to determine whether any such application should be granted or denied.

25 (c) The department's permit shall be issued upon such
26 reasonable terms and conditions as the chief may direct
27 if (1) the certificate or permit of the department of health
28 was issued (in those cases where the director of the division of sanitary engineering was required to act as
29 aforesaid) and/or (2) the application, together with all
30 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
31 therefrom resulting from such proposed activity will be
32 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
33 technology and scientific methods for the treatment, regulation or control of sewage, industrial wastes, or other
34 wastes or the effluent therefrom.

41 (d) An application for a permit incident to remedial
42 action in accordance with the provisions of section eleven
43 of this article shall be processed and decided as any other
44 application for a permit to acquire, construct, install or

45 operate a new disposal system, or to extend, modify or
46 add to a new or existing disposal system.

47 (e) An application for any such permit shall be acted
48 upon by the chief (and by the director of the division of
49 sanitary engineering of the state department of health
50 in those cases in which such director is by this section
51 required to act) and the department's permit (and the
52 certificate or permit of the department of health where
53 the proposed activity relates solely to sewage) delivered
54 or mailed, or a copy of any order of the chief denying any
55 such application mailed as hereinafter specified, as the
56 case may be, to the applicant by the chief within forty-
57 five days after the date upon which such complete ap-
58 plication was received from the applicant by the division
59 of sanitary engineering or within thirty days after the
60 date upon which such complete application was received
61 from the applicant by the division of water resources.
62 Every effort shall be made by the division of sanitary
63 engineering and the division of water resources to ex-
64 pedite all applications.

65 (f) When it is established that an application for a
66 permit should be denied, the chief shall make and enter
67 an order to that effect, which order shall specify the rea-
68 sons for such denial, and shall cause a copy of such order
69 to be served on the applicant by registered or certified
70 mail. The chief shall also cause a notice to be served with
71 the copy of such order, which notice shall advise the ap-
72 plicant of his right to appeal to the board by filing a
73 notice of appeal, on the form prescribed by the board for
74 such purpose, with the board, in accordance with the
75 provisions of section fifteen of this article, within thirty
76 days after the date upon which the applicant received the
77 copy of such order. However, an applicant may alter the
78 plans and specifications for the proposed activity and
79 submit a new application for any such permit, in which
80 event the procedure hereinbefore outlined with respect
81 to an original application shall apply.

82 (g) Upon the sale of property which includes an ac-
83 tivity for which the department's permit was granted,
84 the permit shall be transferable to the new owner, but

85 the transfer shall not become effective until it is made in
86 the records of the division of water resources.

Sec. 8. Orders to Compel Compliance with Permits.—

2 After issuance of the department's permit for any such
3 activity, the chief and his duly authorized representatives
4 may make field inspections of the work on the activity,
5 and, after completion thereof, may inspect the completed
6 activity, and, from time to time, may inspect the main-
7 tenance and operation of such activity.

8 To compel compliance with the terms and conditions
9 of the department's permit for any such activity and with
10 the plans and specifications therefor and the plan of main-
11 tenance and method of operation thereof, the chief is
12 hereby authorized after reasonable notice to make and
13 enter an order revoking or suspending such permit and
14 directing the person to whom such permit was issued to
15 stop or suspend any and all work on such activity or, if
16 completed, to stop or suspend all discharges or deposits of
17 sewage, industrial wastes, or other wastes or the effluent
18 therefrom resulting from such activity, until such time
19 as the deficiencies specified in such order are fully and
20 completely corrected and there is full compliance with
21 the terms and conditions of such permit, and with the
22 plans and specifications for such activity and the plan
23 of maintenance and method of operation thereof. The
24 chief by such order may also direct such person to take
25 affirmative action to correct the deficiencies specified in
26 such order so there will be full compliance with the terms
27 and conditions of such permit and with the plans and
28 specifications therefor, and the plan of maintenance and
29 method of operation thereof.

30 The chief shall cause a copy of any such order to be
31 served by registered or certified mail or by a conservation
32 officer or other law enforcement officer upon the person
33 to whom any such permit was issued. The chief shall
34 also cause a notice to be served with the copy of such
35 order, which notice shall advise such person of his right
36 to appeal to the board by filing a notice of appeal, on the
37 form prescribed by the board for such purpose, with the
38 board, in accordance with the provisions of section fif-

39 teen of this article, within thirty days after the date upon
40 which such person received the copy of such order.

41 All permits for the discharge of sewage, industrial
42 wastes, or other wastes into any waters of the state issued
43 by the water resources board prior to the effective date
44 of this article and which have not been revoked prior to
45 the effective date of this article shall be enforced under
46 the terms and provisions of this article, and shall remain
47 valid unless and until revoked or suspended in accordance
48 with the terms and provisions of this article.

PART IV. POLLUTION ABATEMENT AND CONTROL.

Sec. 9. Information Required.—Any and all persons di-
2 rectly or indirectly discharging or depositing sewage, in-
3 dustrial wastes, or other wastes or the effluent therefrom,
4 into or near any waters of the state shall file with the
5 division of water resources such information as the chief
6 thereof may reasonably require on forms prescribed by
7 him for such purpose, including but not limited to data
8 as to the kind, characteristics, amount and rate of flow
9 of such discharge or deposit.

**Sec. 10. Orders of Chief to Stop or Prevent Discharges
2 or Deposits or Take Remedial Action.**—If the chief, on the
3 basis of investigations, inspections and inquiries, deter-
4 mines that any person is causing the pollution of any of
5 the waters of the state, or does on occasions cause pollu-
6 tion by not regulating and controlling the quantity and
7 rate of flow of sewage, industrial wastes, or other wastes
8 or the effluent therefrom, or otherwise, and that the same
9 should be controlled or reduced, considering the public
10 policy set forth in section one of this article, existing
11 permits, the amount and effect of such pollution, the
12 practicality and physical and economic feasibility of con-
13 trolling or reducing such pollution, the health and wel-
14 fare of the public and other present and future uses of
15 the waters in question, he shall make and enter an order
16 directing such person in the alternative to either (1)
17 stop or prevent such discharges or deposits of sewage,
18 industrial wastes, or other wastes or the effluent there-
19 from determined to be causing such pollution, or (2)

20 take remedial action by acquiring, constructing or in-
21 stalling, and using and operating a new disposal system,
22 or extending, modifying or adding to an existing disposal
23 system so as to control or reduce such pollution, by treat-
24 ing and/or regulating or controlling the quantity and rate
25 of flow of any and all discharges or deposits of sewage,
26 industrial wastes, or other wastes or the effluent there-
27 from to the fullest extent reasonably, economically and
28 practicably feasible in view of modern technology and
29 scientific methods for the treatment, regulation or con-
30 trol of sewage, industrial wastes, or other wastes or the
31 effluent therefrom and with regard for the rights and in-
32 terests of all persons concerned. The chief shall fix a
33 reasonable time in such order by which any and all such
34 discharges or deposits must stop or be prevented or any
35 such remedial action must be completed. Such order shall
36 also direct such person to apply forthwith for a permit
37 in accordance with the provisions of sections five, six and
38 seven of this article, in the event such person elects to
39 comply with such order by taking such remedial action.
40 The order shall contain the findings of fact upon which
41 the chief determined to make and enter such order.

42 The chief shall cause a copy of any such order to be
43 served by registered or certified mail or by a conserva-
44 tion officer or other law enforcement officer upon such
45 person. The chief shall also cause a notice to be served
46 with the copy of such order, which notice shall advise
47 such person of his right to appeal to the board by filing
48 a notice of appeal, on the form prescribed by the board
49 for such purpose, with the board, in accordance with the
50 provisions of section fifteen of this article, within thirty
51 days after the date upon which such person received the
52 copy of such order.

53 In the sole discretion of the chief, he may postpone
54 issuing any such order if he feels such pollution can best
55 be controlled or reduced by cooperative efforts with the
56 person or persons responsible therefor.

**Sec. 11. Compliance by Stopping or Preventing Dis-
2 charges or Deposits or by Taking Remedial Action; Per-
3 mits.**—Any person upon whom any such final order of

4 the chief, or the board in accordance with the provisions
5 of section fifteen of this article, has been served shall
6 comply therewith by immediately stopping or preventing
7 any and all discharges or deposits of sewage, industrial
8 wastes, or other wastes or the effluent therefrom, deter-
9 mined to be causing such pollution, or by taking remedial
10 action as set forth in section ten of this article.

11 If such person elects to comply with any such final order
12 by taking remedial action, he shall forthwith apply for
13 a permit under and in accordance with the provisions of
14 sections five, six and seven of this article. No such reme-
15 dial action shall be taken until a permit therefor has been
16 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
4 with such final order by taking remedial action, such
5 person shall, within thirty days after receipt of such per-
6 mit, take or begin appropriate steps or proceedings to
7 carry out such remedial action. In any such case it shall
8 be the duty of each individual offender, each member of
9 a partnership, each member of the governing body of a
10 municipal corporation and each member of the board of
11 directors or other governing body of a private corporation,
12 association or other legal entity whatever, upon receipt
13 of such permit by such individual, partnership, municipal
14 corporation, private corporation, association or other legal
15 entity whatever, to see that appropriate steps or proceed-
16 ings to comply with such order are taken or begun within
17 thirty days after such receipt. The chief may require
18 progress reports, not oftener than once a month, setting
19 forth the steps taken, the proceedings started and the
20 progress made toward completion of such remedial action.
21 All such remedial action shall be diligently prosecuted to
22 completion.

23 Failure of the governing body of a municipal corpora-
24 tion, or the board of directors or other governing body
25 of any private corporation, association or other legal
26 entity whatever, to provide for the financing and carry-
27 ing out of such remedial action, as may be necessary to

28 comply with said order, by appropriate ordinance or reso-
29 lution within such thirty-day period, shall constitute
30 failure to take or begin appropriate steps or proceedings
31 to comply with such order. If such person be a municipal
32 corporation, the cost of all such remedial action as may
33 be necessary to comply with said order shall be paid out
34 of funds on hand available for such purpose, or out of the
35 general funds of such municipal corporation, not other-
36 wise appropriated, and if there be not sufficient funds on
37 hand or unappropriated, then the necessary funds shall be
38 raised by the issuance of bonds, any direct general obli-
39 gation bond issue to be subject to the approval of the
40 state sinking fund commission and the attorney general
41 of the state of West Virginia.

42 If the estimated cost of the remedial action to be taken
43 by a municipal corporation to comply with such final
44 order is such that any bond issue necessary to finance
45 such action would not raise the total outstanding bonded
46 indebtedness of such municipal corporation in excess of
47 the constitutional limit imposed upon such indebtedness
48 by the constitution of this state, then and in that event
49 the necessary bonds may be issued as a direct obligation
50 of such municipal corporation, and retired by a general
51 tax levy to be levied against all property within the limit
52 of such municipal corporation listed and assessed for tax-
53 ation. If the amount of such bonds necessary to be issued
54 would raise the total outstanding bonded indebtedness
55 of such municipal corporation above said constitutional
56 limitation on such indebtedness, or if such municipal cor-
57 poration by its governing body shall decide against the
58 issuance of direct obligation bonds, then such municipal
59 corporation shall issue revenue bonds and provide for the
60 retirement thereof in the same manner and subject to
61 the same conditions as provided for the issuance and
62 retirement of bonds in chapter twenty-five, acts of the
63 Legislature, first extraordinary session, one thousand nine
64 hundred thirty-three, and any amendment thereof: *Pro-*
65 *vided*, That the provisions of section six of the above-
66 mentioned act, allowing objections to be filed with the
67 governing body, and providing that a written protest of
68 thirty per cent or more of the owners of real estate shall

69 require a four-fifths vote of the governing body for the
70 issuance of said revenue bonds, shall not apply to bond
71 issues proposed by any municipal corporation to comply
72 with a final order made and entered under the authority
73 of this article, and such objections and submission of
74 written protest shall not be authorized, nor shall the same,
75 if made or had, operate to justify or excuse failure to
76 comply with such final order.

77 The funds made available by the issuance of either
78 direct obligation bonds or revenue bonds, as herein provided,
79 shall constitute a "sanitary fund," and shall be used
80 for no other purpose than for carrying out such final order;
81 no public money so raised shall be expended by any municipal
82 corporation for any purpose enumerated in this
83 article, unless such expenditure and the amount thereof
84 have been approved by the board. The acquisition, construction
85 or installation, use and operation, repair, modification,
86 alteration, extension, equipment, custody and maintenance
87 of any disposal system by any municipal corporation, as herein
88 provided, and the rights, powers and duties with respect thereto,
89 of such municipal corporation and the respective officers and
90 departments thereof, whether the same shall be financed by the
91 issuance of revenue or direct obligation bonds, shall be governed
92 by the provisions of said chapter twenty-five, acts of the
93 Legislature, first extraordinary session, one thousand nine
94 hundred thirty-three, and any amendments thereof.

Sec. 13. Time Extensions.—The chief shall have the
2 authority, in his sole discretion, to extend the time fixed
3 in any final order made and entered by him, or the board
4 in accordance with the provisions of section fifteen of
5 this article, within which any person electing to comply
6 with such order by taking remedial action must complete
7 such action, upon written petition filed with him prior to
8 the time fixed in such order, when it shall appear that a
9 good faith effort to comply with said order is being made,
10 and that it shall be impossible for such person to complete
11 such remedial action within the time so fixed:
12 *Provided*, That when it shall appear from such petition

13 that due to wartime or other governmental restrictions
14 with respect to labor or material, or both, such compli-
15 ance with any such order would be impossible or would
16 place an undue burden upon such person, the chief shall
17 stay execution of any such order until such time as it may
18 satisfactorily appear that such wartime or other restric-
19 tions no longer exist. The chief may grant as many such
20 extensions as he finds to be warranted by the facts and
21 circumstances involved in any particular case.

Sec. 14. Control by State as to Pollution; Continuing
2 **Jurisdiction.**—No right to continue existing pollution of
3 any of the waters of the state shall exist nor shall such
4 right be or be deemed to have been acquired by virtue
5 of past or future pollution by any person. The right and
6 control of the state in and over all waters of the state are
7 hereby expressly reserved and reaffirmed. It is recognized
8 that with the passage of time, additional efforts may have
9 to be made by all persons toward control and reduction
10 of the pollution of the waters of the state, irrespective of
11 the fact that such persons may have previously complied
12 with all orders of the chief or board. However, it is also
13 recognized that there should be continuity and stability
14 respecting pollution control measures taken in coopera-
15 tion with, and with the approval of, the chief, or pur-
16 suant to orders of the chief or board. Therefore, and not-
17 withstanding any provision in this section to the contrary,
18 where a person is complying with the terms and condi-
19 tions of a permit granted pursuant to the provisions of
20 section seven of this article or where a person has com-
21 pleted remedial action pursuant to an order of the chief
22 or board, additional efforts may not be required until
23 such time as there has been a substantial and material
24 change in the facts and circumstances of the situation to
25 which the permit or remedial action pertains.

PART V. APPEAL AND REVIEW PROCEDURES.

Sec. 15. Appeal to Water Resources Board.—(a) Any
2 person adversely affected by an order made and entered
3 by the chief in accordance with the provisions of this
4 article, or aggrieved by failure or refusal of the chief to

5 act within the time required by section seven of this
6 article on an application for a permit or aggrieved by the
7 terms and conditions of a permit granted under the pro-
8 visions of this article, may appeal to the water resources
9 board for an order vacating or modifying such order, or
10 for such order, action or terms and conditions as the chief
11 should have entered, taken or imposed. The person so
12 appealing shall be known as the appellant and the chief
13 shall be known as the appellee.

14 (b) Such appeal shall be perfected by filing a notice
15 of appeal, on the form prescribed by the board for such
16 purpose, with the board within thirty days after the date
17 upon which the appellant received the copy of such order,
18 or received such permit, as the case may be. The filing
19 of the notice of appeal shall stay or suspend execution of
20 any order appealed from. The notice of appeal shall set
21 forth the order or terms and conditions complained of and
22 the grounds upon which the appeal is based. A copy of
23 the notice of appeal shall be filed by the board with the
24 chief within three days after the notice of appeal is filed
25 with the board.

26 (c) Within seven days after receipt of his copy of the
27 notice of appeal, the chief shall prepare and certify to
28 the board a complete record of the proceedings out of
29 which the appeal arises, including all documents and cor-
30 respondence in the chief's file relating to the matter in
31 question. With the consent of the board and upon such
32 terms and conditions as the board may prescribe, any
33 persons affected by any such activity or by such alleged
34 pollution may by petition intervene as a party appellant
35 or appellee. The board shall hear the appeal de novo, and
36 evidence may be offered on behalf of the appellant and
37 appellee, and, with the consent of the board, by any in-
38 tervenors.

39 (d) All of the pertinent provisions of article five, chap-
40 ter twenty-nine-a of this code shall apply to and govern
41 the hearing on appeal authorized by this section and the
42 administrative procedures in connection with and follow-
43 ing such hearing, with like effect as if the provisions of
44 said article five were set forth in extenso in this section,
45 with the following modifications or exceptions:

46 (1) Unless the board directs otherwise, the appeal
47 hearing shall be held in the city of Charleston, Kanawha
48 county, West Virginia; and

49 (2) In accordance with the provisions of section one,
50 article five of said chapter twenty-nine-a, all of the testi-
51 mony at any such hearing shall be recorded by steno-
52 graphic notes and characters or by mechanical means.
53 Such reported testimony shall in every appeal hearing
54 under this article be transcribed.

55 (e) Any such appeal hearing shall be conducted by a
56 quorum of the board, but the parties may by stipulation
57 agree to take evidence before a hearing examiner em-
58 ployed by the board. Upon request of any party to the
59 appeal, the evidence taken before a hearing examiner
60 shall be taken in the county in which the activity is pro-
61 posed to take place, or in which the activity is situate or
62 would be situate upon completion thereof, or in which
63 the pollution is alleged to have occurred or to be taking
64 place, as the case may be. For the purpose of conducting
65 such appeal hearing, any member of the board and the
66 secretary thereof shall have the power and authority to
67 issue subpoenas and subpoenas duces tecum in the name
68 of the board, in accordance with the provisions of section
69 one, article five, chapter twenty-nine-a of this code. All
70 subpoenas and subpoenas duces tecum shall be issued and
71 served within the time and for the fees and shall be en-
72 forced, as specified in section one, article five of said chap-
73 ter twenty-nine-a, and all of the said section one provi-
74 sions dealing with subpoenas and subpoenas duces tecum
75 shall apply to subpoenas and subpoenas duces tecum is-
76 sued for the purpose of an appeal hearing hereunder.

77 (f) Any such hearing shall be held within twenty days
78 after the date upon which the board received the timely
79 notice of appeal, unless there is a postponement or con-
80 tinuance. The board may postpone or continue any hear-
81 ing upon its own motion, or upon application of the ap-
82 pellant, the appellee or any intervenors for good cause
83 shown. The chief shall be represented at any such hear-
84 ing by the attorney general or his assistants. At any such
85 hearing the appellant and any intervenor may represent

86 himself or be represented by an attorney at law admitted
87 to practice before any circuit court of this state.

88 (g) After such hearing and consideration of all of the
89 testimony, evidence and record in the case, the board
90 shall make and enter an order affirming, modifying or
91 vacating the order of the chief, or shall make and enter
92 such order as the chief should have entered, or shall make
93 and enter an order approving or modifying the terms and
94 conditions of any permit issued. In determining its course
95 of action, the board shall take into consideration the fac-
96 tors which the chief had to consider in making his order,
97 and fixing the terms and conditions of such permit, as set
98 forth in sections seven, eight or ten of this article, as the
99 case may be.

100 (h) Such order shall be accompanied by findings of
101 fact and conclusions of law as specified in section three,
102 article five, chapter twenty-nine-a of this code, and a copy
103 of such order and accompanying findings and conclusions
104 shall be served upon the appellant, and any intervenors,
105 and their attorneys of record, if any, and upon the ap-
106 pellee in person or by registered or certified mail.

107 (i) The board shall also cause a notice to be served
108 with the copy of such order, which notice shall advise the
109 appellant, the appellee and any intervenors of their right
110 to judicial review, in accordance with the provisions of
111 section sixteen of this article. The order of the board shall
112 be final unless vacated or modified upon judicial review
113 thereof in accordance with the provisions of section six-
114 teen of this article.

Sec. 16. Judicial Review.—(a) Any person or the chief
2 adversely affected by a final order made and entered by
3 the board after such appeal hearing, held in accordance
4 with the provisions of section fifteen of this article, is
5 entitled to judicial review thereof. All of the pertinent
6 provisions of section four, article five, chapter twenty-
7 nine-a of this code shall apply to and govern such review
8 with like effect as if the provisions of said section four
9 were set forth in extenso in this section, with the follow-
10 ing modifications or exceptions:

11 (1) As to cases involving an order denying an appli-

12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,
14 within the time specified in said section four, in the cir-
15 cuit court of the county in which such extension or modi-
16 fication of, or addition to, such industrial or commercial
17 establishment, or such new outlet or the enlargement of,
18 or addition to, the load of an existing outlet, or such ac-
19 quisition, construction, installation or operation of a new
20 disposal system or the extension or modification of, or
21 addition to, a new or existing disposal system, is proposed
22 to take place;

23 (2) As to cases involving an order revoking or sus-
24 pending a permit and directing any and all work on any
25 such activity to stop or suspending such work, or directing
26 all discharges or deposits of sewage, industrial wastes, or
27 other wastes or the effluent therefrom resulting from any
28 such activity to stop or suspending such discharges or
29 deposits, or directing that affirmative action be taken
30 to correct alleged and specified deficiencies concerning
31 any such activity, the petition shall be filed, within the
32 time specified in said section four, in the circuit court of
33 the county in which such extension or modification of,
34 or addition to, such industrial or commercial establish-
35 ment, or such new outlet or the enlargement of, or addi-
36 tion to, the load of an existing outlet, or such acquisition,
37 construction, installation or operation of a new disposal
38 system or the extension or modification of, or addition to,
39 a new or existing disposal system, is situate or would be
40 situate upon completion thereof; and

41 (3) As to cases involving an order directing that any
42 and all discharges or deposits of sewage, industrial wastes,
43 or other wastes or the effluent therefrom determined to
44 be causing pollution be stopped or prevented or else that
45 remedial action be taken, the petition shall be filed, within
46 the time specified in said section four, in the circuit court
47 of the county in which the pollution is alleged to have oc-
48 curred or to be taking place.

49 (b) The judgment of the circuit court shall be final
50 unless reversed, vacated or modified on appeal to the su-
51 preme court of appeals in accordance with the provisions
52 of section one, article six, chapter twenty-nine-a of this

53 code, except that notwithstanding the provisions of said
54 section one the petition seeking such review must be filed
55 with said supreme court of appeals within ninety days
56 from the date of entry of the judgment of the circuit court.

57 (c) Legal counsel and services for the chief in all
58 appeal proceedings in the circuit courts and in the su-
59 preme court of appeals of this state shall be provided by
60 the attorney general or his assistants and in appeal pro-
61 ceedings in the circuit courts by the prosecuting attorneys
62 of the several counties as well, all without additional
63 compensation, or the board or chief, with the written
64 approval of the attorney general may employ special
65 counsel to represent the board or chief in a particular
66 proceeding.

PART VI. ACTIONS.

Sec. 17. Actions to Abate Nuisances; Injunctive Relief.

2 —(a) Whether any violation of the provisions of this
3 article or any final order of the chief or the board shall
4 result in prosecution or conviction or not, any such vio-
5 lation shall be deemed a nuisance which may be abated
6 upon application by the chief to the circuit court of the
7 county in which such nuisance or any part thereof shall
8 exist, or to the judge thereof in vacation. Upon applica-
9 tion by the chief, the circuit courts of this state may by
10 mandatory or prohibitive injunction compel compliance
11 with all final orders of such chief or board. Any applica-
12 tion for an injunction to compel compliance with any
13 final order of the chief or board shall be made to the
14 circuit court of the county in which the activity to which
15 the order relates is proposed to take place, or in which
16 the activity to which the order relates is situate or would
17 be situate upon completion thereof, or in which the pol-
18 lution to which the order relates is alleged to have oc-
19 curred or to be taking place, as the case may be, or to the
20 judge thereof in vacation. Upon application by the chief
21 to the circuit court of the county in which a municipal
22 corporation is located, or in which any person resides or
23 does business, or to the judge thereof in vacation, such
24 court may by injunction require the performance of any
25 duty imposed upon such municipal corporation or person

26 by the provisions of this article. The court may issue a
27 temporary injunction in any case pending a decision on
28 the merits of any application filed.

29 In cases of aggravated pollution where irreparable
30 damage will result from any delay incident to the admini-
31 strative procedures set forth in this article, the chief, with
32 the consent of the director, may forthwith apply to the
33 circuit court of the county in which the pollution is taking
34 place for a temporary injunction. Such court may issue
35 a temporary injunction pending final disposition of the
36 case by the chief or the board, in the event an appeal is
37 taken to the board.

38 The judgment of the circuit court upon any application
39 permitted by the provisions of this section shall be final
40 unless reversed, vacated or modified on appeal to the
41 supreme court of appeals. Any such appeal shall be
42 sought in the manner provided by law for appeals from
43 circuit courts in other civil cases, except that the petition
44 seeking such review must be filed with said supreme court
45 of appeals within ninety days from the date of entry of
46 the judgment of the circuit court.

47 The chief shall be represented in all such proceedings
48 by the attorney general or his assistants and in such pro-
49 ceedings in the circuit courts by the prosecuting attorneys
50 of the several counties as well, all without additional
51 compensation.

Sec. 18. Priority of Actions.—All applications under
2 section seventeen of this article and all proceedings for
3 judicial review under section sixteen of this article shall
4 take priority on the docket of the circuit court in which
5 pending, and shall take precedence over all other civil
6 cases. Where such applications and proceedings for ju-
7 dicial review are pending in the same court at the same
8 time, such applications shall take priority on the docket
9 and shall take precedence over proceedings for judicial
10 review.

PART VII. VIOLATIONS AND PENALTIES.

Sec. 19. Violations; Criminal Penalties.—Any person
2 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
2 criminal liabilities imposed by section nineteen of this
3 article shall not be construed to include any violation re-
4 sulting from accident or caused by an act of God, war,
5 strike, riot or other catastrophe as to which negligence or
6 wilful misconduct on the part of such person was not the
7 proximate cause.

PART VIII. SHORT TITLE; CONSTRUCTION AND SEVERABILITY.

Sec. 21. Short Title.—This article may be known and
2 cited as the "Water Pollution Control Act."

Sec. 22. Article for Benefit of State Only.—The provi-
2 sions of this article inure solely to and are for the benefit
3 of the people generally of the state of West Virginia, and
4 this article is not intended to in any way create new, or
5 enlarge existing rights of riparian owners or others. A
6 final order of the chief or the board, the effect of which

7 is to find that pollution exists, or that any person is caus-
8 ing pollution, or any other final order, or any violation
9 of any of the provisions of this article shall give rise to
10 no presumptions of law or findings of fact inuring to or
11 for the benefit of persons other than the state of West
12 Virginia.

Sec. 23. Conflicting Provisions; Department of Health.

2 —In the event of any inconsistency or conflict between
3 any provision of this article and any provision of this
4 chapter, the provisions of this article shall control. This
5 article shall under no circumstances be construed as
6 limiting or repealing the powers, authority or duties of
7 the state department of health or the director thereof as
8 provided in chapter sixteen of this code or otherwise by
9 law.

Sec. 24. Severability of Provisions.—If any provision

2 of this article or the application thereof to any person or
3 circumstance is held invalid, such invalidity shall not
4 affect other provisions or applications of the article which
5 can be given effect without the invalid provision or its
6 application, and to this end the provisions of this article
7 are declared to be severable.

Article 7. Law Enforcement, Procedures and Penalties.

Section

4. Powers and duties of conservation officers.

Section 4. Powers and Duties of Conservation Officers.

2 —Conservation officers and all other persons authorized
3 to enforce the provisions of this chapter shall be under
4 the supervision and direction of the director in the per-
5 formance of their duties as herein provided. The au-
6 thority, powers and duties of the conservation officers
7 shall be state-wide and they shall have authority to:

8 (1) Arrest on sight, without warrant or other court
9 process, any person or persons detected by them in the
10 violation of any of the provisions of this chapter, but no
11 such arrests shall be made where any form of adminis-
12 trative procedure is prescribed by this chapter for the
13 enforcement of any of the particular provisions contained
14 herein;

15 (2) Carry such arms and weapons as may be prescribed
16 by the director in the course and performance of their
17 duties, upon giving the bond required by the provisions
18 of section five, article seven, chapter sixty-one of this
19 code, but no license or other authorization shall be re-
20 quired of such officers for this privilege;

21 (3) Search and examine, in the manner provided by
22 law, any boat, vehicle, automobile, conveyance, express
23 or railroad car, fish box, fish bucket or creel, game bag or
24 game coat, or any other place in which hunting and fish-
25 ing paraphernalia, wild animals, wild birds, fish, am-
26 phibians or other forms of aquatic life could be concealed,
27 packed or conveyed whenever they have reason to be-
28 lieve that they would thereby secure or discover evidence
29 of the violation of any provision of this chapter;

30 (4) Execute and serve any search warrant, notice or
31 any process of law issued under the authority of this
32 chapter or any law relating to wildlife, forests, and all
33 other natural resources, by a justice of the peace or any
34 court having jurisdiction thereof, or copies of orders made
35 and entered by the chief of the division of water re-
36 sources, or, without fee, any subpoena or subpoena duces
37 tecum issued in accordance with the provisions of article
38 five-a of this chapter, in the same manner, with the same
39 authority, and with the same legal effect, as any constable
40 or sheriff can serve or execute such warrant, notice or
41 process;

42 (5) Require the operator of any motor vehicle or other
43 conveyance, on or about the public highways or roadways,
44 or in or near the fields and streams of this state, to stop
45 for the purpose of allowing such officers to conduct game-
46 kill surveys;

47 (6) Summon aid in making arrests or seizures or in
48 executing any warrants, notices or processes, and they
49 shall have the same rights and powers as sheriffs have in
50 their respective counties in so doing;

51 (7) Enter private lands or waters within the state while
52 engaged in the performance of their official duties here-
53 under: *Provided*, That in connection with all **surveys**,
54 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 thousand nine hundred thirty-one, as amended, relating to the death, disability and retirement fund of the department of public safety; providing for fees to which members of said department shall be entitled, and may claim on account of said department of public safety for services rendered 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:

Article 2. Department of Public Safety.**Section**

27. Death, disability and retirement fund; fees to which members entitled; fees to be deposited in said fund; retirement board.

Section 27. Death, Disability and Retirement Fund;

- 2 **Fees to Which Members Entitled; Fees to Be Deposited in**
3 **Said Fund; Retirement Board.**—There shall be continued
4 the death, disability and retirement fund heretofore
5 created for the benefit of members of the department of
6 public safety, and any dependent of a retired or deceased
7 member thereof. Into such fund shall be paid such
8 amounts as have heretofore been collected by the superin-
9 tendent of the department of public safety on account of
10 fees for arrest, court attendance and mileage, seizures,
11 rewards, or from any other source permitted by law.
12 For official services rendered in any criminal case, a mem-
13 ber of the department of public safety shall be entitled to
14 receive the same fees as a constable is entitled to receive
15 for the same services pursuant to section twelve, article
16 seventeen, chapter fifty of this code, when such fees are
17 actually paid by or for the defendant in such criminal
18 case, pursuant to the order made and entered therein, to
19 the justice of the peace, the clerk of the court, or other
20 officer for the services of such member: *Provided, That*
21 (1) such fees may be claimed and received by the mem-
22 ber only for the account of said department; (2) all fees
23 collected by a member pursuant to this section shall in
24 every instance be remitted by such member to the super-
25 intendent of said department and deposited in the state
26 treasury to the credit of said death, disability and retire-
27 ment fund; and, (3) the superintendent of said depart-
28 ment shall promulgate regulations to assure disposition,
29 in the manner herein provided, of all fees received by
30 members pursuant to this section: *Provided, however,*
31 That under no circumstances shall any member of the
32 department of public safety be entitled to any mileage
33 fees for services rendered in criminal cases and under no
34 circumstances shall any county court or municipal corpora-
35 tion be required to pay any fees or costs which the county
36 court would be required to pay were the services rendered
37 by a constable. There shall be paid into said death, dis-

38 ability and retirement fund all amounts arising in the
39 future from the above-named sources and any other
40 sources that may be designated by the superintendent of
41 said department and permitted by law, except that no
42 part of any fine shall be paid into said death, disability
43 and retirement fund.

44 There shall be deducted from the monthly payroll of
45 each member of the department of public safety and paid
46 into such fund six per cent of the amount of his salary,
47 and an additional twelve per cent of the monthly salary
48 of each member of said department shall be paid by the
49 state of West Virginia monthly into such fund out of
50 the biennial appropriation for said department. All
51 moneys payable into such fund shall be deposited in the
52 state treasury, and the treasurer and auditor shall keep
53 a separate account thereof on their respective books.

54 The death, disability and retirement fund shall be ad-
55 ministered by a retirement board which shall consist of
56 the attorney general, state treasurer, the superintendent
57 and two members in active service of the department of
58 public safety: *Provided*, That members of said retire-
59 ment board shall not be entitled to receive any compen-
60 sation in addition to the salary of their respective offices
61 for any service rendered as a member of said retirement
62 board: *Provided further*, That the superintendent may
63 pay out of funds appropriated for operation of said de-
64 partment the reasonable expenses of members of said
65 board necessarily incurred in connection with dispatch
66 of any business properly before such board. The two
67 members of said department shall be elected to member-
68 ship on the retirement board by vote of the members
69 of the department of public safety; such election to be
70 held on the first Tuesday in June next following the pas-
71 sage of this act and on the first Tuesday in June each two
72 years thereafter. The attorney general, state treasurer
73 and the superintendent of the department of public safety
74 shall promulgate any and all necessary rules and regula-
75 tions for holding in a fair and impartial manner the elec-
76 tion on the first Tuesday in June next following the
77 passage of this act and thereafter the retirement board
78 consisting of the attorney general, state treasurer, super-

79 intendent and the two duly elected members of said de-
80 partment shall have authority to promulgate and, from
81 time to time, revise rules and regulations for holding
82 all subsequent elections in a fair and impartial manner.
83 All elections shall be held under the direction of the
84 superintendent of said department in accordance with
85 said rules and regulations. The members of the depart-
86 ment chosen to serve on said retirement board shall hold
87 office for a period of two years commencing on the first
88 day of July next following the date of such election.
89 When any member elected to the retirement board shall
90 die, resign from the board, resign or be discharged from
91 service in the department, make application for retire-
92 ment, be retired, or become disabled, the office of such
93 member of the retirement board shall be declared vacant
94 by the superintendent of said department, and said super-
95 intendent, to fill such vacancy, shall appoint the mem-
96 ber in active service of said department who as an un-
97 successful candidate at the preceding election of members
98 to said retirement board received the greatest number of
99 votes. No member of the retirement board shall partici-
100 pate in any hearing at which his own petition for
101 retirement or the petition of any member of said depart-
102 ment who is related to him by blood or marriage shall be
103 presented for consideration.

104 At its first meeting following each election of members
105 to the retirement board said board shall elect one of its
106 members to serve as chairman and a second member to
107 serve as secretary thereof. The retirement board shall
108 have the power to make rules and regulations, not in-
109 consistent with the provisions hereof, governing pro-
110 cedure and order and manner of business by and before
111 such board. The retirement board shall have the power
112 to make awards and to revise and terminate awards
113 previously made for such times and under such terms
114 and conditions as are hereinafter provided. The votes
115 of a majority of the five members of the board shall be
116 necessary to decision of any matter by the board. Decisions
117 made by the board shall be supreme and final and there
118 shall be no appeal therefrom.

119 It shall be the duty of the retirement board on or be-

120 fore the first day of July of each year to cause all future
121 awards from such fund to be valued and, to the extent
122 that moneys shall be available, reserves based on sound
123 actuarial principles for payment thereof to be carried on
124 the funds account as a liability against the reserve fund.
125 The board shall have authority to employ an actuary for
126 such purpose. The board shall cause a system of account-
127 ing to be installed and maintained to reflect currently and
128 truly all transactions or developments pertaining to age
129 of members and eligible dependents surviving deceased
130 members, periods of service and aggregate earnings of
131 all members eligible to participate in said fund and any
132 other matter relating to maintenance of said fund or ad-
133 ministration thereof, and each year to cause to be made
134 and submitted to each member of said department a state-
135 ment of the condition of said fund. Costs and expenses
136 incurred in making actuarial studies, audits and installa-
137 tions and maintenance of such accounting system shall
138 be paid by the superintendent from funds appropriated
139 for operation of the department of public safety.

140 All moneys paid into and accumulated in said death,
141 disability and retirement fund, except such amounts as
142 shall be designated or set aside by the retirement board
143 for payments of death, disability and retirement benefits
144 and awards, shall be invested by the state board of public
145 works in bonds of the government of the United States,
146 the state of West Virginia, or any political subdivision
147 thereof selected or approved by the retirement board.

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.]

AN ACT to provide for the submission to the voters of the state
of an amendment to the constitution of the state to be
known as the "Better Roads Amendment," relating to the

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.
2. Amendment to be known as the "Better Roads Amendment."
3. Form of ballot; election.
4. Certificate of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Section 1. Submitting, "Better Roads Amendment"

2 to the State Constitution.—That the question of the rati-
3 fication or rejection of an amendment to the constitution
4 of West Virginia, proposed in accordance with the pro-
5 visions of section two, article fourteen of said constitution,
6 shall be submitted to the voters of the state at the next
7 general election, to be held in the year one thousand nine
8 hundred sixty-four, which proposed amendment is as
9 follows:

10

BETTER ROADS AMENDMENT

11 The Legislature shall have power to authorize the issu-
12 ing and selling of state bonds not exceeding in the aggre-
13 gate two hundred million dollars. The proceeds of said
14 bonds hereby authorized to be issued and sold shall be
15 used and appropriated solely for the building and con-
16 struction of state roads and highways provided for by this
17 constitution and the laws enacted thereunder. Such
18 bonds may be issued and sold in amounts not to exceed
19 twenty million dollars in any fiscal year. When a bond
20 issue as aforesaid is authorized, the Legislature shall, at
21 the same time provide for the collection of an annual

22 state tax sufficient to pay as it may accrue the interest on
23 such bonds and the principal thereof within and not ex-
24 ceeding twenty-five years. Such tax shall be levied in
25 any year only to the extent that the moneys in the state
26 road fund irrevocably set aside and appropriated for and
27 applied to the payment of the interest on and principal
28 of said bonds becoming due and payable in such year are
29 insufficient therefor.

30 The authority to issue and sell and have outstanding
31 additional bonds granted by the amendment to the con-
32 stitution proposed by Senate Joint Resolution No. 15,
33 adopted February 15, 1919, and afterwards ratified by a
34 vote of the people, is hereby revoked as of January 1, 1965,
35 but said amendment shall in all other respects remain in
36 full force and effect.

**Sec. 2. Amendment to Be Known as the "Better Roads
2 Amendment."**—For convenience in referring to said pro-
3 posed amendment, and in the preparation of the form of
4 the ballot hereinafter provided for, said proposed amend-
5 ment is hereby designated as the "Better Roads Amend-
6 ment."

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

9 Ballot on Better Roads Amendment.

- 10 ☐ For ratification of Better Roads Amendment.
11 ☐ Against ratification of Better Roads Amendment.

12 The said election on the proposed amendment at each
13 place of voting shall be superintended, conducted and re-
14 turned, and the result thereof ascertained by the same of-
15 ficers and in the same manner as the election of officers to
16 be voted for at said election, and all the provisions of the
17 law relating to general elections, including all duties to
18 be performed by any officer or board, as far as practicable,
19 and not inconsistent with anything herein contained, shall

20 apply to the election held under the provisions of this act,
21 except when it is herein otherwise provided. The ballots
22 cast on the question of said proposed amendment shall be
23 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 be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or to the following effect:

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

16 “For ratification of Better Roads Amendment
17 _____ votes.

18 “Against ratification of Better Roads Amendment
19 _____ votes.

20 “Given under our hands this _____ day of _____,
21 one thousand nine hundred sixty-four.”

22 The said two certificates shall correspond with each
23 other in all respects and contain the full and true returns
24 of said election at each place of voting on said question.
25 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
26 election was held, deliver one of said certificates to the
27 clerk of the county court of his county, together with the
28 ballots, and the other to the clerk of the circuit court of
29 the county.

32 The said certificates, together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court at the courthouse at the same time the ballots, poll books, and the
35 certificates of election of the members of the Legislature
36

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

4 hereinbefore adopted, to be published one time at least
5 three months before such election in some newspaper in
6 every county in which a newspaper is printed, at a price
7 to be agreed upon in advance, in writing, and the cost of
8 such advertising shall in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 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, chapter six of the code of West Virginia, one thousand nine hundred 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.

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

10 treasurer shall be seventeen thousand five hundred dol-
11 lars per year; and the salary of the secretary of state and
12 the commissioner of agriculture shall each be seventeen
13 thousand dollars per year.

14 The salary of each of the judges of the supreme court
15 of appeals shall be twenty-two thousand five hundred
16 dollars per year.

17 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:

Article 13. Business and Occupation Tax.

Section

2-e. Business of contracting.

Section 2-e. Business of Contracting.—Upon every person engaging or continuing within this state in the business 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 nine hundred sixty-five.

CHAPTER 25

(House Bill No. 12—By Mr. Boiarsky)

[Passed January 22, 1964; in effect July 1, 1964. 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

2 the purpose of providing additional revenue for the state
3 general revenue fund and for the privilege of selling
4 tangible personal property and dispensing certain se-
5 lected services defined in section eight of this article, the
6 vendor, in addition to the tax imposed by section three
7 of this article, shall collect from the purchaser the tax
8 provided by this section, and shall pay the amount of
9 such tax to the tax commissioner in accordance with the
10 provisions of this article.

11 The amount of the tax shall be computed as follows:

12 On each sale, the additional sum of one cent on each
13 one dollar of monetary consideration, or fraction thereof,
14 in excess of one dollar.

15 Except as otherwise provided in this section, all pro-
16 visions of this article relating to the levy, imposition,
17 payment, collection, remission and assessment of the con-
18 sumers sales tax imposed by section three of said article
19 shall be applicable to the levy, imposition, payment, col-
20 lection, remission and assessment of such additional tax.

21 Notwithstanding the provisions of section thirty of this

22 article, all moneys received by the tax commissioner
23 from the additional tax imposed by this section shall be
24 paid by him into the state fund, general revenue, to be
25 expended in whatever manner provided by law.

26 It is the intent of the Legislature in imposing this ad-
27 ditional tax to provide funds to the governor, the state
28 road commissioner and the state department of natural
29 resources for the emergency relief of unemployment
30 throughout the state of West Virginia.

31 The provisions of this section shall expire June thir-
32 tieth, one thousand nine hundred sixty-five.

CHAPTER 26

(House Bill No. 13—By Mr. Boiarsky)

[Passed January 22, 1964; in effect July 1, 1964. Approved by the Governor.]

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 addi-
tional 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
2 providing additional revenue for the state fund, general
3 revenue, there is hereby imposed, other than in this sec-
4 tion two-a to the contrary, an additional excise (use) tax
5 in the same form, manner and extent as in section two of
6 this article provided; said additional excise (use) tax is
7 imposed at the rate of one per cent of the purchase price
8 of such property, with the first one dollar of such pur-

9 chase price being exempt for the purpose of computing
10 the additional excise tax imposed by this section two-a.

11 Except as otherwise provided in this section, all pro-
12 visions of this article relating to the levy, imposition,
13 exemptions, payment, collection, remission and assess-
14 ment of the excise tax imposed by section two of this
15 article shall be applicable to the levy, imposition, exemp-
16 tions, payment, collection, remission and assessment of
17 such additional tax as imposed by this section two-a.

18 Notwithstanding the provisions of section twenty-six
19 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-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 article 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, bureau of employment security, and empowering the commissioner to approve and the state auditor to make periodic 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 employment 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.
2. Granted funds by United States department of labor, bureau of employment security.
3. Terms, conditions and administration generally.
4. Payroll deductions.
5. Custodian; disbursements.

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,

10 bureau of employment security, to pay the agency's share
11 of the premium cost of said group policy or policies.
12 The state of West Virginia shall not pay, or be liable for
13 the payment of, any portion of said premiums for such
14 group insurance.

Sec. 3. Terms, Conditions and Administration Generally.—The provisions and terms of any such group plan
2 ally.—The provisions and terms of any such group plan
3 or plans of insurance shall comply in all respects with
4 the conditions and requirements of the United States de-
5 partment of labor, bureau of employment security, and
6 shall be approved in writing by the insurance commis-
7 sioner of the state of West Virginia as to form, rate and
8 benefits.

Sec. 4. Payroll Deductions.—(a) Whenever the above-
2 described regular employees shall indicate in writing that
3 they have subscribed to any of the aforesaid insurance
4 plans on a group basis, the commissioner of the depart-
5 ment of employment security is hereby authorized and
6 empowered to approve periodic premium deductions from
7 the salary payments due such employees as specified in a
8 written assignment furnished the commissioner by each
9 such employee subscribing to a group insurance plan,
10 which deductions shall be made by the auditor of the state
11 of West Virginia.

12 (b) Upon proper requisition of the commissioner, the
13 auditor shall periodically issue a warrant payable as speci-
14 fied in the requisition, for the total deductions from the
15 salaries of employees participating in any such group in-
16 surance plan. To promote efficiency and economy in mak-
17 ing deductions and issuing warrants as provided herein,
18 the auditor is authorized to promulgate rules and regu-
19 lations specifying the form and the time and manner of
20 presentation of requisitions issued pursuant to this sec-
21 tion.

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

- Sec. 5. Custodian; Disbursements.**—The state treasurer
2 shall be custodian of the funds under the aforesaid group
3 insurance plans, and disbursements from the funds to pay
4 all premiums shall be made only upon warrants signed by
5 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:

Article 9. Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.**Section**

9-407. Information from filing officer.

Section 9-407. Information from Filing Officer.—(1)

2 If the person filing any financing statement, termination
3 statement, statement of assignment, or statement of re-
4 lease, furnishes the filing officer a copy thereof, the filing
5 officer shall upon request note upon the copy the file
6 number and date and hour of the filing of the original
7 and deliver or send the copy to such person.

8 (2) Upon request of any person, the secretary of state
9 shall issue his certificate showing whether there is on
10 file in his office on the date and hour stated therein,
11 any presently effective financing statement naming a
12 particular debtor and any statement of assignment thereof
13 and if there is, giving the date and hour of filing of each
14 such statement and the names and addresses of each se-
15 cured party therein. The uniform fee for such a certifi-
16 cate shall be two dollars plus fifty cents for each financing
17 statement and for each statement of assignment reported
18 therein. Upon request the filing officer shall furnish a
19 copy of any filed financing statement or statement of
20 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 hun-
9 dred thirty feet on Elk street and extending back approx-
10 imately one hundred forty feet on Fourth street. The
11 consideration for such sale or transfer shall be as nego-
12 tiated between the grantor and grantee.

CHAPTER 31

(House Bill No. 26—By Mr. White)

[Passed February 3, 1964; in effect ninety days from passage. Approved by the Governor.]

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
2 court of Harrison county, West Virginia, shall from and
3 after the first day of January, one thousand nine hundred
4 sixty-nine, receive for his services a salary of ten thou-
5 sand five hundred dollars per year; said amount to be
6 paid in twelve equal monthly installments from year to
7 year by the county court of said county, out of funds of
8 said county, in the manner provided by statute. The
9 salary of said judge shall continue as provided in section

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, one thousand nine hundred fifty-seven, 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 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 ses-

sion, 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.
24. Removal of judge from office.
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.
32. Provisions of act severable.

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.—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

26 power, authority and jurisdiction as are or may be vested
27 in the court of common pleas of Kanawha county. Either
28 of said divisions may be held by a judge of a circuit court
29 or by another person in any case where the circuit court
30 of the county might be held by a judge of another circuit
31 court or another person.

**Sec. 2. Apportioning Business of Court between Judges;
2 Rules and Regulations.**—On and after said date, the busi-
3 ness of the court may be apportioned between the two
4 judges by the judge thereof longest in continuous service
5 as a judge of a court of record of this state or, if both shall
6 have served for the same period, by the senior in years,
7 who shall serve as chief judge of the court; if such judge
8 declines to serve as chief judge, the other judge shall be
9 designated as such. If the chief judge is temporarily dis-
10 qualified or unable to serve, the other judge shall serve
11 temporarily in his stead. On and after said date, the work
12 of said court shall be apportioned in accordance with
13 standards, procedures, rules and regulations established
14 by the two judges of said court and the judge of the cir-
15 cuit court of Kanawha county.

**Sec. 3. Jurisdiction of Court; Right of Appeal to the
2 Circuit Court of Kanawha County.**—The said court shall
3 continue to have original jurisdiction within the county
4 of Kanawha concurrent with the circuit court of said
5 county in all suits and proceedings in equity, in all actions
6 of ejectment, and in all civil actions or proceedings at law,
7 except where it shall appear from the pleadings that the
8 matter or thing in controversy in any such civil action or
9 proceeding at law exceeds in value the sum of five hun-
10 dred thousand dollars; and also of appeals from the judg-
11 ments of justices of the peace in said county in civil cases
12 when such appeals shall be to said court in the same
13 manner and under the same regulations as provided in
14 the general law for appeals from justices and shall also
15 continue to have jurisdiction concurrent with the circuit
16 court of said county as to the supervision and control of
17 all proceedings before justices of the peace or municipal
18 courts of said county in civil cases, by mandamus, prohibi-
19 tion, habeas corpus or certiorari, subject to the right of

20 appeal to the circuit court of Kanawha county, as herein-
21 after provided.

**Sec. 4. Judges to Be Resident Members of the Bar of
2 Kanawha County and Have Same Qualifications as Cir-
3 cuit Judge; Present Judge Continued in Office; Election
4 of Judges; Terms; Filing Certificates of Candidacy in Year
5 1964.**—Any and all judges of said court shall be resident
6 members of the bar of Kanawha county, and have the
7 same qualifications as a circuit judge.

8 The judge presently serving as judge of the court of
9 common pleas of Kanawha county shall continue in office
10 until the end of his term, expiring December thirty-one,
11 one thousand nine hundred sixty-four, and shall continue
12 until and including said date to perform and exercise all
13 the duties of said court. At the general election of this
14 state to be held on the Tuesday next after the first Mon-
15 day in November, one thousand nine hundred sixty-four,
16 two judges of the court of common pleas of Kanawha
17 county shall be elected, one of whom shall be elected for
18 a term of four years and one of whom shall be elected for
19 a term of eight years, each said term to begin on January
20 first, one thousand nine hundred sixty-five, and quad-
21 rennially thereafter one judge shall be elected for a term
22 of eight years. Persons who filed their certificates of
23 candidacy in accordance with the provisions of section
24 seven, article five, chapter three of the code of West Vir-
25 ginia, one thousand nine hundred thirty-one, as amended,
26 as candidates for nomination for election as a judge of
27 said court at said general election to be held in the year
28 one thousand nine hundred sixty-four shall be deemed
29 to have filed for the eight-year term. Notwithstanding the
30 provisions of section seven, article five, chapter three of
31 the code of West Virginia, one thousand nine hundred
32 thirty-one, as amended, persons filing as candidates for
33 nomination for election as a judge of said court for the
34 four-year term at said general election to be held in the
35 year one thousand nine hundred sixty-four may file their
36 certificates of candidacy not later than the fifteenth day
37 of February, one thousand nine hundred sixty-four,
38 which certificates must be received by the clerk of the

39 circuit court before midnight, eastern standard time, of
40 that day or, if mailed, shall be postmarked before that
41 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 proceedings, and the modes and procedures authorized therein within the county of Kanawha, including the appointment of commissioners, heretofore conferred upon and exercised by the said court of common pleas of Kanawha county, in respect to all cases, matters and proceedings, 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 tribunal 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

7 and for the judge thereof, and, on and after said date for
8 each of the judges thereof; and shall likewise provide the
9 necessary secretarial help for the judge of said court, and,
10 on and after said date for each of the judges thereof. Full
11 faith and credit shall be given to the records of said court
12 and to the certificates of any judge or clerk thereof,
13 whether the seal of the court be affixed thereto or not, in
14 like manner and with like effect as if the same were
15 records of the circuit court or certificates of the judge or
16 clerk of the circuit court similarly authenticated.

**Sec. 9. Clerk of Circuit Court Ex Officio Clerk of Court
2 and Entitled to Same Fees.**—The clerk of the circuit court
3 of Kanawha county shall be ex officio clerk of said court
4 of common pleas and perform the duties thereof and shall
5 receive the same fees as are allowed by law, for similar
6 services to the clerk of the circuit court; and in the dis-
7 charge of his duties as clerk of the court of common pleas
8 he shall be subject to all statutes relating to the clerk of
9 the circuit court. All process, rules and orders of said
10 court in the exercise of its jurisdiction shall be signed by
11 the clerk thereof, and be directed to the sheriffs of the
12 proper counties wherein the same are to be executed, and
13 they shall be executed in like manner and with the same
14 effect as process issuing from the circuit court of said
15 county.

**Sec. 10. Salary of Judges; Payment from County Treas-
2 ury.**—After the first day of January, one thousand nine
3 hundred sixty-five, each of said judges shall for their
4 services receive fifteen thousand dollars per annum, to
5 be paid in monthly installments out of the county treasury
6 of Kanawha county, out of funds of said treasury, in the
7 manner provided by statute. The salary of the present
8 judge of said court shall continue as provided in chapter
9 one hundred eighty-seven, acts of the Legislature, regular
10 session, one thousand nine hundred fifty-five, until the
11 first day of January, one thousand nine hundred sixty-
12 five.

**Sec. 11. Salary of Clerk; Compensation of Sheriff for
2 Attendance upon Court.**—The clerk of said court shall be
3 paid a salary as provided by general law, and the sheriff

4 shall be allowed the same compensation for attendance
5 upon said court, and, on and after said date, upon each
6 division of said court as is now or may hereafter be
7 allowed by law for attendance upon the circuit court.

**Sec. 12. Three Terms of Court Annually; Adjourned
2 and Special Terms Authorized.**—There shall be three
3 terms of said court held in each year, commencing on
4 the third Monday in February, third Monday in June,
5 and the third Monday in October. Adjourned and special
6 terms of said court may be called and held as provided for
7 special and adjourned terms of the circuit court.

**Sec. 13. Terms to Be Held in Charleston at County
2 Courthouse or Other Appointed Place.**—The said terms
3 of said court shall be held in Charleston in said county of
4 Kanawha at the courthouse thereof except that, on and
5 after said date, either of the divisions of said court may be
6 held at a place other than the courthouse, but in the same
7 city, as may be appointed by joint order of the judges
8 thereof.

**Sec. 14. Sheriffs or Deputies to Execute Process of
2 Court; Power and Right of Officers; Fees of Sheriff.**—The
3 sheriff of Kanawha county and the sheriffs of the several
4 counties of the state shall by themselves or their deputies
5 execute all process of said court, or issued by the clerk
6 thereof, directed to them respectively, and all process
7 emanating from said court, or issued by the clerk thereof,
8 shall be directed to and executed by them in the same
9 manner as is provided by law as to process issuing from
10 the circuit court or its clerk; and the sheriff of Kanawha
11 county shall perform the same duties and services for the
12 court of common pleas of Kanawha county as he now by
13 law is required to perform for the circuit court of said
14 county; and in the execution of the process, rules and
15 orders of said court the said officers shall have the same
16 power and rights, be subject to the liabilities, govern
17 themselves by the same rules and principles of law and
18 the statutes of the state, and be entitled to the same fees
19 as though the process issued from the circuit court of said
20 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

20 county treasury. If, on and after said date, either of the
21 judges of said court in his judgment cannot properly pre-
22 side at the hearing of any cause pending therein, said
23 cause, in his discretion, may be transferred by order
24 entered of record to the other division of said court, or,
25 by and with the consent of the circuit court, to the circuit
26 court of said county, and the original papers, together
27 with a copy of the order transferring said cause shall be
28 filed therein, and the cause shall be docketed therein and
29 proceeded with as though the cause had originally been
30 brought and proceedings therein had in said other division
31 or in the circuit court. When for any cause either of the
32 judges of said court of common pleas is incapable of act-
33 ing, or is absent, the judge of the other division may act,
34 or, in the event neither of such judges shall be available, a
35 special judge may be elected in the same manner as a
36 special judge of the circuit court, and be governed in all
37 respects so far as applicable by the laws governing special
38 judges of the circuit court, and such special judge shall
39 be allowed twenty-five dollars a day to be paid out of the
40 county treasury.

**Sec. 17. Transfer of Actions from Circuit Court to the
2 Court of Common Pleas and from the Court of Common
3 Pleas to the Circuit Court to Expedite Business.**—And to
4 the end that justice may be administered without delay
5 and to expedite the dispatch of the business of the circuit
6 court and the court of common pleas of Kanawha county,
7 the circuit court may transfer by order entered of record
8 to the court of common pleas, any suit or proceeding at
9 law or in equity now, or which may hereafter be, upon
10 the docket of said circuit court, and within the jurisdic-
11 tion of said court of common pleas, and such cause shall
12 thereupon be docketed, proceeded with, heard and de-
13 termined in all respects as though originally brought,
14 matured and docketed in said court of common pleas; and
15 the court of common pleas, and, on and after said date,
16 either division of the court of common pleas, likewise, by
17 and with the consent of the circuit court, may transfer by
18 order entered of record to the circuit court, any case upon
19 its docket, the same to be proceeded with in the circuit
20 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 Judgment, 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 afterward 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 person 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 rejection, and the intention of such person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of such suspension in case supersedeas to such judgment, decree or order

35 should not be allowed and be effective within the time
36 so specified.

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.—
2 In the taxation of costs in said court the clerk and court

3 shall be governed by the same rules and provisions of law
4 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
2 the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, shall apply to the court of com-
4 mon pleas of Kanawha county, in the same manner and
5 to the same extent that it does to the circuit courts of the
6 state.
7

Sec. 27. Power to Punish for Contempt.—The court of
2 common pleas of Kanawha county and any judge thereof
3 in vacation shall have the same power to punish for con-
4 tempts as is conferred by law upon the circuit court of
5 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 com-
2 mon pleas of Kanawha county and any judge thereof in
3 vacation shall, concurrent with the supreme court of ap-
4 peals, the circuit court of said county, or any judge of
5 either of said courts in vacation, grant the writ of habeas
6 corpus ad subjiciendum, as provided in article four, chap-
7 ter fifty-three of the code of West Virginia, one thousand
8 nine hundred thirty-one, as amended, and all the pro-
9 visions of said article shall be applicable thereto, and the
10 same shall be governed as therein provided.
11

Sec. 29. West Virginia Reports and Acts of Legislature to Be Furnished Judges.—The West Virginia reports and
2 bound acts of the Legislature are to be delivered to any
3 and all judges of the said court in the same manner as
4 they are required to be delivered to the circuit courts of
5 the state.
6

Sec. 30. Judgment Creditors Entitled to Liens, etc., to Secure or Recover upon Judgment of Court; Where Judgments Docketed; Docketing Executions on Judgments.—
2 Upon every judgment of said court the judgment creditors
3 shall be entitled to all liens, executions and remedies to
4 secure or recover the same to which they would be en-
5 titled if the same were a judgment of the circuit court of
6 the said Kanawha county; judgments rendered in said
7
8

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 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, 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

4. Salary.

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

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 Beginning at the point of intersection of the eastern
13 line of Hudgins street, and the northern line of Guyan
14 street, said point being located one hundred thirteen
15 feet from the intersection of said line of Hudgins street
16 with the northern right of way line of the Chesapeake
17 and Ohio Railway Company; thence running in a north-
18 erly direction along the eastern line of Hudgins street
19 a distance of fifty-two and three-tenths feet, more or less,
20 thence leaving Hudgins street and running in an easterly
21 direction at right angles therefrom to a point on the
22 western line of Reservoir street (also known as High-
23 land avenue); thence running with the western line of
24 Reservoir street in a southerly direction a distance of
25 sixty-four feet, more or less, to the point of intersection
26 of the western line of Reservoir street and the northern
27 line of Guyan street; thence running along the northern
28 line of Guyan street in a westerly direction to the place
29 of beginning.

30 The consideration of such sale or transfer shall be as
31 negotiated between the grantor and grantee.

CHAPTER 35

(House Bill No. 25—By Mr. Watson)

[Passed February 1, 1964; 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

- 2 **Judge.**—The judge of said criminal court shall receive for
- 3 his services a salary of ten thousand five hundred dollars
- 4 per year, said amount to be fixed and paid from year to
- 5 year, in equal monthly installments, by the county court
- 6 of said county, out of the funds of said county, as provided
- 7 by statute.

CHAPTER 36

(House Bill No. 51—By Mr. Madden)

[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.
2. Jurisdiction.
3. Contempt.
4. Judge, qualifications, term, appointment and election.
5. Salary.
6. Clerk; powers, duties and compensation.
7. Sheriff; powers and duties.
8. Prosecuting attorney; powers and duties.
9. Transfer of pending cases; certification of matters to other court.
10. Terms of court; maturity of causes; procedure.
11. Supplies; finances; seal; court rooms and offices.
12. Appeals.
13. Separability; repeal.

Section 1. Court Created and Established.—There is

- 2 hereby created and established in and for the county of

3 Marshall, with authority and jurisdiction coextensive
4 with the county, a court of limited jurisdiction to be
5 known and designated as "The Common Pleas Court of
6 Marshall County," to be held and presided over by a
7 judge to be appointed or elected as provided by this act.
8 Wherever and whenever the word "Court" is hereinafter
9 in this act used, it shall be taken to mean and refer to
10 the Common Pleas Court of Marshall County, unless the
11 context clearly indicates otherwise.

Sec. 2. Jurisdiction.—The court shall have jurisdiction 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 reenactments 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 reenactments 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 domain 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

32 or village, or of any inferior tribunal therein, wherein an
33 appeal, writ of error, supersedeas or writ of certiorari
34 may be allowed; (i) all proceedings under article one,
35 chapter thirty-seven of the official code of West Virginia
36 and all amendments and reenactments thereof; (j) any
37 and all other matters arising under the present and future
38 laws of the state of West Virginia, common or statutory,
39 incidental to the foregoing, including, but not limited to,
40 the disposition of property and property interests in-
41 volved in any such matters, and, as well, the adjudica-
42 tion of any and all rights, titles and interests necessary
43 or incidental to a full determination of all such matters
44 pending in said court.

45 Said court shall have general equity jurisdiction in
46 causes, matters, proceedings and suits before it within
47 its jurisdiction with power to grant injunctions and to
48 require and take recognizances.

49 The proceedings, modes of procedures, power and jur-
50 isdiction conferred by law upon the circuit court of Mar-
51 shall county in any and all said causes, matters, pro-
52 ceedings and suits, are hereby conferred upon and shall
53 be exercised by said court.

54 The judge of said court shall have the same powers in
55 vacation as to any and all of said causes, matters, pro-
56 ceedings and suits that are conferred upon the judge of
57 the circuit court of said county.

58 It shall not be necessary in any such causes or proceed-
59 ings to set forth upon the record the facts authorizing
60 said court to take jurisdiction thereof, but jurisdiction
61 shall be presumed unless the contrary plainly appears
62 from the record.

2 **Sec. 3. Contempt.**—Said court shall have the same
2 powers to punish for contempt as are conferred upon said
3 circuit court by law.

2 **Sec. 4. Judge, Qualifications, Term, Appointment and**
3 **Election.**—The principal presiding officer of said court
3 shall be a judge whose qualifications, term, appointment
4 and election shall be as follows: The person appointed
5 or elected to the office of judge shall be a member of the
6 West Virginia state bar and a resident of Marshall county.

7 Vacancies in nomination for said office in the year one
8 thousand nine hundred sixty-four shall be filled in the
9 manner provided in section nineteen, article five, chapter
10 three of the official code of West Virginia, as amended.
11 At the general election regularly held on the Tuesday
12 after the first Monday in November, one thousand nine
13 hundred sixty-four, some person qualified as aforesaid
14 shall be elected in the manner provided by law for the
15 election of the circuit judges, to be the judge of said court
16 for the next ensuing term of four years, beginning on
17 January first, next following such election. At the gen-
18 eral election regularly held on the Tuesday after the first
19 Monday in November, one thousand nine hundred sixty-
20 eight, and thereafter at intervals of eight years, some
21 person qualified as aforesaid shall be elected in the man-
22 ner provided by law for the election of the circuit judges,
23 to be the judge of said court for the next ensuing term of
24 eight years, beginning on January first, next following
25 such election. The judge of said court may be removed
26 from office for the same reasons and in the same manner
27 as judges of the circuit court and shall be, except as to
28 his term of office and jurisdiction, subject to the laws in
29 force governing circuit judges. If from any cause the
30 office shall become vacant, the vacancy shall be filled in
31 the same manner as in the case of a vacancy in the office
32 of the judge of the circuit court. Any judge so appointed
33 or elected shall continue in such office until his successor
34 is elected and qualified. Such judge, during his tenure
35 in office, shall not engage in the practice of law.

Sec. 5. Salary.—The judge of said court shall, for his
2 services receive the sum of eleven thousand five hundred
3 dollars per annum, to be paid in monthly installments
4 out of the treasury of Marshall county. The county court
5 shall annually make provision by appropriate levy and
6 appropriation for the payment of said salary.

Sec. 6. Clerk; Powers, Duties and Compensation.—
2 The clerk of the circuit court of Marshall county shall,
3 ex officio, be, act as and perform the duties of the clerk
4 of the said court and shall exercise the same power and
5 duties arising within the jurisdiction of said court as are

6 performed by him as clerk of the circuit court. All pro-
7 cesses, rules and orders of the court, in the exercise of
8 its jurisdiction, shall be signed by the clerk thereof to
9 be directed to the sheriffs of the proper counties wherein
10 the same are to be executed in like manner and with the
11 same effect as processes issuing from the circuit court of
12 Marshall county. For his services under and pursuant
13 to this act, the clerk shall receive no compensation in
14 addition to his annual salary as provided by general
15 statute.

Sec. 7. Sheriff; Powers and Duties.—The sheriff of
2 Marshall county and the sheriffs of the several counties
3 in the state shall, by themselves or their deputies, exe-
4 cute all processes of said court, issued by the clerk
5 thereof, directed to them respectively, and all processes
6 emanating from said court shall be directed to and be
7 executed by them in the same manner as is provided by
8 law as to processes issuing from the circuit court of said
9 county. The sheriff of Marshall county shall perform the
10 same duties and services for said court as he is now by
11 law required to perform for the circuit court of Marshall
12 county. In the execution of processes, rules and orders
13 of the court, the sheriff shall have the same powers and
14 rights, be subject to the same liabilities, govern himself
15 by the same rules and principles of law and the statutes
16 of the state, as though said processes issued from the
17 circuit court of Marshall county.

Sec. 8. Prosecuting Attorney; Powers and Duties.—
2 The prosecuting attorney of Marshall county shall attend
3 the terms of said court, either by himself or his assistant,
4 and shall perform the duties of his office as required by
5 law.

**Sec. 9. Transfer of Pending Cases; Certification of
2 Matters to Other Court.**—The judge of the circuit court
3 of said county may, in his discretion, certify to said court
4 on and after the first day of January, one thousand nine
5 hundred sixty-five, any portion or all of the causes, mat-
6 ters, proceedings and suits within the herein defined
7 jurisdiction of said court pending in said circuit court on
8 the first day of January, one thousand nine hundred

9 sixty-five, or thereafter instituted therein, and all causes,
10 matters, proceedings and suits so certified to said court
11 shall be docketed and thereafter proceeded with therein
12 according to law. The judge of said circuit court, in his
13 discretion, may also direct the clerk of said circuit court
14 to certify to and docket in said court all such causes,
15 matters, proceedings and suits properly within the juris-
16 diction of said court as may be instituted on and after
17 the first day of January, one thousand nine hundred
18 sixty-five, in said circuit court. In the event of the ab-
19 sence or disqualification of the judge of said circuit court
20 or said common pleas court, any matter coming within the
21 purview of this act pending in either court may be certi-
22 fied to the other court, docketed therein and proceeded
23 with according to law.

Sec. 10. Terms of Court; Maturity of Causes; Proce-
2 **dure.**—For the purpose of maturing, docketing, hearing
3 and determining all causes, matters, proceedings and
4 suits properly determinable in said court there shall be
5 regularly continued and held three terms of court each
6 year, beginning on the second Monday in March, July
7 and November. Special and adjourned terms of said
8 court may be called and held whenever, in the discretion
9 of the judge of said court, public interest requires such
10 special or adjourned terms. The judge of said court
11 shall have like jurisdiction and authority in vacation of
12 said court to make and enter such proper orders in any
13 cause, matter, proceeding or suit pending in said court
14 as the judge of the circuit court has under the laws of
15 the state.

16 The mode of procedure in causes instituted in said
17 court shall be the same as that prescribed for the cir-
18 cuit court in similar causes. The court is authorized and
19 empowered to appoint such additional officers, divorce
20 commissioners, commissioners, special commissioners,
21 jury commissioners and such clerical and secretarial
22 assistants as shall enable said court to discharge all the
23 duties required of it under the provision of this act and
24 the general laws of the state. Such appointments shall
25 be made by the judge and the appointees shall serve dur-
26 ing the pleasure of the judge.

27 The judge of said court shall have power to make and
28 promulgate such rules for the transaction of the business
29 of the court as may be necessary: *Provided*, That all such
30 rules shall be in conformity with the laws of the state of
31 West Virginia and with any rules promulgated by the
32 supreme court of appeals of this state, and such rules
33 shall be filed in the office of the clerk of said supreme
34 court of appeals.

Sec. 11. Supplies; Finances; Seal; Court Rooms and
2 **Offices.**—It shall be the duty of the county court of
3 Marshall county to provide all record and other books
4 and stationery, postage, and supplies that may be neces-
5 sary for said court. Likewise a seal for said court shall
6 be provided and full faith and credit shall be given to the
7 records of the court and certificates of its judge or clerk
8 in like manner and with the same effect as if the same
9 were records of the circuit court similarly authenticated.
10 The county court of Marshall county shall likewise fur-
11 nish such rooms, furniture and equipment for the proper
12 conduct and administration of said court and shall,
13 through annual levy and appropriations, make provision
14 for the payment for all such rooms, supplies and equip-
15 ment. It shall be the duty of the county court of Marshall
16 county to pay the salary of a full-time secretary in the
17 office of the judge of said court, to be appointed by him,
18 whose compensation shall be not less than one thousand
19 eight hundred dollars nor more than two thousand seven
20 hundred dollars annually, to be determined by the judge.

Sec. 12. Appeals.—Appeals from, or writs of error or
2 supersedeas to, any judgment, decree or order of said
3 court shall be governed by and subject to the provisions
4 of article four, chapter fifty-eight of the official code of
5 West Virginia, and of all enactments and reenactments
6 thereof pertaining to the subject of "Appeals from Courts
7 of Record of Limited Jurisdiction."

Sec. 13. Separability; Repeal.—The provisions of this
2 act shall be construed as separable and severable and
3 should any provision or part hereof be held unconstitu-
4 tional or for any reason invalid the remaining provisions
5 or parts shall not be thereby affected.

- 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.
6. Presumption of 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.
18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by circuit court.
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
2 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, concu-
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

38 other matters of which the aforesaid criminal court of
39 Mercer county was given jurisdiction by the general laws
40 of West Virginia or of which the court hereby estab-
41 lished may be given jurisdiction by such general laws.

**Sec. 3. Judge; Election; Term; Qualifications; Re-
2 moval from Office; Filling Vacancy.**—The judge of the
3 aforesaid criminal court of Mercer county elected at the
4 general election held in this state on the Tuesday after
5 the first Monday in November, one thousand nine hundred
6 sixty, shall hold his office as judge of said court and of the
7 court hereby established for the term of eight years from
8 the first day of January, one thousand nine hundred sixty-
9 one, and until his successor is duly elected and qualified;
10 and at the general election in this state to be held on the
11 Tuesday after the first Monday in November, one thou-
12 sand nine hundred sixty-eight, and every eight years
13 thereafter, there shall be elected by the legal voters of
14 said county a judge of the intermediate court of Mercer
15 county, who shall be a resident member of the bar of said
16 county, and shall be disqualified from practicing law in all
17 the courts of this state during his continuance in office,
18 who shall preside over said court for the term of eight
19 years from the first day of January succeeding said elec-
20 tion, and shall be, except as to jurisdiction, subject to the
21 laws in force governing circuit judges. The judge of said
22 court may be removed from office for the same reasons,
23 and in the same manner, as judges of circuit courts. And
24 if from any cause the office shall become vacant, the va-
25 cancy shall be filled in the same manner as in the case of a
26 vacancy in the office of the judge of the circuit court.

Sec. 4. Salary of Judge; Payment Thereof.—The judge
2 of said intermediate court shall receive for his services the
3 sum of twelve thousand dollars per annum to be paid out
4 of the county treasury of said county of Mercer.

Sec. 5. General Powers and Jurisdiction.—To the ex-
2 tent of the jurisdiction conferred by this act upon said
3 intermediate court, all powers, jurisdiction and authority
4 conferred by law upon circuit courts in the trial of cases
5 and in respect to proceedings and modes of procedure
6 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

4 county may in his discretion certify to said intermediate
5 court for trial any indictment for any felony or mis-
6 demeanor which may hereafter be found by a grand jury
7 impaneled in said circuit court, as well as any civil action
8 or other proceeding at law within the jurisdiction of
9 said intermediate court or suit for divorce, annulment
10 of marriage or separate maintenance which may now
11 be pending or hereafter instituted in said circuit court,
12 and thereupon the original papers filed in said circuit
13 court together with a copy of any order entered in the
14 cause by said court, including any order or judgment
15 theretofore entered therein, shall be transferred to said
16 intermediate court, and the cause shall be docketed
17 therein and proceeded with as though the indictment
18 had been returned or the cause originally brought and
19 all prior proceedings had in said intermediate court;
20 and said intermediate court shall likewise proceed
21 with all indictments for misdemeanor or felony hereto-
22 fore found by a grand jury in said criminal court of
23 Mercer county and all appeals to said court and other
24 proceedings pending therein as though the indictment
25 had been returned or the cause originally brought and all
26 prior proceedings had in said intermediate court.

Sec. 13. Change of Venue.—A change of venue of any
2 cause pending in said intermediate court may be ordered
3 as provided in section thirteen, article three, chapter
4 sixty-two of the code of West Virginia, one thousand nine
5 hundred thirty-one, as amended.

**Sec. 14. County Court to Provide Record Books, etc.,
2 Office Space and Secretarial Assistance to Judge; Effect
3 of Certificates of Judge or Clerk.**—It shall be the duty of
4 the county court of Mercer county to provide all record
5 books, other books, stationery and postage, as well as
6 office room and such stenographic or secretarial assistance
7 to the judge of said intermediate court as may be neces-
8 sary, and likewise a seal for said court but full faith and
9 credit shall be given to the record of said court, and the
10 certificates of its judge or clerk whether the seal of the
11 court be affixed thereto or not, in like manner and with

12 the same effect as if the same were records of the circuit
13 court similarly authenticated.

**Sec. 15. Appeals May Be Allowed and Writs of Error
2 Awarded to Judgments, etc., of Judge of Intermediate
3 Court; Appeals in Cases Relating to Public Revenue.—**
4 Appeals may be allowed, and writs of error and super-
5 sedeas awarded to the judgments, decrees and orders of
6 said intermediate court by the circuit court of Mercer
7 county, or the judge thereof, in all cases or proceedings
8 as provided in article four, chapter fifty-eight of the
9 code of West Virginia, one thousand nine hundred thirty-
10 one, as amended, or elsewhere in the general laws of this
11 state; and in cases relating to the public revenues the right
12 of appeal shall belong to the state as well as the de-
13 fendant.

**Sec. 16. Petitions for Appeal, Writ of Error, etc.; Who
2 May Present and to Whom; Laws Governing; Time Limi-
3 tation.—**Any person who is a party to any such cause
4 wishing to obtain a writ of error, appeal or supersedeas
5 from any judgment, decree, or order of said intermediate
6 court may present to the circuit court of Mercer county,
7 or the judge thereof in vacation, a petition therefor and
8 the provisions of article four, chapter fifty-eight of the
9 code of West Virginia, one thousand nine hundred
10 thirty-one, as amended, concerning appeals to the circuit
11 courts shall govern the proceedings on such appeal,
12 writ of error or supersedeas from said intermediate
13 court as to the duties of the petitioner, the said
14 courts or judges and clerks thereof: *Provided, however,*
15 That no such appeal, writ of error or supersedeas from
16 said intermediate court shall be allowed unless the peti-
17 tion therefor be presented within four months from the
18 date of such judgment or order.

**Sec. 17. Appeals, etc., Docketed in Circuit Court of
2 Mercer County; Expeditious Proceeding.—**Every appeal
3 writ of error or supersedeas from said intermediate court
4 shall be docketed in the circuit court of Mercer county,
5 and shall be proceeded in as expeditiously as may be
6 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 pending 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 attorney 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 requirements, 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.

CHAPTER 39

(House Bill No. 43—By Mr. Mace)

[Passed January 31, 1964; in effect from passage. Approved by the Governor.]

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.
2. Transfer of funds into the special building and improvement fund.
3. Investment and reinvestment of funds in the special building and improvement fund.
4. Expenditures from fund.
5. Retransfer of funds.

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.

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 useable 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, 1964.]

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.

ACTS

FIRST EXTRAORDINARY SESSION

(February 7-15, 1964)

CHAPTER 1

(House Bill No. 2—Originating in the House Committee on Redistricting)

[Passed February 15, 1964; in effect from passage. Approved by the Governor.]

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.
2. Apportionment of membership of house of delegates; announcements of candidacy for year 1964 validated.
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:

The counties of Brooke, Hancock and Ohio shall constitute the first senatorial district;

The counties of Doddridge, Marshall, Tyler and Wetzel shall constitute the second senatorial district;

The counties of Calhoun, Pleasants, Ritchie, Wirt and Wood shall constitute the third senatorial district;

The counties of Clay, Jackson, Mason, Putnam and Roane shall constitute the fourth senatorial district;

The counties of Cabell and Wayne shall constitute the fifth senatorial district;

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;

32 The counties of Marion and Monongalia shall constitute
33 the fourteenth senatorial district;

34 The counties of Barbour, Grant, Preston, Taylor,
35 Tucker and Upshur shall constitute the fifteenth sena-
36 torial district;

37 The counties of Berkeley, Hampshire, Hardy, Jeffer-
38 son, Mineral and Morgan shall constitute the sixteenth
39 senatorial district; and

40 The county of Kanawha shall constitute the seven-
41 tenth senatorial district.

42 Each of the said districts shall have two senators, and,
43 regardless of the changes in district lines made by this
44 act, the senators elected at the general election of one
45 thousand nine hundred sixty and at the general election
46 of one thousand nine hundred sixty-two shall continue to
47 hold their seats as members of the senate for the term,
48 and as representatives of the senatorial districts, for which
49 each thereof, respectively, was elected.

50 One senator shall be nominated and elected at the
51 general election of one thousand nine hundred sixty-
52 four from each of the senatorial districts hereinabove
53 described for a term of four years, and one shall be
54 nominated and elected from each of the said senatorial
55 districts biennially thereafter for a term of four years:
56 *Provided*, That at the general election to be held in the
57 year one thousand nine hundred sixty-four there shall
58 be two senators elected in the seventeenth senatorial
59 district, as herein designated, one of whom shall be
60 nominated and elected for a term of two years and one of
61 whom shall be nominated and elected for a term of four
62 years, and biennially thereafter one senator shall be
63 elected in said seventeenth senatorial district for a term
64 of four years.

65 Inasmuch as the designation and arrangement of the
66 senatorial districts provided herein are identical with the
67 designation and arrangement of the senatorial districts
68 set forth in chapter one hundred fifty-eight, acts of the
69 Legislature, regular session, one thousand nine hundred
70 sixty-three, under which chapter persons filed their
71 announcements of candidacy for nomination for the state

72 senate in the primary election, to be held in May, one
73 thousand nine hundred sixty-four, and consistent with the
74 provisions of Enrolled House Bill No. 53 enacted at the
75 regular session of the Legislature for the year one thou-
76 sand nine hundred sixty-four, an announcement of candi-
77 dacy for membership in the state senate from a desig-
78 nated senatorial district which was filed on or before
79 February one, one thousand nine hundred sixty-four, un-
80 der the provisions of section seven, article five, chapter
81 three of the code of West Virginia, one thousand nine
82 hundred thirty-one, as amended, shall be considered a
83 valid and sufficient announcement of candidacy for the
84 state senate from the identically designated senatorial
85 district established by this act.

Sec. 2. Apportionment of Membership of House of
2 **Delegates; Announcements of Candidacy for year 1964**
3 **Validated.**—The house of delegates shall consist of one
4 hundred members, who shall be apportioned as follows:
5 The counties of Berkeley and Morgan shall form the
6 first delegate district and elect two delegates.
7 The counties of Grant and Tucker shall form the second
8 delegate district and elect one delegate.
9 The counties of Hardy and Pendleton shall form the
10 third delegate district and elect one delegate.
11 The counties of Greenbrier and Pocahontas shall form
12 the fourth delegate district and elect two delegates.
13 The counties of Doddridge and Tyler shall form the
14 fifth delegate district and elect one delegate.
15 The counties of Pleasants and Ritchie shall form the
16 sixth delegate district and elect one delegate.
17 The counties of Calhoun, Gilmer and Wirt shall form
18 the seventh delegate district and elect one delegate.
19 The counties of Barbour, Braxton, Clay, Hampshire,
20 Jackson, Jefferson, Lewis, Lincoln, Mason, Mineral, Mon-
21 roe, Nicholas, Preston, Putnam, Randolph, Roane, Sum-
22 mers, Taylor, Upshur, Webster and Wetzel shall have one
23 delegate each.
24 The counties of Boone, Brooke, Hancock, Marshall,
25 Mingo, Wayne and Wyoming shall have two delegates
26 each.

27 The counties of Fayette, Logan, Marion and Monon-
28 galia shall have three delegates each.

29 The counties of Harrison, McDowell, Mercer, Ohio,
30 Raleigh and Wood shall have four delegates each.

31 The county of Cabell shall have six delegates.

32 The county of Kanawha shall have fourteen delegates.

33 Consistent with the provisions of Enrolled House Bill
34 No. 53 enacted at the regular session of the Legislature
35 for the year one thousand nine hundred sixty-four, an
36 announcement of candidacy for membership in the house
37 of delegates which was filed on or before February one,
38 one thousand nine hundred sixty-four, under the provi-
39 sions of section seven, article five, chapter three of the
40 code of West Virginia, one thousand nine hundred thirty-
41 one, as amended, shall be considered a valid and sufficient
42 announcement of candidacy for the house of delegates
43 from the county in which the candidate resided at the
44 time said announcement was filed, and, in the event such
45 county is by this section made a part of a delegate district,
46 from the delegate district of which the candidate's county
47 of residence at the time of such filing is made a part.

Sec. 4. Severability of Provisions of Article.—If sec-
2 tion one, two or three of this article or any part of any one
3 or more of said sections is declared invalid or unconstitu-
4 tional by a court of competent jurisdiction, such decision
5 shall not affect the validity of the remaining sections or
6 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, chap-
ter 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:

Article 1. General Provisions and Definitions.

Section

9. Political party committees; how composed; organization.

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-

23 sand or more in population, such voters of each ward of
24 such city within the county shall elect one male and one
25 female member of such county party executive com-
26 mittee in addition to the members thereof chosen from
27 the magisterial district or districts in which such city is
28 situated.

29 All members of executive committees, selected for each
30 political division as herein provided, shall reside within
31 the county, district, or ward from which chosen.

32 The term of office of all members of executive com-
33 mittees so elected shall begin on the first day of June,
34 following said May primary, and shall continue for four
35 years thereafter and until their successors are elected
36 and qualified. Vacancies in the state executive committee
37 shall be filled by the members of the committee for the
38 unexpired term. Vacancies in the party's executive
39 committee of a congressional district, senatorial dis-
40 trict, delegate district or county shall be filled by the
41 party's executive committee of the county in which such
42 vacancy exists, and shall be for the unexpired term.

43 As soon as possible after the first day of June, follow-
44 ing the election of the new executive committees, as
45 herein provided, they shall convene within their respec-
46 tive political divisions, on the call of the chairman of
47 corresponding outgoing executive committees, or by any
48 member of the new executive committee in the event
49 there is no corresponding outgoing executive committee,
50 and proceed to select a chairman, a treasurer, and a sec-
51 retary, and such other officers as they may desire, each
52 of which officers shall for their respective committees
53 perform the duties that usually appertain to such offices.

Article 5. Primary Elections and Nominating Procedures.

Section

4. Nomination of candidates in primary elections.
7. Filing announcements of candidacies; requirements.
8. Filing fees and their disposition.
13. Form and contents of ballots.
20. Election contests and court review.

Section 4. Nomination of Candidates in Primary Elec-
2 **tions.**—At each primary election, the candidate or candi-
3 dates of each political party for all offices to be filled at

4 the ensuing general election by the voters of the entire
5 state, of each congressional district, of each state sen-
6 atorial district, of each delegate district, of each judicial
7 circuit of West Virginia, of each county, and of each
8 magisterial district in the state shall be nominated by
9 the voters of the different political parties, except that
10 no presidential elector shall be nominated at a primary
11 election.

12 In primary elections a plurality of the votes cast shall
13 be sufficient for the nomination of candidates for office.
14 Where only one candidate of a political party for any
15 office in a political division, including party committee-
16 men and delegates to national conventions, is to be
17 chosen, the candidate receiving the highest number of
18 votes therefor in the primary election shall be declared
19 the party nominee for such office. Where two or more
20 such candidates are to be chosen in the primary election,
21 the candidates constituting the proper number to be so
22 chosen who shall receive the highest number of votes
23 cast in the political division in which they are candidates
24 shall be declared the party nominees and choices for such
25 office, except that candidates for the office of commis-
26 sioner of the county court shall be nominated and elected
27 in accordance with the provisions of section twenty-three
28 of article eight of the constitution of this state and that
29 members of county boards of education shall be elected
30 at primary elections in accordance with the provisions
31 of section six of this article.

32 In case of tie votes between candidates for party nom-
33 inations or elections in primary elections, the choice of
34 the political party shall be determined by lot by the exe-
35 cutive committee of the party for the political division
36 in which such persons are candidates.

Sec. 7. Filing Announcements of Candidacies; Re-
2 **quirements.**—Any person who is eligible to hold an of-
3 fice (including that of member of any political party
4 executive committee) shall file with the secretary of
5 state, if it be an office to be filled by the voters of
6 more than one county, or with the clerk of the cir-
7 cuit court, if it be for an office to be filled by the

8 voters of a county or subdivision less than a county,
9 a certificate declaring himself a candidate for the nomi-
10 nation for such office; which certificate shall be in form
11 or effect as follows:

12 I, _____, hereby certify that I am a candidate
13 for the nomination for the office of _____ to
14 represent the _____ party, and desire my name
15 printed on the official ballot of said party to be voted at
16 the primary election to be held on the _____ day of
17 _____, 19____; that I am a legally qualified voter
18 of the county of _____, state of West Virginia;
19 that my residence is number _____ of _____
20 street in the city (or town) of _____ in _____
21 county in said state; that I am eligible to hold the said
22 office; that I am a member of and affiliated with said
23 political party; that I am a candidate for said office in
24 good faith.

25

26

Candidate

27 Signed and acknowledged before me this _____ day of
28 _____, 19____.

29

30

31

Signature and official title of
person before whom signed.

32

33

34

Such announcement shall be signed and acknowledged
by the candidate before some officer qualified to admin-
ister oaths, who shall certify the same.

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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.

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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

49 chapter one of the code of West Virginia, one thousand
50 nine hundred thirty-one, as amended, said article two
51 having been enacted by chapter one hundred fifty-eight
52 of the acts of the Legislature of West Virginia, for the
53 year one thousand nine hundred sixty-three, regular ses-
54 sion, relating to the apportionment of membership in the
55 Legislature, are declared unconstitutional by the supreme
56 court of appeals of West Virginia, and (b) that there-
57 after the Legislature enacts legislation reapportioning
58 said Legislature prior to the primary election for the
59 year one thousand nine hundred sixty-four the announce-
60 ments of candidacies for membership in the state senate
61 and membership in the house of delegates which were
62 properly filed on or before February one, one thousand
63 nine hundred sixty-four, by any persons under the pro-
64 visions of this section, shall be considered valid and suf-
65 ficient announcements of candidacies for such offices in
66 the counties or districts wherein such candidates reside
67 at the time said certificates of candidacies were filed for
68 membership in the Legislature representing the particular
69 counties, delegate districts or senatorial districts for
70 which filed, as the case may be, or which are created in
71 such apportionment legislation as may hereafter be
72 adopted during the year one thousand nine hundred sixty-
73 four, prior to the primary election: *Provided, however,*
74 That in event such apportionment legislation is hereafter
75 adopted during the year one thousand nine hundred
76 sixty-four prior to the primary election wherein delegate
77 districts are established, the circuit clerks of all counties
78 within such established delegate districts shall immedi-
79 ately transfer all certificates of candidacy for member-
80 ship in the house of delegates, together with the filing
81 fees therefor, to the secretary of state: *Provided further,*
82 That notwithstanding the provisions of section nine, ar-
83 ticle five of this chapter and any other provision of this
84 chapter requiring an earlier date or time, the secretary
85 of state shall arrange the names of all candidates who
86 have filed announcements with him and who are entitled
87 to have their names printed on any political party ballot
88 for the offices of state senator and member of the house
89 of delegates and shall certify the same to the several

90 clerks of the circuit courts prior to the week next follow-
91 ing the second Saturday in the month of March, in the
92 year one thousand nine hundred sixty-four.

93 Notwithstanding the provisions of the preceding para-
94 graph of this section, for the primary election in the year
95 one thousand nine hundred sixty-four any person who is
96 eligible to be a member of a party's delegate district
97 executive committee and who desires to be a candidate
98 therefor shall file with the clerk of the circuit court of
99 the county of which he is a resident, a certificate declar-
100 ing himself a candidate for election to his party's execu-
101 tive committee of the delegate district of which the county
102 of his residence is a part not later than the twenty-ninth
103 day of February, one thousand nine hundred sixty-four,
104 and said certificate must be received before midnight,
105 eastern standard time, of that day or, if mailed, shall be
106 postmarked before that hour.

Sec. 8. Filing Fees and Their Disposition.—Every per-
2 son who becomes a candidate for nomination for, or elec-
3 tion to, office in any primary election, shall, at the time
4 of filing the certificate of announcement as required in
5 this article, pay a filing fee as follows:

6 (a) A candidate for president of the United States,
7 for vice president of the United States, for United States
8 senator, for member of the United States house of repre-
9 sentatives, for governor and for all other state elective
10 offices shall pay a fee equivalent to one per cent of the
11 annual salary of the office for which the candidate an-
12 nounces;

13 (b) A candidate for the office of judge of a circuit
14 court and judge of any court of record of limited juris-
15 diction shall pay a fee equivalent to one per cent of the
16 total annual salary of the office paid from any and all
17 sources for which the candidate announces;

18 (c) A candidate for member of the house of delegates
19 shall pay a fee of fifteen dollars, and a candidate for state
20 senator shall pay a fee of thirty dollars;

21 (d) A candidate for sheriff, prosecuting attorney, cir-
22 cuit clerk, county clerk, assessor, member of the county

23 court and member of the county board of education shall
24 pay a fee equivalent to one per cent of the annual salary
25 of the office for which the candidate announces: *Provided,*
26 *however,* That the fee in no case shall be less than five
27 dollars. A candidate for any other county office shall pay
28 a fee of five dollars;

29 (e) A candidate for justice of the peace in districts
30 having a population of five thousand or less shall pay a
31 fee of ten dollars; in districts having a population of more
32 than five thousand and not more than twenty-five thou-
33 sand, fifteen dollars; and in districts having more than
34 twenty-five thousand population, each candidate shall
35 pay a fee of twenty-five dollars;

36 (f) A candidate for constable in districts having a
37 population of five thousand or less shall pay a fee of five
38 dollars; in districts having a population of more than
39 five thousand and not more than twenty-five thousand,
40 ten dollars; and in all other districts fifteen dollars;

41 (g) Delegates to the national convention of any po-
42 litical party shall pay the following filing fees:

43 A candidate for delegate-at-large shall pay a fee of
44 twenty dollars; and a candidate for delegate from a con-
45 gressional district shall pay a fee of ten dollars;

46 (h) Candidates for members of political executive
47 committees and other political committees shall pay the
48 following filing fees:

49 A candidate for member of a state executive com-
50 mittee of any political party shall pay a fee of ten dol-
51 lars; a candidate for member of a county executive
52 committee of any political party shall pay a fee of one
53 dollar; and a candidate for member of a congressional,
54 senatorial or delegate district committee of any political
55 party shall pay a fee of one dollar.

56 Candidates filing for an office to be filled by the voters
57 of one county shall pay the filing fee to the clerk of the
58 circuit court, and candidates filing for an office to be
59 filled by the voters of more than one county shall pay the
60 filing fee to the secretary of state at the time of filing their
61 certificates of announcement, and no certificate of an-
62 nouncement shall be received until the filing fee is paid.

63 All moneys received by such clerk from such fees
64 shall be credited to the general county fund. Moneys
65 received by the secretary of state from fees paid by
66 candidates for offices to be filled by all the voters of the
67 state shall be deposited in a special fund for that pur-
68 pose and shall be apportioned and paid by him to the
69 several counties on the basis of population, and that re-
70 ceived from candidates from a district or judicial circuit
71 of more than one county shall be apportioned to the
72 counties comprising the district or judicial circuit in like
73 manner. When such moneys are received by sheriffs, it
74 shall be credited to the general county fund.

Sec. 13. **Form and Contents of Ballots.**—Official pri-
2 mary ballot shall contain at the left of each column of
3 names of candidates, a perpendicular column, and shall
4 be so printed as to leave a square at the left of each
5 name on the ballot.

6 "On such primary ballot, the names of candidates for
7 president of the United States, for United States senator,
8 for representative in congress, and for delegates to the
9 national convention of the party, shall be placed in the
10 first column of candidates; the names of candidates for
11 all state offices, and all other offices to be filled by the
12 voters of a political division greater than a county, in-
13 cluding the state executive committee, in the second
14 column; the names of all candidates for county offices,
15 including members of the house of delegates and con-
16 gressional, senatorial, and delegate district executive
17 committees, shall be placed in the third column; and the
18 names of all candidates for office in the magisterial dis-
19 tricts shall be placed in the fourth column.

20 The face of every primary election ballot shall conform
21 as nearly as practicable to that used at the general elec-
22 tion.

23 The secretary of state, or the circuit court clerk, as
24 the case may be, shall arrange the names of the candi-
25 dates to be printed on the ballot in alphabetical order,
26 according to the surname, under the title of the respec-
27 tive offices upon the ballot.

28 A separate ballot, in connection with a primary elec-

tion, 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. 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

5 political party executive committee, may contest the
6 primary election before the county court of the county
7 in which any primary election procedures, practices or
8 results may be in issue. The procedure in such case shall
9 be the same as that governing the contest of a general
10 election by candidates for county offices or offices in
11 magisterial districts. The decision of the county court
12 upon such contest may be reviewed by the circuit court
13 of the county and by the supreme court of appeals of
14 the state. Wherever practicable, the circuit court, on
15 review, may, by order entered of record, consolidate and
16 hear together any such primary election cases arising in
17 one or more counties of the circuit, and the supreme
18 court of appeals, on further review, may likewise con-
19 solidate and hear together any such cases whenever con-
20 sidered practicable by the court so to do.

21 Any action of a political party executive committee
22 in the discharge of any of the duties imposed upon such
23 committee by this article, or of any board of election
24 officials in conducting and ascertaining the result of the
25 primary election, or of any board of canvassers in can-
26 vassing and certifying the result of the primary election
27 for the county, may be reviewed by the circuit court of
28 the county, upon the petition of any candidate, political
29 committeeman or delegate voted for at such primary and
30 affected adversely by the action of such committee,
31 board of election officials, or board of canvassers. From
32 the judgment of the circuit court in any such proceeding,
33 an appeal shall lie to the supreme court of appeals of
34 the state.

35 Any such contest, or petition for review, of a candidate
36 for a nomination not finally determined within ten days
37 next preceding the date of the next election after the
38 primary, or of a candidate for delegate to any conven-
39 tion within ten days next preceding the date fixed for
40 holding the convention, shall stand dismissed, and the
41 person shown by the face of the returns of the primary
42 election to be nominated for any office shall be entitled
43 to have his name printed upon the regular ballot to be
44 voted at the election, and the person shown upon the
45 face of the returns to have been elected as a delegate to

46 any convention shall be entitled to sit in such convention
47 as a delegate.

Article 10. Filling Vacancies.

Section

5. Vacancies in state legislature.

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-

36 date to fill a vacancy in the office of governor to be voted
37 for at a general election. The state senatorial district ex-
38 ecutive committee of the political party shall discharge
39 the duties incident to state senator nominations devolving
40 upon the party state executive committee in nominating
41 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

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
3	193	168	10	407	216
6	158	186	126	411	180
7	205	187	125	415	45
8	206	190	147	418	167
14	40	191	3	425	55
29	142	192	73	426	155
35	175	197	86	435	8
36	173	208	36	438	41
37	189	209	148	443	210
39	63	220	81	453	19
40	165	221	105	462	204
44	115	230	217	468	163
48	91	231	59	476	212
49	69	233	89	479	199
50	18	246	170	483	34
65	103	254	201	484	156
71	1	256	85	485	2
73	49	261	31	499	58
74	57	263	121	501	25
76	50	264	74	512	9
86	219	276	169	521	215
87	38	283	75	525	71
89	208	295	84	532	97
96	43	296	139	540	197
103	177	297	35	541	198
105	16	306	127	543	77
106	200	327	186	544	203
110	72	331	145	545	124
113	32	338	23	547	188
117	209	339	27	552	183
123	42	340	24	553	207
125	150	341	123	554	80
130	39	345	22	558	211
132	62	347	90	565	28
133	66	352	78	567	68
135	202	353	94	572	214
142	135	367	29	573	196
147	153	378	93	574	213
156	140	384	98	577	13
163	17	392	110	578	14
165	119	398	218		

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1	12	109	136	209	113
2	64	110	30	211	99
4	79	113	61	217	67
5	187	116	122	219	95
8	185	117, et al	76	226	20
10	162	124	26	227	157
11	114	125	37	243	184
14	96	129	137	244	179
15	117	130	133	245	70
16	109	131	134	254	120
17	65	132	138	256	152
26	194	133	190	260	116
37	44	134	131	261	47
38	192	142	5	263	56
40	48	143	60	264	51
41	52	160	33	270	151
44	160	163	191	271	88
56	92	168	7	272	171
65	130	171	176	283	166
66	15	174	159	289	82
67	164	177	181	302	154
69	54	178	182	306	144
75	87	196	128	312	172
78	11	198	83	313	178
81	53	199	112	316	132
82	161	200	106	325	146
86	168	201	118	327	174
88	46	202	107	332	195
90	4	203	100	341	104
91	6	204	101	342	111
99	141	206	102	347	21
101	149	207	108	351	143
108	129				

Extraordinary Session, 1963

Senate Bill No. 1. Chapter 1

Regular Session, 1964

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1	2	21	10	45	30
2	20	25	35	46	28
3	12	26	31	48	32
7	3	32	11	50	15
8	21	37	6	51	36
11	33	38	19	53	14
12	25	39	9	54	18
13	26	41	23	55	37
14	22	42	7	61	38
17	8	43	39	62	34
20	13	44	29		

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
4	4	9	5	30	1
5	27	10	17	35	24
		22	15		

Extraordinary Session, 1964

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter
2	1	4	2

TOPICAL INDEX

A

	Ch.	Page
ACKNOWLEDGMENTS:		
Persons in military service	155	730
ACTS, AMENDED:		
Acts Sess. Ch. Sec. Page		
1893 Reg. 18		Criminal Court of Mercer County..... 1479
1893 Reg. 28	1, 2	Jurisdiction, etc., of Common Pleas Court of Cabell County..... 1128
1909 Reg. 27	4	Salary of judge of Criminal Court of Harrison County 1454
1915 Reg. 109		Common Pleas Court of Kanawha County 1455
1917 Reg. 90	24	Salary of judge of Common Pleas Court of Cabell County..... 1128
1919 Reg. 69	4	Salary of judge, Criminal Court of Marion County 1471
1919 Reg. 69	3	Election and term of judge of Criminal Court of Marion County..... 1151
1921 Reg. 168	1, 2, 4	Domestic Relations Court of Cabell County, jurisdiction and salary of judge 1131
1947 Reg. 172	4	Salary of judge, Domestic Relations Court of Kanawha County..... 1469
1953 Reg. 193		Terms of McDowell County Criminal Court 1153
1959 Reg. 178		Cabell County Youth Center 1136
1959 Reg. 185	8	Juvenile Court of Kanawha County, terms, maturity of causes, procedure and probation staff 1148
1959 Reg. 199	12	Intermediate Court of Wood County, supplies, court room, offices, secretary for judge, etc. 1177
1961 Reg. 138	3	West Virginia Centennial Fund 1185
ACTS, REPEALED:		
1931 Reg. 15		Bank collection code 889
1945 Reg. 128		Salvage committee 1178
1949 Reg. 21		Bank collection code 889
1955 Reg. 27		Bank collection code 889
ADMINISTRATION OF ESTATES AND TRUSTS:		
Accounting by fiduciaries of small estates.....	4	5
Commissioner of accounts		
Publication of notice of time for receiving claims against decedent's estate	3	4
Designation of testamentary trustee as beneficiary of insurance	5	6
Veteran's guardianship, settlement of accounts by guardian.....	6	8
ADMINISTRATIVE PROCEDURES, STATE:		
See Rules and Regulations.		
AGING:		
State commission on, created.....	4	1308
AGRICULTURE:		
Cooperative extension workers	59	200
Garbage		
Feeding to swine.....	8	10
Inspection of meats and meat products		
Definitions	7	9
Soil Conservation Districts		
State committee	10	13
West Virginia State Apple Commission		
Act creating repealed	9	12

AIR POLLUTION:	Ch.	Page
Control Commission		
Complaints to commission.....	76	448
Proceedings on	76	448
Orders	76	448
Powers and duties.....	76	446
Public hearings	76	446
Record of proceedings.....	76	448
Rules and regulations.....	76	446
Violations	76	448
Policy and purpose of state	76	445
ALCOHOLIC LIQUORS:		
Limitation on amount to be sold	11	16
Limitation on amount to be transported into state	11	16
Municipal tax on purchases of, authorized.....	122	628
ALCOHOLISM:		
Establishing a division and program on, within department of mental health	92	514
APPLES:		
West Virginia State Apple Commission		
Repeal of act creating	9	12
APPROPRIATIONS:		
Budget bill, making general appropriations for fiscal year 1964	12	17
Index to, by accounts.....	12	19
Budget bill, making general appropriations for fiscal year 1965	2	1231
Index to, by accounts	2	1233
Supplemental, for state department of welfare	1	1213
ARCHIVES AND HISTORY:		
Historian and archivist		
Acceptance of gifts, donations, etc.....	15	80
Appointment and term	15	80
Assistants	15	80
Duties	15	80
Publications from state institutions, boards, commissions, etc.	15	80
ASSESSORS:		
Salaries of	10	1346
AUTOPSIES:		
On bodies of deceased persons in interest of medical science	72	436
See Post-Mortem Examinations.		
B		
BAIL AND RECOGNIZANCE:		
Cash deposits as recognizance without surety	39	150
BANKING INSTITUTIONS:		
Bank service corporations and bank services.....	17	84
Legislative study of laws relating to banking, financing, credit, etc. (SCR 33).....		1204
BEDDING AND UPHOLSTERY BUSINESS:		
Repeal of statute establishing bedding division fund in de- partment of labor.....	89	511

	Ch.	Page
BERKELEY SPRINGS SANITARIUM:		
Institutional fees	169	820
Special sanitarium fund.....	169	820
BILLS:		
Preparation by departments of state government (HR 29)....		1198
Requiring bills affecting fiscal liability of state to have "fiscal note" attached (HR 26).....		1197
BOARDS OF EDUCATION:		
See Schools.		
BONDS:		
Issuance and sale of, for construction and maintenance of roads	165	792
Resolution proposing constitutional amendment, authorizing \$200,000,000 state road bond issue (HJR 10).....		1196
See Industrial Development Bond Act.		
BRAXTON COUNTY:		
Four-H Club Development Authority created.....	198	1119
Town of Burnsville authorized to transfer land to board of education of	29	1452
Transfer of land to the United States of America by town of Gassaway	30	1453
BUDGET BILL:		
Itemization of tentative budget.....	14	79
Making general appropriations for fiscal year 1964.....	12	17
Index to, by accounts.....	12	19
Making general appropriations for fiscal year 1965.....	2	1231
Index to, by accounts.....	2	1233
Preparation of digest of	13	78
BUILDING AND LOAN ASSOCIATIONS:		
Conditions under which, may take mortgage or deed of trust	18	86
BUILDING CODE:		
Legislative study and recommendations on (SCR 10).....		1199
BUILDING COMMISSION:		
Grants and gifts	171	831
Issuance of state office revenue bonds.....	171	821
BURNSVILLE:		
Town of, authorized to transfer land to the board of education of Braxton County	29	1452
BUSINESS AND OCCUPATION TAX:		
Appeal procedure on assessment of.....	182	843
Business of contracting	24	1445
C		
CABELL COUNTY:		
Jurisdiction of common pleas court of, and salary of judge....	197	1128
Jurisdiction of domestic relations court of, and salary of judge	198	1131
Special courthouse building and improvement fund.....	199	1134
Youth center	200	1136
CAPITOL SALVAGE COMMITTEE:		
Act creating, repealed and funds transferred.....	217	1178
CEMETERIES:		
See Graves.		
CENTENNIAL:		
West Virginia centennial fund.....	219	1185

			Ch.	Page
CHAUFFEURS' AND OPERATORS' LICENSES:				
See Motor Vehicles.				
CHECKS:				
Giving worthless; penalty.....			35	132
CHURCHILL, SIR WINSTON:				
Making honorary citizen of West Virginia (HCR 24).....				1193
CIGARETTES:				
Excise tax			188	852
Additional, for support of schools.....			189	868
See Taxation.				
CIRCUIT CLERKS:				
Salaries of certain			11	1350
CIRCUIT COURTS:				
Allowance to judges for stationery, postage and stenographic help			31, 6	128, 1317
Salary of judges and additional compensation from counties...			30	127
Special committee to study arrangement of circuits, salaries of judges, etc. (SCR 15).....				1200
Terms in fourth and twenty-eighth circuits			32	129
Terms in twenty-second circuit.....			7	1318
CIVIL DEFENSE:				
Immunity and exemptions.....			150	708
CLAIMS AGAINST THE STATE:				
Declaring certain, to be moral obligations of the state and directing payment thereof			8	1319
CLERKS OF THE COUNTY COURT:				
Recording of writings, plats and papers annexed			156	733
Fees to be charged for.....			156	736
Salaries of certain			11	1350
See Uniform Commercial Code.				
CODE, AMENDED:				
Ch.	Art.	Sec.	Page	
1	2	1-3	Senatorial districts, apportionment of membership of house of delegates and congressional districts.....	
			743,	1505
1	4 (new)	1-3	Relocation of meeting places of governing bodies of political subdivisions in event of enemy attack, etc.	
				699
3			Elections	
				221
3	1	9	Political party committees	
				1510
3	5	4, 7, 8, 13, 20	Primary elections and nominating procedures	
				1512
3	5	7	Announcement of candidacies	
				1360
3	10	5	Filling vacancies in the Legislature.....	
				1521
4	1	18 (new)	Digest of budget bill	
				78
5	1	22 (new)	Vacancies in appointive offices filled by governor, etc.	
				825
5	1	25 (new)	Daylight saving time.....	
				152
5	2	3	Filing rules of state agencies in office of secretary of state	
				799
5	6	7	State office revenue bonds	
				821
5	9	3-a (new)	Recreational facilities.....	
				741
5	10	2, 14, 17, 20, 21, 22, 25, 27, 30, 31, 33; (new) 48, 49, 50	Retirement system for public employees	
				746

CODE, AMENDED—(continued):

Ch.	Art.	Sec.		Page
5-a	2	11	Itemization of tentative budget.....	79
5-a	4	1-a (new)	Regulation of parking around state capitol	697
6	7	2	Salaries of certain state officers..	824, 1444
6	7	4	Salaries of judges of circuit courts..	127
6	7	6	Allowances to circuit judges for sta- tionery, postage and stenographic help	128, 1317
7	1	3-i (new)	Cooperation of county court with other governmental units	113
7	1	5, 5-(1)—5-(54)	Duties and compensation of county commissioners	1324
7	3	7-a (new)	Revenue bonds for construction, etc., of county jail facility	114
7	4	2	Rewards and detection of crime.....	115
7	4	3	Employment of counsel by county courts	117
7	5	15	Auditing and payment of claims of justices and constables	118
7	7	1, 1-(1)—1-(55)	Salaries of sheriffs	1331
7	7	2-(15), 2-(28), 2-(52)	Salaries of county clerks in certain counties	1350
7	7	3-(14), 3-(15), 3-(28), 3-(52)	Salaries of circuit clerks in certain counties	1350
7	7	5, 5-(1)—5-(55)	Salaries of prosecuting attorneys.....	1335
7	7	6, 6-(1)—6-(55)	Appointment and salaries of assist- ants, stenographers, etc., for prose- cuting attorneys	1338
7	8	11	Deduction from jail sentence for good conduct and donation of blood.....	119
7	12 (new)	1-16	County development authorities.....	120
8	1	3	Membership in association or league of municipalities	623
8	2	8	Change of boundary of city, town or village	624
8	4	10-j (new)	Ordinance procedure of municipalities	626, 1384
8	4	13-a	Municipal tax on retail sales of in- toxicating liquors	628
8	4-a	1-b (new)	Revenue bonds for construction, etc., of jail facility	629
8	5	23, 47	Amendment of zoning ordinances.....	630
8	5-a	1-a (new)	Defining "policemen," "officers," "po- lice officers," etc.	631
8	5-a	19	Purposes of civil service law for police departments	632
8	6	14	Maintenance of firemen's and police- men's pension or relief funds	633
8	7	9 (new)	Payment of money out of municipal treasury	636
8-a	3	10	Ordinance procedure.....	627
9	4	6	Offices and equipment for county public assistance councils	700
9	4	10	Assistants and employees of county public assistance councils	701
9	5	3, 24, 26	Releasing liens upon property of aged person receiving public assistance	702
9	6	13	Admission of indigent persons to hospitals	704

CODE, AMENDED—(continued):

Ch.	Art.	Sec.		Page
10	5 (new)	1-7	Educational broadcasting authority	213
11	2	5, 5-(1)--5-(55)	Salaries of assessors	1346
11	8	16	Election to increase levies by local levying bodies	827
11	8	17	Special levy elections	829
11	8	26; (new) 14-b, 26-a	Unlawful expenditures by local fiscal bodies, levy of additional tax and revision of levy estimate	830
11	11	4	Exemptions from inheritance and transfer taxes	832
11	11	21	Appeals from assessments of inheritance and transfer taxes	833
11	12	3	Coin-operated merchandise, service and amusement devices, and vending machines	835
11	12-a	8-d, 10	Appeal from assessment of privilege tax on carrier corporations; lien of tax, etc.	841
11	13	2-e	Tax on business of contracting	1445
11	13	8	Appeals from assessment of business and occupation tax	843
11	13-a	16	Penalty for violation of store license law; jurisdiction of justices of the peace	844
11	14-a	4, 14	Motor carrier road tax	845
11	15	3-a	Additional consumers sales tax	847, 1446
11	15	9	Sales exempt from consumers sales tax	849
11	15-a	2-a	Additional use tax	851, 1447
11	17	1, 3-22; (new) 23-27	Excise tax on cigarettes	852
11	17	2-b	Additional cigarette tax for support of schools	868
11	18	2	Use tax on cigarettes	869
11	21	4, 9; (new) 4-a, 4-b	Personal income tax rate	870
11-a	3	17, 20, 23, 24, 28, 30, 31, 32, 43, 44	Sale of land for taxes	876
11-a	4	9-a (new)	Sale of lands for school fund	882
13	2-c (new)	1-20	Industrial development bond act	466
15	2	3	Salaries, etc., of members of department of public safety	705
15	2	27	Department of Public Safety; death, disability and retirement fund	1435
15	5	10	Immunity and exemptions in connection with civil defense	707
16	1	10	Dental services in state institutions	434
16	4-b (new)	1	Autopsies on bodies of deceased persons in interest of medical science	436
16	5-b	1, 4, 12	Licensing of hospitals and similar institutions	437
16	8-a	17, 23	Offenses and penalties under narcotic drug act	440
16	9	2, 3	Penalties for throwing dead animals or offensive substances in or near waters, roads, public grounds, etc.	1386
16	13-a	3-a, 18-a (new)	Removal of members of public service district board; sale, lease or rental of water system by district	442

CODE, AMENDED—(continued):

Ch.	Art.	Sec.		Page
16	20	1, 5, 6	Air pollution control.....	444
16	21 (new)	1-20	West Virginia water development commission	450
17	1	8	Road, public road and highway de- fined	761
17	2-a	7, 13, 15; (new) 4-a, 4-b, 8-a, 8-b, 17, 18, 19, 20	State road commissioner.....	762
17	3	4, (new) 4-a	State road fund	772
17	4	9, 10, 11, 21, 26, 29, 30, 31	State road system	773
17	4	17-b (new)	Relocation of public utility lines on federal-aid highway projects	778
17	4	47, 48, 49, 50, 51, 52, 53	Access to highways from commercial, industrial and real property, in- cluding real property subdivided into lots	779
17	23		Salvage yards	788
17	24	8	Powers and duties of West Virginia historic commission	791
17-a	1		Motor vehicles; words and phrases defined	567
17-a	1	19	Special mobile equipment	572
17-a	2	14	Records of department of motor ve- hicles	573
17-a	2	16	Cancellation, suspension, seizure, etc., of documents and plates	574
17-a	3	4	Application for certificate of title; tax	575
17-a	3	14	Registration plates	578
17-a	3	15	Display of registration plates	571
17-a	3	23	Registration plates for governmental vehicles	580
17-a	4	12 (new)	Transfer of abandoned motor vehicle	582
17-a	5	1	Exempting vehicles owned by nonres- idents from registration	583
17-a	8	9, 10 (new)	Unlawful obtaining possession and re- taining rented or leased vehicle	587
17-a	10	1	Classification of vehicles for regis- tration	588
17-a	10	3	Registration fees for vehicles	590
17-a	10	5	Public service commission assessment of vehicle operated for compensa- tion to be paid before registration, etc.	593
17-b	1	1	Definitions of words and phrases used in chapter relating to operators' and chauffeurs' licenses	594
17-b	2	2	Persons exempt from motor vehicle licensing requirements	597, 598
17-b	3	1	Cancellation of operator's or chauffeur's license	600
17-c	1	1-35	Definitions of words and phrases in chapter pertaining to traffic regu- lations and laws of the road	603
17-c	2	8	Powers of local authorities respecting regulation of traffic	611

CODE, AMENDED—(continued):

Ch.	Art.	Sec.		Page
17-c	3	4-a (new), 8	Traffic signs, signals and markings	612
17-c	6	1, 2	Speed restrictions	613
17-c	10	8 (new)	Yielding right-of-way to persons working on street or highway	615
17-c	13	3, 5 (new)	Stopping, standing and parking	615
17-c	7	10	Interval of space to be maintained by driver of vehicle following other vehicle	617
17-c	12	7, 8	Overtaking and passing school bus, and lighting equipment on school bus	618
17-c	15	43 (new)	Requiring automobiles to be equipped with safety seat belts	1383
17-d	1		Definitions of words and phrases in motor vehicle safety responsibility law	620
17-d	3	10	Increase or decrease of security ordered following accident	622
18	2	5	General powers and duties of state board of education; public school entrance age	156
18	2	6	Training of teachers; classification and standardization of schools; standards for degrees and diplomas	157
18	2	22 (new)	Automobile parking facilities at Marshall University and state colleges	203
18	2-a	4, 5	Textbook adoption	159
18	3	1	Appointment, qualifications, traveling expenses and residence of state superintendent of schools	161
18	5	13	General control of schools; consolidation; transportation of pupils	162
18	5	39 (new)	Summer school programs	164
18	7	1	Appointment of teachers	166
18	7	2	Teachers' salaries	168
18	7	10	Enumeration of children of school age	172
18	7	15	Certification of teachers; certification of aliens	173
18	7-a	14, 17, 23, 26	Teachers' retirement system—contributions by members, computation of service and benefits	174
18	7-a	26-a (new)	Additional benefits for certain retired teachers	181
18	8	4	Duties of school attendance directors	182
18	8	10	Compulsory education of deaf and blind	184
18	9-a	2, 8, 12	State and county support of schools	186
18	9-a	4	Local share of aid for schools; appraisal and assessment of property	190
18	11	8	Cooperative extension service of West Virginia University	198
18	11	25	Automobile parking facilities at West Virginia University	204
18	12-a	1, 2, 3, 5	Revenue bonds for capital improvements at Marshall University	207
18	22 (new)		State commission on higher education	1357

CODE, AMENDED—(continued):

Ch.	Art.	Sec.		Page
19	2-b	1	Inspection of meats and meat products, definitions.....	9
19	8	1, 2, 3	Cooperative extension workers.....	200
19	9-a (new)	1-8	Feeding untreated garbage to swine...	10
19	21-a	4	State soil conservation committee...	13
19	23	2, 7, 8, 9	Horse racing.....	883
20	1	2	Natural resources, definitions.....	637
20	1	7	Powers and duties of Director of Conservation.....	1388
20	1	18-a, 18-b (new)	Cooperation with federal government in wildlife and fish restoration....	641
20	2	5	Unlawful methods of hunting and fishing.....	642
20	2	13	Importation and liberation of wildlife.....	647
20	2	22	Tagging, transporting, reporting of deer, bear or wild turkey.....	648
20	2	33	Agents to issue hunting and fishing licenses; bonds and fees.....	650
20	2	38	Refusal or revocation of license or permit.....	651
20	2	44-b	Class J national forest fishing license.....	653
20	2	54	License for privately-owned commercial shooting preserves.....	654
20	2	56 (new)	Permit to hold field trial, water race or wild hunt.....	656
20	5		Water resources.....	1393
20	5-a (new)		Water pollution control act.....	1406
20	6	1, 2, 3, 4, 5, 6, 7, 8; (new) 9, 10, 11, 12, 13	Surface mining, etc., reclamation of lands.....	657
20	6	3	Defining surface mining, surface mine, disturbed land and operator.....	1380
20	7	4	Powers and duties of conservation officers.....	1433
20	7	8	Seizure and disposition of property used for illegal purposes.....	683
21	1	2	Qualifications, appointment, term of office and salary of commissioner of labor.....	510
21	8 (new)		Commission on Manpower, Technology and Training.....	1374
21-a	1	3, 4	Definitions; department of employment security.....	403
21-a	2	1-22	Commissioner of employment security.....	392
21-a	2-b (new)		Group insurance plans for employees.....	1448
21-a	5	7, 10-a	Joint and separate accounts; modification or suspension of decreased rates.....	414
21-a	6	1-14	Employees eligibility and benefits	418
21-a	9	5-a	Special employment security administration fund.....	427
22	1	20	Mine rescue crews.....	517
22	2	5, 7, 9, 14, 28, 29, 39, 43, 46, 57, 58, 62, 78	Coal mines.....	518
22	2-a		Surface mining.....	657
22	2-a	2; and 5-a, 5-b (new)	Surface mining.....	1381
22	2-a	14 (new)	Leasing of state-owned lands for strip mining.....	632

CODE, AMENDED—(continued):

Ch.	Art.	Sec.	Page
22	4	1, 2, 3, 4, 9, 14; and 1-a, 1-b, 1-c, 1-d, 1-e, 1-f, 1-g, 1-h, 1-i, 1-j, 18 (new)	Oil and gas wells..... 532
23	1	1	Director of workmen's compensation 1117
24	1	2	Appointment, qualification, salaries, etc., of members of public service commission..... 709
24	3	6	Special license fees to be paid by public utilities..... 711
25	1-a	1-b	Registration fees at state institutions of higher education..... 216
28	7	3	Berkeley Springs Sanitarium..... 820
27	1	1	Defining phrase "mentally ill"..... 513
27	1-a	11	Division on alcoholism within depart- ment of mental health..... 514
29	1	2	Acceptance of gifts, etc., by state historian and archivist..... 80
29	1-e (new)		Southern Interstate Nuclear Compact..... 1298
29	3	4, 24	Office of state fire marshal; fund for maintenance of office..... 423
29	14 (new)		Commission on Aging..... 1308
29	15 (new)		Commission on Mental Retardation..... 1314
29-a (new)			State administrative procedures..... 1215
30	19 (new)	1-10	Professional foresters..... 684
30	20 (new)	1-13	Physical therapists..... 689
31	1	79-a	Acquiring security loans on real or personal property not doing busi- ness in state..... 82
31	4-e (new)	1-5	Bank service corporations and bank services..... 84
31	6	21	Taking mortgage or deed of trust by building and loan associations..... 86
31	10	1, 18, 19, 20, 24, 26, 27; and 28-35 (new)	Credit unions..... 88
31	15	4	Definitions--West Virginia industrial development authority..... 99
31	15	7	Industrial development loans..... 102
31	16 (new)	1-14	Forest industries industrial foundation act..... 105
32	1	5, 6, 8, 12, 28; (new) 29	Registration of securities..... 801
33	3	14-a	Additional insurance premium tax..... 479
33	3	14-b (new)	Credits against insurance premium tax for investment in West Virginia securities..... 480
33	7	9	Standard valuation law for life policies..... 481
33	8	15	Investments by insurers in real prop- erty mortgages..... 488
33	15	1	Accident and sickness insurance— scope of article..... 490
33	25 (new)		Health care corporations..... 1363
36	4	9-a	Cancellation of oil or gas leases for nonpayment of delay rental, etc..... 428
36	7	1	Gifts to minors act—definitions..... 431

CODE, AMENDED—(continued):

Ch.	Art.	Sec.	Page
36-a	(new)		Condominiums and unit property..... 712
37	13 (new)	1-7	Removal, transfer, etc., of remains in graves, located upon privately-owned lands..... 727
38	1	1-a (new)	Deeds of trust conveying personal property..... 512
39	1	4-a	Acknowledgment of persons in military service..... 730
39	1	11	Recordation of papers, etc., and filings under uniform commercial code..... 733
40	1	8	Effect of recorded contracts as to creditors and purchasers, and permitting memorandum of lease to be recorded..... 1
40	1	9, 10, 16	Contracts and deeds invalid as to creditors and purchasers until recorded, when recordation in more than one county necessary, and sections not applicable to transfer or assignment of interest created by trust deed or mortgage..... 2
41	3	8	Operation of devise or bequest as exercise of power of appointment... 1116
44	2	2	Publication of notice of time for receiving claims against decedent's estate by commissioner of accounts..... 4
44	4	6	Fiduciaries of small estates may account in three years..... 5
44	5	11 (new)	Designation of testamentary trustee as beneficiary of insurance..... 6
44	15	8	Settlement of accounts of guardian under veterans' guardianship act... 7
46 (new)			Uniform commercial code..... 889
46	9	9-407	Information from filing officer under uniform commercial code..... 1451
47	7-a	1, 12, 13, 14, 15, 16, 17, 18	Small loans..... 811
48	2	15-b, 15-c (new)	Recordation of order for support, maintenance and alimony; and release of lien created therefor..... 153
48	2	23, 25	Hearing, testimony and depositions in divorce actions, and notice by plaintiff of demand for trial..... 154
49	8 (new)	1-7	Interstate compact on juveniles..... 496
50	17	1	Fees of justices in civil cases..... 491
50	17	2, 12	Fees of constables in civil and criminal cases..... 492, 1322
50	17	11	Fees of justices in criminal cases..... 494
51	2	1-d, 1-bb	Terms of circuit court in 4th and 28th circuits..... 129
51	2	1-v	Terms of court in 22nd circuit..... 1318
54	1	3-a (new)	Right of eminent domain; entry by political body to obtain data..... 380
54	2	5, 7, 8, 9, 10, 12, 18; and 4-a, 7-a, 7-b, 9-a, 11-a, 14-a, 16-a (new)	Procedure in the exercise of the right of eminent domain..... 381
59	1	2, 10	Fees to be charged by secretary of state and county clerk..... 734

CODE, AMENDED—(continued):

Ch.	Art.	Sec.	Page
60	3	21	Limitation on sale of alcoholic liquor 16
60	8	6	Limitation on amount of alcoholic liquor that may be transported 16
61	2	15	Crime of rape 130
61	3	32	Penalty for removal of property securing claim from county 131
61	3	39	Giving worthless checks; penalties 132
61	10	15	Pecuniary interest of county and district officers, teachers and school officials in contracts; penalties 134
81	10	25-29 (new)	Unlawful to engage in work, labor or business on Sunday; penalties 136, 1351
61	12	1-15	Post-mortem examinations 142
62	6	2-a	Cash deposits as recognizance without surety 150
CODE, REPEALED:			
3	10	11	Vacancy in appointive office; recess appointment 825
5	2	3	Filing rules of state agencies with secretary of state 1215
5	10	48	Severability of provisions of article 746
9	5	21, 22, 25, 27, 28	Liens on property of aged persons receiving public assistance 702
11	12	80-a	Additional license fee on insurance corporations 840
11	17	4-a	Ultimate liability for payment of excise tax on cigarettes on consumer or user 852
19	12-a		West Virginia state apple commission 12
21-a	1-a		Limitation on unemployment compensation contributions on wages 402
22	2-b		Auger mining 657
22	3		Sand and clay mines, quarries and cement works 657
28	5	3-a	Salary of warden of penitentiary 821
31	1	41-62	Uniform stock transfer act 889
31	4-a		Bank collection code 889
36	1	22	Leasing of state-owned lands for strip mining 532
38	10-a		Liens to secure agricultural loans from federal agencies, etc. 889
38	10-b		Liens on stocks of goods and inventories of cooperative associations 889
38	11	18-21	Crop liens 889
38	14		Factors' liens 889
38	15		Uniform trust receipts act 889
40	1	7, 11, 12	Pretended loan of goods or chattels; recordation of contracts, deeds, trust deeds and mortgages 889
40	2		Sale of merchandise or fixtures in bulk 889
40	3		Conditional sales 889
46			Negotiable instruments 889
47	6		Warehouse receipts 889
47	8	1	Goods of principal liable for debts of agent unless principal disclosed 889
49	1-a	16	Bedding division fund 511
61	8	17, 18	Labor on Sabbath day, etc.; penalty 136, 1351
61	12		Inquests 142

INDEX

1539

COLORS, STATE:	Ch.	Page
Declaring blue and gold official (SCR 20)		1202
COMMISSIONER OF ACCOUNTS:		
Publication of notice of time for receiving claims against decedent's estate	3	4
COMMISSION ON AGING	4	1308
COMMISSION ON HIGHER EDUCATION:		
Meetings	13	1360
Members, appointment, qualifications, etc.	13	1358
Powers and duties	13	1359
Purpose	13	1358
COMMISSION ON MENTAL RETARDATION	5	1314
CONDEMNATION:		
See Eminent Domain.		
CONDOMINIUMS:		
See Real Property.		
CONGRESS:		
Apportionment of representation	158	745
Congressional districts	158	745
CONSTABLES:		
Auditing and payment of claims of	27	118
Fees		
In civil cases	85	493
In criminal cases	85, 9	494, 1322
CONSTITUTIONAL AMENDMENTS:		
Proposing amendment to state constitution authorizing issu- ance of \$200,000,000 of state road bonds (HJR 10)		1196
Submission to voters	22	1439
Ratifying amendment to Constitution of the United States re- lating to qualifications of electors (SJR 1)		1211
CONSUMERS SALES TAX:		
See Sales Tax.		
CONTRACTING:		
Business and occupation tax on business of	24	1445
CONTRACTS:		
Effect of recorded, as to creditors and purchasers	1	1
In consideration of marriage	1	1
Interest of public officials, school officials and teachers in	36	134
Recording of		
Contracts invalid until recorded	2	2
In more than one county, when necessary	2	3
CORONERS:		
Appointment, oath, duties, fees, etc.	38	149
CORPORATIONS:		
Banking institutions		
Bank service corporations and bank services	17	84

CORPORATIONS—(continued):	Ch.	Page
Building and loan associations		
Taking mortgages and deeds of trust	18	86
Credit unions	19	88
Foreign		
Acquiring secured loans on real or personal property not doing business	16	82
Health care corporations		
Organization, operation, licensing, regulation, etc., of	15	1363
West Virginia Forest Industries Industrial Foundation		
Creation, functions, powers, etc.	22	105
West Virginia Industrial Development Authority		
Definitions	20	99
Loans to industrial development agencies	21	102
COUNTY CLERK:		
See Clerks of the County Court.		
COUNTY COURT:		
Auditing and payment of claims of justices and constables	27	118
Cooperation with other governmental units	23	113
Creation of county development authorities	29	120
Crimes		
Expenditures for detection of	25	115
Rewards for arrest of persons charged with	25	115
Duties of commissioners	10	1324
Employment of counsel	26	117
Issuance of revenue bonds for construction or renovation of jail facility	24	114
Salaries of commissioners	10	1324
COUNTY DEVELOPMENT AUTHORITY:		
Creation, purposes, powers, etc.	29	120
COURTS:		
Circuit courts		
Allowance to judges for stationery, postage and stenographic help	31, 6	128, 1317
Salary of judges and additional compensation from counties	30	127
Terms in fourth and twenty-eighth circuits	32	129
Terms in twenty-second circuit	7	1318
Limited jurisdiction		
Common pleas court of Marshall county created	36	1472
Election and term of judge of Marion county criminal court	206	1151
Intermediate court of Mercer county established	38	1479
Jurisdiction and salary of judge of common pleas court of Cabell county	197	1128
Jurisdiction and salary of judge of domestic relations court of Cabell county	198	1131
Salary of judge of criminal court, Harrison county	31	1454
Salary of judge of criminal court, Marion county	35	1471
Salary of judge of domestic relations court, Kanawha county	33	1469
Second judge for court of common pleas, Kanawha county	32	1455
Supplies, court rooms, secretary, etc., for judge of intermediate court of Wood county	216	1177
Terms of criminal court of McDowell county	208	1153
Terms of juvenile court of Kanawha county, maturity of causes, procedure and probation staff	203	1148
Supreme Court of Appeals		
Salary of judges	172, 23	824, 1444

COVENANTS:**Leases**

Cancellation of oil and/or gas leases for nonpayment of delay rental	68	428
--	----	-----

CREDITOR AND DEBTOR:

Effect of deeds of trust as to	2	3
Effect of recorded contracts as to	1	1

CREDIT UNIONS:

Audits	19	97
Conversion of state union to federal credit union	19	95
Definition	19	89
Dissolution	19	93
False reports, penalty for spreading	19	98
Formation	19	89
Heretofore organized		
Acts validated	19	98
Need not obtain new charter	19	98
Inconsistent acts repealed	19	99
Investment of capital, undivided profits and reserve fund	19	91
Loans to members	19	92
Application for	19	92
Illegal to loan to nonmembers	19	92
Merger	19	96
Penalty for violations	19	97
Provisions of act severable	19	99
Purpose	19	89
Records	19	97
Reserve fund	19	93
Share reduction due to losses	19	95
Taxation, exempt from	19	98

CRIMES AND OFFENSES:

Crimes against property		
Checks, giving worthless	35	132
Property mortgaged by trust deed, removal from county	34	131
Crimes against public policy		
Contracts, interest of public officers, teachers, et al, in	36	134
Work, labor or business on Sunday	37, 12	136, 1351
Crimes against the person		
Rape	33	130
Rewards for detection of	25	115

CRIMINAL PROCEDURE:

Cash deposits as recognizance without surety	39	150
--	----	-----

D**DAYLIGHT SAVING TIME:**

Designation of, by governor as official time	40	152
--	----	-----

DEAF AND BLIND:

Compulsory education	56	184
----------------------------	----	-----

DEEDS:

Recordation of		
Effect as to creditors and purchasers	1	1
In more than one county, when necessary	2	3
Nonrecordation	2	3

DEPARTMENT OF COMMERCE:	Ch.	Page
Authority and duty as to recreational facilities	157	742
DEPARTMENT OF FINANCE AND ADMINISTRATION:		
Itemization of tentative budget by commissioner of	14	79
DEPARTMENT OF MOTOR VEHICLES:		
See Motor Vehicles.		
DEPARTMENT OF NATURAL RESOURCES:		
Definitions	129	637
Director		
Additional powers, duties and services.....	20	1389
Game and Fish Divisions		
See Game and Fish.		
Reclamation of lands		
See Reclamation.		
Violations of law		
Authority of arresting officer to impound property found in possession of accused.....	140	683
Property used for illegal purposes		
Seizure and disposition.....	140	683
Water resources		
See Water and Watercourses		
DEPARTMENT OF PUBLIC SAFETY:		
Companies and platoons.....	149	705
Death, disability and retirement fund; fees to be deposited in....	21	1435
Fees to which members entitled in connection		
with criminal cases	21	1435
Salaries and bonds of members.....	149	705
Training of members and other police officers	149	705
DIVORCE:		
Recordation of order for support, maintenance or alimony.....	41	153
Release of lien created for support, maintenance or alimony.....	41	153
Suits for		
Hearing before court.....	42	155
Notice by plaintiff of demand for trial	42	155
DODDRIDGE COUNTY:		
County court authorized to make contributions to Middle Island Creek Development Authority	218	1179
DOMESTIC RELATIONS:		
Divorce		
Recordation of order for support, maintenance or alimony.....	41	153
Release of lien created for support, maintenance or alimony....	41	153
Suits for		
Hearing before court.....	42	155
Notice by plaintiff of demand for trial	42	155
DRUGS:		
See Narcotics.		
E		
EDUCATIONAL BROADCASTING AUTHORITY:		
Establishment, functions, etc.....	62	213

ELECTIONS:

	Ch.	Page
West Virginia Election Code	64	221
Art. 1. General provisions and definitions	64	221
Political party committees	2	1511
Art. 2. Registration of voters	64	252
Art. 3. Voting by absentees	64	270
Art. 4. Voting machines	64	280
Art. 5. Primary elections and nominating procedures	64	305
Election contests and court review	2	1519
Filing announcements of candidacies	14, 2	1360, 1513
Filing fees and their disposition	2	1516
Form and contents of ballots	2	1518
Nomination of candidates	2	1512
Art. 6. Conduct and administration of elections	64	329
Art. 7. Contested elections	64	342
Art. 8. Regulation and control of elections	64	350
Art. 9. Offenses and penalties	64	361
Art. 10. Filling vacancies	64	373
In the state legislature	2	1521

ELECTRONICS:

Study of effect of electronic data processing equipment on employment (HCR 40)	1494
---	------

EMINENT DOMAIN:

Condemnation by state or political subdivision; alternative method	65	387
Costs, by whom paid	65	390
Entry on land by political body to obtain data	65	380
Procedure		
Commissioners		
Hearings	65	384
Supervision of	65	383
Information as to duties, etc.	65	383
Oath	65	383
Powers	65	384
Qualifications	65	382
Report	65	384
Confirmation of	65	386
Demand for jury trial	65	386
Exceptions to	65	385
Separate findings of compensation and damages	65	385
Viewing the property	65	384
Waiver of findings by	65	386
Costs	65	390
Les Pendens notice; effect	65	382
Payment of award or judgment into court	65	390
Disposition of	65	390
Trial by jury	65	385
Vesting of title in applicant	65	387

EMPLOYEES:

See Public Employees Retirement System.

EMPLOYMENT SECURITY:

See Unemployment Compensation.

EXECUTIVE DEPARTMENTS OF STATE GOVERNMENT:

Study of, by special committee for purpose of allocating functions, etc., (HCR 20)	1189
---	------

F

FFA AND FHA CAMP:		Ch.	Page
Study on advisability of authorizing issuance of revenue bonds for improving (SCR 20).....			1503
FIDUCIARIES:			
Designation of testamentary trustee as beneficiary of insurance	5		6
Settlement of accounts of veterans	6		8
Time for accounting in small estates	4		5
FIREMEN'S PENSIONS:			
Creation and maintenance of fund for			
Assessment on members	127		634
Gifts, grants and bequests	127		634
Levies on property	127		634
Return of assessment	127		634
FIRES:			
State fire marshal			
Deputy and other personnel	70		433
Fund for maintenance of office	70		433
Payment by insurance companies	70		433
Salary	70		433
FISH:			
See Game and Fish.			
FORESTERS:			
Board of registration			
Appointment and terms of members	141		636
Attorney general legal advisor	141		638
Qualifications of members	141		686
Removal of members	141		687
Vacancies	141		687
Definitions	141		685
Enforcement of article			
Duty of officers	141		688
Licenses			
Expiration and renewal	141		688
Fee	141		688
Registration			
Determination of qualifications	141		688
Firms, partnerships, etc., not to be registered	141		688
Reciprocity	141		688
Requirements for	141		687
Title			
Use of restricted	141		685
Violations of law			
Penalties	141		688
FORESTS:			
Forest Industries Industrial Foundation Act	22		105
G			
GAME AND FISH:			
Animals			
Bear, inspection and tagging by conservation officer	133		649
Deer, inspection and tagging by conservation officer	133		649
Importation and liberation of wildlife	132		647
Permit for	132		647

INDEX

1545

GAME AND FISH—(continued):	Ch.	Page
Birds and fowls		
Importation and liberation of wildlife	132	647
Wild turkey, inspection and tagging by conservation officer.....	133	648
Commercial shooting preserves, license required	137	654
Field trial, water race or wild hunt, permit for.....	138	656
Fishing, unlawful methods.....	121	643
Fish restoration and management		
Cooperation with federal government in	130	642
Hunting, unlawful methods	120	643
Licenses and permits		
Class J, national forest fishing license	136	653
Field trial, water race or wild hunt, permit to hold	138	656
Issuance		
Agents appointed by the director	134	650
Bond and fees	134	650
Refusal to issue	135	650
Revocation	135	652
Shooting preserves.....	137	654
Wildlife restoration and management		
Cooperation with federal government in	130	641
GARBAGE:		
Requirements for feeding to swine	8	10
GASSAWAY:		
Transfer of land to the United States of America by town of	30	1453
GIFTS TO MINORS ACT:		
Definitions	69	430
GOVERNOR:		
Designation of Daylight Saving Time as official time by	40	152
Filling vacancies in appointive offices by.....	173	825
GRAVES:		
Removal, transfer and disposition of remains in, located upon privately-owned property	154	727
GREENBRIER COUNTY:		
Special fund for repair, improvement, etc., of courthouse, and for construction and maintenance of a health center	201	1146
GUARDIAN:		
Veteran's guardianship, settlement of accounts	6	8
H		
HANCOCK COUNTY:		
Salary of circuit clerk.....	11	1350
HARRISON COUNTY:		
Salary of circuit and county clerks	11	1350
Salary of judge of criminal court of	31	1454
HEALTH:		
Air pollution. See Air Pollution.		
Autopsies on bodies of deceased persons in the interest of medical science	72	436

HEALTH—(Continued)	Ch.	Page
Hospitals and similar institutions		
Injunction against operation without license.....	73	439
License required.....	73	438
Fees.....	73	439
Narcotic drugs		
Obtaining by fraud, etc., penalty.....	74	441
Violation of act, penalties.....	74	441
Offenses generally against		
Depositing dead animals in waters, etc.....	20	1386
Depositing putrid substances in waters.....	20	1386
Public service districts for water and sewerage systems.....	75	442
State department of		
Direction and supervision of dental services in state institutions and mental hospitals.....	71	434
Medical supervision of state health institutions.....	71	434
West Virginia Water Development Commission. See Water Works Systems.		
HEALTH CARE CORPORATIONS:		
Organization, operation, licensing, regulation, etc.....	15	1363
HISTORY:		
February designated American history month (HCR 27).....		1493
HORSE RACING:		
Commission		
Compensation of members.....	192	883
Employees, qualifications.....	192	883
Qualifications.....	192	883
Secretary, appointment and qualifications.....	192	883
Fund for payment of outstanding pari-mutuel tickets		
Awards to resident owners, etc., of winning horses.....	192	887
Disposition generally.....	192	887
Licenses		
Commission on pari-mutuel pools.....	192	888
Financial responsibility of.....	192	885
Licenses, contents of.....	192	885
Pari-mutuel system		
Auditor, appointment, powers and duties.....	192	888
Commission of licensee on.....	192	888
Tickets, limitation on claiming.....	192	887
Publication of notice.....	192	887
Wagering, minors prohibited.....	192	888
Pool contribution, tax on.....	192	885
Race tracks, per diem tax on.....	192	885
Steward, appointment, qualifications and compensation.....	192	883
Taxes, how paid.....	192	883
HOSPITALS AND SIMILAR INSTITUTIONS:		
Affected hospitals and institutions.....	73	438
Injunction against operating without license.....	73	439
Legislative study regarding medical and hospital services for persons receiving assistance from the state (SCR 48).....		1208
License required.....	73	439
Fees.....	73	439
HOUSE OF DELEGATES:		
Apportionment of membership of.....	158, 1	745, 1509
Filing announcement of candidacies for, in year 1964.....	14	1360
Filling vacancies in.....	2	1521
Rules		
Amending House Rule 92 relating to introduction of bills (HR 26).....		1197

HUNTING:

Ch.

Page

See Game and Fish.

I**INCOME TAX:**

See Taxation.

INDUSTRIAL DEVELOPMENT:

West Virginia Industrial Development Authority

Definition of terms 20 99

Loans to industrial development agencies 21 102

Wood products industry

Promotion and expansion of 22 105

INDUSTRIAL DEVELOPMENT BOND ACT:

Article

Construction 78 478

Provisions severable 78 479

Bonds

Exempt from taxation 78 478

Lease of plant prior to issuance 78 475

Legal investments 78 478

Notice, consent or publication not required for issuance 78 478

Redemption 78 475

Security for 78 472

To finance industrial plant 78 470

Use of proceeds from sale of 78 476

Counties, powers conferred 78 469

Contribution of funds prohibited 78 477

Definitions 78 469

Legislative finding 78 468

Municipalities, powers conferred 78 469

Contribution of funds prohibited 78 477

Plant

Bonds to finance 78 470

Joint establishment by two or more governmental bodies 78 470

Lease required prior to issuance of bonds 78 475

Location 78 470

Public officials

Exempt from personal liability 78 479

Financial interest in plant prohibited 78 479

Short title 78 468

INHERITANCE AND TRANSFER TAXES:

See Taxation.

INSURANCE:

Accident and sickness

Scope of article 83 490

Insurers

Investments in real property mortgages 82 488

License tax

Additional, repealed 180 840

Life policies

Standard valuation law for 81 481

Premium tax

Additional 79 479

Credit for investment in West Virginia securities 80 480

INTERSTATE COMPACTS:		Ch.	Page
Employment of nuclear energy, etc.	3	1298	
Juveniles	87	496	

J**JACKSON COUNTY:**

Expenditure of public funds for development and improvement of recreational facilities	202	1147
--	-----	------

JAILS:

Prisoners		
Deductions from sentence for good conduct and donation of blood	28	119
Revenue bonds for construction and renovation of county	24	114

JUDGES:

Circuit courts		
Allowance for stationery, postage and stenographic help	31, 6	128, 1317
Salary and additional compensation from counties	30	127
Terms in fourth and twenty-eighth circuits	32	129
Terms in twenty-second circuit	7	1318
Supreme Court of Appeals		
Salary of judges	172	824
See Courts.		

JUDICIAL CIRCUITS:

Legislative study of arrangement of, salaries of judges, etc. (SCR 15)		1200
Terms of court		
Fourth circuit	32	129
Twenty-second circuit	7	1318
Twenty-eighth circuit	32	129

JUNK YARD:

See Salvage Yards.

JUSTICES OF THE PEACE:

Auditing and payment of claims of	27	118
Fees		
In civil cases	84	491
In criminal cases	86	494
Jurisdiction in criminal cases involving store license law	183	844

JUVENILES:

Interstate compact on	87	496
-----------------------	----	-----

K**KANAWHA COUNTY:**

Providing a second judge for court of common pleas	32	1455
Salary of judge of domestic relations court	33	1469
Terms of juvenile court, maturity of causes, procedure and probation staff	208	1148

L**LABOR:**

Bedding and upholstery business		
Repeal of statute establishing bedding division fund	89	511
Commissioner		
Appointment and term	88	511
Salary	88	511

LEASES:	Ch.	Page
Cancellation of oil and/or gas leases for nonpayment of delay rental	68	428
Recording of		
Effect as to creditors and purchasers	1	1
In more than one county, when necessary	2	3
Memorandum of	1	1
LEGAL PUBLICATIONS:		
Legislative study of statutes requiring (SCR 36)		1205
LEGISLATIVE COUNCIL:		
Study on establishment of (SCR 10)		1498
LEGISLATURE:		
Filing announcement of candidacies for member of,		
in year 1964	14	1360
Filling vacancies in	2	1521
House of Delegates		
Apportionment of membership	158, 1	745, 1509
Senate		
Division of state into senatorial districts	158, 1	741, 1507
LEVIES:		
See Taxation.		
LICENSE AND LICENSE TAXES:		
Coin-operated merchandise, service and amusement devices, and vending machines	179	835
Store licenses		
Jurisdiction of justice of the peace of violations of licensing law	183	844
Penalty for violation of license law	183	844
LIENS:		
Deeds of trust conveying personal property	90	512
Limitations on application of article	90	512
Public assistance		
Release of, on property of aged persons	147	702
LINCOLN COUNTY:		
Salary of investigator of crime	25	115
LOANS:		
See Small Loans.		
LOGAN COUNTY:		
Transfer of funds from the dog tax fund to the general county fund	204	1149
Transfer of land to the United States of America	34	1470
M		
MANPOWER, TECHNOLOGY AND TRAINING:		
Commission created	16	1374
MARION COUNTY:		
Authorizing county court to pay claim of Ruth Wilderman	205	1150
County court authorized to lease or rent county-owned real property	207	1152
Election and term of judge of criminal court	206	1151
Salary of judge of criminal court	35	1471

MARSHALL COUNTY:	Ch.	Page
Common pleas court created.....	36	1472
Salary of investigator of crime.....	25	115
MARSHALL UNIVERSITY:		
See Schools.		
MASON COUNTY:		
County court authorized to expend funds for medical care and nursing of indigent.....	37	1479
Salary of investigator of crime.....	25	115
MCDOWELL COUNTY:		
Terms of criminal court of.....	208	1153
MEAT:		
Inspection		
Definitions	7	9
MEDICAL AND HOSPITAL SERVICES:		
Legislative study regarding feasibility of state providing med- ical and hospital services for persons receiving assistance from the state (SCR 48).....		1208
MEDICAL EXAMINERS:		
See Post-Mortem Examinations.		
MENTALLY ILL PERSONS:		
Defining the phrase "mentally ill".....	91	513
Department of mental health		
Division on alcoholism.....	92	514
Powers and duties.....	92	514
MENTAL RETARDATION:		
State commission on, created.....	5	1314
MERCER COUNTY:		
Intermediate court established.....	38	1479
MIDDLE ISLAND CREEK DEVELOPMENT AUTHORITY:		
Created	218	1179
MINGO COUNTY:		
Salaries of circuit and county clerks.....	11	1350
MILITARY SERVICE:		
Acknowledgments of persons in.....	155	730
MINES AND MINERALS:		
Coal mines		
Blowtorches	93	528
Electricity, general provisions governing use of.....	93	524
Blowtorches	93	528
Cutting	93	528
Welding	93	528
Examination of gassy and nongassy.....	93	521
Explosives, authorized	93	524
Storage or use of unauthorized.....	93	524
Fines	93	531
Fuel, control of.....	93	528
Gassy mines		
Electrical equipment	93	526
Examination	93	521
Intoxicants or intoxicated persons not permitted in mines.....	93	529

MINES AND MINERALS—(continued):	Ch.	Page
Coal mines—(Continued):		
Man doors, installation.....	93	521
Mine foreman.....		
Drainage of water.....	93	521
Duties.....	93	521
Inspection of working places.....	93	522
Loose coal, slate or rocks, duties.....	93	521
Props.....	93	521
Ventilation.....	93	521
Oil and gas. <i>See</i> Oil and Gas.		
Opening or reopening of mine.....		
Approval of director of department of mines required.....	93	531
Fee.....	93	531
Rescue crews.....	93	517
Roof support.....	93	523
Safety provisions and requirements.....		
Fire protection.....	93	529
Intoxicants, search for.....	93	529
Matches, search for.....	93	529
Ventilation.....		
Gassy mines.....	93	518
Generally.....	93	518
Welding and cutting.....	93	528
Surface mining		
Apportionment of responsibility for land.....	139	672
Bonds, performance.....	139	677
On existing permits.....	139	679
Declaration of legislative purpose.....	139	672
Definitions.....	139, 17	672, 1380, 1381
Inspectors		
Appointment and qualifications.....	139	680
Permanent appointment, eligibility.....	139	681
Compensation and expenses.....	139	680
Duties.....	139	681
Interest in mining operation prohibited.....	139	681
Leasing of lands owned by the state for strip mining coal thereon.....	94	532
Maps, plans and locations.....	139	680
Mining laws and regulations applicable to.....	139	679
Mining without permit; penalty.....	139	682
Offenses.....	139	682
Penalties and prosecutions.....	139	682
Operator of surface mine.....		
Reports by.....	139	682
Permits		
Fees and use of proceeds.....	139	673
Inactive.....	139	677
Required.....	139	673
Reclamation		
Fees, special.....	139	676
<i>See</i> Reclamation.		
Rules and regulations.....	139	679
Supervision by mine inspectors.....	139	679
Supervisor of		
Appointment and qualifications.....	139	680
Permanent appointment, eligibility.....	139	681
Compensation and expenses.....	139	680
Duties.....	139	681
Interest in mining operation prohibited.....	139	681

MINORS:	Ch.	Page
Gifts to minors act, definitions	69	430
MORTGAGES:		
Recording of		
Effect as to creditors and purchasers	1	1
In more than one county, when necessary	2	3
Transfers or assignments of interests	2	3
MOTOR CARRIER ROAD TAX:		
Credit for payment of gasoline tax	184	845
Enforcement	184	847
Assistance of department of public safety	184	847
Refunds	184	845
Hearing upon commissioner's refusal to make	184	845
Appeals	184	845
MOTOR VEHICLES:		
Abandoned		
Transfer of	103	582
Antitheft laws		
Unlawfully obtaining or retaining possession	105	586
Certificate of title		
Application for and tax	100	575
Definitions	96	566
Special mobile equipment	97	572
Department of motor vehicles		
Records	98	573
Registration plates furnished by	101	577
Seizure of documents and plates	99	574
Documents, seizure	99	574
Equipment		
Safety seat belts required on passenger automobiles	18	1383
Nonresident owners exempt from registration of	104	583
Operators' and chauffeurs' licenses		
Cancellation, suspension or revocation	112	600
Definitions of words and phrases	109	594
Exemptions from license	110, 111	596, 598
Violation of license provisions		
Driving while license suspended or revoked	113	601
Pedestrians		
Rights of persons working on streets or highways	114	615
Plates, seizure	99	574
Registration		
Classification of vehicles for purpose of	106	588
Fees		
Equipped with pneumatic tire	107	590
Public service commission assessment must be paid by carrier	108	593
Nonresident owners exempt	104	583
Plates		
Display of	96	571
Furnished by department	101	577
Special	101	577
State, county and municipal vehicles	102	580
Rented or leased		
Unlawfully retaining possession of; penalty	105	586
Unlawful retention of; penalty	105	586

MOTOR VEHICLES—(continued):	Ch.	Page
Safety responsibility law		
Definitions of words and phrases.....	117	620
Security following accident		
Authority of commissioner to decrease or increase.....	118	622
Seat belts required on passenger automobiles.....	18	1383
School bus		
Overtaking and passing.....	116	619
Special lighting equipment.....	116	619
Seizure of documents.....	99	574
Slogan on private automobile registration plates (HCR 6).....		1491
Special mobile equipment defined.....	97	572
Speed restrictions		
Establishment of state speed zones.....	114	614
Special.....	114	613
Stopping, standing or parking		
On controlled-access highway.....	114	616
Removal, etc., and liability of owner.....	114	616
Prohibited in specified places.....	114	615
Traffic regulations and laws of the road		
Definitions of words and phrases.....	114	603
Following too closely.....	116	617
Obedience to traffic-control instructions at street or highway construction.....	114	612
Powers of local authorities.....	114	611
School bus		
Overtaking and passing.....	116	619
Special lighting equipment.....	116	619
Signs, signals and markings		
Display of unauthorized devices, signals, signs or markings.....	114	613
MUNICIPALITIES:		
Boundaries, change of.....	120	624
Firemen's pension		
Creation and maintenance of funds for.....	127	634
Home rule cities		
Ordinance procedure.....	121	627
Intoxicating liquors		
Tax on purchases of.....	122	628
Jails		
Authority to issue revenue bonds for construction, etc.....	123	629
League of municipalities		
Authority to become member.....	119	623
Ordinances		
Adoption of.....	121, 19	627, 1384
Notice and procedure.....	121, 19	627, 1384
Planning and zoning		
Comprehensive plan		
Amendment after adoption.....	124	630
Changes of zoning regulations considered as amendments.....	124	631
Police		
Civil service		
Definitions.....	125	631
Inconsistent acts repealed.....	126	632
Legislative intent.....	126	632
Policemen's pensions		
Creation and maintenance of fund for.....	127	634

MUNICIPALITIES—(continued):	Ch.	Page
Treasury		
Payment of money from.....	128	636
Signing of orders by mechanical or electrical devices.....	128	636
Forgery, penalty.....	128	636
N		
NARCOTICS:		
Obtaining by fraud, etc., penalty.....	74	441
Penalties for violation of uniform narcotic drug act.....	74	441
NATURAL RESOURCES:		
Review of contracts of department of (SCR 18).....		1500
See Department of Natural Resources.		
NATURAL RESOURCES LAW:		
Water resources		
See Water and Watercourses.		
NEGOTIABLE INSTRUMENTS:		
Checks		
Giving worthless; penalty.....	35	132
O		
OFFICERS:		
Salaries of state elective.....	172, 23	824, 1444
Vacancies in appointive offices		
Filling by governor.....	173	825
OHIO COUNTY:		
Board of education authorized to refund certain taxes.....	209	1153
OIL AND GAS:		
Cancellation of leases for nonpayment of delay rental.....	68	428
Department of mines		
Deputy director for oil and gas.....	95	537
Appointment, powers and duties.....	95	537
Qualifications.....	95	538
Salary, expenses, oath and bond.....	95	538
Findings and orders.....	95	548
Judicial review of final.....	95	551
Posting of.....	95	550
Requirements for.....	95	550
Review of.....	95	549
Oil and gas inspectors.....	95	539
Appointment, expenses, removal, salary and qualifications.....	95	541
Examining board.....	95	544
Findings and orders.....	95	548
Review of.....	95	549
Inspection by.....	95	547
Tenure, oath and bond.....	95	539
Records open to public.....	95	537
Violation of law		
Injunctive relief.....	95	566

OIL AND GAS—(continued):	Ch.	Page
Wells		
Abandonment and plugging	95	563
Affidavit of time and manner	95	563
Notice of intention	95	563
Performance bond	95	563
Definition of words and terms	95	536
Drilling of, through coal seams, etc.	95	558
Appeal from action of department	95	560
Objection to, and procedure for	95	558
Fracturing	95	557
Notice of intention to coal operators and department	95	557
Permit required	95	557
Gas wells, preventing waste of gas	95	565
Performance bond required	95	562
Permit required	95	552
Plat showing location prerequisite to drilling	95	552
Contents, filing and notice	95	552

P

PARKING:

Regulation of, around state capitol	143	697
-------------------------------------	-----	-----

PENITENTIARY:

Establishment of book repair industry (HCR 10)		1187
Repeal of section fixing salary of warden	170	821

PERSONAL REPRESENTATIVES:

See Administration of Estates and Trusts.

PHYSICALLY HANDICAPPED:

Providing accessibility to public buildings for (HCR 30)		1493
--	--	------

PHYSICAL THERAPISTS:

Board of physical therapists		
Appointment, term, qualification and compensation of members	142	691
Created	142	691
Duties generally	142	691
Register of licensees	142	691
Definitions	142	690
False oath; penalty	142	696
Funds		
Collections and expenditures	142	696
Disposition of	142	696
Licensing		
Application and fee	142	692
Examination of applicants for	142	693
Fraudulent representation; penalty	142	696
Practice without license; penalty	142	695
Qualification of applicants	142	692
Refusal of license	142	694
Required	142	690
Revocation and suspension of license	142	694
Registration		
Certificate of	142	693
Inactive list	142	694
Reciprocal; fee	142	694
Renewal; fee	142	694

PHYSICAL THERAPISTS—(continued):	Ch.	Page
Registration—(Continued)		
Temporary permit; fee	142	693
Without examination; fee	142	693
Unauthorized practice of	142	696
PLANNING AND ZONING:		
Comprehensive plan		
Amendment after adoption	124	630
Changes of zoning regulations considered as amendments	124	631
PLEASANTS COUNTY:		
County court authorized to make contributions to Middle Island Creek Development Authority	218	1179
POLICE:		
Civil service		
Definitions	125	631
Inconsistent acts repealed	126	632
Legislative intent	126	632
Pensions		
Creation and maintenance of fund for	127	634
POLITICAL SUBDIVISIONS:		
Relocation of meeting places of governing bodies of, in event of enemy attack or threat thereof	144	699
Statutory and charter law superceded	144	700
Temporary location of government		
Conduct of public business and exercise of governmental functions at	144	700
Validity of acts	144	700
POLLUTION:		
See Water and Watercourses.		
POOR:		
County public assistance council		
Assistants and employees	146	701
Offices and equipment	145	700
General relief		
Emergencies, admission of indigents to hospitals in case of	148	704
Public assistance for the aged		
Agreement to reimburse (repealed)	147	703
Certificate of amount of assistance	147	703
Liens against assets and real estate (repealed)	147	703
Exemptions (repealed)	147	704
Persons eligible for	147	703
Reimbursement of federal government (repealed)	147	704
Release of liens against real and personal property	147	703
POST-MORTEM EXAMINATIONS:		
Autopsies	38	142
Chief medical examiner	38	142
Commission on	38	142
Medical examiners	38	142
PRESTON COUNTY:		
Special building and improvement fund	210	1154

PRISONERS:	Ch.	Page
Deductions from sentence		
Donation of blood	28	119
Good conduct	28	119
PRIVILEGE TAX ON CERTAIN CARRIERS:		
Appeals from assessment of	181	841
Lien of tax	181	842
PROFESSIONS AND OCCUPATIONS:		
Physical therapists. <i>See</i> Physical Therapists.		
Professional foresters. <i>See</i> Foresters.		
PROSECUTING ATTORNEY:		
Assistants, stenographers and clerks		
Appointment and compensation	10	1338
Rewards for detection of crime	25	115
Salaries of	10	1335
PUBLIC ASSISTANCE:		
<i>See</i> Poor.		
PUBLIC BUILDINGS:		
Providing for accessibility to, by physically handicapped (HCR 30)		1493
PUBLIC EMPLOYEES RETIREMENT SYSTEM:		
Annuity		
Nonduty death annuity	159	754
Retirement annuity	159	753
Attaining age of sixty		
Voluntary retirement	159	751
Contributions		
By other participating public employees	159	758
Refund of accumulated contributions	159	756
Deferred retirement	159	752
Definitions	159	747
Disability retirement	159	753
Funds		
Employees accumulation	159	757
Membership		
Composition generally	159	750
Removal of member from office terminates	159	759
Nonduty death annuities	159	754
Payment		
Disability retirement	159	753
Nonduty death annuities	159	754
Retirement annuity	159	753
Removal of member from office terminates membership in system	159	759
Retirement		
Deferred	159	752
Reemployment after	159	759
Voluntary	159	751
Service credit	159	750
Validity of article	159	759

PUBLIC LANDS CORPORATION:	Ch.	Page
Review of contracts by joint committee on government and finance (SCR 18)		1500
PUBLIC SAFETY:		
See Civil Defense.		
See Department of Public Safety.		
PUBLIC SERVICE COMMISSION:		
Commissioners		
Appointment and term of office	151	710
Qualifications and disqualifications	151	710
Salaries	151	710
Licenses		
Special fees to be paid by public utilities	151	711
PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SYSTEMS:		
Removal of members of public service district boards	75	443
Sale, lease or rental of water system by district	75	443
PUBLIC UTILITIES:		
Relocation of lines to accommodate federal-aid highway projects	161	778
Special license fee for public service commission fund	151	711
R		
RAILROADS:		
Crossings		
Elimination of railway-highway crossings at grade	160	773
RALEIGH COUNTY:		
Airport authority authorized	212	1166
Lake Stephens tourist development authority	211	1156
RAPE:		
By female persons over sixteen of male under sixteen	33	130
Punishment	33	130
By male persons under sixteen and over sixteen	33	130
Penalties	33	130
Carnal knowledge of female under age of ten	33	130
Penalty	33	130
REAL PROPERTY:		
Condominiums and unit property		
Administrative provisions	153	717
Assessment, taxation and liens	153	724
Declaration, reservations of charges thereunder, conveyances, mortgages and leases	153	720
Definitions	153	713
General provisions	153	716
How act cited	153	713
Insurance, repair or reconstruction	153	726
Provisions of act severable	153	727
Recording	153	723
Removal of property from provisions of act	153	724

REAL PROPERTY—(Continued):	Ch.	Page
Graves		
Removal, transfer and disposition of remains in, located upon privately-owned property.....	154	727
Transfer of		
Effect of recordation as to creditors and purchasers.....	1	1
Nonrecordation	2	3
RECLAMATION:		
Board of review.....	139	666
Appeals to court.....	139	670
Appeals to, from director.....	139	668
Division of reclamation		
Created	139	658
Duties and functions.....	139	658
Excepting borrow or fill material for highway projects from requirements	17	1383
Excepting quarry from certain requirements.....	17	1382
Surface mining		
Apportionment of responsibility for land.....	139	659
Bonds		
Forfeiture	139	663
Performance	139	663
Release of	139	665
Validity of existing	139	664
Declaration of legislative policy.....	139	659
Definitions	139, 17	660, 1380, 1381
Duties of operators of	139	660
Orders to be in writing.....	139	666
Permits		
Validity of existing	139	664
Reclamation fund		
Created	139	665
Expenditure of	139	665
Funds from forfeited performance bonds paid into.....	139	663
Purposes and uses.....	139	665
Rules and regulations	139	666
State land reclamation specialist.....	139	659
Selection, duties and compensation.....	139	659
RECOGNIZANCE:		
Cash deposits as, without surety	39	150
RECORDS AND PAPERS:		
Acknowledgments of persons in military service.....	155	730
Filings under Uniform Commercial Code	156	733
Recordation		
With county clerk.....	156	733
Fees	156	736
With secretary of state.....	156	734
Fees	156	734
RECREATIONAL FACILITIES:		
Authority and duties of department of commerce as to planning, etc., of.....	157	742
RELIEF:		
Public assistance and relief. See Poor.		

RETIREMENT SYSTEMS:	Ch.	Page
Legislative study of state systems (SCR 41)		1207
See Public Employees Retirement System.		
REWARDS:		
Arrest of person charged with crime	25	115
Destruction of noxious animals and birds	25	115
BITCHIE COUNTY:		
County court authorized to expend funds for agricultural and Four-H participation in county fair	213	1175
ROADS AND HIGHWAYS:		
Access from commercial, etc., property and subdivisions to	162	779
Bonds		
Issuance and sale of, for construction and maintenance of	165	792
Resolution proposing constitutional amendment authorizing \$200,000,000 issue of road bonds (HJR 10)		1196
Submitted to voters	22	1439
Definition of road, public road and highway	160	761
Historic markers. See West Virginia Historic Commission.		
Offenses under law		
Placing putrid substances on or near	20	1387
Railroads		
Elimination of railway-highway crossing at grade	160	773
State road commissioner		
Deeds and contracts made by	160	777
Emergency road services	160	764
Legal services	160	763
Payment of travel expenses of prospective employees and moving expenses of new employees	160	762
Payment to persons dislocated by highway construction	160	770
Property		
Acquisition for state road purposes	160	766
Acquisition of, not needed for road purposes	160	768
Advancements of compensation for property immediately needed	160	772
Sale, exchange or lease	160	768
Purchase of materials, supplies and equipment	160	764
Other laws not controlling	160	765
Scholarships for training highway personnel	160	762
Witnesses		
Employment of expert, in eminent domain proceedings	160	764
State road fund		
Disbursements, method of making	160	772
Payments for property immediately needed	160	772
State road system		
Access from commercial, etc., property and subdivisions to highways	162	779
Bridges as connecting part of	160	777
Rules and regulations governing	160	777
Taking over not to affect contract or franchise	160	777
Relocation of public utility lines to accommodate federal-aid highway projects	161	778
Streets as connecting part of	160	777
Rules and regulations governing	160	777
Taking over not to affect contract or franchise	160	777

RULES AND REGULATIONS OF STATE AGENCIES:

	Ch.	Page
Compilation, indexing and filing required	166, 1	799, 1217
Declaratory rulings and declaratory judgments	1	1221
Definitions and application of chapter	1	1215
Contested cases involving	1	1222
Appeals	1	1229
Filed in office of secretary of state	166.1	799, 1217
General provisions	1	1230
Public records	1	1217
Rule making	1	1218

S

SALARIES:

Continuing commission studying salaries of state officials and employees (SCR 9)		1497
Legislative study of salaries of state officials and employees (HCR 37)		1194
State elective officers	23	1444

SALES TAX:

Additional tax	185, 25	847, 1446
Expiration	185, 25	847, 1446
Exemptions	186	849

SALVAGE:

Act creating capitol salvage committee repealed and funds transferred	217	1178
---	-----	------

SALVAGE YARDS:

Definitions	160	788
Enforcement, date of	160	790
Existing	160	789
Fences, requirements as to	160	790
License		
Fee	160	789
Issuance	160	789
Required	160	789
Restriction as to location	160	789
Term	160	789
Penalties	160	790
References to other statutes	160	790

SCHOOLS:

Busses		
Overtaking and passing	116	619
Special lighting equipment	118	619
Certification of teachers	52	173
Classification and standardization	44	157
Commission on higher education	13	1357
Compulsory school attendance		
Duties of attendance directors	55	182
Education of deaf and blind	56	184
Deaf and blind, compulsory education	56	184
Degrees and diplomas, standards for	44	157
District boards of education		
Consolidation of schools	47	162
Establishment of summer school programs	48	164

SCHOOLS—(continued):	Ch.	Page
District boards of education—(Continued):		
General control of schools.....	47	162
Selection of textbooks.....	45	159
Transportation of pupils.....	47	162
Educational broadcasting authority.....	62	213
Enumeration of children of school age.....	51	172
Higher education		
Commission on, created.....	13	1357
Registration fees at institutions of.....	63	216
Disposition and use of.....	63	217
Legislative study of elementary school program (SCR 29).....		1203
Marshall University		
Parking facilities.....	60	203
Revenue bonds for capital improvements.....	61	207
Public school entrance age.....	43	156
Retirement system for teachers.....	53	174
Additional benefits for certain annuitants.....	54	181
Allowance upon retirement.....	53	178
Benefits, withdrawal and death.....	53	178
Computation of teacher's service.....	53	176
Contributions by members.....	53	175
State board of education		
Requested to prepare plan for system of community post-high school facilities (HCR 22).....		1191
State superintendent of schools		
Appointment, qualifications, traveling expenses and residence.....	46	161
Textbook adoption		
Execution of contracts; bond.....	45	159
Selection by county boards.....	45	159
West Virginia University		
Acquisition, financing and regulation of parking facilities.....	60	204
Cooperative extension service.....	59	198
SECRETARY OF STATE:		
Fees to be charged by, for filing, recording, copies, etc., of records and papers.....	156	734
Filings under Uniform Commercial Code		
Fee.....	156	734
Issuance of certificates of filings and fee therefor.....	28	1451
Rules of state agencies		
Filing.....	166, 1	799, 1215
SECURITIES:		
Speculative. <i>See</i> Speculative Securities and Fraudulent Sales.		
SENATE, STATE:		
<i>See</i> Legislature.		
SENATORIAL DISTRICTS:		
Division of state into.....	158, 1	743, 1507
Party executive committees.....	2	1511
SHERIFF:		
Deduction from sentence of prisoner for good conduct and donation of blood.....	28	119
Salaries of.....	10	1331
Statement of fines and costs received from justices.....	27	118
Payment into state treasury.....	27	118

SMALL LOANS:	Ch.	Page
Advertising by licensee.....	168	812
Assignment of wages		
When assignment of wages or lien on household furniture		
not valid.....	168	819
Business, where conducted.....	168	812
Confession of judgment.....	168	812
Interest.....	168	814
Interest on loans of less than eight hundred dollars.....	168	819
Interest when in excess of eight hundred dollars.....	168	818
Licenses		
Duties of licensee to borrower.....	168	817
Renegotiation of original loan with bankrupt.....	168	813
When license necessary to make loans at greater rate than		
six per cent.....	168	812
Liens		
Liens on realty as security.....	168	812
Life insurance as security for loan.....	168	818
Notes, what notes, etc., to contain.....	168	812
SOIL CONSERVATION DISTRICTS:		
State committee.....	10	13
SONGS:		
Adopting official state (HCR 19).....		1188
SOUTHERN INTERSTATE NUCLEAR COMPACT.....	3	1296
SPECULATIVE SECURITIES AND FRAUDULENT SALES:		
Dealers, registration of.....	167	806
How chapter cited.....	167	811
Registration of securities		
Manner of.....	167	802
Record of.....	167	801
Required.....	167	801
Sales		
Regulation of sales price and commissions.....	167	807
Sales in over-the-counter transactions.....	167	811
Salesmen, registration of.....	167	806
STATE ADMINISTRATIVE PROCEDURES:		
See Rules and Regulations of State Agencies.		
STATE AID FOR SCHOOLS:		
See Schools.		
STATE CAPITOL:		
Regulation of parking around.....	143	696
STATE COLORS:		
Declaring blue and gold official (SCR 20).....		1202
STATE INSTITUTIONS:		
Benevolent		
Berkeley Springs sanitarium		
Institutional fees.....	169	620
Special sanitarium fund.....	169	620
Correctional and penal		
Repeal of section fixing salary of warden of penitentiary.....	170	631

STATE OFFICE BUILDING COMMISSION:	Ch.	Page
Acceptance of grants and gifts.....	171	821
Issuance of state office revenue bonds.....	171	821
Review, examination and study of plans, specifications and location of projects (SCR 19).....		1501
STATE SUPERINTENDENT OF SCHOOLS:		
Appointment, qualifications, traveling expenses and residence	46	161
STATE TEACHERS' RETIREMENT SYSTEM:		
Additional benefits for certain annuitants.....	54	181
Allowance upon retirement.....	53	178
Benefits, withdrawal and death.....	53	178
Computation of teacher's service.....	53	176
Contributions by members.....	53	175
STREAM POLLUTION:		
Special committee created to study water pollution and control (SCR 49).....		1210
SUMMERS COUNTY:		
County court authorized to use surplus funds for repair, construction, etc., of county buildings.....	214	1175
SUNDAY:		
Work, labor or business on, an offense.....	37, 12	136, 1351
Exceptions.....	37, 12	136, 1351
Local option election on.....	37, 12	136, 1351
Penalty.....	37, 12	136, 1351
SUPREME COURT OF APPEALS:		
Salary of judges.....	172, 23	824, 1444
SURFACE MINING:		
See Mines and Minerals.		
SWINE:		
Feeding garbage to.....	8	10
T		
TAXATION:		
Appraisal and assessment of property.....	58	190
Business and occupation tax		
Appeal procedure on assessment of.....	182	843
Tax rate on business of contracting.....	24	1445
Consumers sales tax		
Additional tax.....	185, 25	847, 1446
Expiration.....	185, 25	847, 1446
Exemptions.....	186	849
Excise tax on sale of cigarettes		
Additional tax for support of schools.....	189	868
Administration and enforcement		
Amounts allowed for.....	188	865
Collection of tax.....	188	863
Warrant.....	188	863
Common carriers to comply with law.....	188	856

TAXATION—(continued):	Ch.	Page
Excise tax on sale of cigarettes—(continued)		
Dealer		
Records	188	856
Definitions	188	853
Failure to produce invoices	188	861
Forfeiture	188	863
Inspections, preventing	188	861
Justices of the peace, jurisdiction	188	863
Levy to collect tax	188	857
Liability for tax, ultimate	188	855
License		
Expiration and renewal	188	866
Required	188	856
Suspension or revocation	188	856, 864
Appeals	188	864
Notice and hearing	188	864
Subpoena of witnesses	188	864
Metering in lieu of stamping	188	857
Agents for	188	857
Money received paid into general revenue fund	188	854
Penalties	188	861, 862
Political subdivisions		
Not to levy tax	188	866
Priority of tax	188	863
Records		
False records	188	861
Wholesalers and retailers	188	857
Rules and regulations	188	857
Seizure and sale of cigarettes by commissioner	188	863
Stamps	188	854
Altering or counterfeiting stamps	188	862
Custody	188	859
Discount	188	859
Form	188	859
How affixed and cancelled	188	854
Possession of unstamped cigarettes	188	861
Sale by deputies	188	860
Fee	188	860
Reports	188	860
Sales or possession without affixing stamps	188	862
Security for payments	188	859
Tax commissioner		
Powers	188	857
Tax paid by purchase of stamps	188	854
Unstamped cigarettes		
Forfeitures and sales	188	866
In vending machines	188	868
Sale of equipment	188	867
Transportation	188	866
Vending machine operators	188	856
Violations	188	854
Wholesale dealers	188	857
Excise tax on use, consumption or storage of cigarettes		
Levy of tax	189	869
Horse racing. <i>See</i> Horse Racing.		
Income tax. <i>See</i> within this title, "Personal Income Tax."		
Inheritance and transfer taxes		
Appeals from assessment of	178	833
Exemptions	177	832

TAXATION—(continued):	Ch.	Page
Insurance		
Repealing additional license fee on insurance corporation.....	180	840
Levies and imposition of taxes		
County court		
Revision of levy estimate.....	176	831
Elections to increase levies		
Amount and continuation of additional levy.....	174	827
Canvass of returns.....	175	829
Election officers.....	175	829
Form of ballot.....	175	829
Notice of election, publication and posting.....	175	829
Order for election, contents.....	174	827
Vote required.....	174	827
Municipalities		
Levy of additional tax.....	176	830
Revision of levy estimate.....	176	831
Unlawful expenditures by local fiscal body.....	176	831
Licenses and license taxes		
Coin-operated merchandise, service and amusement devices, and vending machines.....	179	835
Store licenses		
Jurisdiction of justice of the peace of violations of licens- ing law.....	183	844
Penalty for violation of licensing law.....	183	844
Motor carrier road tax		
Credit for payment of gasoline tax.....	184	845
Enforcement.....	184	847
Assistance of department of public safety.....	184	847
Refunds.....	184	845
Hearing upon commissioner's refusal to make.....	184	845
Appeals.....	184	845
Municipalities		
Tax on purchase of intoxicating liquors.....	122	628
Personal income tax		
Effect of rate changes during taxable year.....	190	875
Meaning of terms.....	190	875
Rate of tax		
Years beginning on or after January 1, 1963.....	190	871
Years ending prior to January 1, 1963.....	190	870
Privilege tax on certain carriers		
Appeals from assessment of.....	181	841
Lien of tax.....	181	842
Property tax		
Delinquent taxes		
Certification by sheriff.....	191	882
Sale of lands for taxes		
Exception as to year 1961.....	191	882
Purchase by individual		
Deed		
Right to set aside deed, improperly obtained.....	191	881
Right to set aside deed, when all taxes paid before sale.....	191	880
Right to set aside deed, when one entitled to notice not notified.....	191	881
What he must do before he can receive deed.....	191	878

TAXATION—(Continued):	Ch.	Page
Property tax—(Continued):		
Redemption of land sold for taxes.....	191	876
Lien	191	876
List of redemptions	191	876
Notice to redeem.....	191	878
Service	191	879
What purchaser must do before he can receive deed	191	878
Title acquired	191	880
Sale of lands for school fund		
Exception as to year 1961.....	191	882
Sale of lands for taxes. See within this title, "Property Tax."		
Sales tax		
Additional tax	185	847
Expiration	185	847
Exemptions	186	849
Study of consumers sales tax structure (HCR 22).....		1491
Use tax		
Additional	187, 26	851, 1447
Expiration	187, 26	851, 1447
TEACHERS:		
See Schools.		
TEXTBOOKS:		
See Schools.		
TRUST DEEDS:		
Conveying personal property; limitation on application of article.....	90	512
Recordation of		
Effect as to creditors and purchasers	1	1
In more than one county, when necessary.....	2	3
Transfer or assignments of interests	2	3
Removal of property mortgaged by trust deed from county...	34	131
TYLER COUNTY:		
County court authorized to make contributions to Middle Island Creek Development Authority.....	218	1179

U

UNEMPLOYMENT COMPENSATION:

Commissioner of employment security		
Acceptance of aid	66	400
Agreements concerning persons employed in this and other states	66	394
Annual merit ratings.....	66	397
Appointment	66	392
Assistants	66	397
Classification of services and compensation	66	397
Compensation	66	393
Deputies	66	398
Dismissals	66	398
Divisions		
State employment service.....	66	398
Within the department	66	397
Duties generally	66	394

UNEMPLOYMENT COMPENSATION—(continued):	Ch.	Page
Commissioner of employment security		
Duties generally—(Continued):		
Delegation of	66	398
Vested in commissioner	66	393
Employees	66	397
Employment offices	66	398
Employment service	66	398
Examinations	66	397
Federal-state cooperation	66	398
Group insurance		
Adoption of plan for employees of department	27	1448
Lay-offs	66	398
Legal assistants	66	401
Merit ratings	66	397
Oath	66	393
Oaths and witnesses	66	401
Offices	66	393
Powers generally	66	394
Publications	66	402
Qualifications	66	393
Reciprocal agreements	66	395
Rules and regulations	66	401
Salary	66	393
Subpoenas	66	401
Suspensions	66	398
Terminations	66	398
Traveling expenses	66	393
Witnesses and oaths	66	401
Department of employment security		
Creation	67	414
Definitions	67	403
Employee eligibility; benefits		
Benefits		
Disqualification for	67	419
Not disqualified by receiving vocational training	67	423
Maximum, determination of	67	427
Payment	67	424
Decease of claimant	67	427
Place of payment	67	424
Suspension of partial benefit rights	67	426
Eligibility qualifications	67	418
Labor disputes		
Disqualifications in case of; exception	67	424
Partial unemployment; rate	67	426
Qualifications	67	418
Rates	67	424
Seasonal employment	67	418
Suitable work	67	423
Further requirements	67	424
Total unemployment	67	424
Wage credits; computation	67	427
Waiting period construed	67	419
Employer coverage and responsibility		
Joint and separate accounts of employers	67	414
Rate of contributions		
Modification or suspension of decreased rates	67	416
Employment security special administration fund	67	427
Group insurance plan for employees of department of employment security	27	1448

UNIFORM COMMERCIAL CODE:	Ch.	Page
Acts repealed	193	889, 1115
Bank deposits and collections	193	893
Collection of documentary drafts	193	1014
Collection of items		
Depository and collecting banks	193	999
Payor banks	193	1009
Definitions	193	995
General provisions	193	995
Relationship between payor bank and customer	193	1011
Bulk transfers	193	1026
Commercial paper	193	957
Advice of international sight draft	193	991
Discharge	193	988
Form	193	960
Interpretation	193	958
Liability of parties	193	973
Miscellaneous provisions	193	992
Negotiation	193	967
Notice of dishonor	193	981
Presentment	193	981
Protest	193	981
Rights of holder	193	970
Short title	193	958
Transfer	193	967
Effective date	193	1115
Filings under		
Fees	156	732
General provisions	193	891
Application of chapter	193	892
Construction	193	891
Definitions	193	894
Interpretation	193	894
Short title	193	891
Investment securities	193	1055
Definitions	193	1056
General provisions	193	1056
Issue	193	1059
Issuer	193	1059
Purchase	193	1062
Registration	193	1072
Short title	193	1056
Letters of credit	193	1016
Repealers		
General	193	1116
Laws not repealed	193	1116
Specific acts repealed	193	889, 1115
Sales	193	903
Application of article	193	904
Breach	193	938
Construction	193	904
Contract		
Construction	193	914
Form	193	909
Formation	193	910
General obligation of parties	193	914
Readjustment	193	909
Readjustment	193	928
Creditors	193	906
Definitions	193	906

UNIFORM COMMERCIAL CODE—(continued)

	Ch.	Page
Sales—(Continued):		
Excuse	193	944
Good faith purchasers	193	928
Performance	193	930
Remedies	193	945
Repudiation	193	938
Short title	193	904
Title	193	928
Secured transactions; sales of accounts; contract rights and		
chattel paper	193	1077
Applicability of article	193	1078
Default	193	1109
Definitions	193	1081
Filing	193	1103
Information from filing officers	28	1451
Perfected and unperfected security interests	193	1090
Policy and scope of article	193	1078
Rights of third parties	193	1090
Rules of priority	193	1090
Security agreement		
Rights of parties thereto	193	1085
Validity	193	1085
Short title	193	1078
Warehouse receipts, bills of lading and other documents of title		
Bills of lading	193	1042
Construction of article	193	1035
Definitions	193	1033
General obligations	193	1048
Miscellaneous provisions	193	1053
Negotiation and transfer	193	1050
Short title	193	1033
Warehouse receipts	193	1035

UNIT PROPERTY:

See Real Property.

UPSHUR COUNTY:

County court authorized to create special building fund	215	1176
---	-----	------

USE TAX:

Additional	187, 26	851, 1447
Expiration	187, 26	851, 1447

V**VACANCIES IN OFFICE:**

Filling vacancies in appointive offices by governor	173	825
---	-----	-----

VENDING MACHINES:

Licenses and license taxes	179	835
----------------------------------	-----	-----

VETERANS:

Guardianship	6	8
Accounting by guardians		

W

WATER AND WATERCOURSES:

	Ch.	Page
Pollution		
Control act	20	1406
Deposit of dead animals, etc., in	20	1386
Deposit of putrid or offensive substances	20	1386
Special committee created to study (SCR 49)		1210
Water resources board and division of water resources	20	1393
Creation, composition and organization of board	20	1395
Definitions	20	1394
Duties and functions	20	1393
Husbandry of water areas	20	1404
Slack-water dams	20	1400

WATER WORKS SYSTEMS:

Acquisition, construction and operation	77	455
Estimate of cost of	77	455
Article		
Construction	77	466
Provisions severable	77	466
Condemnation not authorized	77	457
Cost, what included	77	460
Definitions	77	451
Disposition of	77	463
Management and control of	77	464
Public service commission to have jurisdiction of	77	466
Purchase of	77	459
Revenue bonds		
Collateral, bonds eligible as	77	457
Combination of projects for financing	77	455
Credit of state or political subdivision not pledged	77	460
Deficiencies, additional bonds to cover	77	457
Exchange or sale	77	457
Form, denomination and execution of	77	457
How known	77	460
Interest	77	456
Issuance	77	455
Combining systems for	77	461
Mortgage lien and trust agreement	77	455
Negotiable	77	457
Priority of payments from revenues	77	455
Redemption	77	457
Refunding	77	465
Sale or exchange	77	457
Tax exemptions	77	455
Temporary	77	457
Terms and conditions of	77	495
Trust agreement to secure holders of	77	461
West Virginia Water Development Commission		
Accounts, examination of	77	462
Appointment, confirmation and terms of members	77	453
Body corporate	77	464
Books, examination of	77	462
Compensation and expenses of members	77	453
Composition	77	453
Created	77	453
Funds, deposit and disposition	77	462
Powers and duties	77	453
State agency	77	464
Vacancies	77	452

WAYNE COUNTY:	Ch.	Page
Salary of investigator of crime.....	25	115
WELFARE:		
Supplementary appropriation for department of See Poor.	1	1213
WEST VIRGINIA CENTENNIAL COMMISSION:		
Special revenue fund.....	219	1185
WEST VIRGINIA FOREST INDUSTRIES INDUSTRIAL FOUNDATION:		
Creation, functions, powers, etc.....	22	105
WEST VIRGINIA COMMISSION ON MANPOWER, TECHNOLOGY AND TRAINING:		
Created	16	1374
WEST VIRGINIA HISTORIC COMMISSION:		
Acceptance of gifts, donations, contributions, bequests or devises	164	791
Powers and duties regarding road markers.....	164	791
WEST VIRGINIA STATE APPLE COMMISSION:		
Repeal of act creating.....	9	12
WEST VIRGINIA UNIVERSITY:		
See Schools.		
WEST VIRGINIA WATER DEVELOPMENT COMMISSION:		
See Water Works Systems.		
WILLS:		
Construction of		
Operation of devise or bequest as power of appointment.....	194	1116
WIRT COUNTY:		
Special building and improvement fund.....	39	1489
WOOD COUNTY:		
Supplies, court rooms, secretary, etc., for intermediate court	216	1177
WORKMEN'S COMPENSATION:		
Director		
Appointment and term of office.....	195	1117
Bond and oath.....	195	1117
Compensation	195	1117
Legal services, attorney general to perform.....	195	1117
Official seal.....	195	1117
Qualifications and disqualifications.....	195	1117
Reference to commissioner deemed to mean director.....	195	1117
WORLD'S FAIR:		
Special committee to audit funds (HCR 49).....		1495
WYOMING COUNTY:		
Salaries of circuit and county clerks.....	11	1350
Salary of investigator of crime.....	25	115

Z

ZONING:

Urban and rural planning and zoning. See Planning and Zoning.