

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 1971**  
**First Extraordinary Session, 1971**  
**Second Extraordinary Session, 1970**

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## FOREWORD

This volume contains the Acts of the West Virginia Legislature of the 1971 Regular Session, the First Extraordinary Session of 1971 and the Second Extraordinary Session of 1970, and resolutions of general interest adopted by the Legislature during these sessions.

The first regular session of the 60th Legislature convened January 13, 1971, and expired for general purposes at midnight March 13; however, by proclamation of the Governor, the session was extended for the purpose of completing work on the annual Budget Bill; and final adjournment came on March 16.

During the session a total of 1202 bills was introduced in the two Houses—721 House Bills and 481 Senate Bills. The Legislature passed 191 bills—121 House Bills and 70 Senate Bills. The Governor approved 182 enactments, vetoed nine and let one become law without approval. One bill vetoed by the Governor, H. B. 944 (State Building Revenue Bonds), was reconsidered, amended and repassed, and approved by the Governor. This procedure was made possible by a new provision of the Constitution ratified in 1970. The Governor permitted S. B. 214 (Acquisition of space within the Capitol Building for use of the Legislature) to become law without his approval.

Bills vetoed by the Governor and not reconsidered were as follows: H. B. 630 (Sale of milk and milk products), H. B. 678 (Licensing private clubs in parks, etc., to sell alcoholic liquors), H. B. 702 (Creating State Department of Program Development and Management), H. B. 985 (Acquisition of waterworks systems by municipalities), H. B. 990 (Registration and licensing of motorboats), H. B. 1085 (Antitrust litigation), H. B. 1199 (Salary of judge of Criminal Court of Marion County) and S. B. 144 (Public Employees Insurance Act).

There were 111 concurrent resolutions introduced during the session—68 House Concurrent and 43 Senate Concurrent—of which 20 House and 14 Senate were adopted. Eighteen

House Joint and 13 Senate Joint Resolutions were introduced, all proposing amendments to the State Constitution. Only one Joint Resolution was adopted—S. J. R. 3, proposing an amendment to Section 2, Article IV, prescribing procedure for making amendments to the Constitution. The House had 43 House Resolutions, of which 38 were adopted; and the Senate had 19 Senate Resolutions, of which 16 were adopted.

The Senate failed to pass 70 House Bills passed by the House, and 28 Senate Bills passed by that body, failed of passage by the House.

### First Extraordinary Session, 1971

This session was convened by the Legislature on April 27, 1971, and adjourned *sine die* on April 30, 1971. The proclamation of the Governor included fourteen items of business for consideration by the Legislature, embracing a number of supplementary appropriations for various spending units of the State.

During the session a total of 53 bills was introduced in the two Houses—31 House Bills and 22 Senate Bills. Fifteen House Bills and four Senate Bills were passed. The Governor approved all bills passed.

There were one House Joint, three House Concurrent and nine House Resolutions offered during the session. The House Joint (ratifying the proposed amendment to the Constitution of the United States extending the right to vote of citizens eighteen years of age or older), and six House Resolutions were adopted. No House Concurrent Resolution was adopted. The Senate had one Joint and seven Senate Resolutions introduced. All of the Senate Resolutions were adopted.

### Second Extraordinary Session, 1970

This session of the Legislature was convened by the Governor on July 28, 1970. The Legislature adjourned July 29 until August 18, reassembled pursuant to the adjournment and adjourned *sine die* on August 22.

The proclamation of the Governor convening the session contained two items of business for consideration of the Legis-



lature: (1) Legislation relating to the crimes of bribery and conspiracy, etc., and (2) supplementary appropriations and raising revenue for such appropriations.

During the session there was a total of 28 bills introduced in the two Houses—17 House Bills and 11 Senate Bills. Two House Bills, dealing with bribery, and one Senate Bill, transferring items in the appropriation for the office of the Alcohol Beverage Control Commissioner, were passed.

There were one House Joint, 10 House Concurrent and 8 House Resolutions offered during the session, of which 2 House Concurrent and 7 House Resolutions were adopted. The Senate had 4 Senate Concurrent and 6 Senate Resolutions, of which 1 Concurrent and all Senate Resolutions were adopted.

C. A. BLANKENSHIP, *Clerk*  
*House of Delegates*



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## MEMBERS OF THE SENATE

REGULAR SESSION, 1971

## OFFICERS

*President*—E. Hans McCourt, Webster Springs*President Pro Tempore*—C. H. McKown, Wayne*Clerk*—J. Howard Myers, Martinsburg*Sergeant at Arms*—John E. Howell, Charleston*Doorkeeper*—J. Brent Monroe, Summersville

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	Russell G. Beall (D) *J. Frank Deem (R)	Parkersburg St. Marys
Fourth	V. K. Knapp (R) *Brad Sayre (R)	Hurricane Gay
Fifth	*C. H. McKown (D) Robert R. Nelson (D)	Wayne Huntington
Sixth	*John Pat Fanning (D) Lafe P. Ward (D)	Iaeger Williamson
Seventh	*W. Bernard Smith (D) David E. Wallace (D)	Logan Madison
Eighth	*Mario J. Palumbo (D) John T. Poffenbarger (R)	Charleston Dunbar
Ninth	*Tracy Hylton (D) Alan L. Susman (D)	Mullens Beckley
Tenth	*R. E. Barnett (D) J. C. Dillon, Jr. (D)	Bluefield Hinton
Eleventh	*Robert K. Holliday (D) Ralph D. Williams (D)	Oak Hill Rainelle
Twelfth	Carl E. Galner (D) *E. Hans McCourt (D)	Richwood Webster Springs
Thirteenth	W. Walter Neeley (D) *Wm. R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	*O. G. Hedrick (D) Wm. A. Moreland (D)	Fairmont Morgantown
Fifteenth	C. N. Harman (R) *Dallas Wolfe (R)	Grafton Rowlesburg
Sixteenth	Louise Leonard (R) *John I. Rogers (R)	Harpers Ferry Keyser
Seventeenth	*W. T. Brotherton, Jr. (D) Si Galperin, Jr. (D)	Charleston Charleston

\*Senators elected in 1968. All others elected in 1970.

(D) Democrat	23
(R) Republican	11
Total	34

# MEMBERS OF THE HOUSE OF DELEGATES

First Extraordinary Session, 1971

## OFFICERS

*Speaker*—<sup>1</sup>Lewis N. McManus, Beckley

*Clerk*—C. A. Blankenship, Pineville

*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont

*Doorkeeper*—Dannie Wingo, Yukon

County or District	Name	Address
Barbour	Kenneth Auvil (D)	Belington
Boone	Thomas G. Goodwin (D)	Seth
	Ivan R. White, (D)	Madison
Braxton	Rodney B. Belknap (D)	Gassaway
Brooke	Mino R. D'Aurora (D)	Follansbee
	Charles Donley (D)	Wellsburg
Cabell	David B. Daugherty (R)	Huntington
	Hugh A. Kincaid (D)	Huntington
	<sup>2</sup> Freda N. Paul (D)	Huntington
	C. E. Romine, Jr. (R)	Huntington
	Jody G. Smirl (R)	Huntington
Clay	E. Dennis White, Jr. (D)	Huntington
	Robert Reed (D)	Clay
Fayette	Ethel L. Crandall (D)	Gauley Bridge
	T. E. Myles (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Hampshire	James B. Cookman (D)	Romney
Hancock	George G. Griffith (D)	Weirton
	Ronald E. Wilson (D)	Weirton
Harrison	Gino R. Colombo (D)	Nutter Fort
	Donald L. Kopp (D)	Clarksburg
	James Laulis (D)	Bridgeport
	C. Paul Wanstreet (D)	Clarksburg
Jackson	John E. Fitzgerald (D)	Ripley
Jefferson	Roger J. Perry (D)	Charles Town
Kanawha	<sup>3</sup> Barbara Polan Bolarsky (D)	Charleston
	James E. Copenhagen (R)	Elkview
	W. C. Field (R)	Charleston
	Phyllis E. Given (D)	Charleston
	Cleo S. Jones (R)	Charleston
	Leo G. Kopelman (R)	East Bank
	Milton Lilly (R)	Charleston
	James W. Loop (D)	Charleston
	Louie A. Paterno, Jr. (R)	Charleston
	Thomas E. Potter (R)	Charleston
	Don R. Richardson (D)	Charleston
	Phyllis J. Rutledge (D)	Charleston
	Leonard I. Underwood (D)	St. Albans
Paul Zakaib, Jr. (R)	Charleston	
Lewis	Fred L. Mulneix (R)	Weston
Lincoln	H. Leon Hager (D)	Hamlin
Logan	Charles Gilliam (D)	Logan
	Earl Hager (D)	Chapmanville
	Ervin S. Queen (D)	Logan
Marion	Nick Fantasia (D)	Kingmont
	Richard Neely (D)	Fairmont
	<sup>4</sup> William E. Shingleton (D)	Fairmont
Marshall	Robert C. Polen (R)	Moundsville
	Roy H. Rogerson (R)	Moundsville
Mason	Eugene Ball (D)	Point Pleasant

<sup>1</sup>Elected Speaker March 13, 1971, to fill the vacancy resulting from the death of Speaker Ivor F. Boiarsky.

<sup>2</sup>Appointed January 11, 1971, to fill the vacancy caused by the death of Michael R. Pretera, a Delegate-elect.

<sup>3</sup>Appointed by the Governor April 13, 1971, to fill the vacancy caused by the death of her husband, the Honorable Ivor F. Boiarsky.

<sup>4</sup>Appointed February 1, 1971, to fill the vacancy caused by the disqualification of W. R. Wilson, a Delegate-elect.



HOUSE OF DELEGATES

County or District	Name	Address
McDowell	Ronnie McKenzie (D)	Roderfield
	Ernest C. Moore (D)	Thorpe
	Harry R. Pauley (D)	Jaeger
	T. J. Scott (D)	Weich
Mercer	Clarence C. Christian, Jr. (D)	Princeton
	Odell H. Huffman (D)	Princeton
	Charles E. Lohr (D)	Princeton
	Tony E. Whitlow (D)	Princeton
Mineral	Robert D. Harman (R)	Keyser
Mingo	Howard B. Chambers (D)	Williamson
	T. I. Varney (D)	Matewan
Monongalia	Robert W. Dinsmore (D)	Morgantown
	Terry T. Jones (R)	Morgantown
	Robert Brand Stone (R)	Morgantown
Monroe	Arnold H. Broyles (R)	Peterstown
Nicholas	Larry A. Tucker (D)	Summersville
Ohio	George F. Beneke (R)	Wheeling
Preston	Fred A. Grewe, Jr. (R)	Wheeling
	Judith A. Herndon (R)	Wheeling
	George H. Seibert, Jr. (R)	Wheeling
	Robert C. Halbritter (R)	Wheeling
Putnam	Robert F. Hatfield (D)	Kingwood
Raleigh	Mary Martha Merritt (D)	Hurricane
	Lewis N. McManus (D)	Beckley
	Anthony J. Sparacino (D)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
Randolph	Earl H. Stalnaker (D)	Elkins
Roane	Orton A. Jones (R)	Spencer
Summers	Jack E. Holt (D)	Hinton
Taylor	Paul K. Moats (R)	Grafton
Upshur	Charles R. Shaffer (R)	Buckhannon
Wayne	Clayton C. Davidson (D)	Huntington
	Walter Rollins, Jr. (D)	Kenova
Webster	D. P. Given (D)	Webster Springs
Wetzel	Joseph M. Ballouz (D)	New Martinsville
Wood	Joseph P. Albright (D)	Parkersburg
	J. C. Butcher (R)	Parkersburg
	Calvin A. Calendine (R)	Parkersburg
	George E. Farley (D)	Parkersburg
	Charles R. Cline (D)	Parkersburg
Wyoming	Warren R. McGraw (D)	Pineville
		Pineville
1st District Berkeley, Morgan	Robert M. Steptoe (D)	Martinsburg
	Luke E. Terry (R)	Martinsburg
2nd District Grant, Tucker	Larkin B. Ours (R)	Dorcas
3rd District Hardy, Pendleton	Thomas J. Hawse (D)	Moorefield
4th District Greenbrier, Pocahontas	Richard H. Bowman (D)	Rainelle
	Thomas C. Edgar (D)	Hillsboro
5th District Doddridge, Tyler	Forrest M. Buck (R)	Sistersville
6th District Pleasants, Ritchie	Harry E. Moats (R)	Harrisville
7th District Calhoun, Gilmer, Wirt	Billy Brown Burke (D)	Glenville

(D) Democrats \_\_\_\_\_ 68  
 (R) Republicans \_\_\_\_\_ 32  
 Total \_\_\_\_\_ 100



# STANDING COMMITTEES OF THE SENATE

Regular Session, 1971

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## AGRICULTURE

Susman (*Chairman*), Gainer (*Vice Chairman*), Dillon, Hedrick, McKown, Neeley, Smith, Williams, Leonard, Rogers and Sayre.

## CONFIRMATIONS

Galperin (*Chairman*), Holliday (*Vice Chairman*), Dillon, Gainer, Hylton, McKown, Tompos, Wallace, Ward, Carrigan, Harman, Knapp and Sayre.

## EDUCATION

Palumbo (*Chairman*), Barnett (*Vice Chairman*), Beall, Dillon, Galperin, Holliday, McKown, Sharpe, Wallace, Ward, Carrigan, Deem, Hubbard, Poffenbarger and Rogers.

## ELECTIONS

Ward (*Chairman*), Fanning (*Vice Chairman*), Brotherton, Galperin, Moreland, Neeley, Nelson, Williams, Knapp, Leonard and Sayre.

## FINANCE

McKown (*Chairman*), Susman (*Vice Chairman*), Barnett, Beall, Dillon, Fanning, Galperin, Hedrick, Hylton, Sharpe, Smith, Williams, Bowers, Deem, Harman, Leonard, Rogers and Wolfe.

## HEALTH

Wallace (*Chairman*), Sharpe (*Vice Chairman*), Brotherton, Galperin, Holliday, Moreland, Knapp, Leonard and Rogers.

## INSURANCE AND CORPORATIONS

Hylton (*Chairman*), Neeley (*Vice Chairman*), McKown, Moreland, Nelson, Susman, Ward, Williams, Carrigan, Harman, Hubbard, Poffenbarger and Sayre.

## INTERSTATE COOPERATION

Gainer (*Chairman*), Moreland (*Vice Chairman*), Neeley, Nelson, Susman, President (nonvoting), Bowers and Hubbard.

## JUDICIARY

Brotherton (*Chairman*), Ward (*Vice Chairman*), Barnett, Fanning, Gainer, Hedrick, Holliday, Moreland, Neeley, Nelson, Palumbo, Tompos, Wallace, Carrigan, Hubbard, Knapp, Poffenbarger and Sayre.

## LABOR

Tompos (*Chairman*), Sharpe (*Vice Chairman*), Dillon, Holliday, Neeley, Ward, Bowers, Harman and Wolfe.

**LOCAL GOVERNMENT**

Smith (*Chairman*), Moreland (*Vice Chairman*), Dillon, Fanning, Nelson, Ward, Poffenbarger, Rogers and Wolfe.

**MILITARY**

Williams (*Chairman*), Hedrick (*Vice Chairman*), Fanning, Holliday, Moreland, Palumbo, Harman, Knapp and Poffenbarger.

**MINES AND MINING**

Hedrick (*Chairman*), Hylton (*Vice Chairman*), Brotherton, Fanning, Gainer, Smith, Williams, Bowers and Deem.

**NATURAL RESOURCES**

Gainer (*Chairman*), Fanning (*Vice Chairman*), Barnett, Beall, Galperin, Hedrick, Hylton, Nelson, Palumbo, Smith, Susman, Bowers, Deem, Hubbard and Wolfe.

**PUBLIC INSTITUTIONS**

Sharpe (*Chairman*), Holliday (*Vice Chairman*), Beall, Hylton, Smith, Tompos, Wallace, Carrigan, Harman, Knapp and Leonard.

**RULES**

McCourt, Mr. President (*Chairman ex officio*), Brotherton, Gainer, McKown, Moreland, Palumbo, Carrigan, Deem and Hubbard.

**TRANSPORTATION**

Barnett (*Chairman*), Dillon (*Vice Chairman*), Beall, Gainer, Hedrick, Hylton, Moreland, Neeley, Palumbo, Sharpe, Wallace, Williams, Bowers, Deem, Knapp, Poffenbarger, Rogers and Wolfe.

**JOINT COMMITTEES****ENROLLED BILLS**

Beall (*Chairman*), Holliday, Palumbo, Leonard and Sayre.

**GOVERNMENT AND FINANCE**

McCourt, Mr. President (*Chairman ex officio*), Barnett, Brotherton, McKown, Sharpe, Carrigan and Wolfe.

**JOINT RULES**

McCourt, Mr. President (*Chairman ex officio*), Brotherton and Carrigan.

## STANDING COMMITTEES OF THE HOUSE OF DELEGATES

June 1, 1971

### AGRICULTURE AND NATURAL RESOURCES

Hawse (*Chairman*), Queen (*Vice Chairman*), Ballouz, Belknap, Bowman, Cline, Colombo, Donley, Edgar, Fitzgerald, Goodwin, Hatfield, Holt, McKenzie, Merritt, Reed, Withrow, Broyles, Butcher, Moats (Taylor), Mulneix, Ours, Polen, Shaffer and Terry.

### BANKING AND INSURANCE

Hager of Lincoln (*Chairman of Banking*), Cookman (*Chairman of Insurance*), Laulis (*Vice Chairman*), Albright, Belknap, Bowman, Cline, Crandall, Fantasia, Hager (Logan), Hatfield, Hawse, Myles, Neely, Pauley, Tucker, Wanstreet, Beneke, Broyles, Buck, Calendine, Halbritter, Paterno, Romine and Zakaib.

### CONSTITUTIONAL REVISION

Huffman (*Chairman*), Dinsmore (*Vice Chairman*), Albright, Auvil, Ballouz, Boiarsky, Christian, Laulis, Neely, Perry, Richardson, Scott, Stalnaker, Underwood, White (Cabell), Whitlow, Paul, Copenhagen, Jones (Kanawha), Jones (Roane), Mulneix, Potter, Rogerson, Smirl and Stone.

### EDUCATION

Lohr (*Chairman*), Goodwin (*Vice Chairman*), Auvil, Boiarsky, Colombo, Cookman, Davidson, Donley, Given (Kanawha), Hager (Logan), Kincaid, Merritt, Moore, Paul, Rollins, Toney, Wilson, Beneke, Calendine, Harman, Jones (Monongalia), Lilly, Moats (Taylor), Moats (6th District) and Shaffer.

### FINANCE

McManus (*Chairman*), Burke (*Vice Chairman*), Auvil, Ball, Crandall, D'Aurora, Fantasia, Farley, Griffith, Hager (Logan), Kincaid, Neely, Perry, Richardson, Rutledge, Tucker, Withrow, Buck, Grewe, Herndon, Kopelman, Ours, Rogerson, Romine and Terry.

### HEALTH AND WELFARE

Withrow (*Chairman*), D'Aurora (*Vice Chairman*), Ballouz, Colombo, Cookman, Davidson, Fitzgerald, Griffith, Lohr, Merritt, Moore, Rutledge, Shingleton, Stalnaker, Wanstreet, White (Boone), Wilson, Calendine, Daugherty, Lilly, Moats (6th District), Paterno, Polen, Romine and Shaffer.

**INDUSTRY AND LABOR**

Kopp (*Chairman*), Fantasia (*Vice Chairman*), Boiarsky, Colombo, D'Aurora, Gilliam, Given (Kanawha), Goodwin, Griffith, Hager (Lincoln), Hatfield, Holt, McKenzie, Moore, Varney, White (Boone), Whitlow, Beneke, Butcher, Copenhaver, Harman, Jones (Monongalia), Kopelman, Shaffer and Terry.

**INTERSTATE COOPERATION**

Hager of Logan (*Chairman*), Burke, Edgar, Kopp, Loop, McManus, Speaker (nonvoting), Buck and Halbritter.

**JUDICIARY**

Steptoe (*Chairman*), Sparacino (*Vice Chairman*), Albright, Christian, Davidson, Dinsmore, Given (Webster), Huffman, Kopp, Loop, McGraw, Myles, Queen, Scott, Underwood, Varney, White (Cabell), Daugherty, Field, Halbritter, Jones (Kanawha), Jones (Roane), Polen, Potter and Zakaib.

**POLITICAL SUBDIVISIONS**

Dinsmore (*Chairman*), Varney (*Vice Chairman*), Ball, Cline, Farley, Kincaid, Laulis, McGraw, Pauley, Rollins, Shingleton, Stalnaker, Toney, Underwood, White (Boone), White (Cabell), Wilson, Grewe, Herndon, Jones (Monongalia), Polen, Rogerson, Smirl, Stone and Zakaib.

**REDISTRICTING**

Perry (*Chairman*), Loop (*Vice Chairman*), Burke, Chambers, Cline, Dinsmore, Edgar, Fantasia, Farley, Given (Kanawha), Hager (Lincoln), Kopp, Lohr, Pauley, Rollins, Sparacino, Tucker, Beneke, Buck, Butcher, Field, Halbritter, Jones (Kanawha), Ours and Terry.

**ROADS AND TRANSPORTATION**

Bowman (*Chairman*), Wanstreet (*Vice Chairman*), Ball, Belknap, Chambers, Christian, Davidson, Donley, Fitzgerald, Gilliam, Hager (Lincoln), Hawse, Holt, Pauley, Reed, Scott, Shingleton, Buck, Butcher, Copenhaver, Harman, Herndon, Moats (6th District), Paterno and Zakaib.

**STATE AND FEDERAL AFFAIRS**

Edgar (*Chairman*), Crandall (*Vice Chairman*), Chambers, Fantasia, Gilliam, Given (Webster), Loop, McGraw, McKenzie, Paul, Queen, Reed, Richardson, Shingleton, Sparacino, Toney, Whitlow, Butcher, Halbritter, Harman, Mulneix, Potter, Smirl, Stone and Zakaib.

**RULES**

McManus (*ex officio Chairman*), Edgar, Kopp, Lohr, Myles, Perry, Steptoe, Buck, Jones (Kanawha), Ours and Seibert.

**JOINT COMMITTEES**

**ENROLLED BILLS**

Rutledge (*Chairman*), Crandall, Whitlow, Mulneix and Smirl.

**GOVERNMENT AND FINANCE**

McManus (*Cochairman*), Lohr, Myles, Steptoe, Ours and Seibert.

**JOINT RULES**

McManus (*ex officio Chairman*), Myles and Seibert. ·





# LEGISLATURE OF WEST VIRGINIA

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## ACTS OF 1971

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### REGULAR SESSION

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#### CHAPTER 1

(House Bill No. 629—By Mr. Myles and Mr. Buck)

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[Passed February 5, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to the uniform recognition of acknowledgments act, notarial acts performed outside this state, persons with authority to take acknowledgments, recognition and meaning of certificates of acknowledgment, short forms of taking acknowledgments and specifying other acknowledgments not affected or invalidated by this article.

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

That chapter thirty-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-a, to read as follows:

#### **ARTICLE 1A. UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT.**

- §39-1A-1. "Notarial acts" defined; who may perform notarial acts outside the state for use in state.
- §39-1A-2. Proof of authority of person performing notarial act.
- §39-1A-3. What person taking acknowledgment shall certify.
- §39-1A-4. When form of certificate of acknowledgment accepted.

§39-1A-5. Meaning of "acknowledged before me."

§39-1A-6. Statutory short forms of acknowledgment.

§39-1A-7. Application of article; article cumulative.

§39-1A-8. Uniform interpretation.

§39-1A-9. Short title.

**§39-1A-1. "Notarial acts" defined; who may perform notarial acts outside the state for use in state.**

1 For the purposes of this article, "notarial acts" means  
2 acts which the laws and regulations of this state au-  
3 thorize notaries public of this state to perform, including  
4 the administering of oaths and affirmations, taking proof  
5 of execution and acknowledgments of instruments, and  
6 attesting documents. Notarial acts may be performed  
7 outside this state for use in this state with the same  
8 effect as if performed by a notary public of this state  
9 by the following persons authorized pursuant to the laws  
10 and regulations of other governments in addition to any  
11 other person authorized by the laws and regulations of  
12 this state:

13 (1) A notary public authorized to perform notarial  
14 acts in the place in which the act is performed;

15 (2) A judge, clerk, or deputy clerk of any court of  
16 record in the place in which the notarial act is per-  
17 formed;

18 (3) An officer of the foreign service of the United  
19 States, a consular agent, or any other person authorized  
20 by regulation of the United States department of state  
21 to perform notarial acts in the place in which the act is  
22 performed;

23 (4) A commissioned officer in active service with the  
24 armed forces of the United States and any other person  
25 authorized by regulation of the armed forces to perform  
26 notarial acts if the notarial act is performed for one of  
27 the following or his dependents: A merchant seaman  
28 of the United States, a member of the armed forces of  
29 the United States or any other person serving with or  
30 accompanying the armed forces of the United States;  
31 or

32 (5) Any other person authorized to perform notarial  
33 acts in the place in which the act is performed.

**§39-1A-2. Proof of authority of person performing notarial act.**

1 (a) If the notarial act is performed by any of the  
2 persons described in subdivisions one to four, inclusive,  
3 section one of this article, other than a person authorized  
4 to perform notarial acts by the laws or regulations of a  
5 foreign country, the signature, rank or title and serial  
6 number, if any, of the person are sufficient proof of the  
7 authority of a holder of that rank or title to per-  
8 form the act. Further proof of his authority is not re-  
9 quired.

10 (b) If the notarial act is performed by a person  
11 authorized by the laws or regulations of a foreign country  
12 to perform the act, there is sufficient proof of the au-  
13 thority of that person to act if:

14 (1) Either a foreign service officer of the United  
15 States resident in the country in which the act is per-  
16 formed or a diplomatic or consular officer of the foreign  
17 country resident in the United States certifies that a  
18 person holding that office is authorized to perform the  
19 act; and

20 (2) The official seal of the person performing the  
21 notarial act is affixed to the document; or

22 (3) The title and indication of authority to perform  
23 notarial acts of the person appears either in a digest  
24 of foreign law or in a list customarily used as a source  
25 of such information.

26 (c) If the notarial act is performed by a person other  
27 than one described in subsections (a) and (b) of this  
28 section, there is sufficient proof of the authority of that  
29 person to act if the clerk of a court of record in the place  
30 in which the notarial act is performed certifies to the  
31 official character of that person and to his authority to  
32 perform the notarial act.

33 (d) The signature and title of the person performing  
34 the act are prima facie evidence that he is a person with  
35 the designated title and that the signature is genuine.

**§39-1A-3. What person taking acknowledgment shall certify.**

1 The person taking an acknowledgment shall certify  
2 that:

3 (1) The person acknowledging appeared before him  
4 and acknowledged he executed the instrument; and

5 (2) The person acknowledging was known to the  
6 person taking the acknowledgment or that the person  
7 taking the acknowledgment had satisfactory evidence  
8 that the person acknowledging was the person described  
9 in and who executed the instrument.

**§39-1A-4. When form of certificate of acknowledgment accepted.**

1 The form of a certificate of acknowledgment used by  
2 a person whose authority is recognized under section  
3 one of this article shall be accepted in this state if:

4 (1) The certificate is in a form prescribed by the  
5 laws or regulations of this state;

6 (2) The certificate is in a form prescribed by the  
7 laws or regulations applicable in the place in which the  
8 acknowledgment is taken; or

9 (3) The certificate contains the words "acknowledged  
10 before me," or their substantial equivalent.

**§39-1A-5. Meaning of "acknowledged before me."**

1 The words "acknowledged before me" mean:

2 (1) That the person acknowledging appeared before  
3 the person taking the acknowledgment;

4 (2) That he acknowledged he executed the instru-  
5 ment;

6 (3) That, in the case of:

7 (a) A natural person, he executed the instrument  
8 for the purposes therein stated;

9 (b) A corporation, the officer or agent acknowledged  
10 he held the position or title set forth in the instrument  
11 and certificate, he signed the instrument on behalf of  
12 the corporation by proper authority, and the instru-  
13 ment was the act of the corporation for the purpose  
14 therein stated;

15 (c) A partnership, the partner or agent acknowl-  
16 edged he signed the instrument on behalf of the partner-

17 ship by proper authority and he executed the instru-  
18 ment as the act of the partnership for the purposes  
19 therein stated;

20 (d) A person acknowledging as principal by an at-  
21 torney in fact, he executed the instrument by proper  
22 authority as the act of the principal for the purposes  
23 therein stated;

24 (e) A person acknowledging as a public officer, trus-  
25 tee, administrator, guardian or other representative, he  
26 signed the instrument by proper authority and he exe-  
27 cuted the instrument in the capacity and for the pur-  
28 poses therein stated; and

29 (4) That the person taking the acknowledgment  
30 either knew or had satisfactory evidence that the person  
31 acknowledging was the person named in the instrument  
32 or certificate.

§39-1A-6. Statutory short forms of acknowledgment.

1 The forms of acknowledgment set forth in this section  
2 may be used and are sufficient for their respective pur-  
3 poses under any law of this state. The forms shall be  
4 known as "Statutory Short Forms of Acknowledgment"  
5 and may be referred to by that name. The authoriza-  
6 tion of the forms in this section does not preclude the  
7 use of other forms.

8 (1) For an individual acting in his own right:

9 State of .....

10 County of .....

11 The foregoing instrument was acknowledged  
12 before me this ..... by  
13 (date)

14 .....

15 (name of person acknowledged)

16 .....

17 (Signature of Person Taking Acknowledgment)

18 .....

19 (Title or Rank)

20 .....

21 (Serial Number, if any)

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- (2) For a corporation:  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 The foregoing instrument was acknowledged  
 before me this \_\_\_\_\_ by  
 \_\_\_\_\_ (date)  
 \_\_\_\_\_  
 (name of officer or agent,  
 \_\_\_\_\_ of \_\_\_\_\_  
 title of officer or agent) (name of corporation  
 \_\_\_\_\_, a \_\_\_\_\_  
 acknowledging) (state or place of incorporation)  
 corporation, on behalf of the corporation.  
 \_\_\_\_\_  
 (Signature of Person Taking Acknowledgment)  
 \_\_\_\_\_  
 (Title or Rank)  
 \_\_\_\_\_  
 (Serial Number, if any)
- (3) For a partnership:  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 The foregoing instrument was acknowledged  
 before me this \_\_\_\_\_ by  
 \_\_\_\_\_ (date)  
 \_\_\_\_\_,  
 (name of acknowledging partner or agent)  
 partner (or agent) on behalf of \_\_\_\_\_  
 \_\_\_\_\_ (name of  
 \_\_\_\_\_, a partnership.  
 partnership)  
 \_\_\_\_\_  
 (Signature of Person Taking Acknowledgment)  
 \_\_\_\_\_  
 (Title or Rank)  
 \_\_\_\_\_  
 (Serial Number, if any)
- (4) For an individual acting as principal by an at-  
 torney in fact:  
 State of \_\_\_\_\_  
 County of \_\_\_\_\_

63 The foregoing instrument was acknowledged  
64 before me this \_\_\_\_\_ by

65 (date)

66 \_\_\_\_\_ as attorney in fact  
67 (name of attorney in fact)

68 on behalf of \_\_\_\_\_  
69 (name of principal)

70 \_\_\_\_\_  
71 (Signature of Person Taking Acknowledgment)

72 \_\_\_\_\_  
73 (Title or Rank)

74 \_\_\_\_\_  
75 (Serial Number, if any)

76 (5) By any public officer, trustee or personal repre-  
77 sentative:

78 State of \_\_\_\_\_

79 County of \_\_\_\_\_

80 The foregoing instrument was acknowledged  
81 before me this \_\_\_\_\_ by

82 (date)

83 \_\_\_\_\_  
84 (name and title of position)

85 \_\_\_\_\_  
86 (Signature of Person Taking Acknowledgment)

87 \_\_\_\_\_  
88 (Title or Rank)

89 \_\_\_\_\_  
90 (Serial Number, if any)

**§39-1A-7. Application of article; article cumulative.**

1 A notarial act performed prior to the effective date of  
2 this article is not affected by this article. This article  
3 provides an additional method of proving notarial acts.  
4 Nothing in this article diminishes or invalidates the  
5 recognition accorded to notarial acts by article one of  
6 this chapter or by other laws or regulations of this state.

**§39-1A-8. Uniform interpretation.**

1 This article shall be so interpreted as to make uniform  
2 the laws of those states which enact it.

**§39-1A-9. Short title.**

- 1 This article may be cited as the "Uniform Recognition
- 2 of Acknowledgments Act."

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**CHAPTER 2**

(House Bill No. 688—By Mr. Halbritter and Mr. Bowman)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to annual meetings to establish uniform standards, grades and market practices concerning agricultural products.

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

That section fifteen, article two-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 2A. PUBLIC MARKETS.****§19-2A-15. Annual meetings to establish uniform standards, grades and market practices.**

- 1 The commissioner shall annually, on or before the first
- 2 day of July, call together in public meeting the president
- 3 and manager, or other officials, of livestock auction
- 4 markets within the state for the purpose of establishing
- 5 uniform standards and grades of livestock and uniform
- 6 market practices and procedures for the operation of live-
- 7 stock auction markets in this state.

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**CHAPTER 3**

(House Bill No. 786—By Mr. Hawse and Mr. Ours)

[Passed February 18, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six, seven, eight, ten and eleven, article two-b, chapter nineteen of



the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of agriculture, to the inspection, labeling and disposition of animals, carcasses, meat, meat food products and meat by-products, to the licensing of commercial slaughterers, custom slaughterers, commercial processors, custom processors or distributors, and to the inspection of slaughterhouses and processing plants; and providing exclusions, exemptions, prohibitions and penalties.

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

That sections two, four, six, seven, eight, ten and eleven, 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 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.**

§19-2B-2. Definitions.

§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examinations; rejection tags.

§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States Department of Agriculture.

§19-2B-8. Exemptions.

§19-2B-10. Additional prohibitions.

§19-2B-11. Penalties.

**§19-2B-2. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Department" means the department of agricul-  
4 ture of the state of West Virginia;

5 (b) "Commissioner" means the commissioner of agri-  
6 culture of the state of West Virginia and his duly autho-  
7 rized representatives;

8 (c) "Person" means any individual, partnership, cor-  
9 poration, association, or other entity;

10 (d) "Contract veterinarian" means a graduate of a  
11 school of veterinary medicine accredited by the American  
12 Veterinary Medical Association who provides services  
13 for the department under contract;

14 (e) "Veterinary supervisor" means a graduate of a  
15 school of veterinary medicine accredited by the American  
16 Veterinary Medical Association, and employed by the  
17 department to inspect and supervise the inspection of  
18 animals, carcasses, meat, meat food products or meat by-  
19 products;

20 (f) "Meat inspector" means an individual employed  
21 by the department to inspect animals, carcasses, meat,  
22 meat food products or meat by-products under the super-  
23 vision of a veterinary supervisor;

24 (g) "State inspection" means inspection services con-  
25 ducted by the department at or in connection with es-  
26 tablishments required to be licensed by this article;

27 (h) "W. Va. condemned," or abbreviation thereof,  
28 means the animal so marked has been inspected and  
29 found to be in a dying condition, or to be affected with  
30 any other condition or disease that would require con-  
31 demnation of its carcass;

32 (i) "W. Va. inspected and condemned," or abbrevia-  
33 tion thereof, means that the carcass, meat, meat food  
34 product or meat by-product, so marked or so identified,  
35 is adulterated and shall be disposed of in the manner  
36 prescribed by the commissioner;

37 (j) "W. Va. retained" means that the carcass, meat,  
38 meat food product or meat by-product so identified is  
39 held for further examination by a veterinary supervisor  
40 or contract veterinarian to determine its disposal;

41 (k) "W. Va. suspect" means that the animal so mar-  
42 ked and identified is suspected of being affected with a  
43 disease or condition which may require its condemnation,  
44 in whole or in part, when slaughtered, and is subject to  
45 further examination by a contract veterinarian or vet-  
46 erinary supervisor to determine its disposal;

47 (l) "W. Va. inspected and passed," or abbreviation  
48 thereof, means that the carcass, meat, meat food product  
49 or meat by-product, so marked, or so identified, was at

50 the time it was so marked or so identified found to be  
51 wholesome;

52 (m) "Country" when used in the name of a meat,  
53 meat food product or meat by-product means that such  
54 meat, meat food product or meat by-product was actual-  
55 ly prepared on a farm;

56 (n) "Federal inspection" means the meat and poultry  
57 inspection service conducted or approved by the meat in-  
58 spection division and the poultry inspection division of  
59 the United States department of agriculture;

60 (o) "Federal Meat Inspection Act" means the act so  
61 entitled, approved March four, one thousand nine hun-  
62 dred seven, as amended by the Wholesome Meat Act;

63 (p) "Federal Poultry Products Inspection Act" means  
64 the act of Congress approved August twenty-eighth, one  
65 thousand nine hundred fifty-seven, as amended;

66 (q) "Inspection legend" means a mark or a statement  
67 on a carcass, meat, meat food product or meat by-product  
68 indicating the same has been inspected and passed in  
69 this state under the provisions of this article;

70 (r) "Meat label" means a display of written, printed  
71 or graphic matter on a container indicating the carcass,  
72 meat, meat food product or meat by-product contained  
73 therein has been inspected and passed in this state  
74 under the provisions of this article;

75 (s) "Official inspection mark" means any symbol  
76 prescribed by the commissioner for the purpose of identi-  
77 fying the inspection status of any article so inspected;

78 (t) "Establishment number" means an official num-  
79 ber assigned by the commissioner to each establishment  
80 and included on the inspection legend and meat label to  
81 identify all inspected and passed carcasses, meat, meat  
82 food products and meat by-products handled in that es-  
83 tablishment;

84 (u) "Container" and "package" shall include but not  
85 be limited to any box, can, tin, cloth, plastic or any other  
86 receptacle, wrapper or cover;

87 (v) "Sell" means offer for sale, expose for sale, have  
88 in possession for sale, exchange, barter or trade;

89 (w) "Animals" mean cattle, swine, sheep and goats;

90 (x) "Carcass" means all or any part of a slaughtered  
91 animal, including viscera, which is capable of being used  
92 for human consumption;

93 (y) "Meat" means the edible part of the muscle of  
94 animals, which is skeletal or which is found in the  
95 tongue, in the diaphragm, in the heart or in the esophagus  
96 with or without the accompanying or overlying fat, and  
97 the portions of bone, skin, sinew nerve and blood vessels  
98 which normally accompany the muscle tissue and which  
99 are not separated from it in the process of dressing; it  
100 does not include the muscle found in the lips, snout or  
101 ears;

102 (z) "Meat food product" means any article of food  
103 for human consumption or any article which enters into  
104 the composition of food for human consumption, which  
105 is derived or prepared in whole or in part from any por-  
106 tion of any animal, except organotherapeutic substances,  
107 meat juices, meat extract and the like which are only  
108 for medicinal purposes and are advertised only to the  
109 medical profession; any edible part of the carcass which  
110 has been manufactured, cured, smoked, processed or  
111 otherwise treated shall be considered a meat food product;

112 (aa) "Meat by-product" means any edible part of an  
113 animal other than meat or meat food product;

114 (bb) "Denature" means the uniform application of  
115 sufficient quantities of crude carbolic acid, cresylic disin-  
116 fectant, or any other agent approved by the commissioner  
117 upon and into the freely slashed flesh of any carcass or  
118 product condemned;

119 (cc) "Decharacterization" means the uniform applica-  
120 tion of sufficient quantities of dye, charcoal, malodorous  
121 fish oil, or any other agent approved by the commissioner,  
122 upon and into the freely slashed flesh of carcasses or  
123 meat not being rendered, so as to unequivocally pre-  
124 clude its use for human food;

125 (dd) "Inedible" means meat, meat food products and  
126 meat by-products derived from 4-D or condemned ani-  
127 mals, or animals which the meat, meat food products or  
128 meat by-products are otherwise unsuitable for human  
129 consumption and shall include meat, meat food products

130 or meat by-products regardless of origin, which have de-  
131 teriorated so far as to be unfit for human consumption;

132 (ee) "4-D animal" means an animal that is dead,  
133 dying, down or diseased on arrival at the slaughterhouse;

134 (ff) "Commercial slaughterer" means a person en-  
135 gaged for profit in this state in the business of slaughter-  
136 ing or dressing animals for human consumption which are  
137 to be sold or offered for sale through a commercial outlet  
138 or establishment, and shall include a person who, in addi-  
139 tion to such commercial slaughtering, also engages in the  
140 business of a custom slaughterer;

141 (gg) "Custom slaughterer" means a person engaged  
142 for profit in this state in the business of slaughtering or  
143 dressing animals for human consumption which are not to  
144 be sold or offered for sale through a commercial outlet,  
145 commercial establishment, distributor, or to an individual,  
146 and shall include the boning or cutting up of carcasses of  
147 such animals and the grinding, chopping and mixing of  
148 the carcasses thereof;

149 (hh) "Slaughterhouse" shall include but not be lim-  
150 ited to all buildings, structures and facilities used in the  
151 slaughtering or dressing of animals for human consump-  
152 tion;

153 (ii) "Distributor" means a person engaged for profit in  
154 this state in the business where carcasses, meat, meat food  
155 products or meat by-products are received from state or  
156 federally inspected establishments, or approved by the  
157 United States department of agriculture, and who stores  
158 and distributes to commercial outlets, processors or indi-  
159 viduals, and who conducts no processing other than  
160 wrapping and/or cutting of carcasses or its parts into  
161 quarters or wholesale cuts;

162 (jj) "Processor" means a person who engages for prof-  
163 it in this state in the business of packing or packaging car-  
164 casses, meat, meat food products or meat by-products for  
165 human consumption or a person engaged for profit in the  
166 business of curing, salting, smoking, processing or other  
167 preparing of carcasses, meat, meat food products or meat  
168 by-products for human consumption;

169 (kk) "Commercial processor" means a processor for

170 commercial outlets or distributors and shall include the  
171 business of custom processing;

172 (ll) "Custom processor" means a processor in which  
173 the meat, meat food products or meat by-products de-  
174 rived through processing cannot be sold or offered for sale  
175 through a commercial outlet, commercial establishment,  
176 distributor, or to an individual;

177 (mm) "Processing plant" shall include but not be lim-  
178 ited to all buildings, structures, chill rooms, aging rooms,  
179 processing rooms, sanitary facilities, other facilities, and  
180 utensils, used by or in connection with the operations of  
181 a processor;

182 (nn) "Establishment" means any slaughterhouse, pro-  
183 cessing plant or distributor in this state;

184 (oo) "Related industries" means rendering plants, re-  
185 frigerated meat warehouses, food lockers, meat and poul-  
186 try wholesalers, brokers, pet food manufacturers, other  
187 animal food manufacturers, animal impoundments  
188 whose main source of food supply is derived  
189 from the raw meats, transportation firms and private  
190 carriers;

191 (pp) "Commercial outlet" means a place of business  
192 in this state and shall include all retail stores and public  
193 eating places in which carcasses, meat, meat food products  
194 or meat by-products are stored, sold or offered for sale for  
195 human consumption by the purchaser or others;

196 (qq) "Commercial dealer" means any person who  
197 operates one or more commercial outlets and who sells or  
198 offers for sale thereat any carcasses, meat, meat food pro-  
199 ducts or meat by-products for human consumption, and  
200 who does not can, cook, cure, dry, smoke, or render any  
201 carcass, meat, meat food products or meat by-products at  
202 such outlets and who conducts no slaughtering or prepar-  
203 ing of carcasses, meat, meat food products or meat by-  
204 products at such outlets other than boning or cutting up  
205 of carcasses, and other than grinding, chopping and mix-  
206 ing operations at such outlets with respect to trim or meat  
207 derived only from such boning or cutting up operations;

208 (rr) "Custom slaughtered carcass or meat," "custom  
209 slaughtered meat food products" or "custom slaughtered

210 meat by-products" mean, respectively, carcasses, meat,  
211 meat food products or meat by-products which were  
212 slaughtered, dressed or otherwise processed by a custom  
213 slaughterer;

214 (ss) "Wholesome" means sound, healthful, clean, and  
215 otherwise fit for human consumption;

216 (tt) "Adulterated" means and shall apply to any car-  
217 cass, part thereof, meat or meat food product under one  
218 or more of the following circumstances:

219 (i) if it bears or contains any poisonous or dele-  
220 terious substance which may render it injurious to health;  
221 but in case the substance is not an added substance, such  
222 article shall not be considered adulterated under this  
223 clause if the quantity of such substance in or on such ar-  
224 ticle does not ordinarily render it injurious to health;

225 (ii) (a) if it bears or contains (by reason of ad-  
226 ministration of any substance to the live animal or other-  
227 wise) any added poisonous or added deleterious substance  
228 (other than one which is (1) a pesticide chemical in or on  
229 a raw agricultural commodity; (2) a food additive; or (3)  
230 a color additive) which may, in the judgment of the  
231 commissioners make such article unfit for human food;

232 (b) if it is, in whole or in part, a raw agricul-  
233 tural commodity and such commodity bears or contains a  
234 pesticide chemical which is unsafe within the meaning of  
235 the Federal Food, Drug and Cosmetic Act;

236 (c) if it bears or contains any food additive  
237 which is unsafe within the meaning of the Federal Food,  
238 Drug and Cosmetic Act;

239 (d) if it bears or contains any color additive  
240 which is unsafe within the meaning of the Federal Food,  
241 Drug and Cosmetic Act: *Provided*, That an article which  
242 is not adulterated under clause (b), (c), or (d) shall  
243 nevertheless be deemed adulterated if use of the pesticide  
244 chemical, food additive, or color additive in or on such  
245 article is prohibited by regulations in establishments at  
246 which inspection is maintained;

247 (iii) if it consists in whole or in part of any  
248 filthy, putrid, or decomposed substance or is for any other

- 249 reason unsound, unhealthful, unwholesome, or otherwise  
250 unfit for human food;
- 251 (iv) if it has been prepared, packed, or held  
252 under insanitary conditions whereby it may have become  
253 contaminated with filth, or whereby it may have been  
254 rendered injurious to health;
- 255 (v) if it is, in whole or in part, the product of  
256 an animal which has died otherwise than by slaughter;
- 257 (vi) if its container is composed, in whole or in  
258 part, of any poisonous or deleterious substance which may  
259 render the contents injurious to health;
- 260 (vii) if it has been intentionally subjected to  
261 radiation, unless the use of the radiation was in conform-  
262 mity with a regulation or exemption in effect pursuant to  
263 the Federal Food, Drug and Cosmetic Act;
- 264 (viii) if any valuable constituent has been in  
265 whole or in part omitted or abstracted therefrom; or if  
266 any substance has been substituted, wholly or in part  
267 therefore; or if damage or inferiority has been concealed  
268 in any manner; or if any substance has been added there-  
269 to or mixed or packed therewith so as to increase its bulk  
270 or weight, or reduce its quality or strength, or make it  
271 appear better or of greater value than it is;
- 272 (ix) if it is margarine containing animal fat and  
273 any of the raw material used therein consisted in whole  
274 or in part of any filthy, putrid, or decomposed substance;
- 275 (uu) "Antemortem" means before death;
- 276 (vv) "Postmortem" means after death;
- 277 (ww) "Reinspection" means inspection of the prepara-  
278 tion of animal products and poultry products, as well as a  
279 reexamination of articles previously inspected;
- 280 (xx) "Licensee" means any person licensed under the  
281 provisions of this article.

**§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.**

- 1 (a) No commercial slaughterer, custom slaughterer,



2 commercial processor, custom processor or distributor  
 3 shall operate an establishment unless he shall first have  
 4 obtained a license from the commissioner so to do, which  
 5 license remains unsuspending and unrevoked. Applica-  
 6 tion for such license shall be made on forms prescribed  
 7 by the commissioner and shall be accompanied by the fee  
 8 required in this section. When such a person operates  
 9 as a commercial slaughterer and also operates as a com-  
 10 mercial processor, whether such operations are located  
 11 on the same or different premises in this state, each  
 12 such operation shall be licensed. When such a person  
 13 operates two or more slaughterhouses not on the same  
 14 premises in this state, or operates two or more process-  
 15 ing plants not on the same premises in this state, a  
 16 separate license shall be required for each such slaugh-  
 17 terhouse and each such processing plant. Each license  
 18 shall expire on the thirtieth day of June next following  
 19 its issuance, and the annual fee for each such license  
 20 shall be based upon the average number of animals  
 21 slaughtered per year and upon the average finished  
 22 product poundage processed per year, as set forth in  
 23 the following table, except that the annual fee for  
 24 the license of a person who operates solely as a custom  
 25 slaughterer shall be ten dollars or as a custom pro-  
 26 cessor shall be five dollars or as a distributor shall be  
 27 five dollars.

28		Average Number of Animals	Annual
29	Class	Slaughtered Per Year	Fee
30	Small	1 - 500	\$10.00
31	Medium	501 - 1000	\$25.00
32	Large	1001 - 5000	\$50.00
33	Extra Large	Over 5000	\$75.00
34		Average Finished Product	Annual
35	Class	Poundage Processed Per Year	Fee
36	Small	1 - 25,000	\$10.00
37	Medium	25,001 - 250,000	\$25.00
38	Large	250,001 - 1,000,000	\$50.00
39	Extra Large	Over 1,000,000	\$75.00

40 Before issuing any license required by the provisions of  
 41 this section, the commissioner shall inspect the appli-  
 42 cant's establishment and if the commissioner is satisfied

43 that the establishment is clean and sanitary, is properly  
44 equipped, and is in conformity with the provisions of  
45 this article and any reasonable rules and regulations  
46 promulgated by the commissioner, and if he is further  
47 satisfied that the carcasses, meat, meat food products  
48 or meat by-products to be sold or offered for sale there-  
49 from through commercial outlets will be wholesome  
50 and unadulterated, he shall issue the license. Each  
51 license shall specify the location of the establishment  
52 at which the licensee shall carry on his operations. The  
53 license shall also contain the establishment number as-  
54 signed by the commissioner.

55 (b) When a licensee changes the location of his  
56 establishment, he shall not operate at such new location  
57 unless and until his establishment at such new location  
58 has been inspected by the commissioner and a new  
59 license has been issued, or when a licensee leases, sells,  
60 changes name, incorporates or in any other way changes  
61 the status of his establishment with relationship to issu-  
62 ance of current license, the new lessee, owner, etc.,  
63 shall not operate at the location unless and until the  
64 establishment at such location has been inspected and  
65 approved by the commissioner and a new license has  
66 been issued in accordance with the provisions of sub-  
67 section (a) of this section: *Provided*, That a fee shall  
68 not be charged for such new license during the license  
69 year in which the change in location or change in owner-  
70 ship, name or leasing was made.

71 (c) The commissioner may refuse to grant a license  
72 or may suspend or revoke a license issued under the  
73 provisions of this section whenever he finds that the  
74 applicant's or licensee's establishment, as the case may  
75 be, is not clean or sanitary, or is not properly equipped,  
76 or is not in conformity with the provisions of this article  
77 or any reasonable rules and regulations promulgated  
78 by the commissioner, or if he finds that the carcasses,  
79 meat, meat food products or meat by-products to be  
80 sold or offered for sale therefrom through commercial  
81 outlets are or will be adulterated. Upon the refusal to  
82 grant a license, the commissioner shall furnish a written  
83 statement to the applicant specifying the grounds for

84 such refusal. No such revocation or suspension of a  
85 license shall be effective until the licensee has received  
86 written notice thereof, which notice shall specify the  
87 grounds for such revocation or suspension. Whenever  
88 there is sufficient cause for the revocation or suspension  
89 of a license as hereinabove specified, the commissioner  
90 may in lieu of such revocation or suspension, suspend  
91 inspections at the establishment. Immediately upon sus-  
92 pension of such inspections the commissioner shall give  
93 the licensee written notice thereof, and such notice shall  
94 contain a recitation of the deficiencies which must be  
95 fully and completely corrected before inspections shall  
96 be resumed. Upon receipt of a written statement ad-  
97 vising that a license has been refused or upon receipt  
98 of a written notice of the revocation or suspension of a  
99 license, or upon the suspension of inspections at the  
100 licensee's establishment, the applicant or licensee, as the  
101 case may be, may, in writing, demand a hearing. The  
102 commissioner shall hold such a hearing within ten days  
103 after receipt of such written demand, in accordance with  
104 the provisions of section nine of this article.

**§19-2B-6. Inspection, marking, labeling, branding, etc.; quar-  
antine; segregation; scheduling of operations; dis-  
position of carcasses, etc.; reinspection; health  
examinations; rejection tags.**

1 (a) The commissioner shall provide antemortem and  
2 postmortem inspection of all animals which are to be  
3 sold or offered for sale through a commercial outlet,  
4 establishment or distributor.

5 (b) The commissioner shall provide reinspection of  
6 carcasses, meat, meat food products and meat by-products  
7 during further preparation and processing which have  
8 previously been inspected.

9 (c) All inspections under the provisions of this article  
10 shall be performed in accordance with reasonable rules  
11 and regulations promulgated by the commissioner.

12 (d) The commissioner shall inspect all establishments  
13 under state inspection to make certain that they are  
14 operating in accordance with the provisions of this article

15 and all reasonable rules and regulations promulgated by  
16 the commissioner.

17 (e) When one inspector is assigned to make inspec-  
18 tions at two or more establishments where few animals  
19 are slaughtered, or where small quantities of carcasses,  
20 meat, meat food products or meat by-products are  
21 handled, or where the operations at such establishments  
22 are sporadic, and such establishments in any of such  
23 cases are in reasonable close proximity to one another,  
24 the commissioner, giving full consideration to the con-  
25 venience of the licensees of such establishments, may by  
26 written notice to such licensees specify a reasonable  
27 schedule for such operations: *Provided*, That the com-  
28 missioner may not require operations other than during  
29 normal working hours.

30 (f) Every conveyance used by any establishment  
31 under state inspection, and, notwithstanding the pro-  
32 visions of section seven of this article, every convey-  
33 ance used by any slaughterhouse, processing plant or  
34 distributor operating under federal inspection or ap-  
35 proved by the United States department of agriculture,  
36 for the transportation of carcasses, meat, meat food  
37 products or meat by-products shall be maintained in a  
38 clean and sanitary condition and may be inspected in  
39 accordance with the provisions of this article and reason-  
40 able rules and regulations promulgated by the com-  
41 missioner.

42 (g) The commissioner shall require such quarantine  
43 and segregation of animals, carcasses, meat, meat food  
44 products and meat by-products in establishments as is  
45 deemed necessary to effectuate the provisions of this  
46 article.

47 (h) The head, tongue, tail, thymus glands, viscera,  
48 blood and other parts of any slaughtered animal shall  
49 be retained in such a manner as to preserve their iden-  
50 tity until after the postmortem inspection has been com-  
51 pleted.

52 (i) Each licensee shall pay for such devices for the  
53 affixing of marks, brands, or stamps and for such meat  
54 labels as may be prescribed for his establishment by  
55 the commissioner. Such devices and meat labels shall

56 be under the exclusive control and supervision of the  
57 commissioner. The meat label used by any licensee shall  
58 be of the form and size prescribed by reasonable rules  
59 and regulations promulgated by the commissioner.

60 (j) Each carcass that has been inspected and passed  
61 in this state by the commissioner shall be marked at  
62 the time of inspection with the inspection legend. Any  
63 carcass which is not passed shall be marked conspicu-  
64 ously by the commissioner at the time of inspection in  
65 the following manner: "W. Va. inspected and con-  
66 demned," or any abbreviation thereof.

67 (k) Each primal part of a carcass that has been in-  
68 spected and passed shall be marked with the inspection  
69 legend, and each liver, beef heart and beef tongue that  
70 has been inspected and passed shall be branded with  
71 the inspection legend at the time of final inspection.  
72 Meat that has been boned out, cut from primal parts  
73 or otherwise changed so that the inspection legend is  
74 no longer plainly visible, and meat food products and  
75 meat by-products that are too small to be marked with  
76 the inspection legend shall be packed in closed con-  
77 tainers to which shall be affixed the meat label indicating  
78 that the meat, meat food products or meat by-products  
79 contained therein have been inspected and passed. Upon  
80 removal of the contents of such containers bearing such  
81 label, the label shall be defaced to prevent its reuse.

82 (l) All carcasses, meat, meat food products and meat  
83 by-products which have been derived from an animal  
84 slaughtered by a custom slaughterer or processed by a  
85 custom slaughterer or custom processor shall be marked  
86 "W. Va. custom slaughtered" in letters not less than  
87 three eighths of an inch in height.

88 (m) Each official inspection mark shall contain the  
89 establishment number of the establishment involved,  
90 unless otherwise authorized by rules and regulations  
91 promulgated by the commissioner.

92 (n) The commissioner is hereby authorized and em-  
93 powered to seize and destroy (i) any animal to be  
94 slaughtered in this state and thereafter sold or offered  
95 for sale through a commercial outlet or distributor which  
96 cannot be made fit for human consumption; (ii) any

97 animal, carcass, meat, meat food product or meat by-  
98 product slaughtered or processed in this state in violation  
99 of the provisions of this article or any reasonable rules  
100 and regulations promulgated by the commissioner; (iii)  
101 any carcass, meat, meat food product or meat by-product  
102 that does not bear an inspection legend or meat label  
103 provided for by this article or which has not been in-  
104 spected and passed under federal inspection or approved  
105 by the United States department of agriculture and  
106 which is intended to be sold or offered for sale  
107 through a commercial outlet or distributor; and (iv)  
108 any animal, carcass, meat, meat food product or meat  
109 by-product which is adulterated. Where appropriate  
110 the commissioner may in lieu of destruction as afore-  
111 said denature, decharacterize, mutilate or slash any  
112 carcass, meat, meat food product or meat by-product  
113 intended to be sold or offered for sale through a com-  
114 mercial outlet or distributor. The commissioner is also  
115 authorized and empowered to seize and retain under a  
116 retained tag any animal, carcass, meat, meat food pro-  
117 duct or meat by-product until the commissioner deter-  
118 mines to destroy, denature, decharacterize, mutilate,  
119 slash or release the same. Whenever the commissioner  
120 is authorized or empowered to take any of the actions  
121 specified in this subsection, he may order and direct the  
122 person having custody or possession of such animal,  
123 carcass, meat, meat food product or meat by-product,  
124 or the licensee of the establishment in which it is found,  
125 to be responsible for the disposition thereof, as well  
126 as any necessary storage, handling or other incidentals  
127 related thereto. Such disposition shall be carried out  
128 only under the direction and supervision of the com-  
129 missioner.

130 (o) Whenever practicable, the commissioner shall  
131 forgo the actions authorized in the immediately pre-  
132 ceding subsection and permit reprocessing if such re-  
133 processing will correct or eliminate the conditions which  
134 would have justified any of such actions. Any such re-  
135 processing in this state shall be under the supervision of  
136 the commissioner.

137 (p) Whenever the commissioner has good cause to  
138 believe that any carcass, meat, meat food product or  
139 meat by-product whether fresh, frozen, cured or other-  
140 wise prepared, and which is intended to be sold or offered  
141 for sale through a commercial outlet or distributor, may  
142 be adulterated or otherwise injurious to health, he may  
143 inspect or reinspect the same under the provisions of  
144 this article and any reasonable rules and regulations  
145 promulgated by him, even though such carcass, meat,  
146 meat food product or meat by-product may have been  
147 previously inspected and passed.

148 (q) No licensee shall employ in any establishment  
149 any person who has any communicable disease or in-  
150 fected wounds or who is a carrier of any communicable  
151 disease. To enforce the provisions of this subsection,  
152 the commissioner may require any employee or prospec-  
153 tive employee to submit to a health examination by a  
154 physician and furnish to the commissioner a certificate  
155 from such physician concerning his findings. The cost  
156 of conducting such examination and furnishing such  
157 certificate shall be borne by the licensee concerned.

158 (r) Whenever the commissioner inspects any room,  
159 compartment, equipment or utensil in any establish-  
160 ment subject to state inspection and finds the same not  
161 to be clean and sanitary or finds the same to be other-  
162 wise unsuitable for the slaughtering or processing op-  
163 erations carried on in such establishment, he shall affix  
164 thereto a rejection tag or rejection notice. No such  
165 rejected room, compartment, equipment or utensil shall  
166 be used until the deficiencies requiring such rejection  
167 shall have been fully and completely corrected and the  
168 rejection tag or rejection notice has been removed. No  
169 person other than the commissioner shall remove any  
170 such rejection tag or notice.

171 (s) When any animal, carcass, meat, meat food pro-  
172 duct or meat by-product has been inspected hereunder,  
173 the appropriate official inspection mark shall be affixed  
174 thereto, and no person shall remove the same unless  
175 authorized so to do by the commissioner.

**§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States Department of Agriculture.**

1 The provisions of this article shall not apply to any  
2 slaughterhouse or processing plant operating under the  
3 Federal Meat Inspection Act or the Federal Poultry  
4 Products Inspection Act, or approved by the United  
5 States department of agriculture.

**§19-2B-8. Exemptions.**

1 (a) In order to accomplish the objectives of this  
2 article, the commissioner may by reasonable rules and  
3 regulations exempt from inspection:

4 (i) Any commercial dealer, provided all car-  
5 casses, meat, meat food products and meat by-products  
6 sold or offered for sale by such dealer were slaughtered  
7 and/or processed in commercial establishments under  
8 state inspection or have been inspected and passed by  
9 the United States department of agriculture or have been  
10 approved by the United States department of agriculture  
11 and shall be prepared, identified, labeled and sold in  
12 normal retail quantities as prescribed by reasonable rules  
13 and regulations promulgated by the commissioner;

14 (ii) The slaughtering by any person of animals  
15 of his own raising, and the preparation by him of the  
16 carcasses, meat, meat food products and meat by-products  
17 of such animals exclusively for use by him and mem-  
18 bers of his household and his nonpaying guests and  
19 employees; or custom slaughtered animals, by a custom  
20 slaughterer, delivered by the owner thereof for such  
21 slaughter and the preparation by such slaughterer or  
22 custom processor of the carcasses, meat, meat food pro-  
23 ducts and meat by-products of such animals, exclusively  
24 for use, in the household of such owner, by him and  
25 members of his household and his nonpaying guests  
26 and employees: *Provided*, That the custom slaughterer  
27 or custom processor is not handling adulterated car-  
28 casses, meat, meat food products and meat by-products;  
29 maintains identity of carcasses, meat, meat food products  
30 and meat by-products; and maintains acceptable sani-  
31 tation and operational controls as prescribed by reason-



32 able rules and regulations promulgated by the commis-  
33 sioner;

34 (iii) Antemortem and postmortem inspection of  
35 a licensed custom slaughterer;

36 (iv) Any other operations which the commis-  
37 sioner may determine would best be exempted to further  
38 the purposes of this article, to the extent such exemptions  
39 conform to the Federal Meat Inspection Act and the  
40 Federal Poultry Products Inspection Act as amended  
41 from time to time and the regulations thereunder;

42 (b) Any institution operated by the state requiring  
43 inspection under this article shall be exempt from the  
44 licensing fee as required by section four of said article.

#### §19-2B-10. Additional prohibitions.

1 In addition to any other prohibitions contained in this  
2 article, it shall be unlawful:

3 (a) For any person to operate any establishment  
4 under state inspection which is not clean and sanitary;

5 (b) To slaughter any adulterated animal intended  
6 to be sold or offered for sale through a commercial out-  
7 let or distributor;

8 (c) To sell or offer for sale through a commercial  
9 outlet or distributor any carcass, meat, meat food pro-  
10 duct or meat by-product for human consumption which  
11 is adulterated;

12 (d) To slaughter for human consumption any animal  
13 tagged or permanently identified as "W. Va. condemned,"  
14 or abbreviation thereof;

15 (e) To process, sell or offer for sale for human con-  
16 sumption any carcass, meat, meat food product or meat  
17 by-product which is mislabeled with intent to deceive or  
18 which is marked "W. Va. inspected and condemned," or  
19 abbreviation thereof;

20 (f) To process in an establishment under state in-  
21 spection for sale through any commercial outlet or dis-  
22 tributor any carcass, meat, meat food product or meat  
23 by-product intended for human consumption and derived  
24 in whole or in part from any calf, pig, kid or lamb

25 which is so immature as to be lacking in nutritional  
26 value;

27 (g) To knowingly or intentionally expose any car-  
28 cass, meat, meat food product or meat by-product in any  
29 establishment under state inspection to insects, live ani-  
30 mals or any contamination;

31 (h) To add kangaroo meat, horse meat, mule meat  
32 or other equine meat to any animal meat, or meat food  
33 product or meat by-product derived from animals and  
34 to be sold or offered for sale through commercial outlets  
35 or distributors for human consumption;

36 (i) To remove any hide, skin or any other part of  
37 an unborn or stillborn animal in the confines of a room  
38 in an establishment where any animals, carcasses, meat,  
39 meat food products or meat by-products are slaughtered  
40 or processed, as the case may be, or to be sold or offered  
41 for sale through a commercial outlet or distributor;

42 (j) To process for human consumption in any es-  
43 tablishment subject to state inspection any carcass, meat,  
44 meat food product or meat by-product derived from any  
45 animal which died other than by slaughter;

46 (k) To transport to any commercial outlet or dis-  
47 tributor for the purpose of being sold or offered for  
48 sale therein, any carcass, meat, meat food product or  
49 meat by-product which is not marked, branded or stamped  
50 as having been inspected and passed by the commis-  
51 sioner or by the United States department of agriculture  
52 or which has not been approved by the United States  
53 department of agriculture;

54 (l) For any commercial outlet or distributor to re-  
55 ceive, for the purpose of being sold or offered for sale  
56 therein, any carcass, meat, meat food product or meat  
57 by-product which is not marked, branded or stamped  
58 as having been inspected and passed by the commis-  
59 sioner or by the United States department of agriculture  
60 or which has not been approved by the United States  
61 department of agriculture;

62 (m) To slaughter any horse, mule or other equine  
63 in any establishment under state inspection in which  
64 animals are slaughtered for human consumption for

- 65 the purpose of being sold or offered for sale through  
66 commercial outlets;
- 67 (n) To bring any kangaroo meat, horse meat, mule  
68 meat or other equine meat into any establishment under  
69 state inspection where animal carcasses, meat, meat  
70 food products or meat by-products are processed for  
71 human consumption for the purpose of being sold or  
72 offered for sale through commercial outlets;
- 73 (o) To transport, process, sell or offer for sale any  
74 kangaroo meat, horse meat, mule meat or other equine  
75 meat within this state for human consumption unless  
76 it is conspicuously and plainly identified or stamped as  
77 such;
- 78 (p) For any person to use an establishment number  
79 not assigned to him or to use an establishment number  
80 in connection with operations concerning which a dif-  
81 ferent establishment number was assigned by the com-  
82 missioner;
- 83 (q) To remove from any article any retained tag  
84 affixed by the commissioner, unless such removal is au-  
85 thorized by him;
- 86 (r) For a licensee to use any container bearing an  
87 official inspection mark unless it contains the exact  
88 carcass, meat, meat food product or meat by-product  
89 which was in the container at the time such contents  
90 were inspected and passed: *Provided*, That such a con-  
91 tainer may be otherwise used if such official inspection  
92 mark thereon is removed, obliterated or destroyed, and  
93 such other use is authorized by reasonable rules and  
94 regulations promulgated by the commissioner;
- 95 (s) For any person, other than the commissioner,  
96 to possess, keep or use, except as authorized by the  
97 commissioner, any meat label or device for the affixing  
98 of a mark, brand or stamp prescribed for inspection  
99 purposes hereunder;
- 100 (t) For any person, with intent to deceive, to pos-  
101 sess, keep or use any meat label, mark, brand or stamp  
102 similar in character or import to an official meat label,  
103 mark, brand or stamp prescribed by the commissioner  
104 hereunder or to an official meat label, mark, brand or

105 stamp used by the United States department of agricul-  
106 ture;

107 (u) To falsely make, falsely issue, falsely publish,  
108 alter, forge, simulate or counterfeit any inspection cer-  
109 tificate, memorandum, meat label, mark, brand, or stamp,  
110 or device for making an inspection mark, brand or  
111 stamp, or to possess, keep or use the same, with intent  
112 to deceive;

113 (v) For any person to refuse to permit the commis-  
114 sioner to enter and inspect at any time, upon presenta-  
115 tion of appropriate credentials, an establishment under  
116 state inspection, or to interfere with any such lawful  
117 entry or inspection;

118 (w) For any person to refuse to permit the com-  
119 missioner, upon presentation of appropriate credentials,  
120 to examine and copy the records described in section five  
121 of this article;

122 (x) For a person to prevent or fail to decharacterize  
123 or denature carcasses, meat or meat food products as  
124 prescribed by reasonable rules and regulations promul-  
125 gated by the commissioner;

126 (y) For a person to transport offal, blood, or inedible  
127 and condemned parts of animal bodies from slaughter-  
128 houses, meat processing plants or other related industries:  
129 *Provided*, That such products may be transported if  
130 placed in suitable containers with tight covers, or water-  
131 tight tanks so as not to contaminate the public high-  
132 ways or private roadways while going to or from the  
133 points of pickup;

134 (z) For a person to store offal, blood, or inedible  
135 and condemned parts of animal bodies from slaughter-  
136 houses, meat processing plants or other related indus-  
137 tries during interim transit movement in refrigerated  
138 warehouses, food lockers or other related industries:  
139 *Provided*, That such products may be otherwise stored  
140 if properly marked "NOT FOR HUMAN FOOD" "FOR  
141 ANIMAL FOOD ONLY" and identified as approved pro-  
142 ducts to be used for animal food;

143 (aa) For a person knowingly to purchase or deliver,  
144 or both, a 4-D animal to an establishment in this state;

145 (bb) For any person to transport carcasses, meat,  
146 meat food products or meat by-products that are in-  
147 tended for human consumption in a manner which would  
148 permit the products to become adulterated;

149 (cc) For any person who forcibly assaults, resists,  
150 opposes, impedes, intimidates, or interferes with the  
151 commissioner or his representative while engaged in or  
152 on account of the performances of his official duties.

**§19-2B-11. Penalties.**

1 Any person who shall violate any of the provisions  
2 of this article shall be guilty of a misdemeanor, and,  
3 upon conviction thereof, shall for the first offense be  
4 fined not less than fifty nor more than five hundred  
5 dollars and upon conviction of each subsequent offense  
6 shall be fined not less than one hundred nor more than  
7 one thousand dollars.

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## CHAPTER 4

(House Bill No. 858—By Mr. Bowman and Mr. Edgar)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and five, article eighteen of said chapter, all relating to the general and optional stock law.

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

That article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one and five, article eighteen of said chapter be amended and reenacted to read as follows:

**ARTICLE 18. GENERAL STOCK LAW.**

§19-18-1. Stock trespassing on grounds of another; damages.

§19-18-5. Liability of owner for damage by stock unlawfully running at large.

**§19-18-1. Stock trespassing on grounds of another; damages.**

1 If any horse, mule, ass, jennet, cattle, sheep, swine,  
2 or goat shall enter into any grounds, the owner or man-  
3 ager of any such stock shall be liable to the owner or  
4 tenant of such grounds for any damage he may sustain  
5 thereby, and the party so injured may, if he find such  
6 stock on his premises, impound them, or a sufficient  
7 number thereof, subject to the provisions of sections  
8 eight, nine and ten of this article, until such damages  
9 and costs of keeping have been paid.

**§19-18-5. Liability of owner for damage by stock unlawfully running at large.**

1 Should any stock, while running at large contrary to  
2 the provisions of sections one, two, three or four of this  
3 article, injure or destroy the property of another, the  
4 owner or manager of any such stock shall, notwith-  
5 standing any penalty imposed by said sections, be liable  
6 to the party whose property shall have been injured or  
7 destroyed for the amount of damage sustained by him  
8 by reason of such injury or destruction. And the party  
9 so injured may, if he find such stock on his premises,  
10 impound them, or a sufficient number thereof, subject  
11 to the provisions of sections eight, nine and ten of this  
12 article, until such damages and costs of keeping be paid.

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## CHAPTER 5

(House Bill No. 762—By Mr. Whitlow and Mr. Broyles)

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[Passed February 22, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs killing or worrying livestock or poultry and damages resulting therefrom; penalties.

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

That sections fourteen, fifteen, sixteen, seventeen and eighteen, article twenty, 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 20. DOGS.**

§19-20-14. Dog killing or worrying livestock or poultry—Recovery of damages from owner of dog or county court.

§19-20-15. Same—Assessment of damages; appraisers.

§19-20-16. Same—When lawful to kill dog.

§19-20-17. Same—Unlawful to harbor dog; penalty.

§19-20-18. Same—Duty of owner to kill dog; proceeding before justice on failure of owner to kill.

**§19-20-14. Dog killing or worrying livestock or poultry—  
Recovery of damages from owner of dog or county  
court.**

1 If any dog shall have killed or assisted in killing,  
2 wounding or worrying any sheep, lambs, goats, kids,  
3 calves or poultry out of the enclosure of the owner of  
4 such dog, the owner or keeper of such dog shall be liable  
5 to the amount of such sheep, lambs, goats, kids, calves  
6 or poultry in the amount of the damages sustained, to  
7 be recovered in an action before any court or justice  
8 having jurisdiction of such action; and it shall not be  
9 necessary to sustain such action to prove that the owner  
10 of such dog knew such dog was accustomed to do such  
11 worrying, killing or wounding; but a recovery under  
12 this section shall bar and preclude the owner of such  
13 sheep, lambs, goats, kids, calves or poultry from obtain-  
14 ing compensation from the county court under the pro-  
15 visions of this article. If such person suffering such loss  
16 or damage cannot ascertain the owner or keeper of  
17 such dog, or if such owner or keeper is not financially  
18 responsible, then the person suffering such loss or dam-  
19 age may file his claim with, and prove the same before,  
20 the county court of the county in which such loss or  
21 damage is sustained, in the manner provided in this  
22 article, and the court shall pay such loss or damage out  
23 of the fund provided for such purposes and according  
24 to the provisions of this article. When compensation  
25 is so obtained from the county court, said county court

26 is authorized to sue under this section and recover as  
27 the owner of the sheep, lambs, goats, kids, calves or  
28 poultry might have done, and the amount so recovered  
29 shall be paid into the county treasury; but no suit shall  
30 be commenced unless authorized by the county court.

**§19-20-15. Same—Assessment of damages; appraisers.**

1 Authority is hereby given to justices of the peace and  
2 notaries public within this state, and within their re-  
3 spective jurisdictions, to summon three substantial, up-  
4 right and worthy bona fide residents, citizens and tax-  
5 payers of his county to assess the damages suffered by  
6 any person on account of the destruction, loss or injury  
7 of any sheep, lambs, goats, kids, calves or poultry by  
8 dogs within the county. Such appraisers shall be ap-  
9 pointed upon the request of any person suffering dam-  
10 ages on account of such destruction, loss or injury, and  
11 shall go upon the ground and investigate fully the ex-  
12 tent of such destruction, loss or injury, taking all the  
13 evidence deemed necessary to arrive at the facts to be  
14 passed upon in arriving at the amount of damage, if any,  
15 suffered by the party making the complaint. Before  
16 such appraisers may be summoned by such justice or  
17 notary public, such complainant shall be required to  
18 make a sworn complaint before such justice or notary  
19 public, setting out in plain, easily comprehended terms  
20 the facts concerning his damage to the best of his knowl-  
21 edge. And after making a full investigation of the facts  
22 involved, such appraisers, with the assistance of such  
23 justice or notary public, shall make a sworn statement  
24 and report the facts ascertained and the damages suf-  
25 fered, which report and statement shall be filed with  
26 the county court or the clerk thereof in vacation. The  
27 fees and mileage for services allowed in such cases shall  
28 be the same as are allowed justices, witnesses and arbi-  
29 trators in justices' courts in this state for similar ser-  
30 vices. In the event that such appraisers find that the  
31 complainant has suffered no damage, then the com-  
32 plainant shall be responsible for and pay all the costs  
33 and expenses of such proceeding; and in the event that  
34 such complainant has suffered damages on account of  
35 the destruction, loss or injury of any such domestic



36 animals, according to the finding of such appraisers,  
37 then in such event the owner, keeper or person per-  
38 mitting the dog, or dogs, causing such damage to re-  
39 main upon premises under his control shall be liable  
40 for all damage sustained by the complainant, including  
41 all costs and necessary expenses, all of which shall be  
42 collectible by an action at law before any court or justice  
43 have jurisdiction of the matter. All papers in connection  
44 with any such claim shall be filed and preserved in the  
45 office of the clerk of the county court.

**§19-20-16. Same—When lawful to kill dog.**

1 Any person may kill any dog that he may see chasing,  
2 worrying, wounding or killing any sheep, lambs, goats,  
3 kids, calves or poultry outside of the enclosure of the  
4 owner of such dog, unless the same be done by the direc-  
5 tion of the owner of such sheep, lambs, goats, kids, calves  
6 or poultry.

**§19-20-17. Same—Unlawful to harbor dog; penalty.**

1 Any person who shall harbor or secrete or aid in  
2 secreting any dog which he knows or has reasons to  
3 believe has worried, chased or killed any sheep, lambs,  
4 goats, kids, calves or poultry not the property of the  
5 owner of such dog, out of his enclosure, or knowingly  
6 permits the same to be done on any premises under his  
7 control, shall be guilty of a misdemeanor, and, upon  
8 conviction thereof, before any court or justice having  
9 jurisdiction thereof in the county in which the offense  
10 is committed, shall be fined not less than ten nor more  
11 than fifty dollars, and, at the discretion of the court or  
12 justice, imprisoned in the county jail not more than  
13 thirty days; and each day that such dog is harbored,  
14 kept or secreted shall constitute a separate offense.

**§19-20-18. Same—Duty of owner to kill dog; proceeding before justice on failure of owner to kill.**

1 The owner or keeper of any dog that has been worry-  
2 ing, wounding, chasing or killing any sheep, lambs, goats,  
3 kids, calves or poultry not the property of such owner  
4 or keeper, out of his enclosure, shall, within forty-eight

5 hours, after having received notice thereof in writing  
6 from a reliable and trustworthy source, under oath, cause  
7 such dog to be killed. If the owner or keeper refuses  
8 to kill said dog as hereinbefore provided, any justice  
9 of the peace, upon information, shall summon the owner  
10 or keeper of such dog, and, after receiving satisfactory  
11 proof that his dog did the mischief, shall issue a warrant  
12 on application being made by the owner of the sheep,  
13 lambs, goats, kids, calves or poultry killed; and give  
14 it into the hands of the constable, special constable or  
15 sheriff, who shall kill the dog forthwith. The cost of  
16 such proceedings shall be paid by the owner or keeper  
17 of the dog so killed, including a fee of fifty cents to the  
18 officer killing the dog. The owner or keeper of the dog  
19 so killed shall, in addition to the costs, be liable to the  
20 owner of the sheep, lambs, goats, kids, calves or poultry  
21 or to the county court, for the value of the sheep, lambs,  
22 goats, kids, calves or poultry so killed or injured.

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## \* CHAPTER 6

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(Com. Sub. for Senate Bill No. 142—Originating in the Senate  
Committee on Finance)

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[Passed March 18, 1971; in effect from passage. Approved by the Governor  
March 20, 1971, after deleting and reducing certain items and parts  
of items and disapproving certain items and parts of items.]

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AN ACT making appropriations of public moneys 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.

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\*See Clerk's note on page 100.

**TITLE 1. GENERAL PROVISIONS.**

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

1     **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 seventy-two.

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

2     “Governor” shall mean the Governor of the State of West  
3 Virginia;

4     “Spending Unit” shall mean the department, agency or  
5 institution to which an appropriation is made;

6     The “fiscal year one thousand nine hundred seventy-  
7 two” shall mean the period from July first, one thousand  
8 nine hundred seventy-one through June thirtieth, one  
9 thousand nine hundred seventy-two;

10    “From collections” shall mean that part of the total ap-  
11 propriation which must be collected by the spending unit  
12 to be available for expenditure. If the authorized amount  
13 of collections is not collected, the total appropriation for  
14 the spending unit shall be reduced automatically by the  
15 amount of the deficiency in the collection. If the amount  
16 collected exceeds the amount designated “from collections”  
17 the excess shall be set aside in a special surplus fund and  
18 may be expended for the purpose of the spending unit as  
19 provided by Chapter 5-A, Article 2 of the Code of West  
20 Virginia.

1     **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, except from the appropriations  
6 made to the spending units of State Government, there  
7 may be transferred upon approval of the Governor, to a  
8 special account an amount sufficient to match Federal  
9 Funds under any Federal Acts;

10 Unless otherwise specified, appropriations for personal  
11 services shall include salaries of heads of spending unit;

12 "Current Expenses" shall be expended only for operating  
13 cost other than personal services or capital outlay;

14 "Repairs and Alterations" shall include all expenditures  
15 for materials, supplies and labor used in repairing and  
16 altering buildings, grounds and equipment, other than per-  
17 sonal service;

18 "Equipment" shall be expended only for things which  
19 have an appreciable and calculable period of usefulness in  
20 excess of one year;

21 "Buildings" shall include construction and alteration of  
22 structures and the improvements of lands, sewer and water  
23 improvements, and shall include shelter, support, storage,  
24 protection, or the improvement of a natural condition;

25 "Lands" shall be expended only for the purchase of lands  
26 or interest in lands.

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

1 **Sec. 4. Method of Expenditure.**—Money appropriated  
2 by this act, unless otherwise specifically directed, shall be  
3 appropriated and expended according to the provisions of  
4 Chapter 12, Article 3 of the Code of West Virginia, or ac-  
5 cording to any law detailing a procedure specifically limit-  
6 ing that article.

## TITLE 2. APPROPRIATIONS.

### §1. Appropriations from general revenue.

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- §12. Appropriations for local governments.
- §13. Total appropriations.
- §14. General school fund.

1    **Section 1. Appropriations from General Revenue.**—From  
2 the state fund, general revenue, there is hereby appro-  
3 priated conditionally upon the fulfillment of the provisions  
4 set forth in Chapter 5-A, Article 2 of the Code of West Vir-  
5 ginia, the following amounts, as itemized, for expenditure  
6 during the fiscal year one thousand nine hundred seventy-  
7 two.

### LEGISLATIVE

#### 1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1970-71
1 Compensation and per diem of officers and 2 attaches	
	<i>Fiscal Year</i> 1971-72
1 Compensation of Members .....	\$ 151,900.00
2 Compensation and per diem of officers and 3 attaches .....	181,500.00
4 Expenses of Members .....	113,500.00
5 Current Expenses and Contingent Fund.....	150,000.00
6 To pay Clerk of the Senate for compiling and 7 publishing the West Virginia Blue Book, 8 the distribution of which shall be made by	



- 9 the office of the Clerk of the Senate and  
 10 shall include seventy-five copies for each  
 11 member of the Legislature and two copies  
 12 to each classified and approved High and  
 13 Junior High School and one to each  
 14 Elementary School within the state ..... 10,000.00  
 15 To pay cost of printing the 1971 edition of  
 16 the Blue Book ..... 50,000.00  
 17 The appropriations for the Senate for the  
 18 fiscal year 1970-71 are to remain in full  
 19 force and effect, and are hereby reapprop-  
 20 priated to June 30, 1972.  
 21 Any balances so reappropriated may be  
 22 transferred and credited to the 1971-72  
 23 accounts.  
 24 Upon 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  
 28 the efficiency of the service.  
 29 The Clerk of the Senate is authorized to  
 30 draw his requisitions upon the Auditor,  
 31 payable out of the contingent fund of the  
 32 Senate for any bills for supplies and ser-  
 33 vices that may have been incurred by the  
 34 Senate and not included in the appropria-  
 35 tion bill, and for bills for supplies and  
 36 services incurred after adjournment, and  
 37 for the necessary operation of the Senate  
 38 offices, the requisition for same to be ac-  
 39 companied by the bills to be filed with the  
 40 Auditor.

2—House of Delegates

Acct. No. 102

Fiscal Year  
1970-71

- 1 Compensation and per diem of officers and  
 2 attaches  
 3 Current Expenses and Contingent Fund

	<i>Fiscal Year</i> 1971-72
1 Compensation of Members.....\$	415,900.00
2 Compensation and per diem of officers and	
3 attaches .....	197,100.00
4 Expenses of Members .....	275,500.00
5 Current Expenses and Contingent Fund.....	166,000.00

6 The appropriation for the House of Delegates  
7 for the fiscal year 1970-71 are to remain  
8 in full force and effect, and are hereby re-  
9 appropriated to June 30, 1972.

10 Any balances so reappropriated may be trans-  
11 ferred and credited to the 1971-72 accounts.

12 Upon the written request of the Clerk of the  
13 House of Delegates, the State Auditor shall  
14 transfer amounts between items of the  
15 total appropriation in order to protect or  
16 increase the efficiency of the service.

17 The Clerk of the House of Delegates, with  
18 approval of the Speaker, is authorized to  
19 draw his requisitions upon the Auditor,  
20 payable out of the contingent fund of the  
21 House of Delegates, for any bills for sup-  
22 plies and services that may have been in-  
23 curred by the House of Delegates, and not  
24 included in the appropriation bill, for bills  
25 for services and supplies incurred in prepa-  
26 ration for the opening of the session and  
27 after adjournment, and for the necessary  
28 operation of the House of Delegates'  
29 offices, the requisition for same to be ac-  
30 companied by bills to be filed with the  
31 Auditor.

32 For duties imposed by law and by the House  
33 of Delegates, including the salary allowed  
34 by law as keeper of the rolls, the Clerk of  
35 the House of Delegates shall be paid a  
36 monthly salary as provided in Committee  
37 Substitute for House Resolution No. 10,

38 adopted January 25, 1971, payable from  
 39 the contingent fund of the House of Dele-  
 40 gates, and the Clerk may employ a secre-  
 41 tary and a bookkeeper, one custodian-  
 42 messenger, and two janitors at the salaries  
 43 provided in said resolution.

44 The Speaker of the House of Delegates, upon  
 45 recommendation of the Chairman of the  
 46 Finance Committee, shall have the au-  
 47 thority to convene the Finance Committee  
 48 at any time within ten (10) days prior  
 49 to the next Legislative session for the  
 50 purpose of reviewing the budget requests  
 51 of the various spending units of this State.  
 52 Such members of the Committee are to  
 53 be allowed \$25.00 per diem in lieu of actual  
 54 and necessary expenses, and the Clerk of  
 55 the House is hereby authorized to draw  
 56 requisitions upon the State Auditor pay-  
 57 able out of the appropriation for Current  
 58 Expenses and Contingent Fund for these  
 59 expenses.

60 The Speaker of the House of Delegates, upon  
 61 recommendation of the Chairman of the  
 62 Finance Committee, shall have authority to  
 63 employ such staff personnel during and  
 64 between sessions of the Legislature as shall  
 65 be needed, and the Clerk of the House is  
 66 hereby authorized to draw requisitions  
 67 upon the State Auditor, payable out of the  
 68 appropriation for Contingent Expenses for  
 69 such services.

### 3—Joint Expenses

Acct. No. 103

*Fiscal Year*  
 1970-71

- 1 Joint Committee on Government and
- 2 Finance
- 3 Cost of Legislative Printing

4 Commission on Interstate  
5 Cooperation

*Fiscal Year*  
1971-72

1 To pay the cost of legislative printing .....	\$ 165,000.00
2 Commission on Interstate Cooperation .....	35,000.00
3 Joint Committee on Government and	
4 Finance .....	1,340,650.00
5 Other Legislative Committees .....	30,000.00
6 The appropriation for Joint Expenses for	
7 the fiscal year 1970-71, are to remain in full	
8 force and effect, and are hereby reappro-	
9 priated to June 30, 1972.	
10 Any balances so reappropriated may be	
11 transferred and credited to the 1971-72	
12 accounts.	
13 Upon written request of the Clerk of the	
14 Senate and the Clerk of the House of Dele-	
15 gates the State Auditor shall transfer	
16 amounts between items of the total appro-	
17 priation in order to protect or increase	
18 the efficiency of the service.	

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1 Salaries of Judges .....	\$ 137,500.00
2 Other Personal Services .....	234,024.00
3 Current Expenses .....	36,000.00
4 Equipment .....	5,000.00
5 Total .....	\$ 412,524.00

5—*Judicial—Auditor's Office*

Acct. No. 111

1 Salaries of Judges .....	\$ 637,000.00
2 Other Personal Services .....	174,400.00
3 Current Expenses .....	45,400.00

4	Judges Retirement System .....	300,000.00
5	Criminal Charges .....	600,000.00
		<hr/>
6	Total .....	\$ 1,756,800.00
7	This appropriation shall be administered by	
8	the State Auditor who shall draw his requi-	
9	sition for warrants in payments 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 accord-	
15	ance with the law relating thereto, upon	
16	requisition of the State Auditor.	

6—*State Law Library*

Acct. No. 114

1	Personal Services .....	\$ 59,560.00
2	Current Expenses .....	10,125.00
3	Equipment .....	40,000.00
		<hr/>
4	Total .....	\$ 109,685.00

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 .....	\$ 25,000.00
2	Other Personal Services .....	131,250.00
3	Current Expenses .....	60,000.00
4	Equipment .....	15,000.00
5	Civil Contingent Fund .....	400,000.00

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 Custodial Fund .....	75,000.00
12 To be used for current general expenses, in- 13 cluding compensation of servants and em- 14 ployees, household maintenance, cost of 15 official functions, and any additional house- 16 hold expenses occasioned by such official 17 functions.	
18 Federal State Coordination .....	1,250,000.00
19 Disaster Relief-Federal Matching .....	50,000.00
20 To match and aid Federal Programs, and any 21 part of this appropriation may be trans- 22 ferred to any department for such purposes.	
23 Any unexpended balance remaining in the 24 appropriation—"Civil Contingent Fund, 25 Office of Federal State Relations, and Fed- 26 eral State Coordination," at the close of 27 the fiscal year 1970-71 is hereby reappro- 28 priated for expenditure during the fiscal 29 year 1971-72.	
30 Total .....	\$ 2,006,250.00

## FISCAL

## 9—Auditor's Office—General Administration

## Acct. No. 150

1 Salary of State Auditor .....	\$ 18,000.00
2 Other Personal Services .....	500,060.00
3 Current Expenses .....	136,025.00
4 Equipment .....	10,000.00
5 Microfilm Program .....	10,000.00
6 Total .....	\$ 674,085.00

10—*Treasurer's Office*

## Acct. No. 160

1	Salary of State Treasurer .....	\$	17,500.00
2	Other Personal Services .....		167,980.00
3	Current Expenses .....		28,190.00
4	Equipment .....		8,080.00
5	Board of Investments .....		1,500.00
<hr/>			
6	Total .....	\$	223,250.00

11—*Sinking Fund Commission*

## Acct. No. 170

1	Personal Services .....	\$	34,272.00
2	Current Expenses .....		3,075.00
3	Equipment .....		1,000.00
<hr/>			
4	Total .....	\$	38,347.00

12—*State Tax Department*

## Acct. No. 180

1	Personal Services .....	\$	2,477,328.00
2	Current Expenses .....		832,885.00
3	Equipment .....		44,000.00
<hr/>			
4	Total .....	\$	3,354,213.00

13—*State Tax Department*  
*Property Appraisal*

## Acct. No. 185

1	Personal Services .....	\$	554,500.00
2	Other Expenses .....		45,500.00
<hr/>			
3	Total .....	\$	600,000.00
4	Any balance remaining in the Property Appraisal Account at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.		
5			
6			
7			

14—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner .....	\$	16,000.00
2	Salaries of Board Members—Board of Pro-		
3	bation and Parole .....		36,000.00
4	Other Personal Services .....		435,267.00
5	Current Expenses .....		135,900.00
6	Equipment .....		3,000.00
			<hr/>
7	Total .....	\$	626,167.00

15—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services .....	\$	865,250.00
2	Current Expenses .....		397,300.00
3	Repairs and Alterations .....		65,200.00
4	Equipment .....		18,600.00
5	Postage .....		260,000.00
6	Records Management .....		49,000.00
7	Office of State Emergency Planning .....		24,000.00
8	Transportation Division .....		50,000.00
9	Information Systems Service Division .....		206,016.00
10	Major Building Repairs .....		150,000.00
11	National Youth Science Camp .....		80,000.00
12	State Agency Surplus Property .....		50,000.00
			<hr/>
13	Total .....	\$	2,215,366.00

14 The Workmen's Compensation Commission,  
 15 Department of Welfare, Public Service  
 16 Commission, Department of Natural Re-  
 17 sources, Department of Motor Vehicles,  
 18 State Department of Highways, State  
 19 Health Department and State Tax Depart-  
 20 ment—Income Tax Division shall reim-  
 21 burse the Postage appropriation of the De-  
 22 partment of Finance and Administration  
 23 monthly for all meter service. Any spending  
 24 unit operating from Special Revenue or re-  
 25 ceiving reimbursement for postage costs



26 from the Federal Government shall re-  
 27 fund to the Postage account of the De-  
 28 partment of Finance and Administration  
 29 such amounts. Should this appropriation for  
 30 Postage be insufficient to meet the mailing  
 31 requirements of the State spending units as  
 32 set out above, any excess postage meter  
 33 service requirements shall be a proper  
 34 charge against the units, and each spending  
 35 unit shall refund to the Postage appropria-  
 36 tion of the Department of Finance and Ad-  
 37 ministration any amounts required for that  
 38 Department for postage in excess of this  
 39 appropriation.

40 Any unexpended balance remaining in the  
 41 "Postage Account" and "National Youth  
 42 Science Camp" at the close of the fiscal  
 43 year 1970-71 is hereby reappropriated for  
 44 expenditure during the fiscal year 1971-72.

45 Any unexpended balance remaining in  
 46 "Major Building Repairs", at the close of  
 47 the 1970-71 fiscal year, is hereby reappro-  
 48 priated for expenditure during the fiscal  
 49 year 1971-72, (Major Building Repairs to  
 50 include maintenance and repairs to Gover-  
 51 nor's Mansion).

52 State Department of Highways, shall reim-  
 53 burse the appropriation of the Department  
 54 of Finance and Administration monthly for  
 55 all actual expenses incurred pursuant to  
 56 the provisions of Chapter 17, Article 2-A,  
 57 Section 13 of the Code of West Virginia.

### 16—State Board of Insurance

Acct. No. 225

1 Personal Services .....	\$	23,520.00
2 Current Expenses .....		8,480.00
3 Equipment .....		500.00
4 Fire Insurance Premiums .....		350,000.00
5 Automobile Insurance Premiums .....		125,000.00

6	Bonds Premiums .....	50,000.00
7	Self-Insurance Fund .....	300,000.00
8	Total .....	\$ 857,500.00

9 The above appropriations on lines 4, 5, 6 and 7  
 10 are for the purpose of paying premiums for  
 11 the various state agencies. Should these ap-  
 12 propriations be insufficient to meet the pre-  
 13 mium requirements of the state spending  
 14 units, any excess premium requirements  
 15 shall be a proper charge against the units  
 16 and each spending unit shall reimburse to  
 17 the Board of Insurance any amounts re-  
 18 quired for that department for premiums  
 19 in excess of this appropriation.

20 Any unexpended balance remaining in the  
 21 appropriation for "Self-Insurance Fund"  
 22 at the close of the fiscal year 1970-71 is  
 23 hereby reappropriated for expenditure dur-  
 24 ing the fiscal year 1971-72.

## LEGAL

### 17—Attorney General

Acct. No. 240

1	Salary of Attorney General .....	\$ 18,500.00
2	Other Personal Services .....	342,657.00
3	Current Expenses .....	49,250.00
4	Equipment .....	11,500.00
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 .....	\$ 425,157.00

9 When legal counsel or secretarial help is ap-  
 10 pointed by the Attorney General, for any  
 11 state spending unit, this account shall be  
 12 reimbursed from such unit's appropriated  
 13 account in an amount agreed upon by the

- 14 Attorney General and the proper authority  
15 of said spending unit.

18—*Commission on Uniform State Laws*

Acct. No. 245

1	Total.....	\$	5,000.00
2	To pay expenses of members of the Com-		
3	mission on Uniform State Laws.		

INCORPORATING AND RECORDING

19—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State.....	\$	17,000.00
2	Other Personal Services .....		117,755.00
3	Current Expenses .....		34,000.00
4	Equipment .....		7,650.00
5	Total.....	\$	176,405.00

EDUCATIONAL

20—*State Department of Education*

Acct. No. 277

1	Teacher Education Program .....	\$	100,000.00
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21—*State Board of Education*

Acct. No. 278

1	Early Childhood Ed. (Public Kindergarten) ..	\$	3,500,000.00
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22—*West Virginia Board of Regents (Control)*

Acct. No. 279

1	Personal Services .....	\$	48,421,124.00
2	Current Expenses .....		5,523,769.00
3	Repairs and Alterations .....		1,880,432.00
4	Equipment .....		2,938,175.00
5	Oak Wilt Research .....		10,000.00

6	Veterinary Tuition .....	40,200.00
7	Educational TV .....	523,000.00
8	Bureau for Coal Research .....	225,000.00
9	Forestry Products .....	90,000.00
10	Regional Research Institute .....	79,700.00
11	Intensive Agriculture-Demonstration Trial...	26,000.00
12	Experimental Projects in Teacher Education	45,000.00
13	Community Development and Research .....	18,000.00
14	Center for Economic Action .....	45,000.00
15	Branch College .....	203,200.00
16	Individual Accreditation—2-year Colleges	
17	and Graduate Center .....	500,000.00
18	New Programs .....	110,000.00
19	Unclassified .....	1,305,100.00
20	State Commission on Higher Education—	
21	Operating Expenses .....	28,400.00
22	Title I—Matching Funds .....	130,000.00
23	Scholarship Program .....	300,000.00
24	Awareness .....	50,000.00
25	Total .....	\$ 62,492,100.00

*23—West Virginia Board of Regents*

Acct. No. 280

1	Personal Services .....	\$ 247,340.00
2	Current Expenses .....	83,625.00
3	Equipment .....	4,800.00
4	Total .....	\$ 335,765.00

*24—West Virginia University—Medical School*

Acct. No. 285

1	Total .....	\$ 3,560,000.00
2	To be transferred to the West Virginia Uni-	
3	versity—Medical School Fund upon the	
4	requisition of the Governor.	

*25—Department of Education*

Acct. No. 286

1	Personal Services .....	\$ 650,273.00
2	Current Expenses .....	188,305.00

3	Equipment .....	9,350.00
4	National Defense Education Act .....	301,000.00
5	Statewide Testing Program .....	176,000.00
6	Experimental Projects .....	10,730.00
7	Safety Education—Aid to Counties .....	135,000.00
8	State Aid to Children's Home .....	25,000.00
9	Comprehensive Education Program .....	1,000,000.00
		<hr/>
10	Total .....	\$ 2,495,658.00

11 The above appropriation includes the State  
 12 Board of Education and their executive  
 13 offices.

14 Any part or all of the appropriation for  
 15 "National Defense Education Act" may be  
 16 transferred to a Special Revenue Fund for  
 17 the purpose of matching Federal Funds for  
 18 this program.

26—*State Department of Education—School Lunch Program*

Acct. No. 287

1	Personal Services .....	\$ 93,429.00
2	Current Expenses .....	19,560.00
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches .....	650,000.00
		<hr/>
5	Total .....	\$ 762,989.00

27—*State Board of Education—Vocational Division*

Acct. No. 289

1	Personal Services .....	\$ 104,850.00
2	Current Expenses .....	66,500.00
3	Equipment .....	1,650.00
4	Vocational Aid .....	378,335.00
5	Adult Basic Education .....	200,000.00
		<hr/>
6	Total .....	\$ 751,335.00

7 Any balance remaining in the appropriations  
 8 "Vocational Aid and Aid to Counties" at  
 9 the close of the fiscal year 1970-71 is hereby

- 10 reappropriated for expenditure during the  
11 fiscal year 1971-72.

28—*Educational Broadcasting Authority*

Acct. No. 291

1 Personal Services .....	\$ 40,000.00
2 Current Expenses .....	35,020.00
3 Equipment .....	2,050.00
4 Regional ETV .....	1,009,382.00

5 Total.....\$ 1,086,452.00

- 6 For participation in the construction and  
7 operation of Regional ETV stations by Mar-  
8 shall University, Concord College, Bluefield  
9 State College, West Virginia Institute of  
10 Technology and West Virginia State Col-  
11 lege and may be transferred to special  
12 revenue accounts for matching County  
13 and/or Federal Funds.

29—*State Board of Education—Vocational Division*

Acct. No. 293

- |  |                 |
|--|-----------------|
| 1 To implement Vocational Education Act of<br>2 1963 P.L. 88-210 ..... | \$ 2,250,000.00 |
|--|-----------------|
- 3 The above appropriation includes \$100,000.00  
4 for Manpower Training.

30—*State Board of Education—Vocational Division*

Acct. No. 294

- |              |               |
|--------------|---------------|
| 1 Total..... | \$ 150,000.00 |
|--------------|---------------|
- 2 Any unexpended balance remaining in the  
3 appropriation "Aid to Counties" at the  
4 close of the fiscal year 1970-71 is hereby re-  
5 appropriated for expenditure during the  
6 fiscal year 1971-72.

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

Acct. No. 295

- |                              |                  |
|------------------------------|------------------|
| 1 State Aid to Schools ..... | \$148,650,594.00 |
|------------------------------|------------------|

- 2 To be distributed according to Enrolled Com.  
 3 Sub. for Senate Bill No. 122, Regular Ses-  
 4 sion of the Legislature, 1971.

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

Acct. No. 296

1	Personal Services .....	\$ 35,028.00
2	Current Expenses .....	16,240.00
3	Out-of-State Instruction .....	90,000.00
4	Aid to Counties .....	424,000.00
		<hr/>
5	Total .....	\$ 565,268.00
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.	

33—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired	
2	Teachers .....	\$14,502,000.00
3	Employers' Accumulation Fund—To match	
4	contributions of members .....	3,525,000.00
5	Expense Fund .....	35,000.00
		<hr/>
6	Total .....	\$18,062,000.00

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

Acct. No. 333

1	Personal Services .....	\$ 1,059,903.00
2	Current Expenses .....	212,900.00
3	Repairs and Alterations .....	63,850.00
4	Equipment .....	43,800.00
		<hr/>
5	Total .....	\$ 1,380,453.00
6	Any unexpended balance remaining in the	
7	appropriation "Intermediate Classroom	

8 Dormitory Unit" at the close of the fiscal  
 9 year 1970-71 is hereby reappropriated for  
 10 expenditure during the fiscal year 1971-72.

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

Acct. No. 336

1	Personal Services .....	\$	41,665.00
2	Current Expenses .....		7,250.00
3	Repairs and Alterations .....		10,200.00
4	Equipment .....		10,000.00
5	Total .....	\$	69,115.00

36—*Department of Archives and History*

Acct. No. 340

1	Personal Services .....	\$	85,590.00
2	Current Expenses .....		18,000.00
3	Equipment .....		21,500.00
4	Total .....	\$	125,090.00

37—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services .....	\$	138,000.00
2	Current Expenses .....		4,900.00
3	Equipment .....		5,000.00
4	Books and Periodicals .....		31,480.00
5	To Match Federal Funds .....		210,000.00
6	Library Matching Fund .....		250,000.00
7	Total .....	\$	639,380.00

8 Any unexpended balance remaining in the  
 9 appropriation "Library Matching Fund" at  
 10 the close of the fiscal year 1970-71 is hereby  
 11 reappropriated for expenditure during the  
 12 fiscal year 1971-72.



## CHARITIES AND CORRECTION

38—*West Virginia Industrial School for Boys*

## Acct. No. 370

1 Personal Services .....	\$ 669,038.00
2 Current Expenses .....	223,620.00
3 Repairs and Alterations .....	53,650.00
4 Equipment .....	95,200.00
5 Total .....	\$ 1,041,508.00

39—*Forestry Camp for Boys*

## Acct. No. 371

1 Personal Services .....	\$ 151,702.00
2 Current Expenses .....	92,750.00
3 Repairs and Alterations .....	10,500.00
4 Equipment .....	16,300.00
5 Total .....	\$ 271,252.00

40—*West Virginia Industrial Home for Girls*

## Acct. No. 372

1 Personal Services .....	\$ 279,287.00
2 Current Expenses .....	101,700.00
3 Repairs and Alterations .....	19,600.00
4 Equipment .....	22,000.00
5 Vocational Training .....	5,000.00
6 Total .....	\$ 427,587.00

41—*West Virginia Forestry Camp (Leckie)*

## Acct. No. 373

1 Personal Services .....	\$ 148,534.00
2 Current Expenses .....	103,300.00
3 Repairs and Alterations .....	5,500.00
4 Equipment .....	30,000.00
5 Total .....	\$ 287,334.00

42—*West Virginia State Prison for Women*

## Acct. No. 374

1	Personal Services .....	\$	72,418.00
2	Current Expenses .....		41,630.00
3	Repairs and Alterations .....		9,000.00
4	Equipment .....		7,350.00
5	Total .....	\$	130,398.00

43—*West Virginia Penitentiary*

## Acct. No. 375

1	Personal Services .....	\$	1,245,800.00
2	Current Expenses .....		537,600.00
3	Repairs and Alterations .....		68,200.00
4	Equipment .....		38,100.00
5	Total .....	\$	1,889,700.00

44—*Huttonsville Correctional Center*

## Acct. No. 376

1	Personal Services .....	\$	563,950.00
2	Current Expenses .....		215,000.00
3	Repairs and Alterations .....		25,000.00
4	Equipment .....		28,000.00
5	Roof Installation .....		150,000.00
6	Total .....	\$	981,950.00

45—*West Virginia Children's Home*

## Acct. No. 380

1	Personal Services .....	\$	77,137.00
2	Current Expenses .....		39,130.00
3	Repairs and Alterations .....		14,000.00
4	Equipment .....		14,600.00
5	Total .....	\$	144,867.00

46—*Andrew S. Rowan Memorial Home*

## Acct. No. 384

1	Personal Services .....	\$	393,645.00
2	Current Expenses .....		190,000.00
3	Repairs and Alterations .....		32,000.00
4	Equipment .....		55,000.00
5	Total .....	\$	670,645.00

## HEALTH AND WELFARE

47—*State Health Department*

## Acct. No. 400

1	Personal Services .....	\$	720,295.00
2	Current Expenses .....		131,140.00
3	Equipment .....		21,443.00
4	Emergency Medical Services .....		35,000.00
5	Cancer Control and Treatment .....		175,000.00
6	Local Health Services .....		700,000.00
7	Dental Clinics .....		60,000.00
8	Heart Disease Control .....		125,000.00
9	Maternal and Child Healthmobile Medical		
10	Examination Clinic .....		150,000.00
11	Home Health Services .....		40,000.00
12	Mobile Chest X-Ray & Diagnostic Services		
13	for Tuberculosis Control .....		80,000.00
14	Hospital and Medical Facilities Construction		
15	Program .....		17,500.00
16	Special Project for Eradication of Tubercu-		
17	losis .....		237,000.00
18	Environmental Health Services .....		69,000.00
19	Repairs to State Hygienic Laboratory .....		20,000.00
20	Nursing Home Inspection Unit .....		64,000.00
21	Total .....	\$	2,645,378.00

48—*Department of Veterans Affairs*

## Acct. No. 404

1	Personal Services .....	\$	247,000.00
2	Current Expenses .....		64,400.00

3	Equipment .....	5,100.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legisla-	
7	ture, one thousand nine hundred forty-	
8	three .....	20,000.00
		<hr/>
9	Total .....	\$ 336,500.00
10	Any unexpended balances remaining in the	
11	appropriation "To Provide Educational Op-	
12	portunities for Children of War Veterans"	
13	at the close of the fiscal year 1970-71 is	
14	hereby reappropriated for expenditure dur-	
15	ing the fiscal year 1971-72.	

## 49—Department of Welfare

## Acct. No. 405

1	Personal Services .....	\$ 4,750,000.00
2	Current Expenses .....	1,876,000.00
3	Equipment .....	104,213.00
4	Public Assistance Grants—Classified Aid .....	16,050,000.00
5	Aid to Crippled Children .....	920,000.00
6	Medical Services .....	7,500,000.00
7	Child Welfare Services .....	3,562,100.00
8	General Relief and Boarding Care .....	300,000.00
9	Social Security Matching Fund .....	281,687.00
		<hr/>
10	Total .....	\$ 35,344,000.00

## 50—State Agency on Aging

## Acct. No. 406

1	Personal Services .....	\$ 36,729.00
2	Current Expenses .....	2,805.00
3	Programs for the Elderly .....	50,000.00
		<hr/>
4	Total .....	\$ 89,534.00

51—*Department of Mental Health*

## Acct. No. 410

1	Personal Services .....	\$ 764,430.00
2	Current Expenses .....	159,630.00
3	Equipment .....	13,800.00
4	Research and Training .....	30,000.00
5	Civil Service Costs .....	82,000.00
6	Division of Health Education .....	18,500.00
7	Day Care Center .....	100,000.00
8	Division of Alcoholism .....	350,000.00
9	Division of Community Services .....	362,000.00
10	Roney's Point Branch Hospital .....	185,000.00
11	Commission on Mental Retardation.....	20,000.00
		<hr/>
12	Total.....	\$ 2,085,360.00

52—*Colin Anderson Center*

## Acct. No. 419

1	Personal Services .....	\$ 1,981,046.00
2	Current Expenses .....	332,100.00
3	Repairs and Alterations .....	57,300.00
4	Equipment .....	94,782.00
		<hr/>
5	Total.....	\$ 2,465,228.00
6	Any unexpended balance remaining in the	
7	appropriation "Capital Outlay Improve-	
8	ment" at the close of fiscal year 1970-71 is	
9	hereby reappropriated for expenditure	
10	during the fiscal year 1971-72.	

53—*Weston State Hospital*

## Acct. No. 420

1	Personal Services .....	\$ 3,605,545.00
2	Current Expenses .....	1,100,000.00
3	Repairs and Alterations .....	115,000.00
4	Equipment .....	100,000.00
5	Psychiatric Training Center for Student	
6	Nurses .....	310,000.00
		<hr/>
7	Total.....	\$ 5,230,545.00

8 Any unexpended balance remaining in the  
 9 appropriation "Boiler Replacement" at the  
 10 close of fiscal year 1970-71 is hereby re-  
 11 appropriated for expenditure during fiscal  
 12 year 1971-72.

54—*Spencer State Hospital*

Acct. No. 421

1 Personal Services .....	\$ 2,251,536.00
2 Current Expenses .....	610,000.00
3 Repairs and Alterations .....	75,000.00
4 Equipment .....	75,000.00
5 Total .....	<u>\$ 3,011,536.00</u>

55—*Huntington State Hospital*

Acct. No. 422

1 Personal Services .....	\$ 2,377,274.00
2 Current Expenses .....	801,580.00
3 Repairs and Alterations .....	120,000.00
4 Equipment .....	75,000.00
5 Total .....	<u>\$ 3,373,854.00</u>

56—*Lakin State Hospital*

Acct. No. 423

1 Personal Services .....	\$ 1,144,500.00
2 Current Expenses .....	325,000.00
3 Repairs and Alterations .....	100,000.00
4 Equipment .....	59,100.00
5 Total .....	<u>\$ 1,628,600.00</u>

6 Any unexpended balance remaining in the ap-  
 7 propriation—"Renovate Classroom Build-  
 8 ing, Construct Ward Building," at the close  
 9 of the fiscal year 1970-71 is hereby reappro-  
 10 priated for expenditure during the fiscal  
 11 year 1971-72.

57—*Barboursville State Hospital*

Acct. No. 424

1 Personal Services .....	\$ 595,686.00
2 Current Expenses .....	180,000.00
3 Repairs and Alterations .....	45,000.00
4 Equipment .....	17,200.00
5 Total .....	\$ 837,886.00

58—*Fairmont Emergency Hospital*

Acct. No. 425

1 Personal Services .....	\$ 358,500.00
2 Current Expenses .....	115,000.00
3 Repairs and Alterations .....	25,000.00
4 Equipment .....	13,600.00
5 Total .....	\$ 512,100.00

59—*Welch Emergency Hospital*

Acct. No. 426

1 Personal Services .....	\$ 392,978.00
2 Current Expenses .....	175,000.00
3 Repairs and Alterations .....	47,500.00
4 Equipment .....	58,000.00
5 Total .....	\$ 673,478.00

60—*Hopemont State Hospital*

Acct. No. 430

1 Personal Services .....	\$ 1,568,414.00
2 Current Expenses .....	310,000.00
3 Repairs and Alterations .....	36,200.00
4 Equipment .....	20,000.00
5 Total .....	\$ 1,934,614.00

61—*Pinecrest State Hospital*

Acct. No. 431

1 Personal Services .....	\$ 1,172,629.00
---------------------------	-----------------

2	Current Expenses .....	450,000.00
3	Repairs and Alterations .....	31,800.00
4	Equipment .....	70,300.00
		<hr/>
5	Total .....	\$ 1,724,729.00

## 62—Denmar State Hospital

## Acct. No. 432

1	Personal Services .....	\$ 914,338.00
2	Current Expenses .....	244,000.00
3	Repairs and Alterations .....	33,100.00
4	Equipment .....	100,000.00
		<hr/>
5	Total .....	\$ 1,291,438.00

## 63—Berkeley Springs Sanitarium

## Acct. No. 436

1	Personal Services .....	\$ 68,240.00
2	Current Expenses .....	10,000.00
3	Repairs and Alterations .....	12,000.00
4	Equipment .....	3,000.00
		<hr/>
5	Total .....	\$ 93,240.00

## 64—State Board of Education—Rehabilitation Division

## Acct. No. 440

1	Personal Services .....	\$ 597,730.00
2	Current Expenses .....	120,508.00
3	Rehabilitation Center .....	487,038.00
4	Case Services .....	1,111,655.00
5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind .....	22,321.00
7	Training and Special Projects .....	67,755.00
8	Social Security Matching Fund .....	40,000.00
		<hr/>
9	Total .....	\$ 2,447,007.00



## BUSINESS AND INDUSTRIAL RELATIONS

65—Bureau of Labor and Department of  
Weights and Measures

## Acct. No. 450

1	Personal Services .....	\$	569,110.00
2	Current Expenses .....		187,975.00
3	Equipment .....		32,350.00
4	W. Va. Labor-Management		
5	Relations Board .....		38,000.00
6	Total .....	\$	827,435.00

## 66—Department of Mines

## Acct. No. 460

1	Personal Services .....	\$	1,507,400.00
2	Current Expenses .....		222,187.00
3	Equipment .....		37,000.00
4	Total .....	\$	1,766,587.00

5 Out of the above appropriation for "Per-  
6 sonal Services" the sum of \$19,000.00 is to  
7 be expended for the employment of the  
8 "deputy director for oil and gas" and only  
9 in the event such deputy director is quali-  
10 fied pursuant to Chapter 22, Article 4, Sec-  
11 tion 1(b) of the code of West Virginia, as  
12 amended.

## 67—Department of Commerce

## Acct. No. 465

1	Personal Services .....	\$	393,750.00
2	Current Expenses .....		812,000.00
3	Equipment .....		5,000.00
4	Mt. State Forest Festival .....		15,000.00
5	Alpine Festival .....		1,500.00
6	West Virginia Historical Drama Association ..		35,000.00

7 Arts and Humanities Fund .....	150,000.00
8 West Virginia Water Festival .....	5,000.00
9 Independence Hall, Wheeling, West Virginia..	125,000.00
10 White Water Weekend .....	2,000.00
11 Industrial Development Loan Fund.....	500,000.00
12 Oil and Gas Festival .....	2,000.00
13 Calhoun County Wood Festival .....	2,500.00
14 New Martinsville Regatta .....	2,000.00
15 Braxton County Regatta .....	4,000.00

16 Total.....\$ 2,054,750.00

17 The above appropriations, "Mountain State  
18 Forest Festival, Alpine Festival, White  
19 Water Weekend, Oil and Gas Festival,  
20 West Virginia Water Festival, West Vir-  
21 ginia Historical Drama Association, Cal-  
22 houn County Wood Festival, New Martins-  
23 ville Regatta and Braxton County Regatta"  
24 shall be expended only upon authorization  
25 of the Commerce Commissioner and in ac-  
26 cordance with the provisions of Chapter  
27 5-A of the Code of West Virginia.

28 All Federal moneys received as reimburse-  
29 ments to the Department of Commerce, for  
30 moneys expended from the General Reve-  
31 nue fund for Arts and Humanities are here-  
32 by reappropriated for the purposes as origi-  
33 nally made, including Personal Services,  
34 Current Expenses and Equipment.

35 Any unexpended balance remaining in the  
36 appropriation "Independence Hall, Wheel-  
37 ing, West Virginia" at the close of the fiscal  
38 year 1970-71 is hereby reappropriated for  
39 expenditure during the fiscal year 1971-72.

68—*State Commission on Manpower, Technology  
and Training*

Acct. No. 470

1 Personal Services .....	\$ 22,050.00
2 Current Expenses .....	7,400.00

3	Equipment .....	200.00
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4	Total .....	\$ 29,650.00
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69—*Council of State Governments*

Acct. No. 472

1	Total .....	\$ 21,900.00
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70—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac	
2	River Basin Interstate Commission .....	\$ 12,450.00

71—*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 .....	\$ 20,657.00

72—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern	
2	Regional Education Board .....	\$ 55,072.00
3	To be expended upon requisition of the	
4	Governor.	

73—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services .....	\$ 299,100.00
2	Current Expenses .....	77,750.00
3	Equipment .....	19,400.00
4	Total .....	\$ 396,250.00

74—*Interstate Education Compact*

Acct. No. 477

1	West Virginia's contribution to Interstate	
2	Education Compact .....	\$ 9,500.00

75—*Antiquities Commission*

## Acct. No. 478

1	Personal Services .....	\$	15,372.00
2	Current Expenses .....		6,000.00
3	Equipment .....		1,862.00
4	Total .....	\$	23,234.00

76—*Department of Banking*

## Acct. No. 480

1	Personal Services .....	\$	157,755.00
2	Current Expenses .....		59,605.00
3	Equipment .....		2,524.00
4	HCR No. 10—Banking Study .....		50,000.00
5	Total .....	\$	269,884.00

77—*West Virginia State Aeronautics Commission*

## Acct. No. 485

1	Personal Services .....	\$	27,006.00
2	Current Expenses .....		18,300.00
3	Equipment .....		1,000.00
4	Aerial Markers .....		1,300.00
5	Civil Air Patrol Expenses .....		12,000.00
6	Airport Matching Fund .....		750,000.00
7	Total .....	\$	809,606.00

8 Any unexpended balance remaining in the  
 9 appropriation "Airport Matching Fund" at  
 10 the close of the fiscal year 1970-71 is hereby  
 11 reappropriated for expenditure during fis-  
 12 cal year 1971-72.

78—*West Virginia Nonintoxicating Beer Commissioner*

## Acct. No. 490

1	Personal Services .....	\$	147,619.00
2	Current Expenses .....		66,000.00
3	Equipment .....		2,500.00
4	Total .....	\$	216,119.00

79—*West Virginia Racing Commission*

## Acct. No. 495

1	Personal Services .....	\$ 276,082.00
2	Current Expenses .....	36,355.00
3	Equipment .....	6,500.00
		<hr/>
4	Total .....	\$ 318,937.00

## AGRICULTURE

80—*Department of Agriculture*

## Acct. No. 510

1	Salary of Commissioner .....	\$ 17,000.00
2	Other Personal Services .....	771,110.00
3	Current Expenses .....	293,700.00
4	Repairs and Alterations .....	30,000.00
5	Equipment .....	25,000.00
		<hr/>
6	Total .....	\$ 1,136,810.00
7	Out of the above funds a sum may be used	
8	to match Federal Funds for the eradication	
9	and control of pest and plant diseases.	

81—*Department of Agriculture—Soil Conservation  
Committee*

## Acct. No. 512

1	Personal Services .....	\$ 121,500.00
2	Current Expenses .....	43,000.00
3	Watershed Program .....	75,000.00
		<hr/>
4	Total .....	\$ 239,500.00
5	Any unexpended balance remaining in the	
6	Watershed Program at the end of the fiscal	
7	year 1970-71 is hereby reappropriated for	
8	expenditure during fiscal year 1971-72.	

82—*Department of Agriculture—Division of Rural Resources*

## Acct. No. 513

1	Matching Fund _____	\$	320,000.00
2	Any part or all of this appropriation may be		
3	transferred to Special Revenue Fund for		
4	the purpose of matching Federal Funds for		
5	the above-named program.		

83—*Department of Agriculture—Meat Inspection*

## Acct. No. 514

1	Unclassified _____	\$	240,000.00
2	Any part or all of this appropriation may be		
3	transferred to Special Revenue Fund for		
4	the purpose of matching Federal Funds for		
5	the above-named program.		
6	Any unexpended balance remaining in the		
7	appropriation "Meat Inspection" at the		
8	close of the fiscal year 1970-71 is hereby		
9	reappropriated for expenditure during the		
10	fiscal year 1971-72.		

84—*Department of Agriculture—Agricultural Awards*

## Acct. No. 515

1	West Virginia State Fair _____	\$	30,000.00
2	Agricultural Awards _____		45,000.00
3	Walnut Festival _____		3,500.00
4	Apple Festival _____		1,500.00
5	Strawberry Festival _____		3,500.00
6	Buckwheat Festival _____		1,000.00
7	Marshall Fair _____		2,000.00
8	Town and Country Days _____		2,000.00
9	Potato Festival _____		1,500.00
10	Total _____	\$	90,000.00

## CONSERVATION AND DEVELOPMENT

85—*Geological and Economic Survey Commission*

## Acct. No. 520

1	Personal Services _____	\$	260,000.00
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2	Current Expenses .....	110,000.00
3	Equipment .....	30,000.00
4	Cooperative Mapping Program .....	60,000.00
		<hr/>
5	Total .....	\$ 460,000.00
6	Of the above appropriations for Current Ex-	
7	penses, the sum of \$50,000.00 may be used	
8	to cooperate with the United States Geo-	
9	logical Survey in Ground Waters Re-	
10	sources Study.	

86—*Department of Veterans Affairs*

Acct. No. 564

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

87—*Department of Natural Resources*

Acct. No. 565

1	Personal Services .....	\$ 2,592,521.00
2	Current Expenses .....	702,806.00
3	Repairs and Alterations .....	233,100.00
4	Equipment .....	249,570.00
5	Subsistence for Conservation Officers .....	184,830.00
6	Clarke-McNary Fire Prevention .....	200,000.00
7	A.R.A.-E.D.A. Park Programs .....	94,940.00
8	Water Resources Board .....	12,000.00
9	U.S. Geological Survey .....	40,500.00
10	Rabies Control .....	30,000.00
11	Work Incentive Program .....	270,709.00
12	French Creek Game Farm .....	30,000.00
13	Cacapon State Park Golf Course .....	265,000.00
14	Grave Creek Mound Park .....	100,000.00
		<hr/>
15	Total .....	\$ 5,005,976.00

16 Out of the above appropriation for Subsist-  
 17 ence for Conservation Officers, subsistence  
 18 shall be paid at the rate of five dollars per  
 19 calendar day to the chief conservation offi-  
 20 cer and each full-time uniformed conserva-  
 21 tion officer, under his direct supervision,  
 22 whose primary duties and responsibilities  
 23 are law enforcement.

24 Any unexpended balance remaining in the  
 25 appropriation "Clarke-McNary—Fire Pre-  
 26 vention" at the close of the fiscal year  
 27 1970-71 is hereby reappropriated for ex-  
 28 penditure during the fiscal year 1971-72.

29 Out of the above appropriation for "Repairs  
 30 and Alterations" there shall be expended  
 31 an amount of \$40,000.00 for improvements  
 32 to the Camping Facilities at North Bend  
 33 State Park.

34 Any unexpended balance remaining in the  
 35 appropriation "Capital Improvements,  
 36 State Parks" at the close of the fiscal year  
 37 1970-71 is hereby reappropriated for ex-  
 38 penditure during the fiscal year 1971-72.

39 Any or all of the appropriation "Capital Im-  
 40 provements, State Parks" may be used to  
 41 match and aid Federal funds.

## PROTECTION

### 88—Department of Public Safety

Acct. No. 570

1	Personal Services .....	\$ 4,520,387.00
2	Current Expenses .....	2,033,895.00
3	Repairs and Alterations .....	130,500.00
4	Equipment .....	859,048.00
5	Emergency Fund .....	10,000.00
6	Total.....	<u>\$ 7,553,830.00</u>



## 89—Adjutant General—State Militia

## Acct. No. 580

1	Personal Services .....	\$ 104,129.00
2	Current Expenses .....	196,660.00
3	Repairs and Alterations .....	23,200.00
4	Equipment .....	2,300.00
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances ..	92,800.00
7	Property Maintenance .....	196,200.00
8	State Armory Board .....	919,000.00
		<hr/>
9	Total .....	\$ 1,534,289.00

## 90—Department of Civil and Defense Mobilization

## Acct. No. 581

1	Personal Services .....	\$ 44,395.00
2	Current Expenses .....	10,862.00
3	Equipment .....	600.00
		<hr/>
4	Total .....	\$ 55,857.00

## 91—Auditor's Office—Social Security

## Acct. No. 582

1	To match contributions of state employees for	
2	social security .....	\$ 3,400,000.00
3	The above appropriation is intended to cover	
4	the state's share of social security costs for	
5	those spending units operating from Gen-	
6	eral Revenue Fund. The State Department	
7	of Highways, Department of Motor Ve-	
8	hicles, Workmen's Compensation Commis-	
9	sion, Public Service Commission, and oth-	
10	er departments operating from Special	
11	Revenue Fund and/or Federal Funds shall	
12	pay their proportionate share of the social	
13	security cost for their respective divisions.	
14	Any unexpended balance remaining in this	
15	appropriation at the close of the fiscal year	

- 16 1970-71 is hereby reappropriated for ex-  
 17 penditure during the fiscal year 1971-72.

92—*West Virginia State Board of Land Surveyors*

Acct. No. 585

1 To pay the per diem of members and other		
2 general expenses _____	\$	6,000.00
3 From Collections _____		6,000.00

93—*State Board of Professional Foresters*

Acct. No. 586

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

94—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses _____	\$	31,000.00
3 From Collections _____		31,000.00

95—*State Board of Chiropractic Examiners*

Acct. No. 588

1 To pay the per diem of members and other		
2 general expenses _____	\$	700.00
3 From Collections _____		700.00

96—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses _____	\$	37,350.00
3 From Collections _____		37,350.00

97—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other		
2 general expenses _____	\$	2,356.00
3 From Collections _____		2,356.00

98—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses _____	\$	25,000.00
3 From Collections _____		25,000.00

99—*State Board of Registration for Professional Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses _____	\$	37,000.00
3 From Collections _____		37,000.00

100—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses _____	\$	9,000.00
3 From Collections _____		9,000.00

101—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses _____	\$	1,000.00
3 From Collections _____		1,000.00

102—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses _____	\$	3,400.00

103—*Human Rights Commission*

Acct. No. 598

1 Personal Services _____	\$	107,432.00
2 Current Expenses _____		64,778.00
3 Equipment _____		3,125.00
4 Total _____	\$	175,335.00

104—*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

105—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1	Employers Accumulation Fund .....	\$ 2,695,000.00
2	Expense Fund .....	25,000.00
3	Total .....	\$ 2,720,000.00

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 Chapter 5, Article 10 of the Code  
8 of West Virginia for those departments  
9 operating from General Revenue Fund. The  
10 State Department of Highways, Depart-  
11 ment of Motor Vehicles, State Tax Depart-  
12 ments—Gasoline Tax Division, Workmen's  
13 Compensation Commission, Public Service  
14 Commission, and other departments oper-  
15 ating from Special Revenue Funds and/or  
16 Federal Funds shall pay their proportionate  
17 share of the retirement costs for their re-  
18 spective divisions. When specific appro-  
19 priations are not made such payments may  
20 be made from the balances in the various  
21 Special Revenue Funds in excess of specific  
22 appropriations.

106—*West Virginia Public Employees Insurance Board*

Acct. No. 615

1	Expense Fund .....	\$ 48,000.00
2	Public Employees Health Insurance—State	
3	Contribution .....	1,000,000.00
4	Total .....	\$ 1,048,000.00

107—*Insurance Commissioner*

## Acct. No. 616

1	Personal Services .....	\$ 367,500.00
2	Current Expenses .....	81,900.00
3	Repairs and Alterations .....	5,500.00
4	Equipment .....	5,000.00
5	Total .....	\$ 459,900.00

108—*State Department of Highways*

## Acct. No. 617

1	Total .....	
2	The total amount herein appropriated to	
3	be transferred in equal amounts quarterly	
4	to the State Sinking Fund Commission	
5	upon the requisition of the Governor for	
6	Department of Highways bond require-	
7	ments after June 30, 1972.	

1 **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 5-A, Article 2 of the Code of West Virginia, the  
 5 following amounts, as itemized, for expenditure during  
 6 the fiscal year one thousand nine hundred seventy-two.

109—*State Department of Highways*

## Acct. No. 670

## TO BE PAID FROM STATE ROAD FUND

1	Federal-Aid Construction — Interstate Pro-	
2	gram .....	\$193,500,000.00
3	Federal-Aid Construction—ABC Program....	27,500,000.00
4	Appalachian Program .....	102,800,000.00
5	Interstate Maintenance .....	6,000,000.00
6	Maintenance	
7	—Expressway, Trunkline and Feeder.....	20,000,000.00

8	Maintenance	
9	—State Local Service .....	26,000,000.00
10	Nonfederal Aid Construction .....	20,000,000.00
11	Emergency Road Operations .....	8,000,000.00
12	Scenic Highway .....	1,200,000.00
13	Forest Highway .....	300,000.00
14	General Operations .....	23,000,000.00
15	Equipment Purchases .....	3,500,000.00
16	Inventory Purchases .....	1,000,000.00
17	Debt Service .....	33,755,000.00
18	Total .....	\$466,555,000.00

19 It is the intent to appropriate and make avail-  
 20 able for expenditure, the balances and all  
 21 revenues and income of the state road fund,  
 22 including the proceeds from the sale of  
 23 bonds, for the maintenance, construction  
 24 and reconstruction of state roads and for  
 25 other purposes in accordance with the pro-  
 26 visions of Chapter 17, Code of West Vir-  
 27 ginia, one thousand nine hundred thirty-  
 28 one, as amended.

29 Out of the above appropriations there shall  
 30 be an amount of .....  
 31 for replacement of Bridge No. 1406 on  
 32 Alternate Route Three, spanning the New  
 33 River at Hinton, West Virginia Summers  
 34 County.

35 Funds in excess of amounts herein appropri-  
 36 ated may be made available by budget  
 37 amendment upon request of the Highways  
 38 Commissioner and approval of the Gov-  
 39 ernor.

40 The State Commissioner of Highways shall  
 41 have the authority to operate revolving  
 42 funds within the state road fund for the  
 43 operation and purchase of various types of  
 44 equipment used directly and indirectly in  
 45 the construction and maintenance of roads

46 and for the purchase of inventories and  
 47 materials and supplies: *Provided, how-*  
 48 *ever,* That the operation of such revolving  
 49 funds shall not cause expenditures in ex-  
 50 cess of the foregoing appropriations.

51 There is hereby appropriated, within the  
 52 above line items, sufficient moneys for the  
 53 payment of claims, accrued or arising dur-  
 54 ing this budgetary period, to be paid in ac-  
 55 cordance with Chapter 14, Article 2, Sec-  
 56 tions 7 and 8, Code of West Virginia, one thou-  
 57 sand nine hundred thirty-one, as amended.

58 Notwithstanding the provisions of Chapter  
 59 5A, Article 2, Section 19, Code of West Vir-  
 60 ginia, one thousand nine hundred thirty-  
 61 one, as amended, transfer of amounts be-  
 62 tween the line items of appropriation  
 63 herein is authorized.

110—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Personal Services .....	\$ 1,029,376.00
2 Current Expenses .....	626,865.00
3 Equipment .....	30,000.00
4 Purchase of License Plates .....	160,000.00
5 Social Security Matching Fund .....	53,365.00
6 Public Employees Retirement Matching Fund .....	95,960.00
7 Public Employees Health Insurance .....	24,505.00
<hr/>	
8 Total .....	\$ 2,020,071.00

111—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1 Personal Services .....	\$ 263,277.00
2 Current Expenses .....	100,000.00
3 Equipment .....	4,000.00

4	Social Security Matching Fund .....	14,328.00
5	Public Employees Health Insurance .....	6,270.00
6	<b>Total</b> .....	<b>\$ 387,875.00</b>

112—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services .....	\$ 58,464.00
2	Current Expenses .....	20,135.00
3	<b>Total</b> .....	<b>\$ 78,599.00</b>

4 Expenditures from this appropriation shall  
5 not exceed the amount to be reimbursed by  
6 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 Governor for any emergency  
12 which might arise in the operation of this  
13 Division during the fiscal year.

113—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1	Abandoned and Unclaimed Property —	
2	Trust and Expense Fund .....	\$ 20,000.00

114—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 39,540.00
2	Current Expenses .....	16,614.00
3	Social Security Matching Fund .....	1,865.00
4	Public Employees Retirement Matching Fund	3,265.00



5	Public Employees Health Insurance .....	870.00
6	Total .....	\$ 62,154.00
7	The total amount of this appropriation shall	
8	be paid out of collections of license fees as	
9	provided by law.	

115—*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.	
10	Special funds in excess of the amounts here-	
11	by appropriated may be made available by	
12	budget amendments upon request of the	
13	West Virginia Racing Commission and ap-	
14	proval of the Governor.	

116—*Auditor's Office—Land Department Operating Fund*

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 23,670.00
2	Current Expenses .....	16,000.00
3	Microfilm Program .....	5,000.00
4	Public Employees Health Insurance .....	570.00
5	Total .....	\$ 45,240.00
6	The total amount of this appropriation shall	
7	be paid from Special Revenue Fund out of	
8	fees and collections as provided by law.	

9 Special funds in excess of the amount herein  
 10 appropriated may be made available by  
 11 budget amendments upon request of the  
 12 State Auditor and the approval of the  
 13 Governor.

117—*Department of Finance and Administration—  
 Division of Purchases—Revolving Fund*

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$	183,750.00
2 Current Expenses .....		20,000.00
3 Equipment .....		20,000.00
4 Social Security Matching Fund .....		8,000.00
5 Public Employees Retirement Matching Fund .....		10,000.00
6 Public Employees Health Insurance .....		5,000.00
		<hr/>
7 Total .....	\$	246,750.00

8 The total amount of this appropriation shall  
 9 be paid from Special Revenue Fund as pro-  
 10 vided by Chapter 5-A, Article 2 of the Code  
 11 of West Virginia.

12 The above appropriation includes salaries  
 13 and operating expenses.

14 There is hereby appropriated from this fund,  
 15 in addition to the above appropriation, the  
 16 necessary amount for the purchase of sup-  
 17 plies for resale.

18 Special funds in excess of the amounts here-  
 19 by appropriated may be made available by  
 20 budget amendments upon request of the  
 21 Department of Finance and Administration  
 22 and approval of the Governor.

118—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$	229,950.00
2 Current Expenses .....		58,585.00

3	Equipment .....	25,000.00
4	Social Security Matching Fund .....	10,950.00
5	Public Employees Retirement Matching Fund .....	19,200.00
6	Public Employees Health Insurance .....	5,475.00
		<hr/>
7	Total .....	\$ 349,160.00
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 in-	
12	tention that special funds in excess of the	
13	amounts hereby appropriated may be made	
14	available by budget amendments upon re-	
15	quest of the Commissioner of Agriculture,	
16	and approval of the Governor.	

119—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 69,615.00
2	Current Expenses .....	35,150.00
3	Equipment .....	1,000.00
4	Social Security Matching Fund .....	3,736.00
5	Public Employees Retirement Matching Fund .....	6,962.00
6	Public Employees Health Insurance .....	1,650.00
		<hr/>
7	Total .....	\$ 118,113.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	collections made by the State Committee of	
11	Barbers and Beauticians as provided by	
12	law.	

120—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners .....	\$ 48,000.00
2	Other Personal Services .....	800,155.00

3	Current Expenses .....	127,835.00
4	Equipment .....	16,265.00
5	Social Security Matching Fund .....	31,200.00
6	Public Employees Retirement Matching Fund .....	44,700.00
7	Public Employees Health Insurance .....	16,095.00
		<hr/>
8	Total .....	\$ 1,084,250.00

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  
 14 \$5,000.00 may be transferred to the State  
 15 Water Resources Commission of the De-  
 16 partment of Natural Resources for use in  
 17 cooperation with the U. S. Geological Sur-  
 18 vey in a program of stream gauging.

121—*Public Service Commission*

*Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 86,420.00
2	Current Expenses .....	23,520.00
3	Equipment .....	6,930.00
4	Social Security Matching Fund .....	2,890.00
5	Public Employees Retirement Matching Fund .....	4,100.00
6	Public Employees Health Insurance .....	690.00
		<hr/>
7	Total .....	\$ 124,550.00

8 The total amount of this appropriation shall  
 9 be paid from Special Revenue Fund out  
 10 of receipts collected for or by the Public  
 11 Service Commission pursuant to and in  
 12 the exercise of regulatory authority over  
 13 pipeline companies.

122—*Public Service Commission—Motor Carrier Division*

Acct. No. 829

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	329,180.00
2	Current Expenses .....		84,100.00
3	Equipment .....		4,860.00
4	Social Security Matching Fund .....		13,427.00
5	Public Employees Retirement Matching Fund .....		18,575.00
6	Public Employees Health Insurance .....		6,740.00
			<hr/>
7	Total .....	\$	456,882.00
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 Ser-		
11	vice Commission pursuant to and in the		
12	exercise of regulatory authority over motor		
13	carriers as authorized by law.		

123—*Department of Natural Resources*

Acct. No. 830

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$	1,463,215.00
2	Current Expenses .....		667,591.00
3	Repairs and Alterations .....		98,700.00
4	Equipment .....		135,789.00
5	Public Employees Health Insurance .....		34,900.00
			<hr/>
6	Total .....	\$	2,400,195.00
7	The total amount of this appropriation shall		
8	be paid from Special Revenue Fund out of		
9	fees collected by the Department of Natur-		
10	al Resources. Expenditures shall be limited		
11	to the amounts appropriated except for		
12	Federal Funds received and Special Funds		
13	collected at state parks. Special Funds in		
14	excess of the amounts hereby appropriated		
15	may be made available by budget amend-		
16	ment upon request of the Department of		

- 17 Natural Resources and approval of the  
18 Governor.

124—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 168,381.00
2	Current Expenses .....	103,720.00
3	Repairs and Alterations .....	7,600.00
4	Equipment .....	15,550.00
5	Social Security Matching Fund .....	1,210.00
6	Public Employees Health Insurance .....	4,440.00
		<hr/>
7	Total .....	\$ 300,901.00

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

12 Special Funds in excess of the amounts here-  
13 by appropriated may be made available by  
14 budget amendment upon request of the De-  
15 partment of Public Safety and approval of  
16 the Governor for the purpose of repairs  
17 to, or construction of police barracks.

125—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner .....	\$ 16,000.00
2	Other Personal Services .....	4,200,000.00
3	Current Expenses .....	1,200,000.00
4	Repairs and Alterations .....	29,000.00
5	Equipment .....	252,500.00
6	Social Security Matching Fund .....	229,000.00
7	Public Employees Retirement Matching	
8	Fund .....	400,000.00
9	Public Employees Health Insurance .....	105,000.00
		<hr/>
10	Total .....	\$ 6,431,500.00

11 The total amount of this appropriation shall  
 12 be paid from Special Revenue Fund out of  
 13 liquor revenues.

14 The above appropriation includes the salaries  
 15 of store personnel, store inspectors, store  
 16 operating expenses and equipment and  
 17 salaries, expenses and equipment of ad-  
 18 ministration offices.

19 There is hereby appropriated from liquor  
 20 revenues, in addition to the above appro-  
 21 priation, the necessary amount for the pur-  
 22 chase of liquor, as provided by law.

126—*West Virginia Civil Service System*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .....	\$	226,800.00
2 Current Expenses .....		101,950.00
3 Social Security Matching Fund .....		10,689.00
4 Public Employees Retirement Matching Fund .....		20,000.00
5 Public Employees Health Insurance .....		5,400.00
		<hr/>
6 Total .....	\$	364,839.00

7 The total amount of this appropriation shall  
 8 be paid from Special Revenue Fund sup-  
 9 ported by participating agencies as pro-  
 10 vided by law.

11 The Governor is hereby authorized to make  
 12 available by budget amendment, upon re-  
 13 quest of the Civil Service Commission,  
 14 funds in excess of the amounts hereby  
 15 appropriated.

127—*Board of Regents—West Virginia University—  
 Special Capital Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service .....	\$	665,000.00
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2	Property Acquisition .....	400,000.00
3	Miscellaneous Small Projects .....	600,000.00
4	Creative Arts .....	800,000.00
5	Utilities, Roads and Parking .....	250,000.00
6	Renovating of Existing Buildings .....	185,000.00
7	Medical Center—Repairs and Alterations .....	1,000,000.00
8	Total .....	\$ 3,900,000.00

9 The total amount of this appropriation shall  
 10 be paid from the nonrevolving Capital Im-  
 11 provement Fund created by the 1959 Legis-  
 12 lature, amended by the 1963 Legislature.

13 Any unexpended balance remaining in this  
 14 appropriation at the close of the fiscal  
 15 year 1969-70 and 1970-71 is hereby reappro-  
 16 priated for expenditure during the fiscal  
 17 year 1971-72.

128—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$ 2,019,225.00
2	Develop Plans and Specifications for the fol- 3 lowing buildings:	
4	Marshall University, Academic Building No. 1	240,000.00
5	Marshall University, Academic Building No. 2	120,000.00
6	Fairmont State College, Health and Physical 7 Education Building .....	135,000.00
8	Shepherd College, Academic Building .....	140,000.00
9	West Liberty State College, Science Building	250,000.00
10	Miscellaneous Projects .....	800,000.00
11	Campus Long Range Land Utilization and 12 Facilities Master Planning .....	150,000.00
13	West Virginia Institute of Technology, Addi- 14 tional Amount for New Library Building ..	200,000.00
15	West Liberty State College, Furniture and 16 Equipment for New Twin Towers Dormi- 17 tory Complex .....	250,000.00



18	West Virginia Institute of Technology, Equip-	
19	ment for New Community and Technical	
20	College Building .....	550,000.00
21	West Virginia State College, Equipment for	
22	New Classroom Building .....	116,700.00
23	Shepherd College, Under or Overpass Across	
24	Route 48 .....	50,000.00
25	Shepherd College, Additional Amount for Re-	
26	novation of Heating System in Science Hall	80,000.00
27	Bluefield State College, Technical Equipment	175,000.00
28	Glenville State College, Intramural Activities	
29	Playing Fields, Tennis Courts, etc. ....	136,000.00
30	Concord College, Swimming Pool for New	
31	Physical Education Building .....	400,000.00
32	West Liberty State College, Addition to Sani-	
33	tation System .....	200,000.00
34	West Virginia State College, Additional	
35	Amount for Steam Plant Renovation and	
36	ROTC Facility, Phase A .....	100,000.00
37	Bluefield State College, Parking Lot Addition,	
38	Road, Drains, Lighting, etc. ....	175,000.00
39	Fairmont State College, Library Alterations	
40	and Addition .....	1,200,000.00
41	West Virginia Institute of Technology, Main-	
42	tenance Building and Allied Equipment ....	375,000.00
43	West Liberty State College, Maintenance	
44	Building and Allied Equipment .....	400,000.00
45	West Virginia State College, Renovate Ad-	
46	ministration Building .....	190,000.00
		<hr/>
47	Total .....	\$ 8,451,925.00

48 The appropriation of items on lines 1 through  
 49 38 is to be paid on a cash basis and made  
 50 available from date of passage; items on  
 51 lines 39 though 46 are to be started as funds  
 52 become available and then only in listed  
 53 order of priority.

54 The total amount of this appropriation shall  
 55 be paid from the nonrevolving Capital

56 Improvement Fund created by the 1959  
57 Legislature, as amended.

58 Any unexpended balance remaining in the ap-  
59 propriation to this account for the fiscal  
60 years 1969-70 and 1970-71 and in this ap-  
61 propriation at the close of the fiscal year is  
62 hereby reappropriated for expenditure dur-  
63 ing the next fiscal year.

64 The appropriation heretofore authorized by  
65 the Legislature for expenditures during the  
66 fiscal year 1969-70, set forth in the Budget  
67 Bill, Regular Session, 1969, Section 2, Ap-  
68 propriations from Other Funds, pages 47  
69 through 50, inclusive, West Virginia Board  
70 of Regents—Special Capital Improvement  
71 Fund, Account No. 854, lines 42 and 43, and  
72 lines 46 through 64, inclusive is hereby  
73 voided.

74 It is intended that only complete and usable  
75 units or projects be constructed and/or  
76 equipped, and then only in the listed order  
77 of priority.

129—*West Virginia University—Medical School*

Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services .....	\$ 12,247,536.00
2 Current Expenses .....	3,767,194.00
3 Repairs and Alterations .....	455,000.00
4 Equipment .....	690,315.00

5 Total .....	\$ 17,160,045.00
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6 Special funds in excess of the amounts hereby  
7 appropriated may be made available by  
8 budget amendment upon request of the  
9 Board of Regents and approval of the  
10 Governor.

130—*Workmen's Compensation Commission*

Acct. No. 900

## TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services .....	\$ 1,094,528.00
2	Current Expenses .....	442,035.00
3	Equipment .....	22,600.00
4	Social Security Matching Fund .....	50,580.00
5	Public Employees Retirement Matching Fund .....	102,000.00
6	Public Employees Health Insurance .....	25,985.00
7	Total .....	\$ 1,737,728.00
8	There is hereby authorized to be paid out of	
9	the above appropriation for current ex-	
10	penses the amount necessary for the pre-	
11	miums on bonds given by the State Treas-	
12	urer and bond custodian for the protection	
13	of the Workmen's Compensation Fund.	
14	This sum shall be transferred to the Board	
15	of Insurance.	

- 1 **Sec. 3. Supplemental and Deficiency Appropriation.—**  
 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  
 5 year, one thousand nine hundred seventy-one, to supple-  
 6 ment the 1970-71 appropriations, and to be available for  
 7 expenditure upon date of passage.

131—*Department of Welfare*

Acct. No. 405

1	Total .....	\$ 2,000,000.00
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132—*West Virginia Alcohol Beverage Control*

Acct. No. 837

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 230,000.00
2	Current Expenses .....	95,000.00

3	Public Employees Retirement Matching	
4	Fund .....	80,000.00
5	Social Security Matching Fund .....	4,800.00
6	Total .....	\$ 409,800.00

133—*Department of Motor Vehicles*

Acct. No. 671

## TO BE PAID FROM STATE ROAD FUND

1	Public Employees Retirement Matching	
2	Fund .....	\$ 28,000.00

1 **Sec. 3a. Appropriations of surplus for fiscal year 1970-**  
2 **71.**—The item set forth below in this section is appropriated  
3 from the State Fund, General Revenue for fiscal year  
4 1970-71, subject to the terms and conditions set forth in this  
5 section. By Executive Message No. 16, dated March fifteen,  
6 one thousand nine hundred seventy-one, the governor  
7 transmitted to the Legislature a revised statement of the  
8 State Fund, General Revenue for fiscal year 1970-71, re-  
9 vised as of March fifteen, one thousand nine hundred  
10 seventy-one, in which it is stated that the estimated  
11 revenue in the State Fund, General Revenue for fiscal  
12 year 1970-71 will be \$302,458,234.00. Therefore, the governor  
13 shall continue to review the revenue in the State Fund,  
14 General Revenue from the first day of July, one thousand  
15 nine hundred seventy, to the date the appropriation under  
16 this section is expected to be made available for expendi-  
17 ture and determine whether, in his opinion, the revenue  
18 in the State Fund, General Revenue then in prospect or  
19 on hand will be sufficient to meet all appropriations from  
20 the State Fund, General Revenue under the budget bill  
21 for fiscal year 1970-71, and make a finding with respect  
22 thereto. In the event that such findings shall show sufficient  
23 revenue in prospect or on hand to meet all other appro-  
24 priations made from the State Fund, General Revenue  
25 under the budget bill for fiscal year 1970-71, the Governor  
26 may, from any excess over and above the amount re-  
27 quired to meet all such appropriations, release the follow-  
28 ing item, if available funds will permit:

29 Item: Department of Welfare, to the extent of any  
30 surplus in excess of said sum of \$302,458,234.00, up to a  
31 maximum surplus of \$5,500,000.00.

1 **Sec. 4. Awards for Claims Against the State.**—From  
2 the funds designated there are hereby appropriated for  
3 the fiscal year 1971-72 for payment of claims against the  
4 state, the following amounts as itemized.

5 (a) *Claims Versus the Department of High-*  
6 *ways*

TO BE PAID FROM STATE ROAD FUND

7	(1) Equitable Gas Company.....	\$	254.90
8	(2) Mr. and Mrs. H. B. Lewis.....		50.00
9	(3) Sam Melvin .....		11.00
10	(4) C. J. Langenfelder & Son,		
11	Inc. ....		191,701.42
12	(5) Harold E. Price .....		81.24
13	(6) M & M Construction Co.....		27,095.75
14	(7) Monongahela Power Co.....		189.67
15	(8) Olaf Humphrey .....		128.24
16	(9) Chesapeake & Ohio Railway.....		1,297.20
17	(10) Dale E. Olive.....		1,071.27
18	(11) Mrs. Jessie P. Randall.....		139.88
19	(12) State Farm Mutual Automobile In-		
20	surance Co., assignee to Sarah		
21	G. Romans .....		168.83
22	(13) Frank Fedorka .....		76.00
23	(14) Lowell C. Shinn .....		409.87
24	(15) Gerald S. Swiger .....		423.49
25	(16) Everett and Betty Miller .....		936.25
26	(17) Perry K. and Anne B. Caldwell.....		1,497.00
27	(18) Lemuel L. and Estelle Warden.....		3,000.00
28	(19) Charleston Concrete Floor		
29	Company, Inc. ....		299.93
30	(20) State Farm Mutual Automobile In-		
31	surance Co. ....		105.46
32	(21) Esdel B. and Sylvia J. Yost.....		355.00
33	(22) Joyce J. Droddy Ayers .....		10,000.00
34	(23) Charles E. Talbert .....		40.17
35	(24) Robert Lee Holley .....		56.14

36	(b) <i>Claims Versus the Office of the Governor</i>		
	TO BE PAID FROM GENERAL REVENUE FUND		
37	(1) Pitney-Bowes, Inc. ....	\$	90.05
38	(c) <i>Claims Versus the West Virginia Board</i>		
39	<i>of Regents</i>		
	TO BE PAID FROM GENERAL REVENUE FUND		
40	(1) Helen I. Wotkiewicz .....	\$	1,258.00
41	(d) <i>Claims Versus the Department of Motor</i>		
42	<i>Vehicles</i>		
	TO BE PAID FROM STATE ROAD FUND		
43	(1) West Virginia Business Forms, Inc. \$		249.97
44	(e) <i>Claims Versus the Department of Men-</i>		
45	<i>tal Health</i>		
	TO BE PAID FROM GENERAL REVENUE FUND		
46	(1) Betsy Ross Bakeries, Inc. ....	\$	841.10
47	(f) <i>Claims Versus the Department of Nat-</i>		
48	<i>ural Resources</i>		
	TO BE PAID FROM GENERAL REVENUE FUND		
49	(1) W. M. McClintic .....	\$	46.77
50	(g) <i>Claims Versus the Department of Public</i>		
51	<i>Institutions</i>		
	TO BE PAID FROM GENERAL REVENUE FUND		
52	(1) Cecil Smith, Jr. ....	\$	3,000.00

1 **Sec. 5. Legislative Findings of Fact Claims.**—The Legis-  
2 lature has heretofore made findings of fact that the state  
3 has received the benefit of the commodities and services  
4 rendered by certain claimants herein and has considered  
5 claims against the state and agencies thereof which have  
6 arisen due to over-expenditures of departmental appro-  
7 priations by officers of certain state spending units, such  
8 claims having been previously considered by the court  
9 of claims which found that the state has received the bene-  
10 fit of the commodities and services rendered by each  
11 claimant, but were denied by the court of claims on  
12 the purely statutory grounds that to allow such claims  
13 would be condoning illegal acts contrary to the laws of  
14 the state.

15 The Legislature, pursuant to its findings of fact and  
 16 also by the adoption of the findings of fact by the court  
 17 of claims as its own, and, while not condoning such illegal  
 18 acts, hereby declares it to be the moral obligation of the  
 19 state to pay each such claim in the amount specified below,  
 20 and directs the auditor to issue warrants for the payment  
 21 thereof out of any fund appropriated and available for such  
 22 purpose, and hereby directs the Attorney General to re-  
 23 view the bonds executed by all public officials and em-  
 24 ployees who are in any way responsible for the State  
 25 spending units over-expending departmental appropria-  
 26 tions and where it appears feasible to institute proper legal  
 27 proceedings to recover for the State sums equal to the  
 28 claims specified below; and in instances where the At-  
 29 torney General determines that such legal proceedings  
 30 are not feasible, to report to the Legislative Auditor the  
 31 reasons why such legal proceedings are not feasible.

32 From the funds designated there are hereby appropri-  
 33 ated for the fiscal year 1971-72 for payment of claims  
 34 against the state, the following amounts as itemized.

35 (a) *Claims Versus the Department of Mental Health*

TO BE PAID FROM GENERAL REVENUE FUND

36	(1) Airken Sales and Service .....	\$ 630.00
37	(2) Odorite Service and Supply Com-	
38	pany .....	1,673.40
39	(3) McCormick Office Supplies, Inc. ....	77.10
40	(4) Riverside Paper Company, Inc. ....	178.07
41	(5) Laird Office Equipment Company ..	98.83
42	(6) Guthrie-Morris-Campbell Company	1,813.40
43	(7) Southern Chemical Company .....	1,217.80
44	(8) Tri-State Drug Company .....	166.36
45	(9) Copco Papers, Inc. ....	299.52
46	(10) Copco Papers, Inc. ....	224.64
47	(11) Fry Brothers Company .....	168.00
48	(12) Fry Brothers Company .....	605.00
49	(13) Union 76—Pure Oil Division .....	824.94
50	(14) Vaughan's Termite Control Com-	
51	pany .....	290.00
52	(15) S. B. Wallace and Company .....	120.00
53	(16) Oxford Chemicals .....	1,155.75

54	(17) Spencer Business Forms Company,	
55	Inc. _____	175.03
56	(18) Armour and Company _____	865.54
57	(19) Odorite Service & Supply _____	112.90
58	(20) Willard C. Starcher, Inc. _____	70.20
59	(21) McCormick Office Supply, Inc. _____	183.52
60	(22) Goldsmit-Black, Inc. _____	269.04
61	(23) Goldsmit-Black, Inc. _____	136.60
62	(24) Goldsmit-Black, Inc. _____	48.00
63	(25) Mallinckrodt Chemical Works _____	673.20
64	(26) Industrious Blind Enterprise _____	269.40
65	(27) Appalantic Corporation _____	12,252.72
66	(28) Ohio Valley Office Equipment _____	500.55
67	(29) Will Ross, Inc. _____	126.70
68	(30) Noe Office Equipment _____	15.55
69	(31) The Medical Arts Supply Com-	
70	pany, Inc. _____	94.96
71	(32) Roche Laboratories _____	1,466.80
72	(33) Raybestos-Manhattan, Inc.-	
73	Revolite Division _____	390.00
74	(34) Accounting Supplies and Systems,	
75	Inc. _____	25.95
76	(35) Bell Lines, Inc. _____	64.75
77	(36) Economic Laboratories _____	29.82
78	(37) Harry W. Higgins General Store....	49.20
79	(38) Merck Sharp & Dohme _____	26.46
80	(39) Shouldis Department Store _____	472.86
81	(40) DuBois Chemicals _____	809.06
82	(41) Eaton Laboratories _____	85.50
83	(42) Sandoz-Wander, Inc. _____	146.85
84	(43) The Crocker-Fels Company _____	182.66
85	(44) Acme Cotton Products Company,	
86	Inc. _____	533.12
87	(45) William H. Rorer, Inc. _____	109.96
88	(46) Lederle Laboratories _____	264.00
89	(47) Scientific Products _____	345.89
90	(48) Martini Packing Company _____	745.53
91	(49) Smith, Kline & French Company....	261.32
92	(50) A. B. Dick Products Company _____	332.15
93	(51) Storck Baking Company _____	247.60
94	(52) Singer Sheet Metal Company, Inc.	5,928.00



95	(53)	Karoll's, Inc. ....	1,796.48
96	(54)	William J. Swearingen .....	500.00
97	(55)	Charles V. Selby, Jr. ....	200.00
98	(56)	Granville H. Lance .....	500.00
99	(57)	K. V. Pathology, Inc. ....	1,500.00
100	(58)	Mt. Clare Provision Company.....	2,116.00
101	(59)	Dowling Pool Company .....	33.80
102	(60)	St. Joseph's Hospital .....	13.50
103	(61)	St. Joseph's Hospital .....	88.70
104	(62)	St. Joseph's Hospital .....	527.64
105	(63)	St. Joseph's Hospital .....	9.25
106	(64)	St. Joseph's Hospital .....	15.00
107	(65)	St. Joseph's Hospital .....	1,160.38
108	(66)	St. Joseph's Hospital .....	28.00
109	(67)	The Red Head Oil Company .....	52.75
110	(68)	Picker X Ray .....	347.16
111	(69)	Empire Foods, Inc. ....	494.70
112	(70)	General Electric Company .....	2,594.82
113	(71)	Kellogg Sales Company .....	547.70
114	(72)	James Produce Company .....	572.97
115	(73)	Fairmont Foods Company .....	1,310.34
116	(74)	Union Oil Company of California....	302.24
117	(75)	Standard Brands Sales Company .....	1,290.40
118	(76)	Ace Exterminators, Inc. ....	160.00
119	(77)	A. B. Dick Products Company.....	211.60
120	(78)	Capitol Paper Supply, Inc. ....	382.80
121	(79)	Genuine Parts Co. of W. Va. ....	94.39
122	(80)	Noe Office Equipment .....	281.68
123	(81)	The Universal Supply Co. ....	172.14
124	(82)	McGlothlin Printing Co. ....	546.76
125	(b)	<i>Claims Versus West Virginia Board of</i>	
126		<i>Regents</i>	
		TO BE PAID FROM GENERAL REVENUE FUND	
127	(1)	Appalachian Power Company.....\$	34,979.13
128	(2)	Potomac Edison Company of W. Va.	5,170.24
129	(3)	Utilities, Inc. ....	4,915.82
130	(c)	<i>Claims Versus the Department of Public</i>	
131		<i>Institutions</i>	
		TO BE PAID FROM GENERAL REVENUE FUND	
132	(1)	Crook's Wholesale Food Company..\$	1,657.90

1 **Sec. 6. Special Revenue Appropriations.**—There is  
2 hereby appropriated for expenditure during the fiscal year  
3 one thousand nine hundred seventy-two appropriations  
4 made by general law from special revenue which are not  
5 paid into the state fund as general revenue under the  
6 provisions of Chapter 12, Article 2, Section 2 of the Code of  
7 West Virginia, one thousand nine hundred thirty-one:  
8 *Provided, however,* That none of the moneys so appro-  
9 priated by this section shall be available for expenditure  
10 except in compliance with and in conformity to the pro-  
11 visions of Chapter 12, Articles 2 and 3, and Chapter  
12 5A, Article 2 of the Code of West Virginia, unless  
13 the spending unit has filed with the state director of  
14 the budget, the state auditor and the legislative auditor  
15 prior to the beginning of each fiscal year:

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

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

1 **Sec. 7. Specific Funds and Collection Accounts.**—A  
2 fund or collection account, which by law is dedicated to a  
3 specific use is hereby appropriated in sufficient amount to  
4 meet all lawful demands upon the fund or collection ac-  
5 count, and shall be expended according to the provisions of  
6 Chapter 12, Article 3 of the Code of West Virginia.

1 **Sec. 8. Appropriation 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 re-  
8 funding of the proper amount. The auditor shall issue his  
9 warrant to the treasurer and the treasurer shall pay the  
10 warrant out of the fund into which the amount was  
11 originally paid.

1 **Sec. 9. Sinking Fund Deficiencies.**—There is hereby  
2 appropriated to the Governor a sufficient amount to meet

3 a deficiency that may arise in the funds of the State Sink-  
4 ing Fund Commission because of the failure of any state  
5 agency for either general obligation or revenue bonds or  
6 any local taxing district for general obligation bonds to  
7 remit funds necessary for the payment of interest and  
8 sinking fund requirements. The Governor is authorized to  
9 transfer from time to time such amounts to the State Sink-  
10 ing Fund Commission as may be necessary for this purpose.

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

1 **Sec. 10. Appropriations from Taxes and License Fees.**

2 —There is hereby appropriated from the soft drink tax  
3 revenues for administration and enforcement of the law  
4 relating to said tax, a sum not to exceed two and one-half  
5 percent of the total revenues collected. All such salaries  
6 and expenses, authorized by law as aforesaid, shall be paid  
7 by the Tax Commissioner through the state treasury out  
8 of gross collections.

1 **Sec. 11. Appropriations to Pay Cost of Publication**

2 **of 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 cor-  
7 porations as provided by Chapter 11, Article 12, Sections 75  
8 and 77 of the code of West Virginia.

1 **Sec. 12. Appropriations for Local Governments.**—

2 There is hereby appropriated for payment to counties, dis-  
3 tricts, and municipal corporations such amounts as will be  
4 necessary to pay taxes due county, district, and municipal  
5 corporations 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.

1 **Sec. 13. Total Appropriations.**—Where only a total  
2 sum is appropriated to a spending unit that total sum shall  
3 include personal services, current expenses, and capital  
4 outlay, except as otherwise provided in Title I, Section 3.

1 **Sec. 14. General School Fund.**—The balance of the  
2 proceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is appro-  
4 priated for expenditure in accordance with Chapter 18,  
5 Article 9-A, Section 16 of the Code of West Virginia.

### TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **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  
4 branches of the state government, are conditioned upon  
5 the compliance by the spending unit with the require-  
6 ments of Chapter 5A, Article 2 of the Code of West  
7 Virginia.

8 Where former spending units have been absorbed by or  
9 combined with other spending units by acts of this Legisla-  
10 ture it is the intent of this act that reappropriation shall  
11 be to the succeeding or later spending unit created unless  
12 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is  
2 declared unconstitutional by a court of competent juris-  
3 diction, 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.

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**House Clerk's Note:** The Governor disapproved and deleted items and parts of items in the Budget Bill as follows:

Acct. No. 101, line 2, \$68,430.00  
Acct. No. 102, line 2, \$55,000.00  
Acct. No. 102, line 3, \$24,000.00  
Acct. No. 103, line 2, \$797,500.00  
Acct. No. 103, line 3, \$75,000.00  
Acct. No. 103, line 4, \$11,000.00  
Acct. No. 617, line 1, \$7,000,000.00  
Acct. No. 670, line 30, \$900,000.00

Reductions in items and parts of items were made by the Governor as follows:

Acct. No. 150, line 2, from \$536,480.00 to \$500,060.00  
 Acct. No. 150, line 3, from \$158,275.00 to \$136,025.00  
 Acct. No. 150, line 6, from \$732,755.00 to \$674,085.00  
 Acct. No. 240, line 2, from \$612,830.00 to \$342,657.00  
 Acct. No. 240, line 8, from \$695,330.00 to \$425,157.00  
 Acct. No. 450, line 5, from \$40,000.00 to \$38,000.00  
 Acct. No. 450, line 6, from \$829,435.00 to \$827,435.00  
 Acct. No. 510, line 2, from \$809,665.00 to \$771,110.00  
 Acct. No. 510, line 3, from \$297,440.00 to \$293,700.00  
 Acct. No. 510, line 6, from \$1,179,105.00 to \$1,136,810.00

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## CHAPTER 7

(House Bill No. 609—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed January 20, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the governor to transfer amounts between items of the total appropriation made to the department of welfare for fiscal year one thousand nine hundred seventy-one, and requiring notices of transfer.

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

That section nineteen, 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.

#### §5A-2-19. Transfers between items of appropriation prohibited; exceptions.

1 Notwithstanding any other provision of law to the con-  
 2 trary except as to the authority of the state department  
 3 of highways contained in the budget act for fiscal year  
 4 one thousand nine hundred seventy—seventy-one re-  
 5 lating to items of appropriation, Account No. 670, and  
 6 except as provided in this section, there shall be no

7 transfer of amounts between items of appropriation, and  
8 moneys appropriated for any particular purpose shall  
9 not be spent by a spending unit for any other pur-  
10 pose.

11 Upon the written request of the commissioner of the  
12 department of welfare, the governor may transfer  
13 amounts between items of the total appropriation for  
14 the department of welfare, Account No. 405, as appro-  
15 priated for expenditure during the fiscal year one thou-  
16 sand nine hundred seventy-one, by chapter one, acts of  
17 the Legislature, first extraordinary session, one thousand  
18 nine hundred seventy. Notices of any such transfer shall  
19 be sent to the state auditor, the state treasurer and the  
20 legislative auditor.

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## CHAPTER 8

(Senate Bill No. 147—By Mr. Hedrick)

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[Passed February 8, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful acts of beer licensees and penalties thereof and changing the hours, other than in private clubs, during which beer may not be sold, given, dispensed, drunk or consumed in or on any licensed premises or in any rooms directly connected therewith.

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

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

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-13. Unlawful acts of licensees; penalties.**

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents  
3 or employees to sell, give or dispense, or any individual  
4 to drink or consume, in or on any licensed premises  
5 or in any rooms directly connected therewith, non-  
6 intoxicating beer on weekdays between the hours of  
7 two o'clock a.m., and seven o'clock a.m., or between the  
8 hours of two o'clock a.m., and one o'clock p.m., on any  
9 Sunday, except in private clubs licensed under the pro-  
10 visions of article seven, chapter sixty of this code, where  
11 the hours shall conform with the hours of sale of alcoholic  
12 liquors;

13 (b) For any licensee, his, its or their servants, agents  
14 or employees, to sell, furnish or give any nonintoxicating  
15 beer to any person visibly or noticeably intoxicated, or  
16 to any insane person, or to any habitual drunkard, or  
17 to any person under the age of eighteen years;

18 (c) For any distributor to sell or offer to sell, or any  
19 retailer to purchase or receive, any nonintoxicating beer  
20 except for cash; and no right of action shall exist to  
21 collect any claims for credit extended contrary to the  
22 provisions of this subdivision. Nothing herein contained  
23 shall prohibit a licensee from crediting to a purchaser  
24 the actual price charged for packages or containers re-  
25 turned by the original purchaser as a credit on any  
26 sale, or from refunding to any purchaser the amount  
27 paid or deposited for such containers when title is re-  
28 tained by the vendor;

29 (d) For any brewer or distributor or his, its or their  
30 agents, to transport or deliver nonintoxicating beer to  
31 any retail licensee on Sunday;

32 (e) For any brewer or distributor to give, furnish, rent  
33 or sell any equipment, fixtures, signs or supplies directly  
34 or indirectly or through a subsidiary or affiliate to any  
35 licensee engaged in selling products of the brewing in-  
36 dustry at retail, or to offer any prize, premium, gift, or  
37 other similar inducement, except advertising matter of  
38 nominal value, to either trade or consumer buyers:  
39 *Provided*, That nothing contained herein shall prohibit  
40 a distributor from offering for sale or renting tanks  
41 of carbonic gas;

42 (f) For any licensee to transport, sell, deliver or pur-  
43 chase any nonintoxicating beer or product of the brewing  
44 industry upon which there shall appear a label or other  
45 informative data which in any manner refers to the  
46 alcoholic content of such beer or product of the brewing  
47 industry, or upon the label of which there appears the  
48 word or words "strong," "full strength," "extra strength,"  
49 "prewar strength," "high test" or other similar expres-  
50 sions bearing upon the alcoholic content of such product  
51 of the brewing industry, or which refers in any manner  
52 to the original alcoholic strength, extract or balling  
53 proof from which such beverage was produced, except  
54 that such label shall contain a statement that the alco-  
55 holic content thereof does not exceed three and two-  
56 tenths percent by weight;

57 (g) For any licensee to permit in his premises any  
58 lewd, immoral or improper entertainment, conduct or  
59 practice;

60 (h) For any licensee except the holder of a license  
61 to operate a private club issued under the provisions of  
62 article seven, chapter sixty of this code, to possess a  
63 federal license, tax receipt or other permit entitling,  
64 authorizing or allowing such licensee to sell liquor or  
65 alcoholic drinks;

66 (i) For any licensee to obstruct the view of the in-  
67 terior of his premises by enclosure, lattice, drapes or  
68 any means which would prevent plain view of the patrons  
69 occupying such premises. The interior of all licensed  
70 premises shall be adequately lighted at all times: *Pro-*  
71 *vided*, That provisions of this subdivision shall not apply  
72 to the premises of a Class B retailer or to the premises  
73 of a private club licensed under the provisions of article  
74 seven, chapter sixty of this code;

75 (j) For any licensee to manufacture, import, sell, trade,  
76 barter, possess, or acquiesce in the sale, possession or  
77 consumption of any alcoholic liquors on the premises  
78 covered by such license or on premises directly or in-  
79 directly used in connection therewith: *Provided*, That  
80 the prohibitions contained in this subdivision with re-  
81 spect to the selling or possessing or to the acquiescence



82 in the sale, possession or consumption of alcoholic liquors  
83 shall not be applicable with respect to the holder of a  
84 license to operate a private club issued under the pro-  
85 visions of article seven, chapter sixty of this code;

86 (k) For any licensee to print, paint or place upon the  
87 door, window, or in any other public place in or about  
88 the premises, the word "saloon" or word of similar  
89 character or nature, or for the word "saloon" or simi-  
90 lar words to be used in any advertisement by the  
91 licensee;

92 (l) For any retail licensee to sell or dispense non-  
93 intoxicating beer purchased or acquired from any source  
94 other than a licensed distributor or brewer under the  
95 laws of this state;

96 (m) For any licensee to permit loud, boisterous or  
97 disorderly conduct of any kind upon his premises or to  
98 permit the use of loud musical instruments if either or  
99 any of the same may disturb the peace and quietude of  
100 the community wherein such business is located: *Provided,*  
101 That no licensee shall have in connection with his place  
102 of business any loudspeaker located on the outside of  
103 the licensed premises that broadcasts or carries music  
104 of any kind;

105 (n) For any person whose license has been revoked,  
106 as in this article provided, to obtain employment with  
107 any retailer within the period of one year from the date  
108 of such revocation, or for any retailer to employ know-  
109 ingly any such person within such time;

110 (o) For any distributor to sell, possess for sale, trans-  
111 port or distribute nonintoxicating beer except in the  
112 original container;

113 (p) For any licensee to permit any act to be done  
114 upon the licensed premises, the commission of which  
115 constitutes a crime under the laws of this state;

116 (q) For any Class B retailer to permit the consump-  
117 tion of nonintoxicating beer upon his licensed premises;

118 (r) For any licensee, his, its or their servants, agents,  
119 or employees, or for any licensee by or through such  
120 servants, agents or employees, to allow, suffer or permit

121 any person under the age of eighteen years to loiter in  
122 or upon any licensed premises; except, however, that  
123 the provisions of this subdivision shall not apply where  
124 such person under the age of eighteen years, is in, or  
125 upon such premises in the immediate company of his  
126 or her parent or parents, or where and while such person  
127 under the age of eighteen years is in, on or upon such  
128 premises for the purpose of and actually making a law-  
129 ful purchase of any items or commodities therein sold,  
130 or for the purchase of and actually receiving any law-  
131 ful service therein rendered, including the consumption  
132 of any item of food, drink or soft drink therein lawfully  
133 prepared and served or sold for consumption on such  
134 premises.

135 Any person who violates any provision of this article  
136 or who makes any false statement concerning any ma-  
137 terial fact in submitting application for license or for  
138 a renewal of a license or in any hearing concerning  
139 the revocation thereof, or who commits any of the acts  
140 herein declared to be unlawful, shall be guilty of a  
141 misdemeanor, and shall be punished for each offense  
142 by a fine of not less than twenty-five nor more than  
143 five hundred dollars, or imprisoned in the county jail  
144 for not less than thirty days or more than six months,  
145 or by both fine and imprisonment in the discretion of  
146 the court. Justices of the peace shall have concurrent  
147 jurisdiction with the circuit court, and any other courts  
148 having criminal jurisdiction in their county, for the  
149 trial of all misdemeanors arising under this article.

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## CHAPTER 9

(Senate Bill No. 197—By Mr. Fanning)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section thirteen-b, relating to the sale of non-intoxicating beer, ale or other malt beverage; specifying certain unlawful acts of brewers, their distributors and their officers, agents and representatives; requiring all franchise agreements between a brewer and its distributors to be equitable, in writing and uniform; specifying certain provisions which must be contained in any such franchise agreement; providing that any such franchise agreement may not be cancelled, terminated or rescinded without due regard for the equities of the brewer and distributor and without just cause; providing that any such cancellation, termination or rescission shall not be effective for at least ninety days after written notice; authorizing court action with respect to the cancellation, termination or rescission of a franchise agreement for certain reasons; specifying that the bond of any brewer may be cancelled for any violation of the section; and authorizing court action to enjoin the cancellation, termination or rescission of any such franchise agreement.

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

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

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-13b. Unlawful acts of brewers and distributors; requirements as to franchise agreements; penalties; injunctions.**

1 (a) On and after July one, one thousand nine hundred  
2 seventy-one, it shall be unlawful for any brewer to  
3 transfer or deliver to a distributor any nonintoxicating  
4 beer, ale or other malt beverage without first having  
5 entered into an equitable franchise agreement with such  
6 distributor, which franchise agreement shall be in writing,  
7 shall be identical as to terms and conditions with all  
8 other franchise agreements between such brewer and  
9 its other distributors in this state, and which shall con-  
10 tain a provision in substance or effect as follows:

11 The brewer recognizes that the distributor is free to  
12 manage his business in the manner the distributor deems  
13 best, and that this prerogative vests in the distributor  
14 the exclusive right to establish his selling prices, to select  
15 the brands of beer he wishes to handle, and to determine  
16 the efforts and resources which the distributor will  
17 exert to develop and promote the sale of the brewer's  
18 products handled by the distributor. However, since the  
19 brewer does not expect that its products handled by  
20 the distributor will be sold by others in the territory  
21 assigned to the distributor, the brewer is dependent upon  
22 the distributor alone for the sale of such products in said  
23 territory. Consequently, the brewer expects that the  
24 distributor will price competitively the products handled  
25 by the distributor, devote reasonable effort and resources  
26 to the sale of such products and maintain a satisfactory  
27 sales level.

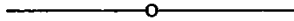
28 (b) It shall also be unlawful:

29 (1) For any brewer or distributor, or any officer,  
30 agent or representative of any brewer or distributor, to  
31 coerce or persuade or attempt to coerce or persuade any  
32 person licensed to sell, distribute or job nonintoxicating  
33 beer, ale or other malt beverage at wholesale or retail  
34 to enter into any contracts or agreements, whether written  
35 or oral, or to take any other action, which will violate or  
36 tend to violate any provision of this article or any of  
37 the rules, regulations, standards, requirements or orders  
38 of the commissioner promulgated as provided in section  
39 fourteen of this article; or

40 (2) For any brewer or distributor, or any officer, agent  
41 or representative of any brewer or distributor, to can-  
42 cel, terminate or rescind without due regard for the  
43 equities of such brewer or distributor, and without just  
44 cause, any franchise agreement, whether oral or written,  
45 and in the case of an oral franchise agreement, whether  
46 the same was entered into on or before the effective  
47 date of this section and prior to July one, one thousand  
48 nine hundred seventy-one, and in the case of a franchise  
49 agreement in writing, whether the same was entered  
50 into on, before or subsequent to July one, one thousand

51 nine hundred seventy-one. The cancellation, termination  
52 or rescission of any such franchise agreement shall not  
53 become effective for at least ninety days after written  
54 notice of such cancellation, termination or rescission has  
55 been served on the affected party and the commission-  
56 er by certified mail, return receipt requested: *Provided*,  
57 That said ninety-day period and said notice of can-  
58 cellation, termination or rescission shall not apply if such  
59 cancellation, termination or rescission is agreed to in writ-  
60 ing by both the brewer and the distributor involved.

61 (c) The violation of any provision of this section by  
62 any brewer shall constitute grounds for the forfeiture  
63 of the bond furnished by such brewer in accordance  
64 with the provisions of section five of this article. More-  
65 over, any circuit court of the county in which a distrib-  
66 utor's principal place of business is located shall have  
67 the jurisdiction and power to enjoin the cancellation,  
68 termination or rescission of any franchise agreement be-  
69 tween a brewer and such distributor, and in granting  
70 an injunction to a distributor, the court shall provide  
71 that the brewer so enjoined shall not supply the cus-  
72 tomers or territory of the distributor while the injunction  
73 is in effect.



## CHAPTER 10

(Senate Bill No. 286—By Mr. Carrigan and Mr. Neeley)

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[Passed March 8, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section nine, article six, chap-  
ter twelve of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to investment  
of public funds and classes of securities in which funds  
may be invested.

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

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

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.****§12-6-9. Investments for periods in excess of one year.**

1 Notwithstanding the restrictions which may otherwise  
2 be provided by law as to the securities in which funds  
3 may be invested, funds made available for investment  
4 for periods in excess of one year may be invested by the  
5 board, without the approval of any other state agency  
6 or official other than as required in section six of this  
7 article, in the following classes of securities, and not  
8 otherwise:

9 (a) Securities of the United States or agency thereof,  
10 or those guaranteed by, or for which the credit of the  
11 United States or agency thereof is pledged for the pay-  
12 ment of the principal and interest thereof.

13 (b) Direct general obligation securities of this state,  
14 or any other state or territory of the United States, or  
15 the District of Columbia, unconditionally guaranteed as  
16 to the principal and interest by such other state or terri-  
17 tory of the United States, or the District of Columbia:  
18 *Provided*, That (1) such other state, territory, or the  
19 District of Columbia has the power to levy taxes for  
20 the payment of the principal and interest of such securi-  
21 ties, and (2) at the time of investment such other state,  
22 territory, or the District of Columbia is not in default  
23 in the payment of any part of the principal or interest  
24 owing by it upon any part of its funded indebtedness.

25 (c) Securities issued by a federal land bank, or by a  
26 federal intermediate credit bank, under the act of Con-  
27 gress of July seventeen, one thousand nine hundred six-  
28 teen, known as the "Federal Farm Loan Act," as amended  
29 or supplemented from time to time, or by the federal  
30 home loan bank system, federal national mortgage as-  
31 sociation, or banks for cooperatives.

32 (d) Securities issued, assumed or unconditionally  
33 guaranteed by the International Bank for Reconstruction  
34 and Development, or Tennessee Valley Authority.

35 (e) Any fixed interest bond, note or debenture of any  
36 corporation organized and operating within the United  
37 States: *Provided*, That such corporation shall have a

38 minimum net worth of fifteen million dollars and its  
39 securities or its parent corporation's securities are listed  
40 on one or more of the national stock exchanges: *Pro-*  
41 *vided, however,* That (1) such corporation has earned a  
42 profit in eight of the preceding ten fiscal years as re-  
43 flected in its statements, and (2) such corporation has not  
44 defaulted in the payment of principal or interest on any  
45 of its outstanding funded indebtedness during its pre-  
46 ceding ten fiscal years, and (3) the bonds, notes or deben-  
47 tures of such corporation to be purchased are rated "AA"  
48 or the equivalent thereof or better than "AA" or the  
49 equivalent thereof by at least two or more nationally  
50 recognized rating services, such as Standard and Poor's,  
51 Dun & Bradstreet, or Moody's.

52 (f) Any security that is secured by a first lien deed  
53 of trust or mortgage on real property situate within  
54 this state, and that is either (1) insured by the federal  
55 housing administration pursuant to provisions of the Na-  
56 tional Housing Act, as amended or supplemented from  
57 time to time, or (2) guaranteed by the veterans admini-  
58 stration pursuant to provisions of Title 38, United States  
59 Code, relating to veterans benefits, as amended or supple-  
60 mented from time to time: *Provided,* That the board shall  
61 not purchase any such security from anyone other than  
62 a federal housing administration approved mortgagee.  
63 To facilitate and encourage the offering of such securities  
64 to the board for its investment therein, the board shall  
65 have the power and authority to make to any federal  
66 housing administration approved mortgagee, at any time,  
67 an advance written commitment and obligation, binding  
68 upon the board and its funds, for the future purchase of  
69 such securities in such amount or amounts, at such price  
70 or prices, and at such future time or times as the board  
71 may in its discretion deem to be for the best interests of  
72 the fund, and all purchases of such securities shall be  
73 made pursuant to such a commitment and obligation:  
74 *Provided, however,* That the board shall make no com-  
75 mitment and obligation to purchase any such securities  
76 except in specified amounts of two hundred fifty thou-  
77 sand dollars or more as the aggregate of the unpaid prin-

78 cipal balances owing on such securities at the time of  
79 purchase thereof. No such commitment and obligation  
80 shall be valid or binding for more than eighteen months  
81 after the date thereof. To facilitate preservation of the  
82 value of such securities and of the real property securing  
83 the same, the board shall have the further power and  
84 authority to make with any federal housing administra-  
85 tion approved mortgagee from whom such a security is  
86 purchased a contract under which the mortgagee shall be  
87 authorized, empowered and obligated to service a loan  
88 represented by the security, and to pay such mortgagee  
89 for its services a monthly fee not in excess of the rate of  
90 one twelfth of one half of one per centum per annum of  
91 the unpaid principal balance of the loan represented by  
92 the security.

93 (g) Promissory notes secured by federal loan insurance  
94 on loans made to students pursuing programs of higher  
95 education or programs of vocational education pursuant  
96 to Title IV Part "B" of the Higher Education Act of 1965,  
97 as heretofore or hereafter amended: *Provided*, That there  
98 shall be no investment in any such promissory notes exe-  
99 cuted by nonresidents of the state of West Virginia unless  
100 such nonresidents are enrolled in good standing in a  
101 West Virginia institution of higher education or qualified  
102 vocational school or have made application to and have  
103 been accepted by such institution or vocational school:  
104 *And provided further*, That there shall be no investment  
105 in any such promissory notes executed pursuant to loans  
106 made prior to the effective date of this section.

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## CHAPTER 11

(House Bill No. 643—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

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[Passed February 8, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia state board of investments and providing that



such board shall not invest more than seventy-five percent of each separate fund placed with it for investment in corporate bonds, notes or debentures.

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

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

**ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.**

**§12-6-11. Purchase, sale or exchange of securities; restrictions.**

1 The board shall not invest more than five percent of  
2 each fund placed with it for investment in any bonds,  
3 notes or debentures of any one corporation meeting the  
4 requirements of subdivision (e) of section nine of this  
5 article; nor shall the board invest more than seventy-five  
6 percent of each separate fund placed with it for invest-  
7 ment in bonds, notes or debentures of corporations meet-  
8 ing the requirements of subdivision (e) of section nine of  
9 this article.

10 Securities purchased or held under the provisions of  
11 this article may be sold or exchanged for other securities:  
12 *Provided*, That (1) no security shall be purchased, sold  
13 or exchanged without the concurrence of a majority of  
14 all members of the board, (2) no security shall be pur-  
15 chased at a price above, nor sold or exchanged at a price  
16 below, its prevailing fair market value, (3) no security  
17 shall be purchased, sold, or exchanged for the purpose  
18 of aiding any individual, firm or corporation by the pay-  
19 ment of brokerage commissions or fees thereto, (4) no  
20 security shall be received in exchange which does not  
21 comply with the requirements of section nine or ten of  
22 this article, and (5) the board shall not engage in any  
23 arbitrage practices.

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## CHAPTER 12

(House Bill No. 1101—By Mr. Jones, of Kanawha, and Mrs. Given)

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[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, providing that the prosecuting attorney in counties having a population in excess of two hundred thousand shall represent petitioners in juvenile proceedings; full-time assistants to appear before juvenile court; county court to provide office space for assistants.

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

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

**ARTICLE 5. JUVENILE COURTS.**

**§49-5-13a. Petitioning juvenile court for disposition of suspected delinquents—Prosecuting attorney shall represent petitioner.**

1 The prosecuting attorney, in counties having a popula-  
2 tion in excess of two hundred thousand, shall represent  
3 the petitioner in all juvenile proceedings before the court  
4 or judge having juvenile jurisdiction in such counties.  
5 The prosecuting attorney shall assign one or more full-  
6 time assistants for the purpose of representing said peti-  
7 tioners.

8 The county court shall provide office space in or near  
9 the juvenile court for the assistant prosecuting attorney.

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## CHAPTER 13

(House Bill No. 865—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Passed February 26, 1971; in effect July 1, 1971. Approved by the Governor.]

**AN ACT** to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the court of claims and the compensation of the judges thereof and

the number of days each such judge may serve during any one fiscal year.

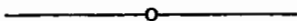
*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. CLAIMS AGAINST THE STATE.**

**§14-2-8. Compensation of judges of court of claims; expenses.**

1 Each judge of the court shall receive one hundred dol-  
2 lars for each day actually served, and actual expenses  
3 incurred in the performance of his duties. The number  
4 of days served by each judge shall not exceed one hun-  
5 dred in any fiscal year, except by authority of the joint  
6 committee on government and finance. Requisitions for  
7 compensation and expenses shall be accompanied by  
8 sworn and itemized statements, which shall be filed with  
9 the auditor and preserved as public records. For the  
10 purpose of this section, time served shall include time  
11 spent in the hearing of claims, in the consideration of  
12 the record, in the preparation of opinions, and in necessary  
13 travel.



## CHAPTER 14

(House Bill No. 1121—By Mr. Kincaid and Mr. Buck)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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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:*

**§1. Finding and declaring certain claims against the department of highways; office of the governor; West Virginia board of regents; department of motor vehicles; department of mental health; department of natural resources; and department of public institutions, to be**

**moral obligations of the state, and directing payment thereof.**

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

11 (a) Claims against the department of highways:

12	(1) Equitable Gas Company .....	\$ 254.90
13	(2) Mr. and Mrs. H. B. Lewis .....	50.00
14	(3) Sam Melvin .....	11.00
15	(4) C. J. Langenfelder & Son, Inc. ....	191,701.42
16	(5) Harold E. Price .....	81.24
17	(6) M & M Construction Co. ....	27,095.75
18	(7) Monongahela Power Co. ....	189.67
19	(8) Olaf Humphrey .....	128.24
20	(9) Chesapeake & Ohio Railway .....	1,297.20
21	(10) Dale E. Olive .....	1,071.27
22	(11) Mrs. Jessie P. Randall .....	139.88
23	(12) State Farm Mutual Automobile In-	
24	insurance Co., assignee to Sarah	
25	G. Romans .....	168.83
26	(13) Frank Fedorka .....	76.00
27	(14) Lowell C. Shinn .....	409.87
28	(15) Gerald S. Swiger .....	423.49
29	(16) Everett and Betty Miller .....	936.25
30	(17) Jerry K. and Anne B. Caldwell.....	1,497.00
31	(18) Lemuel L. and Estelle Warden .....	3,000.00
32	(19) Charleston Concrete Floor	
33	Company, Inc. ....	299.93
34	(20) State Farm Mutual Automobile	
35	Insurance Co. ....	105.46

36	(21)	Esdel B. and Sylvia J. Yost .....	355.00
37	(22)	Joyce J. Droddy Ayers .....	10,000.00
38	(23)	Charles E. Talbert .....	40.17
39	(24)	Robert Lee Holley .....	56.14
40	(b)	Claim against the office of the governor:	
41	(1)	Pitney-Bowes, Inc. ....	\$ 90.05
42	(c)	Claim against the West Virginia board of regents:	
43	(1)	Helen I. Wotkiewicz .....	1,258.00
44	(d)	Claim against the department of motor vehicles:	
45	(1)	West Virginia Business Forms, Inc.	249.97
46	(e)	Claim against the department of mental health:	
47	(1)	Betsy Ross Bakeries, Inc. ....	841.10
48	(f)	Claim against the department of natural resources:	
49	(1)	W. M. McClintic .....	46.77
50	(g)	Claim against the department of public institutions:	
51	(1)	Cecil Smith, Jr. ....	3,000.00

52 The Legislature finds that the above moral obligations  
 53 and the appropriations made in satisfaction thereof shall  
 54 be the full compensation for all claimants, and that prior  
 55 to the payment to any claimant provided for in this bill,  
 56 the court of claims shall receive a release from said claim-  
 57 ant releasing any and all claims for moral obligations  
 58 arising from the matters considered by the Legislature  
 59 in the finding of the moral obligations and the making of  
 60 the appropriations for said claimant. The court of claims  
 61 shall deliver all releases obtained from claimants to the  
 62 department against which the claim was allowed.

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## CHAPTER 15

(House Bill No. 1173—By Mr. Kincaid and Mr. Buck)

[Passed March 13, 1971; in effect July 1, 1971. 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:*

**§1. Finding and declaring certain claims against the department of mental health; West Virginia board of regents; and department of public institutions, to be moral obligations of the state, and directing payment thereof.**

1 The Legislature has heretofore made findings of fact  
2 that the state has received the benefit of the commodities  
3 and services rendered by certain claimants herein and has  
4 considered claims against the state and agencies thereof  
5 which have arisen due to over-expenditures of depart-  
6 mental appropriations by officers of certain state spending  
7 units, such claims having been previously considered by  
8 the court of claims which also found that the state has  
9 received the benefit of the commodities and services ren-  
10 dered by each claimant, but were denied by the court of  
11 claims on the purely statutory grounds that to allow such  
12 claims would be condoning illegal acts contrary to the  
13 laws of the state. The Legislature, pursuant to its findings  
14 of fact and also by the adoption of the findings of fact by  
15 the court of claims as its own, and, while not condoning  
16 such illegal acts, hereby declares it to be the moral obli-  
17 gation of the state to pay each such claim in the amount  
18 specified below, and directs the auditor to issue war-  
19 rants upon receipt of a properly executed requisition sup-  
20 ported by an itemized invoice, statement or other satis-  
21 factory document as required by chapter twelve, article  
22 three, section ten of the code of West Virginia, one thou-  
23 sand nine hundred thirty-one, as amended, for the pay-  
24 ment thereof out of any fund appropriated and available  
25 for the purpose and hereby directs the attorney general to  
26 review the bonds executed by all public officials and em-  
27 ployees who are in any way responsible for the state  
28 spending units which have overspent departmental ap-  
29 propriations, and where it appears feasible, to institute  
30 proper legal proceedings to recover for the state sums  
31 equal to the claims specified below, and in instances where  
32 the attorney general determines that such legal proceed-  
33 ings are not feasible, to report to the legislative auditor on

34 or before the beginning of the regular legislative session  
 35 in the year one thousand nine hundred seventy-two, the  
 36 reasons why such legal proceedings are not feasible.

37	(a)	Claims against the department of mental health:	
38	(1)	Airkem Sales and Service .....	\$ 630.00
39	(2)	Odorite Service and Supply	
40		Company .....	1,673.40
41	(3)	McCormick Office Supplies, Inc. ....	77.10
42	(4)	Riverside Paper Company, Inc. ....	178.07
43	(5)	Laird Office Equipment Company ..	98.83
44	(6)	Guthrie-Morris-Campbell Company	1,813.40
45	(7)	Southern Chemical Company ....	1,217.80
46	(8)	Tri-State Drug Company .....	166.36
47	(9)	Copco Papers, Inc. ....	299.52
48	(10)	Copco Papers, Inc. ....	224.64
49	(11)	Fry Brothers Company .....	168.00
50	(12)	Fry Brothers Company .....	605.00
51	(13)	Union 76-Pure Oil Division .....	824.94
52	(14)	Vaughan's Termite Control	
53		Company .....	290.00
54	(15)	S. B. Wallace and Company .....	120.00
55	(16)	Oxford Chemicals .....	1,155.75
56	(17)	Spencer Business Forms Company,	
57		Inc. ....	175.03
58	(18)	Armour and Company .....	865.54
59	(19)	Odorite Service & Supply .....	112.90
60	(20)	Willard C. Starcher, Inc. ....	70.20
61	(21)	McCormick Office Supply, Inc. ....	183.52
62	(22)	Goldsmid-Black, Inc. ....	269.04
63	(23)	Goldsmid-Black, Inc. ....	136.60
64	(24)	Goldsmid-Black, Inc. ....	48.00
65	(25)	Mallinckrodt Chemical Works ....	673.20
66	(26)	Industrious Blind Enterprise .....	269.40
67	(27)	Appalantic Corporation .....	12,252.72
68	(28)	Ohio Valley Office Equipment .....	500.55
69	(29)	Will Ross, Inc. ....	126.70

70	(30) Noe Office Equipment .....	15.55
71	(31) The Medical Arts Supply Com-	
72	pany, Inc. ....	94.96
73	(32) Roche Laboratories .....	1,466.80
74	(33) Raybestos-Manhattan, Inc.-	
75	Revolite Division .....	390.00
76	(34) Accounting Supplies and Systems,	
77	Inc. ....	25.95
78	(35) Bell Lines, Inc. ....	64.75
79	(36) Economic Laboratories .....	29.82
80	(37) Harry W. Higgins General Store ..	49.20
81	(38) Merck Sharp & Dohme .....	26.46
82	(39) Shouldis Department Store .....	472.86
83	(40) DuBois Chemicals .....	809.06
84	(41) Eaton Laboratories .....	85.50
85	(42) Sandoz-Wander, Inc. ....	146.85
86	(43) The Crocker-Fels Company .....	182.66
87	(44) Acme Cotton Products Company,	
88	Inc. ....	533.12
89	(45) William H. Rorer, Inc. ....	109.96
90	(46) Lederle Laboratories .....	264.00
91	(47) Scientific Products .....	345.89
92	(48) Martini Packing Company .....	745.53
93	(49) Smith, Kline & French Company ..	261.32
94	(50) A. B. Dick Products Company .....	332.15
95	(51) Storck Baking Company .....	247.60
96	(53) Karoll's, Inc. ....	1,796.48
97	(54) William J. Swearingen .....	500.00
98	(55) Charles V. Selby, Jr. ....	200.00
99	(56) Granville H. Lance .....	500.00
100	(57) K. V. Pathology, Inc. ....	1,500.00
101	(58) Mt. Clare Provision Company .....	2,116.00
102	(59) Dowling Pool Company .....	33.80
103	(60) St. Joseph's Hospital .....	13.50
104	(61) St. Joseph's Hospital .....	88.70
105	(62) St. Joseph's Hospital .....	527.64



106	(63)	St. Joseph's Hospital .....	9.25
107	(64)	St. Joseph's Hospital .....	15.00
108	(65)	St. Joseph's Hospital .....	1,160.38
109	(66)	St. Joseph's Hospital .....	28.00
110	(67)	The Red Head Oil Company .....	52.75
111	(68)	Picker X Ray .....	347.16
112	(69)	Empire Foods, Inc. ....	494.70
113	(70)	General Electric Company .....	2,594.82
114	(71)	Kellogg Sales Company .....	547.70
115	(72)	James Produce Company .....	572.97
116	(73)	Fairmont Foods Company .....	1,310.34
117	(74)	Union Oil Company of California ..	302.24
118	(75)	Standard Brands Sales Company ...	1,290.40
119	(76)	Ace Exterminators, Inc. ....	160.00
120	(77)	A. B. Dick Products Company .....	211.60
121	(78)	Capitol Paper Supply, Inc. ....	382.80
122	(79)	Genuine Parts Co. of W. Va. ....	94.39
123	(80)	Noe Office Equipment .....	281.68
124	(81)	The Universal Supply Co. ....	172.14
125	(82)	McGlothlin Printing Co. ....	546.76
126	(b)	Claims against West Virginia board of	
127		regents:	
128	(1)	Appalachian Power Company ....	34,979.13
129	(2)	Potomac Edison Company of W. Va.	5,170.24
130	(3)	Utilities, Inc. ....	4,915.82
131	(c)	Claims against the department of public	
132		institutions:	
133	(1)	Crook's Wholesale Food Company	1,657.90

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## CHAPTER 16

(House Bill No. 929—By Mr. Loop and Mr. Fantasia)

[Passed March 6, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter one of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the number of members to which the state is entitled in the House of Representatives of the United States Congress and arranging the counties of the state into districts for the election thereof.

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

That section three, article two, chapter 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. APPORTIONMENT OF REPRESENTATION.**

**§1-2-3. Congressional districts.**

1 The number of members to which the state is entitled  
2 in the House of Representatives of the Congress of the  
3 United States shall be apportioned among the several  
4 counties of the state, arranged into four congressional  
5 districts, numbered as follows:

6 First District: Brooke, Doddridge, Hancock, Harrison,  
7 Marion, Marshall, Ohio, Pleasants, Tyler, Wetzel and  
8 Wood.

9 Second District: Barbour, Berkeley, Fayette, Grant,  
10 Greenbrier, Hampshire, Hardy, Jefferson, Lewis, Mineral,  
11 Monongalia, Monroe, Morgan, Pendleton, Pocahontas,  
12 Preston, Randolph, Summers, Taylor, Tucker, Upshur  
13 and Webster.

14 Third District: Boone, Braxton, Calhoun, Clay, Gil-  
15 mer, Jackson, Kanawha, Lincoln, Mason, Nicholas, Put-  
16 nam, Ritchie, Roane and Wirt.

17 Fourth District: Cabell, Logan, McDowell, Mercer,  
18 Mingo, Raleigh, Wayne and Wyoming.

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**CHAPTER 17**

(Senate Bill No. 74—Originating in the Senate Committee on the Judiciary)

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[Passed February 8, 1971; in effect ninety days from passage. Approved by the Governor.]

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

Virginia, amending section two, article fourteen thereof, relating to making amendments to the state constitution.

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

**CONSTITUTIONAL IMPROVEMENT AMENDMENT.**

- §1. Submitting an amendment to the state constitution.
- §2. Amendment to be known as the "Constitutional Improvement Amendment"; statement of purpose.
- §3. Publication of proposed amendment by governor.
- §4. Form of ballot; election.
- §5. Certificates of election commissioners; canvass of vote; certifying result.
- §6. Proclamation of result of election by governor.

**§1. Submitting an amendment to the state constitution.**

1 That the question of the ratification or rejection of an  
2 amendment to the constitution of the state of West Vir-  
3 ginia, proposed in accordance with the provisions of  
4 section two, article fourteen of said constitution, shall  
5 be submitted to the voters of the state at the next general  
6 election, to be held in the year one thousand nine hun-  
7 dred seventy-two, which proposed amendment is that  
8 section two, article fourteen of the constitution of the  
9 state of West Virginia, be amended to read as follows:

**"ARTICLE XIV. AMENDMENTS.**

**"§2. How amendments are made.**

1 "Any amendment to the Constitution of the State may  
2 be proposed in either House of the Legislature at any  
3 regular or extraordinary session thereof; and if the  
4 same, being read on three several days in each House,  
5 be agreed to on its third reading, by two thirds of the  
6 members elected thereto, the proposed amendment, with  
7 the yeas and nays thereon, shall be entered on the Jour-  
8 nals, and it shall be the duty of the Legislature to provide  
9 by law for submitting the same to the voters of the  
10 State for ratification or rejection, at a special election,  
11 or at the next general election thereafter, and cause the  
12 same to be published, at least three months before such  
13 election in some newspaper in every county in which a  
14 newspaper is printed. And if a majority of the qualified  
15 voters, voting on the question at the polls held pursuant  
16 to such law, ratify the proposed amendment, it shall be

17 in force from the time of such ratification, as part of  
18 the Constitution of the State. If two or more amend-  
19 ments be submitted at the same time, the vote on the  
20 ratification or rejection shall be taken on each separately,  
21 but an amendment may relate to a single subject or to  
22 related subject matters and may amend or modify as  
23 many articles and as many sections of the Constitution  
24 as may be necessary and appropriate in order to accom-  
25 plish the objectives of the amendment. Whenever one  
26 or more amendments are submitted at a special election,  
27 no other question, issue or matter shall be voted upon  
28 at such special election, and the cost of such special elec-  
29 tion throughout the State shall be paid out of the State  
30 Treasury."

**§2. Amendment to be known as the "Constitutional Improvement Amendment"; statement of purpose.**

1 In accordance with the provisions of section thirteen,  
2 article six, chapter three of the code of West Virginia,  
3 one thousand nine hundred thirty-one, as amended, said  
4 proposed amendment is hereby designated as the "Con-  
5 stitutional Improvement Amendment," and the purpose  
6 of the proposed amendment is summarized as follows:  
7 "To authorize proposed amendments to the West Vir-  
8 ginia Constitution to be voted upon by the voters at  
9 special elections as well as general elections."

**§3. Publication of proposed amendment by governor.**

1 The governor shall cause the said proposed amend-  
2 ment, with the proper designation and the summary of  
3 the purpose for the same as hereinbefore adopted and  
4 stated, to be published one time at least three months  
5 before such election in some newspaper in every county  
6 in which a newspaper is printed, and the cost of such  
7 advertising, determined in accordance with the provi-  
8 sions of section three, article three, chapter fifty-nine  
9 of the code of West Virginia, one thousand nine hundred  
10 thirty-one, as amended, shall in the first instance, if  
11 found necessary by him, be paid out of the governor's  
12 contingent fund and be afterwards repaid to such fund  
13 by appropriation of the Legislature.

**§4. Form of ballot; election.**

1 For the purpose of enabling the voters of the state to  
2 vote on the question of this proposed amendment to the  
3 constitution and any other proposed amendments to the  
4 constitution which may be submitted at the said gen-  
5 eral election to be held in the year one thousand nine  
6 hundred seventy-two, the board of ballot commissioners  
7 of each county is hereby required to place upon and at  
8 the foot of the official ballot to be voted at that election,  
9 under the heading reading "Ballot on Constitutional  
10 Amendment(s)," in the first position under said head-  
11 ing, the following:

12 No. 1. Constitutional Improvement Amendment.

13  For

14  Against

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

**§5. Certificates of election commissioners; canvass of vote; certifying result.**

1 As soon as the result is ascertained, the commissioners,  
2 or a majority of them, and the canvassers (if there be  
3 any), or a majority of them, at each place of voting, shall  
4 make out and sign two certificates thereof in the follow-  
5 ing form or to the following effect:

6 "We, the undersigned, who acted as commissioners (or  
7 canvassers, as the case may be) of the election held at  
8 Precinct No. \_\_\_\_\_, in the district of \_\_\_\_\_, in  
9 the county of \_\_\_\_\_, on the \_\_\_\_\_ day of

10 \_\_\_\_\_, one thousand nine hundred seventy-  
 11 two, upon the question of the ratification or rejection of  
 12 the proposed constitutional amendment, do hereby certify  
 13 that the result of said election is as follows:

14 "Amendment No. 1. Constitutional Improvement  
 15 Amendment.

16 "For the amendment \_\_\_\_\_ votes.

17 "Against the amendment \_\_\_\_\_ votes.

18 "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
 19 one thousand nine hundred seventy-two."

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

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

40 "We, the board of canvassers of the county of \_\_\_\_\_  
 41 \_\_\_\_\_, having carefully and impartially examined the  
 42 returns of the election held in said county, in each district  
 43 thereof, on the \_\_\_\_\_ day of November, one thousand nine  
 44 hundred seventy-two, do certify that the result of the  
 45 election in said county, on the question of the ratification  
 46 or rejection of the proposed amendment is as follows:

47 "Amendment No. 1. Constitutional Improvement  
 48 Amendment.

49 "For the amendment \_\_\_\_\_ votes.

50 "Against the amendment \_\_\_\_\_ votes.

51 "Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_,  
52 one thousand nine hundred seventy-two."

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

**§6. Proclamation of result of election by governor.**

1 On the twenty-fifth day after the election is held, or  
2 as soon thereafter as practicable, the said certificates  
3 shall be laid before the governor, whose duty it shall be  
4 to ascertain therefrom the result of said election in the  
5 state, and declare the same by proclamation published in  
6 one or more newspapers printed in the seat of govern-  
7 ment, the cost of such publication to be determined in  
8 accordance with the provisions of section three, article  
9 three, chapter fifty-nine of the code of West Virginia, one  
10 thousand nine hundred thirty-one, as amended. If a  
11 majority of the votes cast at said election upon said  
12 question be for ratification of said amendment, the pro-  
13 posed amendment so ratified shall be in force and effect  
14 from and after the time of such ratification as part of  
15 the constitution of the state.

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## CHAPTER 18

(House Bill No. 1094—By Mr. Steptoe and Mr. Potter)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact sections sixty-three and sixty-three-a, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consolidation or merger of domestic corporations and to the consolidation or merger of a domestic corporation with a foreign corporation.

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

That sections sixty-three and sixty-three-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.**

§31-1-63. Consolidation or merger of domestic corporations.

§31-1-63a. Consolidation or merger of domestic with foreign corporations.

**§31-1-63. Consolidation or merger of domestic corporations.**

1 Any two or more corporations organized under the  
2 provisions of this chapter, or existing under the laws  
3 of this state, for the purpose of carrying on any kind  
4 of business, may consolidate or merge into a single  
5 corporation which may be any one of such constituent  
6 corporations or a new corporation to be formed by means  
7 of such consolidation or merger as shall be specified in  
8 the agreement hereinafter required. The directors, or a  
9 majority of them, of such corporations as desire to con-  
10 solidate or merge, may enter into an agreement signed  
11 by them and under the corporate seals of the respective  
12 corporations, which agreement shall state: (1) The terms  
13 and conditions of the consolidation or merger; (2) the  
14 mode of carrying the same into effect; (3) such other  
15 provisions or facts required or permitted by this article  
16 to be stated in an agreement of incorporation as can be  
17 stated in the case of a consolidation or merger, stated  
18 in such altered form as the circumstances of the case  
19 require; (4) the manner of converting the shares of each  
20 of the constituent corporations into shares or other  
21 securities of the corporation surviving or resulting from  
22 the consolidation or merger and, if any shares of any  
23 of the constituent corporations are not to be converted  
24 solely into shares or other securities of the surviving or  
25 resulting corporation, the amount of cash or securities  
26 of any other corporation, or other property, which the  
27 holders of such shares are to receive in exchange for  
28 such shares or upon their conversion and the surrender  
29 of the certificates evidencing such shares, which cash



30 and securities of any other corporation, or other property,  
31 may be in addition to or in lieu of the shares or other  
32 securities of the surviving or resulting corporation; and  
33 (5) such other details or provisions as are deemed de-  
34 sirable, including, without limiting the generality of the  
35 foregoing, a provision for the payment of cash in lieu  
36 of the issuance of fractional shares of the surviving or  
37 resulting corporation or of any other corporation the  
38 securities of which are to be received in the consolidation  
39 or merger.

40 Such agreement shall be submitted to the stockholders  
41 of each constituent corporation, at a meeting thereof,  
42 called separately for the purpose of taking the same into  
43 consideration; of the time, place and object of which  
44 meeting due notice shall be given by publication as a  
45 Class II legal advertisement in compliance with the pro-  
46 visions of article three, chapter fifty-nine of this code,  
47 and the publication area for such publication shall be the  
48 county wherein each such corporation either has its  
49 principal office or conducts its business. A copy of such  
50 notice shall also be mailed to the last known post-office  
51 address of each stockholder of each such corporation, at  
52 least twenty days prior to the date of such meeting: *Pro-*  
53 *vided*, That in the consolidation or merger of banking  
54 institutions as defined in this chapter, in the case of  
55 emergency, and upon the order of the commissioner of  
56 banking, the meeting may be held upon at least twelve  
57 hours' notice sent by mail or telegraph to the last known  
58 post-office address of each stockholder, and without pub-  
59 lication.

60 At any such stockholders' meeting of any corporation  
61 said agreement shall be considered and a vote by ballot, in  
62 person or by proxy, taken for the adoption or rejection  
63 of the same, each share entitling the holder thereof to  
64 one vote; and if the votes of stockholders of each such  
65 corporation representing two thirds of the total number  
66 of shares of its capital stock then issued and outstand-  
67 ing shall be for the adoption of such agreement, then  
68 that fact shall be certified on such agreement by the  
69 secretary of each such corporation under the seal there-

70 of; and the agreement so adopted and certified shall be  
71 signed by the president and secretary of each of such  
72 corporations under the corporate seals thereof and ac-  
73 knowledged by the president of each of such corpora-  
74 tions before any officer authorized by the laws of this  
75 state to take acknowledgments of deeds to be the respec-  
76 tive act, deed and agreement of each of such corporations,  
77 and the agreement so certified and acknowledged shall  
78 be filed in the office of the secretary of state, and shall  
79 thence be taken and deemed to be the agreement and  
80 act of consolidation or merger of the said corporations;  
81 and a copy of such agreement and act of consolidation  
82 or merger, duly certified by the secretary of state un-  
83 der the seal of his office, shall also be recorded in the  
84 offices of the clerks of the county courts of the counties  
85 of this state in which the respective corporations so con-  
86 solidating or merging shall have their original certificates  
87 of incorporation recorded, if any, or if any of the corpo-  
88 rations shall have been specially created by a public act  
89 of the Legislature, then such agreement shall be recorded  
90 in the county where such corporation shall have had  
91 its principal place of business, if any, and such record,  
92 or a certified copy thereof, shall be evidence of the agree-  
93 ment and act of consolidation or merger of such corpo-  
94 rations, and of the observance and performance of all  
95 acts and conditions necessary to have been observed and  
96 performed precedent to such consolidation or merger.

97 On such date as shall be specified in such agreement,  
98 or if no effective date is specified in such agreement, on  
99 the date such certified copy of said agreement is issued  
100 by the secretary of state, for all purposes of the laws of  
101 this state, the separate existence of all the constituent  
102 corporations, parties to said agreement, or of all such con-  
103 stituent corporations except the one into which the other  
104 or others of such constituent corporations have been  
105 merged, or consolidated, as the case may be, shall cease  
106 and the constituent corporations shall become a new  
107 corporation, or be merged into one of such corporations,  
108 as the case may be, in accordance with the provisions  
109 of said agreement, possessing all the rights, privileges,

110 powers, franchises and trust and fiduciary duties, powers  
111 and obligations, as well of a public as of a private nature,  
112 and being subject to all the restrictions, disabilities and  
113 duties of each of such corporations so consolidated or  
114 merged, and all and singular the rights, privileges,  
115 powers, franchises, and trust and fiduciary rights, powers,  
116 duties and obligations, of each of said corporations; and  
117 all property, real, personal and mixed, and all debts  
118 due to any of said constituent corporations on whatever  
119 account, as well for stock subscriptions as all other things  
120 in action or belonging to each of such corporations shall  
121 be vested in the corporation resulting from or sur-  
122 viving such consolidation or merger; and all property,  
123 rights, privileges, powers and franchises, and all and  
124 every other interest shall be thereafter as effectually  
125 the property of the resulting or surviving corporation as  
126 they were of the several and respective constituent  
127 corporations; and the title to any real estate, whether  
128 vested by deed or otherwise, under the laws of this  
129 state, vested in any of such constituent corporations, shall  
130 not revert or be in any way impaired by reason of this  
131 chapter: *Provided*, That all rights of creditors and all  
132 liens upon any property of any of said constituent corpo-  
133 rations shall be preserved unimpaired, and all debts, lia-  
134 bilities and duties of the respective constituent corpo-  
135 rations shall thenceforth attach to said resulting or sur-  
136 viving corporation, and may be enforced against it to  
137 to the same extent as if said debts, liabilities and duties  
138 had been incurred or contracted by it.

**§31-1-63a. Consolidation or merger of domestic with foreign corporations.**

1 Any one or more corporations organized under the  
2 provisions of this chapter, or existing under the laws of  
3 this state, may consolidate or merge with one or more  
4 other corporations organized under the laws of any other  
5 state or states of the United States of America, if the  
6 laws under which said other corporation or corporations  
7 are formed shall permit such consolidation or merger.  
8 The constituent corporations may merge into a single  
9 corporation, which may be any one of said constituent

10 corporations, or they may consolidate to form a new  
11 corporation, which may be a corporation of the state of  
12 incorporation of any one of said constituent corporations  
13 as shall be specified in the agreement hereinafter re-  
14 quired. All the constituent corporations shall enter into  
15 an agreement of consolidation or merger, which agree-  
16 ment shall state: (1) The terms and conditions of the  
17 consolidation or merger; (2) the mode of carrying the  
18 same into effect; (3) the manner of converting the shares  
19 of each of the constituent corporations into shares or  
20 other securities of the corporation surviving or resulting  
21 from the consolidation or merger and, if any shares of  
22 any of the constituent corporations are not to be con-  
23 verted solely into shares or other securities of the sur-  
24 viving or resulting corporation, the amount of cash or  
25 securities of any other corporation, or other property,  
26 which the holders of such shares are to receive in ex-  
27 change for such shares or upon their conversion and the  
28 surrender of the certificates evidencing such shares, which  
29 cash or securities of any other corporation, or other prop-  
30 erty, may be in addition to or in lieu of the shares or  
31 other securities of the surviving or resulting corporation;  
32 and (4) such other details or provisions as are deemed  
33 desirable, including, without limiting the generality of  
34 the foregoing, a provision for the payment of cash in lieu  
35 of the issuance of fractional shares of the surviving or  
36 resulting corporation or of any other corporation the  
37 securities of which are to be received in the consolidation  
38 or merger. There shall also be set forth in the agree-  
39 ment such other matters or provisions as shall be required  
40 to be set forth in certificates of incorporation by the  
41 laws of the state which are stated in the agreement to  
42 be the laws that shall govern the surviving or resulting  
43 corporation and that can be stated in the case of a merger  
44 or consolidation. Said agreement shall be authorized,  
45 adopted, approved, signed and acknowledged by each of  
46 said constituent corporations in accordance with the laws  
47 under which it is formed and, in the case of a West  
48 Virginia corporation, in the manner provided in section  
49 sixty-three of this article. The agreement so authorized,

50 adopted, approved, signed and acknowledged shall be  
51 filed in the office of the secretary of state and a copy  
52 thereof, certified by the secretary of state, shall be  
53 recorded as provided in section sixty-three of this article  
54 with respect to the consolidation or merger of corpora-  
55 tions of this state; and said agreement shall become effec-  
56 tive on such date as shall be specified in such agreement,  
57 or if no effective date is specified in such agreement, on  
58 the date such certified copy of said agreement is issued  
59 by the secretary of state, and shall thenceforth be taken  
60 and deemed to be the agreement and act of consolidation  
61 or merger of said constituent corporations for all pur-  
62 poses of the laws of this state.

63 Wherever the laws of another state than West Virginia  
64 are selected as the laws which shall govern the merged  
65 or consolidated corporation, such surviving corporation  
66 shall comply with the provisions of section seventy-nine,  
67 of this article, as last amended, before it holds property or  
68 transacts business in this state, and thereafter shall com-  
69 ply with the laws of this state with respect to foreign  
70 corporations holding property or transacting business  
71 in this state.

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## CHAPTER 19

(House Bill No. 533—By Mr. Steptoe)

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[Passed February 22, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections twenty-three, twenty-five and forty-two, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section forty-three, all relating to building and loan associations, default by borrowers, contingent reserves, rights and powers of associations, and their authority to make certain loans and investments.

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

That sections twenty-three, twenty-five and forty-two, article six, 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 be further amended by adding thereto a new section, designated section forty-three, all to read as follows:

**ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.**

§31-6-23. Default by borrower; acceleration of maturity; realizing on security.

§31-6-25. Amount and purpose of contingent reserve; undivided profit account.

§31-6-42. State associations to have same rights, powers, etc., as federal associations as to savings accounts.

§31-6-43. Certain building and loan associations may make loans and investments permitted to be made by federal savings and loan associations doing business in this state.

**§31-6-23. Default by borrower; acceleration of maturity; realizing on security.**

1 Whenever any borrower on a direct reduction basis shall  
 2 fail or neglect to pay his contracted monthly install-  
 3 ments, or whenever any borrower on a loan secured by  
 4 shares shall fail or neglect to pay dues, interest, premium,  
 5 or fines, as provided by the bylaws or the terms of his  
 6 obligation, bond, mortgage, or deed of trust or other  
 7 evidence of indebtedness, for a period of thirty days, or  
 8 shall be in default in the performance of any of the ob-  
 9 ligations imposed upon him thereby, then the whole of  
 10 said indebtedness shall become and be immediately due  
 11 and payable at the option of the association. Any shares  
 12 pledged as security for such loan may be declared can-  
 13 celled and their withdrawal value at the time of said  
 14 declaration applied as a payment on the loan, and such  
 15 shares shall revert to the association. The balance or  
 16 the amount due, with interest and premium, fines, and  
 17 other charges thereon, may be enforced by proceedings  
 18 on the defaulting borrower's security according to law.

**§31-6-25. Amount and purpose of contingent reserve; undivided profit account.**

1 Every building and loan association shall set aside out  
 2 of its earnings a contingent reserve. Until such time as

3 the contingent reserve equals ten percent of the assets  
4 of the association, the association shall, at each dividend  
5 date, transfer to such contingent reserve a credit equiv-  
6 alent to at least five percent of the net earnings of the  
7 association for the period since the previous dividend  
8 date. The preceding requirement shall not apply to any  
9 building and loan association which is an insured in-  
10 stitution and whose accounts are insured by the federal  
11 savings and loan insurance corporation. Such contingent  
12 reserve shall be used only for the purpose of making  
13 good to the association losses suffered on loans and ex-  
14 penses incurred in the collection of loans which may not  
15 be charged against or collected from the borrower. Every  
16 building and loan association may also carry an undi-  
17 vided profit account as provided in the constitution and  
18 bylaws of the association. The contingent reserve and  
19 the undivided profit account shall be invested as other  
20 funds of the association.

**§31-6-42. State associations to have same rights, powers, etc.,  
as federal associations as to savings accounts.**

1 (a) Building and loan associations organized and exist-  
2 ing under the laws of the state of West Virginia are  
3 hereby authorized to accept savings accounts and to  
4 issue to each holder of its savings accounts an account  
5 book, or a separate certificate, evidencing the ownership  
6 of the account and the interest of the holder thereof in  
7 the capital of such association, and to pay dividends and  
8 to distribute earnings thereon, all upon the same terms  
9 and conditions and subject to the same limitations and  
10 restrictions as were provided on the second day of Jan-  
11 uary, one thousand nine hundred seventy-one, for fed-  
12 eral savings and loan associations whose home offices are  
13 located in this state, under the "Rules and Regulations  
14 for the Federal Savings and Loan System" issued by  
15 the federal home loan bank board, and under the "Rules  
16 and Regulations for Insurance of Accounts," issued by  
17 the federal savings and loan insurance corporation: *Pro-*  
18 *vided*, That whenever and wherever amendments to the  
19 charter or bylaws of said federal savings and loan asso-  
20 ciations were at such date permitted or required, as a  
21 prerequisite to the exercise of any such right, power,

22 privilege or benefit, such amendments may be adopted  
23 to the charter, constitution and bylaws of building and  
24 loan associations organized under the laws of this state  
25 and: *Provided, however,* That whenever and wherever  
26 action by the members or by the board of directors of  
27 said federal savings and loan associations was at said  
28 date permitted or required as a prerequisite of the exer-  
29 cise of such right, power, privilege or benefit, such ac-  
30 tion may be taken by the shareholders or by the board  
31 of directors, as the case may be, of building and loan  
32 associations organized under the laws of this state. Noth-  
33 ing contained in this section shall be construed to au-  
34 thorize building and loan associations to accept savings  
35 deposits as distinguished from savings accounts.

36 (b) This statute shall not grant to any building and  
37 loan association organized under the laws of the state of  
38 West Virginia, permission or authority to install or main-  
39 tain any branch or to engage in business at any place  
40 other than its principal office in this state.

**§31-6-43. Certain building and loan associations may make loans  
and investments permitted to be made by federal  
savings and loan associations doing business in  
this state.**

1 In addition to all other powers conferred by this ar-  
2 ticle, building and loan associations whose accounts are  
3 insured by the federal savings and loan insurance corpo-  
4 ration are authorized and empowered to make any loan or  
5 investment permitted to be made by any federal savings  
6 and loan association doing business in this state on the  
7 second day of January, one thousand nine hundred  
8 seventy-one: *Provided,* That all such loans and invest-  
9 ments shall be made upon the same terms and conditions  
10 and subject to the same restrictions and limitations as  
11 were at said date prescribed for loans and investments  
12 made by such a federal savings and loan association  
13 doing business in this state under the provisions of the  
14 Homeowners Loan Act of one thousand nine hundred  
15 thirty-three, as amended, and the "Rules and Regulations  
16 for The Federal Savings and Loan System," as amended,  
17 promulgated by the federal home loan bank board:



18 *Provided, however,* That (a) whenever and wherever  
19 authorization by charter or bylaws of such a federal  
20 savings and loan association was at said date required  
21 by said law or said rules and regulations as a prerequi-  
22 site to the making of any such loan or investment, such  
23 authorization in the case of a building and loan asso-  
24 ciation may be granted by its charter or constitution and  
25 bylaws, as the case may be, or by amendments thereto  
26 heretofore or hereafter duly adopted; (b) whenever or  
27 wherever authorization of the members of such a federal  
28 savings and loan association was at said date required  
29 by said law or by said rules and regulations as a pre-  
30 requisite to the making of any such loan or investment,  
31 such authorization may in the case of a building and  
32 loan association be granted by its shareholders; and  
33 (c) whenever and wherever approval by the board of  
34 directors of such a federal savings and loan association  
35 was at said date required by said law or by said rules  
36 and regulations as a prerequisite to the making of any  
37 such loan or investment, such approval may in the case  
38 of a building and loan association be granted by the  
39 board of directors of such building and loan association.

40 Building and loan associations are authorized and em-  
41 powered to amend their charters, constitutions and by-  
42 laws to provide for the making of all loans and invest-  
43 ments permitted by this section and their shareholders  
44 and boards of directors are authorized to take any and all  
45 actions required to authorize the making of such loans  
46 and investments.

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## CHAPTER 20

(House Bill No. 627—By Mr. Myles and Mr. Halbritter)

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[Passed February 22, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article seven, chapter thirty-one of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to industrial loan companies holding obligations secured by real estate.

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

That section seven, article seven, 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 7. INDUSTRIAL LOAN COMPANIES.**

**§31-7-7. Limitations on powers.**

1 A corporation under the provisions of this article shall  
2 not:

3 (a) Make any loan under the provisions of this article  
4 for a longer period than two years from the date thereof,  
5 except upon express authorization of the board of direc-  
6 tors of such company;

7 (b) Hold at any one time the primary obligation or  
8 obligations of any one person, firm or corporation, for  
9 more than ten percent of the amount of the paid-up  
10 capital and surplus of such industrial loan company;

11 (c) Hold at any one time the obligation or obligations  
12 of persons, firms or corporations purchased from any  
13 person, firm or corporation in excess of twenty percent  
14 of the aggregate paid-up capital and surplus of such in-  
15 dustrial loan company;

16 (d) Make any loan or discount on the security of its  
17 own capital stock (controlling and voting stock, if there  
18 be more than one class), unless such security or purchase  
19 shall be necessary to prevent loss upon a debt previ-  
20 ously contracted in good faith. Stock so purchased or  
21 acquired shall be sold at public or private sale or other-  
22 wise disposed of within ninety days from the time of its  
23 purchase or acquisition;

24 (e) Have outstanding at any time its evidences or  
25 certificates of indebtedness, in an aggregate sum in ex-  
26 cess of ten times the aggregate amount of its paid-up  
27 capital (voting and controlling stock) and surplus;

28 (f) Deposit any of its funds with any other moneyed  
29 corporation unless such corporation has been designated

30 as such depository by a vote of the majority of the board  
31 of directors;

32 (g) Pledge or hypothecate any of its securities to  
33 any creditor, except that such companies shall have the  
34 power to rediscount or to borrow money from any source  
35 in addition to selling its evidences or certificates of in-  
36 debtedness, but the aggregate amount of such redis-  
37 counting and borrowing shall at no time exceed the sum  
38 total of the capital, surplus and reserve funds of such  
39 company, and the security so pledged therefor shall not  
40 exceed two times the amount borrowed and redis-  
41 counted;

42 (h) Pay any fees, bonuses, commissions, rewards, or  
43 other consideration to any person, firm or corporation  
44 for the privilege of using any plan of operation, scheme  
45 or device for the organization or carrying on of business  
46 under this article, or the use of any name, trademark  
47 or copyright to be so used; nor shall any corporation  
48 under this article enter into any contract for such pur-  
49 pose or purposes, or for the purpose of giving to or vest-  
50 ing in any other corporation any power or authority  
51 over the organization or management of corporations  
52 under this article.

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## CHAPTER 21

(Senate Bill No. 412—By Mr. Carrigan)

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[Passed March 2, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article ten, chapter thirty-one; and sections six and eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to supervision by and reports to commissioner of banking, examinations, fees, penalty for failure to report, revocation of certificates of approval, commissioner's examinations of financial institution, reports, records, communications from commissioner to institution, examination by

federal agency in lieu of commissioner's examination, fees, costs and expenses of examinations, and collection.

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

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

#### Chapter

31. Corporations.

31A. Banks and Banking.

### CHAPTER 31. CORPORATIONS.

#### ARTICLE 10. CREDIT UNIONS.

**§31-10-6. Supervision by and reports to commissioner of banking; examinations; fees; penalty for failure to report; revocation of certificates of approval.**

1 Credit unions shall be under the supervision of the  
2 commissioner of banking. They shall report to him at  
3 least semiannually on or before the first day of January  
4 and the first day of July of each calendar year, on blanks  
5 supplied by the said commissioner for that purpose. Ad-  
6 ditional reports may be required by said commissioner.  
7 Credit unions shall be examined annually by the com-  
8 missioner of banking, except that, if a credit union has  
9 assets of less than twenty-five thousand dollars, he may  
10 accept the audit of a certified public accountant in place  
11 of such examination. The fee for examination of credit  
12 unions not subject to the above exception will be charged  
13 on the basis of sixty-five dollars per day per examiner.

14 For failure to file reports when due, unless excused  
15 for cause, the credit union shall pay to the treasurer of  
16 the state five dollars for each day of its delinquency. If  
17 the commissioner of banking determines that a credit  
18 union is violating any provision of this article, or is in-  
19 solvent, said commissioner may serve notice on such  
20 credit union of his intention to revoke the certificate  
21 of approval. If, for a period of fifteen days after such  
22 notice, such violation continues, the commissioner of

23 banking may revoke such certificate and take possession  
24 of the business and property of such credit union and  
25 maintain possession until such time as he shall permit  
26 it to continue business or its affairs are finally liquidated.  
27 He may take similar action if such report remains in ar-  
28 rears for more than fifteen days.

## CHAPTER 31A. BANKS AND BANKING.

### ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal agency in lieu of commissioner's examination.

§31A-2-8. Fees, costs and expenses of examinations; collection.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal agency in lieu of commissioner's examination.

1 The commissioner of banking shall make, at least once  
2 each calendar year, a thorough examination of all the  
3 books, accounts, records and papers of every financial  
4 institution. He shall carefully examine all of the assets  
5 of each such institution, including its notes, drafts, checks,  
6 mortgages, securities deposited to assure the payment  
7 of debts unto it, and all papers, documents and records  
8 showing, or in any manner relating to, its business affairs,  
9 and shall ascertain the full amount and the nature in  
10 detail of all of its assets and liabilities. The commissioner  
11 may also make such examination of any subsidiaries or  
12 affiliates of a financial institution as he may deem neces-  
13 sary to ascertain the financial condition of such financial  
14 institution, the relations between such financial institu-  
15 tion and its subsidiaries and affiliates and the effect of  
16 such relations upon the affairs of such financial institu-  
17 tion. A full report of every such examination shall be  
18 made and filed and preserved in the office of the com-  
19 missioner and a copy thereof forthwith mailed to the  
20 institution examined. Every such institution shall retain  
21 all of its records of final entry for such period of time  
22 as required in section thirty-five, article four of this  
23 chapter for banking institutions.

24 Every official communication from the commissioner  
25 to any such institution, or to any officer thereof, relating  
26 to an examination or an investigation of the affairs of  
27 such institution conducted by the commissioner or con-  
28 taining suggestions or recommendations as to the manner  
29 of conducting the business of the institution, shall be  
30 read to the board of directors at the next meeting after  
31 the receipt thereof, and the president, or other execu-  
32 tive officer, of the institution shall forthwith notify the  
33 commissioner in writing of the presentation and read-  
34 ing of such communication and of any action taken there-  
35 on by the institution.

36 The commissioner of banking, in his discretion, may (a)  
37 accept a copy of a reasonably current examination of  
38 any banking institution made by the federal deposit  
39 insurance corporation or the federal reserve system in  
40 lieu of an examination of such banking institution re-  
41 quired or authorized to be made by the laws of this  
42 state, and the commissioner may furnish to the federal  
43 deposit insurance corporation or the federal reserve  
44 system or to any official or examiner thereof, any copy  
45 or copies of the commissioner's examinations of and re-  
46 ports on such banking institutions, (b) accept a copy of a  
47 reasonable current examination of any building and loan  
48 association made by the federal home loan bank board,  
49 a federal home loan bank or the federal savings and loan  
50 insurance corporation, in lieu of an examination of such  
51 building and loan association required or authorized to  
52 be made by the laws of this state, and the commis-  
53 sioner may furnish to the federal home loan bank or  
54 any of its member banks or to the federal savings and  
55 loan insurance corporation or any official or examiner  
56 thereof, any copy or copies of the commissioner's exami-  
57 nation and reports on such building and loan associa-  
58 tions; but nothing herein shall be construed to limit the  
59 duty and responsibility of banking institutions or build-  
60 ing and loan associations to comply with all provisions  
61 of law relating to examinations and reports, nor to limit  
62 the powers and authority of the commissioner of banking  
63 with reference to examinations and reports under exist-  
64 ing laws.

**§31A-2-8. Fees, costs and expenses of examinations; collection.**

1 (a) For making an examination within the state of  
2 any state banking institution, the commissioner of bank-  
3 ing shall charge and collect from such institution and pay  
4 into the state treasury a fee of one hundred dollars upon  
5 the first twenty-five thousand dollars of the assets as  
6 shown by the books of the bank on the date of exami-  
7 nation and six cents for each additional one thousand  
8 dollars of such assets.

9 (b) For making such an examination within the state  
10 of any other financial institution, the commissioner of  
11 banking shall charge and collect from such other financial  
12 institution and pay into the state treasury the actual and  
13 necessary costs and expenses incurred in connection  
14 therewith, as fixed and determined by the commissioner.

15 (c) If any such examination be made at a place outside  
16 of this state, the fees, costs and expenses shall be as  
17 above provided, except that there shall be an additional  
18 charge for mileage and travel expense as provided and  
19 allowed by law for state agencies and employees.

20 (d) The commissioner of banking may maintain an  
21 action for the recovery of all such fees, costs and expenses  
22 in any court of competent jurisdiction.

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## CHAPTER 22

(Senate Bill No. 344—By Mr. Carrigan)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend and reenact sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code, all relating to additional powers given to the West Virginia industrial

development authority authorizing the granting of loans to industrial development agencies for industrial subdivision project improvements; defining industrial subdivision project, industrial subdivision project improvements and cost of industrial subdivision project improvements; such loans not to be in excess of fifty percent of the cost or estimated cost of such improvements; prescribing the conditions to be met by loan applicants and the requirements to be made by the authority on account of such loans; prescribing the security and protection for such loans on behalf of the authority; permitting the deferment of principal and interest on industrial subdivision project improvement loans for a period not in excess of five years; limiting in any single fiscal year the aggregate amount which can be loaned to all applicants for industrial subdivision project improvements; providing that, when an agency of the federal government has made a loan or participated in a loan for, or has constructed industrial subdivision project improvements, the state will not alter or limit the powers of the authority in a manner inconsistent with the performance of any agreements between the authority and such agency; permitting loans to industrial development agencies for industrial development projects not in excess of fifty percent of the cost or estimated cost of such project in instances where federal agencies may not participate in such loans because of relocation restrictions; providing for the assignment by industrial development agencies of deeds of trust, notes and other security to the authority on loans to such agencies for industrial development projects; and elimination of the term "bond" as security on loans for industrial development projects and the substitution, in lieu thereof, the term "negotiable promissory note".

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

That article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; and that sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:



**ARTICLE 15. WEST VIRGINIA INDUSTRIAL DEVELOPMENT AUTHORITY.**

§31-15-4. Definitions.

§31-15-6. Powers of authority generally.

§31-15-7. Loans to industrial development agencies for industrial development projects.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project improvements.

§31-15-8. Loan application requirements; hearings upon applications.

§31-15-9. Industrial development fund.

§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.

**§31-15-4. Definitions.**

1 The following terms, whenever used or referred to in  
2 this article, shall have the following meanings:

3 (a) The term "authority" shall mean the public cor-  
4 poration created by this article.

5 (b) The term "board" shall mean the governing body  
6 of the authority.

7 (c) The term "county" shall mean any county of this  
8 state.

9 (d) The term "critical economic area" shall mean the  
10 area encompassing any municipality or group of municipi-  
11 palities, county, group of counties or region of the state  
12 reasonably defined by the authority wherein critical con-  
13 ditions of unemployment, economic depression, wide-  
14 spread reliance on public assistance and unemployment  
15 compensation are found to exist by the authority. Prior  
16 to determination and designation of any area of the  
17 state as a critical economic area, the authority shall  
18 conduct such investigations of the area and of the rec-  
19 ords and statistical indices of the department of employ-  
20 ment security, department of labor, department of natur-  
21 al resources, department of welfare and other applicable  
22 state agencies, as well as the declarations and statistics  
23 of any federal agencies as shall be necessary to establish  
24 the existence of the above conditions in such area. No  
25 area of the state shall be designated a critical economic  
26 area without such investigations and findings having  
27 been first made and certified to the permanent records  
28 of the authority.

29 (e) The term "federal agency" shall mean and include  
30 the United States of America, the president of the United  
31 States of America, and any department of, or corpora-  
32 tion, agency or instrumentality heretofore or hereafter  
33 created, designated or established by, the United States  
34 of America.

35 (f) The term "government" shall mean the state and  
36 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, associa-  
41 tion or agency, regardless of the particular name, and  
42 to whose members or shareholders no profit shall inure,  
43 which shall have as its primary function the promotion,  
44 encouragement and development of industrial, manu-  
45 facturing and tourist facility enterprises in a critical  
46 economic area.

47 (h) The term "industrial development fund" shall mean  
48 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 com-  
51 prising or being connected with or being a part of an  
52 industrial, manufacturing or tourist facility enterprise  
53 established or to be established by an industrial develop-  
54 ment agency in a critical economic area.

55 (j) The term "industrial subdivision project" shall  
56 mean any tract of land located within a critical economic  
57 area, together with utilities, services and access roads,  
58 the clear, unencumbered and marketable legal title to  
59 which tract of land is held by an industrial develop-  
60 ment agency for sale or lease for an industrial develop-  
61 ment project.

62 (k) The terms "industrial subdivision project improve-  
63 ments" and "improvements to industrial subdivision proj-  
64 ects" shall embrace any or all of the following: Site prep-  
65 aration and grading, installation of utilities and sewage  
66 disposal facilities upon, and preparation of access roads  
67 to, an industrial subdivision project.

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

70 (m) The term "responsible buyer" shall mean any per-  
71 son, partnership, firm, company or corporation organized  
72 for profit deemed by the authority, after proper investi-  
73 gation, to be financially responsible to assume all obliga-  
74 tions prescribed by the authority in the acquisition of  
75 an industrial development project from an industrial  
76 development agency, and in the operation of an industrial  
77 or manufacturing enterprise therein or thereon.

78 (n) The term "responsible tenant" shall mean any  
79 person, partnership, firm, company or corporation or-  
80 ganized for profit deemed by the authority, after proper  
81 investigation, to be financially responsible to assume all  
82 rental and all other obligations prescribed by the authority  
83 in the leasing of an industrial development project and  
84 in the operation of an industrial or manufacturing enter-  
85 prise therein or thereon.

86 (o) The words "cost of establishing an industrial de-  
87 velopment project" shall embrace any or all of the fol-  
88 lowing: The cost of construction, the cost of all lands,  
89 property rights, easements, and in cases of demonstrated  
90 need, machinery and equipment, if said demonstrated  
91 need shall have been shown to the satisfaction of the  
92 authority, which are deemed necessary for such con-  
93 struction, financing charges, interest prior to and during  
94 construction, cost of engineering and legal expense, plans,  
95 specifications, surveys, estimates of costs and other ex-  
96 penses necessary or incident to determining the feasi-  
97 bility or practicability of any industrial development  
98 project, together with such other expenses as may be  
99 necessary or incidental to the financing and the con-  
100 struction of the industrial development project and the  
101 placing of the same in operation.

102 (p) The words "cost of industrial subdivision project  
103 improvements" shall embrace any or all of the following:  
104 Construction cost of site preparation and grading, con-  
105 struction cost of utilities, sewage disposal facilities and  
106 access roads; cost of acquiring easements and property  
107 rights in other lands, in connection therewith, financing

108 charges, interest prior to and during the construction  
109 of such improvements, cost of engineering and legal  
110 services, preparation of plans, specifications, surveys and  
111 estimates of costs, together with such other expenses as  
112 may be reasonably necessary or incidental to the financing  
113 and the construction of improvements to industrial sub-  
114 division projects.

**§31-15-6. Powers of authority generally.**

1 The authority, as a public corporation and governmental  
2 instrumentality exercising public powers of the state,  
3 is hereby granted and shall have and may exercise all  
4 powers necessary or appropriate to carry out and ef-  
5 fectuate the purposes of this article, including the follow-  
6 ing powers, in addition to others herein granted:

7 (a) To make determination and designation of critical  
8 economic areas.

9 (b) To cooperate with industrial development agencies  
10 in the efforts to promote the expansion of industrial  
11 and manufacturing activity in critical economic areas.

12 (c) To determine, upon proper application of industrial  
13 development agencies, whether the declared public pur-  
14 pose of this article has been accomplished or will be  
15 accomplished by the establishment by such industrial  
16 development agencies of an industrial development project  
17 in a critical economic area.

18 (d) To conduct examinations and investigations and  
19 to hear testimony and take proof, under oath or affirma-  
20 tion, at public or private hearings, on any matter ma-  
21 terial for its information and necessary to the determina-  
22 tion and designation of critical economic areas and the  
23 establishment of industrial development projects therein.

24 (e) To issue subpoenas requiring the attendance of  
25 witnesses and the production of books and papers perti-  
26 nent to any hearing before such authority, or before one  
27 or more members of the authority appointed by it to  
28 conduct such hearings.

29 (f) To apply to any court, having territorial juris-  
30 diction of the offense, to have punished for contempt any

31 witness who refuses to obey a subpoena, or who refuses  
32 to be sworn or affirmed or to testify, or who is guilty  
33 of any contempt after summons to appear.

34 (g) To authorize any member or members of such  
35 authority to conduct hearings and to administer oaths,  
36 take affidavits and issue subpoenas.

37 (h) To make, upon proper application of industrial  
38 development agencies, loans to such industrial develop-  
39 ment agencies of moneys held in the industrial develop-  
40 ment fund for industrial development projects and in-  
41 dustrial subdivision project improvements, in critical  
42 economic areas, and to provide for the repayment and  
43 redeposit of such allocations and loans in the manner  
44 hereinafter provided.

45 (i) To have existence for a term of fifty years.

46 (j) To sue and be sued, implead and be impleaded,  
47 complain and defend in all courts.

48 (k) To adopt, use and alter at will a corporate seal.

49 (l) To make bylaws for the management and regula-  
50 tion of its affairs.

51 (m) To appoint officers, agents, employees and servants.

52 (n) To make contracts of every name and nature and  
53 to execute all instruments necessary or convenient for  
54 carrying on its business.

55 (o) Without limitation of the foregoing, accept grants  
56 from and enter into contracts or other transactions with  
57 any federal agency.

58 (p) To take title by foreclosure to any industrial de-  
59 velopment project or any industrial subdivision project  
60 where such acquisition is necessary to protect any loan  
61 previously made by the authority on account of such  
62 industrial development project or improvements to such  
63 industrial subdivision project and to sell, transfer and  
64 convey any such industrial development project or in-  
65 dustrial subdivision project to any responsible buyer;  
66 in the event such sale, transfer and conveyance cannot  
67 be effected with reasonable promptness, the authority  
68 may, in order to minimize financial losses and sustain

69 employment, lease such industrial development project  
70 or industrial subdivision project to a responsible tenant  
71 or tenants; the authority shall not lease industrial de-  
72 velopment projects or industrial subdivision projects ex-  
73 cept under the conditions and for the purposes cited  
74 in this section: *Provided*, That the authority shall have  
75 no power at any time to borrow money or in any manner  
76 to pledge the credit or taxing power of the state or any  
77 of its municipalities or political subdivisions, nor shall  
78 any of its obligations be deemed to be obligations of  
79 the state or any of its political subdivisions.

80 (q) To participate in any reorganization proceeding  
81 pending pursuant to Title II of the United States Bank-  
82 ruptcy Act or in any receivership proceeding had in a  
83 state or United States court for the purpose of reorganiza-  
84 tion or liquidation of a responsible buyer or responsible  
85 tenant. It may file its claim against any such responsible  
86 buyer or responsible tenant in any of the foregoing pro-  
87 ceedings, vote upon any question pending therein which  
88 requires the approval of the creditors participating in  
89 any reorganization proceeding or receivership, exchange  
90 any evidence of said indebtedness for any property, secur-  
91 ity or evidence of indebtedness offered as a part of the  
92 reorganization of said responsible buyer or responsible  
93 tenant or of any other entity formed to acquire the assets  
94 thereof, and may compromise or reduce the amount of  
95 any indebtedness owing to it as a part of any such  
96 reorganization.

**§31-15-7. Loans to industrial development agencies for in-  
dustrial development projects.**

1 When it has been determined by the authority upon  
2 application of an industrial development agency and upon  
3 hearing thereon in the manner hereinafter provided that  
4 the establishment of a particular industrial development  
5 project (of such industrial development agency) in a  
6 critical economic area has accomplished or will accom-  
7 plish the public purposes of this article, the authority  
8 may contract to loan such industrial development agency  
9 an amount not in excess of thirty percent (or, in the  
10 event that agencies of the federal government may not

11 participate in such loan because of relocation restrictions,  
12 an amount not in excess of fifty percent) of the cost, or  
13 estimated cost, of such industrial development project,  
14 as established or to be established, subject, however, to  
15 the following conditions:

16 (A) Industrial development projects to be established.

17 1. The authority shall have first determined that the  
18 industrial development agency holds funds in an amount  
19 equal to, or property of a value equal to, not less than  
20 twenty percent of the estimated cost of establishing the  
21 industrial development project, which funds or property  
22 are available for and shall be applied to the establishment  
23 of such project; and

24 2. The authority shall have also determined that the  
25 industrial development agency has obtained from other  
26 independent and responsible sources, such as banks and  
27 insurance companies or otherwise, a firm commitment  
28 for all other funds, over and above the loan of the au-  
29 thority and such funds or property as the industrial de-  
30 velopment agency may hold, necessary for payment of  
31 all the estimated cost of establishing the industrial de-  
32 velopment project, and that the sum of all these funds  
33 is adequate to insure completion and operation of the  
34 industrial development project.

35 (B) Industrial development projects established with  
36 initial authority loan participation.

37 1. The authority shall have first determined that the  
38 industrial development agency has expended funds in  
39 an amount equal to, or has applied property of a value  
40 equal to, not less than twenty percent of the cost of  
41 establishing the industrial development project; and

42 2. The authority shall have also determined that the  
43 industrial development agency obtained from other inde-  
44 pendent and responsible sources, such as banks and in-  
45 surance companies or otherwise, other funds necessary  
46 for payment of all the cost of establishing the industrial  
47 development project, and that the industrial develop-  
48 ment agency participation and these funds, has been  
49 adequate to insure completion and operation of the in-

50 industrial development project: *Provided*, That the pro-  
51 ceeds of any loan made by the authority to the industrial  
52 development agency pursuant to this subdivision (B) shall  
53 be used only for the establishment of additional indus-  
54 trial development projects in furtherance of the public  
55 purposes of this article.

56 Any such loan of the authority shall be for such period  
57 of time and shall bear interest at such rate as shall be  
58 determined by the authority and shall be secured by  
59 the negotiable promissory note of the industrial develop-  
60 ment agency and by deed of trust on the industrial de-  
61 velopment project for which such loan was made, or by  
62 assignment of any deed of trust and negotiable promissory  
63 note and other security taken by the industrial develop-  
64 ment agency on the industrial development project,  
65 such deed of trust and note, assignment of deed of trust,  
66 and note and other security to be second and subordinate  
67 only to the deed of trust securing the first lien obliga-  
68 tion issued to secure the commitment of funds from  
69 the aforesaid independent and responsible sources and  
70 used in the financing of the industrial development  
71 project.

72 Moneys so loaned by the authority to industrial de-  
73 velopment agencies shall be withdrawn from the indus-  
74 trial development fund and paid over to the industrial  
75 development agency in such manner as shall be provided  
76 and prescribed by the rules and regulations of the au-  
77 thority.

78 All payments of interest on said loans and the principal  
79 thereof shall be deposited by the authority in the indus-  
80 trial development fund.

81 Loans by the authority to an industrial development  
82 agency for an industrial development project shall be  
83 made only in the manner and to the extent as in this  
84 section provided, except, however, in those instances  
85 wherein an agency of the federal government participates  
86 in the financing of an industrial development project by  
87 loan, grant, or otherwise, or in those instances where  
88 any bank, insurance company, lending agency, or com-  
89 bination thereof, participates in any industrial develop-



90 ment project in an amount equal to sixty percent of the  
91 cost of the project. Where any bank, insurance company,  
92 lending agency, or combination thereof, participates in  
93 an amount equal to sixty percent of the cost of the indus-  
94 trial development project, the authority may adjust the  
95 required ratios of financial participation by the local in-  
96 dustrial development agency to an amount not less than  
97 ten percent of the estimated cost of establishing the in-  
98 dustrial development project. When any federal agency  
99 participates, the authority may adjust the required ratios  
100 of financial participation by the industrial development  
101 agency, the source of independent funds and the authority  
102 in such manner as to insure the maximum benefit avail-  
103 able to the industrial development agency, the authority,  
104 or both, by the participation of the federal agency. When  
105 ratios are adjusted in the manner set forth above, no  
106 such adjustment shall be made which shall cause the  
107 authority to grant a loan to the industrial development  
108 agency in excess of thirty percent (or in the event that  
109 agencies of the federal government may not participate  
110 in such loan because of relocation restrictions, an amount  
111 not in excess of fifty percent) of the cost, or estimated  
112 cost of the industrial development project.

113 Where any federal agency participating in the financing  
114 of an industrial development project is not permitted to  
115 take as security for such participation a deed of trust or  
116 assignment of deed of trust and other security the lien  
117 of which is junior to the deed of trust or assignment of  
118 deed of trust and other security of the authority, the  
119 authority shall, in such instances, be authorized to take  
120 as security for its loan to the industrial development  
121 agency a deed of trust or assignment of deed of trust  
122 and other security junior in lien to that of the federal  
123 agency.

**§31-15-7a. Loans to industrial development agencies for industrial subdivision project improvements.**

1 When it has been determined by the authority upon  
2 application of an industrial development agency and  
3 upon hearing thereon in the manner hereinafter provided  
4 that the improvement by such industrial development

5 agency of a particular industrial subdivision project,  
6 owned by such industrial development agency, which  
7 industrial subdivision project shall be located in a critical  
8 economic area, will accomplish the public purposes of  
9 this article, the authority may contract to loan such in-  
10 dustrial development agency an amount not in excess of  
11 fifty percent of the cost, or estimated cost, of such indus-  
12 trial subdivision project improvements, subject, however,  
13 to the following conditions:

14 1. The authority shall have determined that the indus-  
15 trial development agency has obtained from other inde-  
16 pendent and responsible sources, such as banks and  
17 insurance companies or otherwise, a firm commitment for  
18 all other funds, over and above the loan of the authority,  
19 necessary for payment of all the estimated cost of the  
20 industrial subdivision project improvements, and that  
21 the sum of all these funds is adequate to insure comple-  
22 tion of the improvements to the industrial subdivision  
23 project; and

24 2. The authority shall have also determined that the  
25 industrial development agency has clear, unencumbered  
26 and marketable legal title to the industrial subdivision  
27 project to be improved; and

28 3. The industrial development agency shall covenant  
29 in writing to and with the authority that as long as any  
30 loan made by the authority to the industrial development  
31 agency for the improvement of any industrial subdivision  
32 project shall remain unpaid, such industrial subdivision  
33 project, or any portion thereof, shall not be sold, leased  
34 or otherwise encumbered except for the purpose of  
35 establishing an industrial development project or projects  
36 on such land by the industrial development agency.

37 Any such loan of the authority shall be for such period  
38 of time and shall bear interest at such rate as shall be  
39 determined by the authority and shall be secured by the  
40 negotiable, promissory note of the industrial develop-  
41 ment agency and by deed of trust on the industrial sub-  
42 division project for which such loan was made, such  
43 deed of trust to be second and subordinate only to the  
44 deed of trust securing the first lien obligation issued

45 to secure the commitment of funds from the aforesaid  
46 independent and responsible sources and used in the  
47 financing of the industrial subdivision project improve-  
48 ments.

49 In its discretion the authority may, in a proper case,  
50 defer the payment of principal and interest, or principal  
51 only, or interest only, upon any loan made by the au-  
52 thority to an industrial development agency for the im-  
53 provement of any industrial subdivision project, such  
54 deferment to be for such period as may be determined by  
55 the authority, not to exceed five years from the date of  
56 the deed of trust securing the authority for the loan, and,  
57 in the event that such industrial subdivision project, or  
58 any portion thereof, is sold or leased by the industrial  
59 development agency prior to the expiration of said five-  
60 year period, all deferred installments of the principal  
61 of the loan accrued on the date of such sale or lease, or  
62 the proportionate part of such deferred principal which  
63 the sold or leased portion of the industrial subdivision  
64 project shall bear to the total acreage thereof, together  
65 with all unpaid interest accrued thereon on the date of  
66 such sale or lease shall, at the option of the authority,  
67 be and become immediately due and payable or, become  
68 subject to renegotiation by either increasing or decreas-  
69 ing the number of and the amount of each installment  
70 of principal and interest, without, however, effecting any  
71 change in the amount of principal of the original loan or  
72 the rate of interest as originally fixed by the authority  
73 in said deed of trust and note.

74 The authority may not lend in any single fiscal year,  
75 upon the aggregate of all of the applications made for  
76 loans for improvements to industrial subdivision projects,  
77 a total sum in excess of two hundred fifty thousand  
78 dollars.

79 Moneys so loaned by the authority to industrial de-  
80 velopment agencies shall be withdrawn from the indus-  
81 trial development fund and paid over to the industrial  
82 development agency in such manner as shall be provided  
83 and prescribed by the rules and regulations of the au-  
84 thority.

85 All payments of interest on said loans and the principal  
86 thereof shall be deposited by the authority in the indus-  
87 trial development fund.

88 Where any federal agency participating in the financing  
89 of improvements to industrial subdivision projects is not  
90 permitted to take as security for such participation a deed  
91 of trust the lien of which is junior to the deed of trust  
92 of the authority, the authority shall, in such instances,  
93 be authorized to take as security for its loan to the in-  
94 dustrial development agency a deed of trust junior in  
95 lien to that of the federal agency.

**§31-15-8. Loan application requirements; hearings upon ap-  
plications.**

1 Prior to the loaning of any funds to an industrial  
2 development agency for an industrial development proj-  
3 ect or for industrial subdivision project improvements,  
4 in a critical economic area, the authority shall receive  
5 from such industrial development agency a loan applica-  
6 tion in form adopted by the authority.

7 1. If the loan application is for an industrial develop-  
8 ment project the form shall contain, without being limit-  
9 ed to, the following provisions:

10 (a) A general description of the industrial develop-  
11 ment project and a general description of the industrial  
12 or manufacturing enterprise for which the industrial  
13 development project has been or is to be established.

14 (b) A legal description of all real estate necessary for  
15 the industrial development project.

16 (c) Such plans and other documents as may be re-  
17 quired to show the type, structure and general character  
18 of the industrial development project.

19 (d) A general description of the type, classes and  
20 number of employees employed or to be employed in  
21 the operation of the industrial development project.

22 (e) Cost or estimates of cost of establishing the in-  
23 dustrial development project.

24 (f) A general description and statement of value of  
25 any property, real or personal, of the industrial develop-

26 ment agency applied or to be applied to the establishment  
27 of the industrial project.

28 (g) A statement of cash funds previously applied, or  
29 then held by the industrial development agency which  
30 are available for and are to be applied, to the estab-  
31 lishment of the industrial development project.

32 (h) Evidence of the arrangement made by the in-  
33 dustrial development agency for the financing of all cost  
34 of the industrial development project over and above  
35 the participation of the industrial agency.

36 (i) A general description of the responsible tenant to  
37 which the industrial development agency has leased or  
38 will lease the industrial development project or of the  
39 responsible buyer to which the industrial development  
40 agency has sold or will sell the project.

41 (j) A general description of the form of lease or sales  
42 agreement entered into or to be entered into by and  
43 between the industrial development agency and its re-  
44 sponsible tenant or responsible buyer.

45 (k) Evidence that the establishment of the industrial  
46 development project will not cause the removal of an  
47 industrial or manufacturing plant or facility from one  
48 area of the state to another area of the state.

49 2. If the loan application is for industrial subdivision  
50 project improvements the form shall contain, without  
51 being limited to, the following provisions:

52 (a) A general description of the industrial subdivision  
53 project and a general description of its adaptability to  
54 industrial or manufacturing purposes, including the kinds  
55 or types of industrial development project which may  
56 be established thereon upon completion of the improve-  
57 ments for which the loan is requested.

58 (b) A legal description of the industrial subdivision  
59 project.

60 (c) Such plans and other documents as may be re-  
61 quired to show the type, structure and general character  
62 of the proposed improvements to the industrial sub-  
63 division project.

64 (d) Cost or estimates of cost of the proposed improve-  
65 ments to the industrial subdivision project.

66 (e) Evidence of the arrangement made by the indus-  
67 trial development agency for the financing of all cost of  
68 the industrial subdivision project improvements over and  
69 above the participation by the authority.

70 (f) Evidence that the establishment of an industrial  
71 development project upon the industrial subdivision proj-  
72 ect to be improved will not cause the removal of an  
73 industrial or manufacturing plant or facility from one  
74 area of the state to another area of the state.

75 The board of the authority shall hold such hearings  
76 and examinations as to each loan application received  
77 as shall be necessary to determine whether the public  
78 purposes of this article will be accomplished by the  
79 granting of loans within such applications requested.

80 When the board shall have determined said facts  
81 favorable as to any application, it is authorized and em-  
82 powered, having due regard to the promotion of the  
83 public purposes herein declared, to grant a loan to an  
84 industrial development agency in the manner and to the  
85 extent as in this article provided.

### §31-15-9. Industrial development fund.

1 There is hereby created a special account in the treasury  
2 of the state to be known as the industrial development  
3 fund to which shall be accredited any appropriation made  
4 by the Legislature to the authority, as well as such other  
5 deposits as in this section provided.

6 As often as may be necessary, the authority shall requi-  
7 sition from the industrial development fund such amounts  
8 as may be necessary to provide adequate funds for the  
9 payment of the administration of the purposes of this  
10 article. And whenever the authority determines it to be  
11 necessary to purchase, at a foreclosure sale, any industrial  
12 development project or industrial subdivision project pur-  
13 suant to subdivision (p), section six of this article, in order  
14 to protect any loan theretofore made by the authority,  
15 the authority may requisition from the industrial develop-  
16 ment fund such amount as may be necessary to pay

17 the purchase price thereof, notwithstanding the fact that  
18 the purchase price, in the instance of the foreclosure sale  
19 of any industrial development project, may exceed thirty  
20 percent (or in the event that no agency of the federal  
21 government participated in the loan because of relocation  
22 restrictions, fifty percent) of the original cost of the in-  
23 dustrial development project, or in the instance of the  
24 foreclosure sale of any industrial subdivision project, the  
25 purchase price may exceed fifty percent of the original  
26 cost of the industrial subdivision project improvements.

27 The authority shall also requisition, from time to time,  
28 from the industrial development fund such amounts as  
29 shall be allocated and appropriated by the authority for  
30 loans to industrial development agencies for industrial  
31 development projects and for industrial subdivision proj-  
32 ect improvements. When and as the amounts so allocated  
33 and appropriated by the authority as loans to industrial  
34 development agencies are repaid to the authority pursuant  
35 to the terms of the mortgages and other agreements made  
36 and entered into by the authority, the authority shall  
37 pay such amounts into the industrial development fund,  
38 it being the intent of this article that the industrial de-  
39 velopment fund shall operate as a revolving fund where-  
40 by all appropriations and payments made thereto may be  
41 applied and reapplied to the purposes of this article.

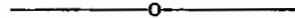
42 Whenever the authority shall determine that the bal-  
43 ance in the industrial development fund is in excess of  
44 the immediate requirements for loan purposes it may  
45 request that such excess funds be invested until needed  
46 for loan purposes, in which case such excess funds shall  
47 be invested in the manner provided for the investment  
48 of other temporary state funds. All interest earned on  
49 the money invested pursuant to this section shall be  
50 credited to the industrial development fund.

51 At any time that the authority shall determine that  
52 funds held for the credit of the industrial development  
53 fund are in excess of the amount needed by the authority  
54 to carry out the purposes of this article, the authority  
55 shall take such action as shall be required to release

56 such excess from the industrial development fund and  
57 transfer the same to the general fund of the state treasury.

**§31-15-13. Agreement with federal agencies not to alter or  
limit powers of authority.**

1 The state does hereby pledge to and agree with the  
2 United States and any other federal agency that in the  
3 event any federal agency shall construct or loan or con-  
4 tribute any funds for the construction, extension, im-  
5 provement or enlargement of any industrial development  
6 project, or any portion thereof, or construct improve-  
7 ments to any industrial subdivision project or loan or  
8 contribute any funds for the construction, extension or  
9 enlargement of improvements to any industrial subdivi-  
10 sion project, or any portion thereof, the state will not  
11 alter or limit the rights and powers of the authority in  
12 any manner which would be inconsistent with the due  
13 performance of any agreements between the authority  
14 and any such federal agency, and the authority shall con-  
15 tinue to have and may exercise all powers herein granted,  
16 so long as the same shall be necessary or desirable for the  
17 carrying out of the purposes of this article.



## CHAPTER 23

(Com. Sub. for House Bill No. 674—Originating in the House Committee  
on Political Subdivisions)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to repeal sections four, five-(one) through five-(fifty-four), article one; and section nineteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections five, five-(one) through five-(fifty-five) and ten, article two, chapter eleven of said code; to amend and reenact sections one and five, article one, chapter seven of said code; to amend and reenact article seven, chapter seven of said code; and to amend and reenact section two, article two,



chapter eleven of said code, all relating generally to county government, county courts and officers and their deputies, assistants and employees; relating to the composition, powers and duties of county courts; setting forth legislative findings and a declaration of policy; establishing county in-service training programs; requiring participation in such programs as additional duties of county officials; classifying counties on the basis of assessed valuations for the purpose of determining compensation of elected county officials; establishing minimum and maximum compensation limits for elected county officials; relating to the compensation of county commissioners and the compensation of other elected county officials, county deputies, assistants and employees; prohibiting outside employment of certain elected officials; providing percentage limitations with respect to compensation in excess of minimum; relating to the county budget; relating to assistant prosecuting attorneys, and their appointment and compensation; relating to the appointment of an attorney to prosecute cases; relating to the procedure for the payment of compensation of county officials, deputies, assistants and employees; relating to affidavits as to compensation; relating to illegal orders for compensation; providing prohibitions; relating to the allowance for the expenses of sheriffs and prosecuting attorneys; relating to the training of sheriffs and their deputies; relating to the payment of training expenses by the county court; relating to the mileage allowance for county officials and their deputies, assistants and employees and reports in connecton therewith; relating to annual reports by county officers; relating to the source of compensation paid judges of courts of limited jurisdiction; providing criminal penalties; providing a severability clause; and relating to the deputies, assistants and employees of assessors.

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

That sections four, five-(one) through five-(fifty-four), article one; and section nineteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five, five-(one)

through five-(fifty-five) and ten, article two, chapter eleven of said code be repealed; that sections one and five, article one, chapter seven of said code be amended and reenacted; that article seven, chapter seven of said code be amended and reenacted; and that section two, 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.**

#### **7. Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, Their Number and Compensation.**

### **ARTICLE 1. COUNTY COURTS GENERALLY.**

§7-1-1. County courts corporations; how constituted; election of president.

§7-1-5. Powers and duties of county commissioners.

#### **§7-1-1. County courts corporations; how constituted; election of president.**

1 The county court or tribunal in lieu thereof of every  
 2 county within the state of West Virginia shall be a cor-  
 3 poration by the name of "The county court of \_\_\_\_\_  
 4 county", by which name it may sue and be sued, plead  
 5 and be impleaded, and contract and be contracted with.  
 6 Every county court shall consist of three commissioners as  
 7 provided in section twenty-two, article eight of the con-  
 8 stitution of the state of West Virginia, any two of whom  
 9 shall constitute a quorum for the transaction of business,  
 10 except in the case of any county which, in accordance with  
 11 section twenty-nine, article eight of the constitution of  
 12 the state of West Virginia or any earlier counterpart  
 13 thereof, has applied to the Legislature of West Virginia  
 14 for it to reform, alter or modify its county court and the  
 15 Legislature by its act, in accordance therewith, and  
 16 with the assent of the voters of the county voting at an  
 17 election, has effected the requested reformation, alter-  
 18 ation or modification, in which case the provisions of the  
 19 act of the Legislature creating a tribunal in lieu of the  
 20 county court shall apply concerning the number of county

21 court commissioners and the number of commissioners  
22 required to constitute a quorum. Each county court shall  
23 annually, at its first session in each year, or as soon there-  
24 after as practicable, elect one of its commissioners as  
25 president of the county court.

26 Throughout this chapter the term "county court" or  
27 any reference to a county court shall include all tribunals  
28 created in lieu of the county court.

**§7-1-5. Powers and duties of county commissioners.**

1 The county commissioners of each county shall exercise  
2 the following powers and perform the following duties  
3 for their respective counties:

4 (1) At least quarterly visit and inspect institutions  
5 within their county for housing and caring for the poor  
6 and investigate the conditions of the poor within their  
7 county and not housed within such institutions.

8 (2) Arrange for the feeding and care of county jail  
9 prisoners and at least quarterly inspect the jails.

10 (3) At least quarterly visit and inspect detention  
11 homes for children within their county.

12 (4) Visit and inspect bridges and bridge approaches  
13 under their control.

14 (5) Provide for and have general supervision over  
15 the repair and maintenance of the county courthouse, jails,  
16 houses for the poor and any other county property and  
17 prevent their deterioration.

18 (6) Supervise and control the purchase, erection,  
19 maintenance and operation of any airport owned by the  
20 county or operated by the county court.

21 (7) Supervise and control the purchase of furniture,  
22 fixtures, equipment and supplies for their county.

23 (8) Attend the annual meeting of county assessors,  
24 and any other meetings called by the state tax commis-  
25 sioner on matters pertaining to the work of the county  
26 assessors and the county courts acting as boards of re-  
27 view and equalization; review and equalize the assess-  
28 ments made by the assessors, inspect and review the lists  
29 of property, both real and personal, made up by the as-  
30 sessor and his deputies for taxable purposes, and point

31 out to the assessor any property, real and personal,  
32 which the county assessors may have overlooked or  
33 omitted to place on the tax lists; and call to the attention  
34 of the assessor all real estate and personal property  
35 belonging to churches, lodges, schools or other charitable  
36 institutions which may have been overlooked or omitted  
37 by the assessor or his deputies in making up his lists of  
38 property for entry on the land and personal property  
39 books.

40 (9) Purchase, lease, rent, control, supervise, inspect,  
41 maintain and erect public parks, playgrounds and recrea-  
42 tional facilities and purchase, lease or rent equipment  
43 therefor; and employ qualified recreational directors and  
44 personnel to operate those parks, playgrounds and recre-  
45 ational facilities.

46 (10) Construct and operate Four-H camps on county  
47 property.

48 (11) Operate stone quarries and sand deposits on  
49 property owned or leased by the county.

50 (12) Construct or aid in constructing or equipping  
51 civilian defense buildings on sites approved by the de-  
52 partment of civil and defense mobilization.

53 (13) Operate dog pounds for the county and the mu-  
54 nicipalities of such county.

55 (14) Purchase, lease, rent, control, supervise, inspect,  
56 maintain and erect public markets; purchase, rent or  
57 lease equipment therefor; and employ qualified personnel  
58 to operate those public markets.

59 (15) Purchase, lease, rent, control, supervise, inspect,  
60 maintain and erect county mental and physical health  
61 clinics and engage in any program designed for the bet-  
62 terment of the mental and physical well-being of the  
63 residents of their county and to cooperate with any pub-  
64 lic or private agency for these purposes.

65 (16) Construct fallout shelters and aid individuals,  
66 by furnishing to them available information, to construct  
67 fallout shelters.

68 (17) Survey all abandoned and dilapidated buildings  
69 or structures within the county and prepare an inventory  
70 thereof which inventory shall be made available to any

71 agency of the state or federal government or to local  
72 governmental agencies upon request.

73 (18) Establish and participate in regional councils.

74 (19) Supervise and manage county fiscal affairs and  
75 business.

76 In addition to exercising the powers and performing  
77 the duties aforementioned, the county commissioners of  
78 each county may exercise any other powers and may  
79 perform any other duties that are reasonably and neces-  
80 sarily implied in the full and proper exercise of the  
81 powers and duties conferred upon county commissioners  
82 and county courts by the constitution of the state of  
83 West Virginia and by general law.

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,  
ETC.; COMPENSATION OF ELECTED COUNTY  
OFFICIALS; COUNTY ASSISTANTS, DEPUTIES  
AND EMPLOYEES, THEIR NUMBER AND COM-  
PENSATION.**

- §7-7-1. Legislative findings and declaration of policy.
- §7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.
- §7-7-3. Classification of counties for purpose of determining compensation of elected county officials.
- §7-7-4. Minimum and maximum compensation limits of elected county officials for each class of county.
- §7-7-5. Compensation of county commissioners.
- §7-7-6. Compensation of all elected county officials except county commissioners.
- §7-7-7. County assistants, deputies and employees; their number and compensation; county budget.
- §7-7-8. Assistant prosecuting attorneys; appointment and compensation; when court may appoint attorney to prosecute.
- §7-7-9. Procedure for payment of compensation.
- §7-7-10. Affidavits acknowledging receipt of compensation.
- §7-7-11. Illegal orders for compensation.
- §7-7-12. Sharing compensation prohibited.
- §7-7-13. Allowance for expenses of sheriff.
- §7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county court.
- §7-7-15. Allowance for expenses of prosecuting attorney.
- §7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.
- §7-7-17. Annual reports by county officers of expenditures for assistants, deputies and employees.
- §7-7-18. Source of compensation paid judges of courts of limited jurisdiction.
- §7-7-19. Penalties.
- §7-7-20. Severability.

**§7-7-1. Legislative findings and declaration of policy.**

1 The Legislature hereby finds and declares (1) that  
2 the ever increasing demands upon the counties for addi-  
3 tional and improved services and the rapid changes in  
4 the science of government and technological changes  
5 make it necessary to provide training programs for  
6 elected county officials and their assistants and em-  
7 ployees; (2) that such training programs will do much  
8 to improve the processes of local government; (3) that  
9 the present system of providing compensation for these  
10 offices is antiquated and not conducive to attracting and  
11 holding the best qualified people in government service;  
12 and (4) that it is in the interest of the public to adopt the  
13 provisions as hereinafter set forth for the effective oper-  
14 ation of county government.

**§7-7-2. Establishment of county in-service training programs;  
further additional duties for prosecuting attorney  
in any county in excess of two hundred thousand.**

1 There is hereby established county in-service training  
2 programs as hereinafter set forth.

3 The attorney general is hereby authorized and directed  
4 to establish such in-service training programs as in his  
5 opinion will do most to assist the prosecuting attorneys  
6 in the performance of their duties. The attorney gen-  
7 eral is authorized to accept any federal aid which may  
8 be made available or any financial assistance which may  
9 be available from any private nonprofit organization  
10 for the purposes of this section. The prosecuting attorney  
11 in any county having a population in excess of two hun-  
12 dred thousand shall also discharge the additional duties  
13 imposed upon him by the provisions of section thirteen-a,  
14 article five, chapter forty-nine of this code.

15 The state tax commissioner is hereby authorized and  
16 directed to establish such in-service training programs for  
17 county commissioners, county clerks, circuit clerks,  
18 assessors, sheriffs and their assistants and employees  
19 as in his opinion will do most to modernize and improve  
20 the services of their respective offices. The state tax com-  
21 missioner is authorized to accept any federal aid which

22 may be made available or any financial assistance which  
 23 may be available from any private nonprofit organization  
 24 for the purpose of this article.

25 Each of the county officials mentioned in this section,  
 26 and, at his option, one or more of his assistants, deputies  
 27 and employees, shall participate in the programs estab-  
 28 lished under this section.

29 The county court is authorized and directed to expend  
 30 funds for the purpose of reimbursing such officials and/or  
 31 employees for the actual amount expended by them for  
 32 food, lodging and registration while in attendance at  
 33 meetings called by the attorney general or the tax com-  
 34 missioner for the purpose of this section, not to exceed  
 35 thirty-five dollars per day, with mileage not to exceed  
 36 the rate of ten cents per mile to be computed according  
 37 to the distance by the nearest practicable route for travel  
 38 to and from such meetings.

**§7-7-3. Classification of counties for purpose of determining  
 compensation of elected county officials.**

1 For the purpose of determining the compensation of  
 2 elected county officials, the counties of the state of West  
 3 Virginia are hereby grouped into seven classes based  
 4 on their assessed valuation of property, all classes. These  
 5 seven classes and the minimum and maximum valu-  
 6 ation of property, all classes, established to determine  
 7 the classification of each county are as follows:

	Minimum Assessed Valuation of Property,	Maximum Assessed Valuation of Property,
8		
9		
10	All Classes	All Classes
11	Class I \$450,000,000	No limit
12	Class II \$200,000,000	\$449,999,999
13	Class III \$100,000,000	\$199,999,999
14	Class IV \$ 50,000,000	\$ 99,999,999
15	Class V \$ 25,000,000	\$ 49,999,999
16	Class VI \$ 15,000,000	\$ 24,999,999
17	Class VII \$ 0	\$ 14,999,999

18 The assessed valuation of property, all classes, that  
 19 shall be used as the base to determine the class of a

20 county shall be the assessed valuation of property, all  
21 classes, of the county as certified by the county assessor,  
22 state auditor and county clerk prior to March twenty-  
23 ninth of each year.

24 Prior to March twenty-ninth of each year, the county  
25 court of each county shall determine the class of the  
26 county based upon the assessed valuation of property, all  
27 classes, of the county, as certified by the county assessor,  
28 state auditor and county clerk in accordance with the table  
29 of classes hereinabove set forth. If the county court de-  
30 termines that such assessed valuation is within the min-  
31 imum and maximum limits of a class above or below those  
32 of the classification then current, it shall record the new  
33 classification of the county with the state auditor and  
34 state tax commissioner and record its action on its county  
35 court record. If a county court fails to record a new classi-  
36 fication or fails to determine a new classification, the  
37 classification of the county for the current fiscal year shall  
38 be and remain its classification for the next fiscal year  
39 following except as provided in the next succeeding  
40 paragraph.

41 The classification of each county for the next fiscal  
42 year shall be subject to review by the state tax com-  
43 missioner. He shall determine if the classification of each  
44 county is correct based on the final assessed valuation of  
45 property, all classes, certified to him by the county as-  
46 sessor, state auditor and county clerk. If the state tax  
47 commissioner finds that a county is incorrectly classified  
48 he shall notify the county court of that county promptly  
49 of his finding and in any case shall notify the county court  
50 prior to June thirtieth of that current fiscal year. Any  
51 county court so notified shall correct its classification im-  
52 mediately and make any necessary corrections in the sal-  
53 aries of its elected county officials for the next fiscal year.

54 Notwithstanding any other provision of this chapter,  
55 no salary of any member of a county court, sheriff, county  
56 clerk, circuit clerk, assessor, prosecuting attorney, or  
57 other public officer whose salary is governed by this  
58 chapter, shall be reduced during the term for which  
59 such public officer is serving.



**§7-7-4. Minimum and maximum compensation limits of elected county officials for each class of county.**

1 For the purpose of determining the compensation to  
 2 be paid to the elected county officials of each county,  
 3 the following minimum and maximum compensation  
 4 limits for each county office by class are hereby estab-  
 5 lished and shall be used by each county court in deter-  
 6 mining the compensation of each of their county officials  
 7 including compensation of members of the county  
 8 court:

	County Court	Sheriff	County Clerk
11 Class I	\$ 9,600-12,800	\$ 9,000-12,000	\$13,800-18,400
12 Class II	\$ 6,000- 9,000	\$ 7,800-11,700	\$10,000-15,000
13 Class III	\$ 4,400- 6,600	\$ 7,800-11,700	\$ 8,000-12,000
14 Class IV	\$ 2,800- 4,200	\$ 6,600- 9,900	\$ 6,000- 9,000
15 Class V	\$ 1,600- 2,400	\$ 4,800- 7,200	\$ 4,800- 7,200
16 Class VI	\$ 1,400- 2,100	\$ 4,400- 6,600	\$ 4,400- 6,600
17 Class VII	\$ 600- 900	\$ 3,600- 5,400	\$ 2,400- 3,600
	Circuit Clerk	Assessor	Prosecuting Attorney
20 Class I	\$13,800-18,400	\$ 9,000-15,000	\$20,000-26,000
21 Class II	\$10,000-15,000	\$ 9,000-13,500	\$12,000-18,000
22 Class III	\$ 8,000-12,000	\$ 7,800-11,700	\$ 9,000-13,500
23 Class IV	\$ 6,000- 9,000	\$ 6,600- 9,900	\$ 7,200- 9,600
24 Class V	\$ 4,800- 7,200	\$ 4,800- 7,200	\$ 4,800- 7,200
25 Class VI	\$ 4,400- 6,600	\$ 4,400- 6,600	\$ 4,400- 6,600
26 Class VII	\$ 1,800- 2,700	\$ 3,000- 4,500	\$ 1,800- 2,700

27 When the classification of a county is changed as pro-  
 28 vided in this article, the compensation of each elected  
 29 county official of that county for each fiscal year there-  
 30 after shall be set within the minimum and maximum  
 31 compensation limits established for each elected county  
 32 official in that class until the classification again changes.

**§7-7-5. Compensation of county commissioners.**

1 (a) Every county commissioner who attends any ses-  
 2 sion of the county court on which he serves shall receive  
 3 two dollars per day for every day he attends, which

4 shall be paid out of the county treasury, as provided for  
5 in section twenty-three, article eight of the constitution  
6 of the state of West Virginia.

7 (b) In addition to the payment for services in court  
8 as described in subsection (a) of this section, all county  
9 commissioners shall be paid compensation out of the  
10 county treasury for performing the duties specified in  
11 this chapter and elsewhere in the code. The compensa-  
12 tion shall be determined by each county court for its  
13 own members. The compensation of a county court mem-  
14 ber shall never be fixed in an amount less than the mini-  
15 mum limit or more than the maximum limit in effect  
16 for the class in which that county is for that fiscal year.  
17 The compensation shall be reasonable and proper, and  
18 due consideration shall be given to the duties, respon-  
19 sibilities and the work required of the individual mem-  
20 bers of each county court: *Provided, however,* That as  
21 to any county having a tribunal in lieu of a county court,  
22 the county commissioners of such county may be paid  
23 less than the minimum compensation limits of the county  
24 court for the particular class of such county.

25 (c) Compensation for all county court members shall  
26 be fixed by order of the county court before March  
27 twenty-ninth of each year and shall take effect on the  
28 first day of July following and shall be in effect through-  
29 out that fiscal year. Each county court shall enter its  
30 order upon its county court record.

31 (d) The compensation of all members of each county  
32 court under subsection (b) of this section shall be the  
33 same for any given fiscal year regardless of any given  
34 member's tenure or term of office.

**§7-7-6. Compensation of all elected county officials except  
county commissioners.**

1 The county court of each county shall determine the  
2 compensation to be paid to the county clerk, circuit clerk,  
3 joint clerk of the county and circuit court, if any, sheriff,  
4 county assessor and prosecuting attorney for its county.  
5 The compensation of an elected county official shall never  
6 be fixed in an amount less than the minimum limit or

7 more than the maximum limit in effect for the class  
8 in which that county is for the fiscal year involved. The  
9 compensation shall be reasonable and proper and due  
10 consideration shall be given to the duties, responsibilities  
11 and the work required of these elected county officials:  
12 *Provided*, That any county clerk, circuit clerk, joint  
13 clerk of the county and circuit court, if any, county  
14 assessor, sheriff and prosecuting attorney in a Class I  
15 county shall devote full time to his public duties to the  
16 exclusion of any other employment, and any county  
17 clerk, circuit clerk, joint clerk of the county and circuit  
18 court, if any, county assessor, sheriff and prosecuting  
19 attorney in a Class II county receiving at least eighty  
20 percent of the maximum compensation shall devote full  
21 time to his public duties to the exclusion of any other  
22 employment.

23 If a county court for any fiscal year fixes the compen-  
24 sation of its members or of any other elected official of  
25 such county in any amount in excess of the minimum  
26 compensation limit in effect for such county court or such  
27 other elected official for the class in which the county is  
28 for that fiscal year, then such county court shall fix the  
29 compensation of all other elected officials in that county  
30 for such fiscal year so that the compensation of such  
31 officials will be the same percentage above the minimum  
32 as the compensation of the members of such county  
33 court or such other official is above the minimum:  
34 *Provided, however*, That in the case of a county that has  
35 a joint clerk of the county and circuit court, the com-  
36 pensation of the joint clerk shall be fixed in an amount  
37 not more than fifty percent higher than the compensation  
38 that would be fixed for the county clerk of the county if  
39 it had separate offices of county clerk and circuit clerk.

40 Compensation for the county clerk, circuit clerk, joint  
41 clerk of the county and circuit court, if any, sheriff, county  
42 assessor and prosecuting attorney shall be fixed by order  
43 of the county court before March twenty-ninth of each  
44 year and shall take effect on the first day of July following  
45 and shall remain in effect throughout that fiscal year.  
46 Each county court shall enter its order upon its county  
47 court record.

**§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.**

1 The county clerk, circuit clerk, joint clerk of the county  
2 and circuit court, if any, sheriff, county assessor and  
3 prosecuting attorney, by and with the advice and consent  
4 of the county court, may appoint and employ to assist  
5 them in the discharge of their official duties for and dur-  
6 ing their respective terms of office assistants, deputies  
7 and employees.

8 The county clerk, circuit clerk, joint clerk of the coun-  
9 ty and circuit court, if any, sheriff, county assessor and  
10 prosecuting attorney shall, prior to March second of each  
11 year, file with the county court a detailed request for  
12 appropriations for anticipated or expected expenditures  
13 for their respective offices, including the compensation  
14 for their assistants, deputies and employees, for the  
15 ensuing fiscal year.

16 The county court shall, prior to March twenty-ninth of  
17 each year by order fix the total amount of money  
18 to be expended by the county for the ensuing fiscal  
19 year, which amount shall include the compensation  
20 of county assistants, deputies and employees. Each  
21 county court shall enter its order upon its county court  
22 record.

23 The county clerk, circuit clerk, joint clerk of the county  
24 and circuit court, if any, sheriff, county assessor and  
25 prosecuting attorney shall then fix the compensation of  
26 their assistants, deputies and employees based on the  
27 total amount of money designated for expenditure by  
28 their respective offices by the county court, and the  
29 amount so expended shall not exceed the total expendi-  
30 ture designated by the county court for each office.

31 The county officials, in fixing the individual compen-  
32 sation of their assistants, deputies and employees, and  
33 the county court in fixing the total amount of money to  
34 be expended by the county, shall give due consideration  
35 to the duties, responsibilities and work required of the  
36 assistants, deputies and employees and their compensa-  
37 tion shall be reasonable and proper.

38 After the county court has fixed the total amount of  
39 money to be expended by the county for the ensuing  
40 fiscal year and after each county official has fixed the  
41 compensation of each of his assistants, deputies and em-  
42 ployees, as provided in this section, each county official  
43 shall file prior to June thirtieth, with the clerk of the  
44 county court a budget statement for the ensuing fiscal  
45 year setting forth the name, or the position designation  
46 if then vacant, of each of his assistants, deputies and  
47 employees, the period of time for which each is em-  
48 ployed, or to be employed if the position is then vacant,  
49 and his monthly or semimonthly compensation.

50 All budget statements required to be filed by this sec-  
51 tion shall be verified by an affidavit by the county of-  
52 ficial making them. Among other things contained in  
53 the affidavit shall be the statement that the amounts  
54 shown therein are the amounts actually paid or intended  
55 to be paid to the assistants, deputies and employees  
56 without rebate, and without any agreement, understand-  
57 ing or expectation that any part thereof shall be repaid to  
58 him, and that, prior to the time the affidavit is made, noth-  
59 ing has been paid or promised him on that account, and  
60 that if he shall thereafter receive any money, or thing of  
61 value, on account thereof, he will account for and pay  
62 the same to the county. Until the statements required  
63 by this section have been filed, no allowance or payments  
64 shall be made to any county official or his assistants,  
65 deputies and employees.

66 Each county official named in this section shall have  
67 the authority to discharge any of his assistants, deputies  
68 or employees by filing with the clerk of the county court  
69 a discharge statement specifying the discharge action.

**§7-7-8. Assistant prosecuting attorneys; appointment and com-  
pensation; when court may appoint attorney to  
prosecute.**

1 The prosecuting attorney of each county may, in ac-  
2 cordance with and limited by the provisions of section  
3 seven of this article, appoint practicing attorneys to assist  
4 him in the discharge of his official duties during his term  
5 of office. Any attorney so appointed shall be classified

6 as an assistant prosecuting attorney and shall take the  
7 same oath and may perform the same duties as his prin-  
8 cipal. Each assistant shall serve at the will and pleasure  
9 of his principal and may be removed from office by the  
10 circuit court of the county in which he is appointed for  
11 any cause for which his principal might be removed.

12 If, in any case, the prosecuting attorney and his as-  
13 sistants are unable to act, or if in the opinion of the  
14 court it would be improper for him or his assistants  
15 to act, the court shall appoint some competent practicing  
16 attorney to act in that case. The court shall certify  
17 to the county court the performance of that service when  
18 completed and recommend to the county court a reason-  
19 able compensation for the attorney for his service, and  
20 the compensation, when allowed by the county court,  
21 shall be paid out of the county treasury. No provision  
22 of this section shall be construed to prohibit the employ-  
23 ment by any person of a practicing attorney to assist in  
24 the prosecution of any person or corporation charged  
25 with a crime.

26 The compensation to be paid to an assistant prosecut-  
27 ing attorney shall include compensation provided by law  
28 for any services he renders as attorney for any adminis-  
29 trative board or officer of his county. No assistant prose-  
30 cuting attorney shall serve as attorney for any other  
31 political subdivision of this state.

**§7-7-9. Procedure for payment of compensation.**

1 The compensation of the county clerk, circuit clerk,  
2 joint clerk of the county and circuit court, if any, sheriff,  
3 county assessor, prosecuting attorney, and their assistants,  
4 deputies and employees shall be paid monthly or semi-  
5 monthly by the county court, which compensation shall be  
6 paid out of the county treasury in the manner prescribed  
7 by law.

8 The county court, after the filing of the budget state-  
9 ment specified in section seven of this article, may, by  
10 order of record, authorize and order a draft on the county  
11 treasurer, payable out of the general county fund, to be  
12 drawn in favor of the county official, assistant, deputy

13 or employee named in this statement, in payment of the  
14 compensation to which the person is entitled.

15 The draft shall not be issued to the county official,  
16 assistant, deputy or employee until the proper county  
17 official has filed a detailed monthly or semimonthly state-  
18 ment with the county treasurer and has filed with the  
19 county clerk a duplicate copy of the monthly or semi-  
20 monthly statement, together with a receipt from the  
21 county treasurer, showing that the person to be paid  
22 has paid into the county treasury all moneys belonging  
23 to the county that have been collected by him during  
24 that pay period as shown by the monthly or semimonthly  
25 statement.

26 When the order for the draft has been entered of record,  
27 the president and clerk of the county court shall be au-  
28 thorized to issue and approve by their signature the  
29 draft.

**§7-7-10. Affidavits acknowledging receipt of compensation.**

1 At the end of each fiscal year, each county official,  
2 assistant, deputy and employee shall sign and submit  
3 to the clerk of the county court an affidavit which shall  
4 be in the following form:

5 No. \_\_\_\_\_, 19\_\_\_\_\_

6 Name \_\_\_\_\_

7 Position or job title \_\_\_\_\_ County \_\_\_\_\_

8 Description of services rendered:

9 (Describe service and specify period [dates] of service)

10 \_\_\_\_\_

11 \_\_\_\_\_

12 I hereby certify that I have rendered the services  
13 herein stated, that I have received the full compensation  
14 to which I was entitled for those services rendered for  
15 my own use and benefit, and that I have not paid, de-  
16 posited, assigned, or contracted to pay, deposit or assign,  
17 any part of my full compensation for the use of any  
18 other person, or in any way, directly or indirectly, paid  
19 or given, or contracted to pay or give, any reward or  
20 compensation for my position or job or the emoluments  
21 thereof to any other person.

22

(Signed) \_\_\_\_\_

23 If the services to the county of a county official, assis-  
24 tant, deputy or employee terminate before the end of a  
25 fiscal year, the official, assistant, deputy or employee  
26 shall, at the time his services end, sign and submit the  
27 above affidavit to the clerk of the county court.

28 All affidavits submitted shall be filed and preserved  
29 by the clerk of the county court.

**§7-7-11. Illegal orders for compensation.**

1 If any clerk shall issue and deliver a draft to any county  
2 clerk, circuit clerk, joint clerk of the county and circuit  
3 court, if any, sheriff, county assessor, prosecuting at-  
4 torney, or any of their assistants, deputies or employees,  
5 in payment of their compensation, without all the ap-  
6 plicable requirements of this article being complied  
7 with, the draft so issued and delivered shall be illegal  
8 and invalid. The clerk and the sureties on his bond shall  
9 be liable to the county court of his county for the pay-  
10 ment thereof.

**§7-7-12. Sharing compensation prohibited.**

1 No county official shall receive or be paid, directly  
2 or indirectly, any part of the compensation of any assis-  
3 tant, deputy or employee, or any fee or reward for  
4 appointing him to his position. No member of a county  
5 court shall receive or be paid, directly or indirectly, any  
6 part of the compensation of any other county officer  
7 named in this article, or of any county assistant, deputy  
8 or employee. If any county commissioner or county  
9 official violates the provisions of this section, he shall  
10 be guilty of a misdemeanor, and, upon conviction thereof,  
11 shall be fined not more than five hundred dollars, or  
12 imprisoned in the county jail not more than one year,  
13 or both fined and imprisoned. Any county commissioner  
14 or county official so convicted shall forfeit his office.

**§7-7-13. Allowance for expenses of sheriff.**

1 The county court of every county having a population  
2 of thirty thousand or less as determined by the latest  
3 official census available which, as provided in section  
4 two-a, article eight of this chapter, has directed the



5 sheriff as jailer to feed prisoners shall, in addition to his  
6 compensation, allow to the sheriff for keeping and feeding  
7 each prisoner, other than federal prisoners or prisoners  
8 held under civil process as provided by law, one dollar  
9 and twenty-five cents per day for each prisoner.

10 The limitation per day shall not include cost of per-  
11 sonal service, bed or bedding, soaps and disinfectants  
12 and items of like kind, the cost of all of which shall be  
13 paid out of the allowance fixed by the county court  
14 under the provisions of present law.

15 All supplies of whatever kind for keeping and feeding  
16 prisoners shall be purchased upon the requisition of the  
17 sheriff under rules and regulations prescribed by the  
18 county court. At the end of each month the sheriff shall  
19 file with the county court a detailed statement showing  
20 the name of each prisoner, date of commitment and date  
21 of discharge, the number of days in jail, and shall also  
22 file an itemized statement showing each purchase and  
23 the cost thereof for keeping and feeding prisoners.

24 The county court of every county shall allow the actual  
25 and necessary expenses incurred or expended by the  
26 sheriff in the discharge of his duties, including, but not  
27 limited to those incurred in arresting, pursuing or trans-  
28 porting persons accused or convicted of crimes and  
29 offenses; in the cost of law enforcement and safety equip-  
30 ment; in conveying or transporting a prisoner from and  
31 to jail to participate in court proceedings, and in con-  
32 veying or transferring any person to or from any state  
33 institution where he may be committed from his county,  
34 where by law the sheriff is authorized to convey or  
35 transfer the person. The county court shall allow the  
36 actual and necessary expenses incurred or expended in  
37 serving summonses, notices or other official papers in  
38 connection with the sheriff's office.

39 Every sheriff shall file monthly, under oath, a full and  
40 accurate account of all the actual and necessary ex-  
41 penses incurred by him, his deputies, assistants and  
42 employees in the performance and discharge of their  
43 official duties supported by verified accounts before  
44 reimbursement thereof shall be allowed by the county

45 court. Reimbursement, properly allowed, shall be made  
46 from the general county fund.

**§7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county court.**

1 The county court of each county is authorized, at its  
2 discretion, to expend from the general county fund, upon  
3 request and requisition by the sheriff of the county, the  
4 necessary and proper travel expenses, per diem allowance  
5 of not less than three dollars fifty cents per day and  
6 tuition expenses for the training of the sheriff and his  
7 deputies of the county in the performance of their duties,  
8 as sheriff and deputy, at any training school or academy  
9 available therefor located in this state.

**§7-7-15. Allowance for expenses of prosecuting attorney.**

1 In addition to his compensation, the prosecuting at-  
2 torney and his assistants shall be reimbursed for actual  
3 traveling expenses within the state in the performance  
4 of their official duties, and when out of the state for the  
5 purpose of taking depositions in cases in which other  
6 counsel is not employed by the court under section one,  
7 article three, chapter sixty-two of this code, which ex-  
8 penses shall be duly itemized and verified, and shall, if  
9 found correct, be allowed by the county court and be  
10 paid monthly out of the general county fund.

**§7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.**

1 The county court of each county shall allow to each  
2 county official and to their deputies, assistants and em-  
3 ployees, when they are required to drive their personally  
4 owned car in the actual performance and discharge of  
5 their official duties, reimbursement at the rate of ten  
6 cents for each mile traveled in their personally owned  
7 car.

8 Every county official shall file monthly, under oath, a  
9 full and accurate account of all the actual mileage driven  
10 by him, his deputies, assistants and employees, in the  
11 performance and discharge of their official duties sup-  
12 ported by verified accounts before reimbursement thereof

13 shall be allowed by the county court. Reimbursement,  
14 properly allowed, shall be made from the general county  
15 fund.

**§7-7-17. Annual reports by county officers of expenditures for assistants, deputies and employees.**

1 Every county official named in this article shall, on the  
2 first day of June of each year, file with the county court  
3 and with the state tax commissioner, an itemized sworn  
4 statement of the amount expended by him, including com-  
5 pensation, emoluments and other outlay of money or  
6 thing of value for the twelve months last preceding the  
7 time of filing the report, for the services of all his as-  
8 sistants, deputies and employees.

**§7-7-18. Source of compensation paid judges of courts of limited jurisdiction.**

1 The compensation of every judge of a court of record  
2 of limited jurisdiction established by the Legislature  
3 under section nineteen, article eight of the constitution,  
4 and the compensation of every person who serves as  
5 judge of any of those courts when the judge of the  
6 court cannot act, shall be paid out of the treasury of  
7 the county and not out of the treasury of the state.

**§7-7-19. Penalties.**

1 If any county clerk, circuit clerk, joint clerk of any  
2 county and circuit court, sheriff, county assessor or  
3 prosecuting attorney fail to file the detailed request for  
4 appropriations or the budget statement as provided in  
5 section seven of this article or fail to file the monthly or  
6 semimonthly statement as provided in section nine of  
7 this article or fail to file the statement of expenditures as  
8 provided for in section seventeen of this article, or if any  
9 county clerk, circuit clerk, joint clerk, or any county and  
10 circuit court, sheriff, county assessor, prosecuting at-  
11 torney, their assistants, deputies or employees, fail to  
12 comply with any of the requirements provided in this  
13 article, he shall, except where another penalty is pre-  
14 scribed, be guilty of a misdemeanor, and, upon conviction  
15 thereof, shall be fined not less than fifty dollars nor more  
16 than one hundred dollars, or imprisoned in the county

- 17 jail not less than thirty days nor more than six months, or  
 18 both fined and imprisoned.

**§7-7-20. Severability.**

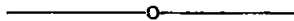
- 1 If any provision of this article or the application thereof  
 2 to any person or circumstance is held invalid, such in-  
 3 validity shall not affect other provisions or applications  
 4 of the article, and to this end the provisions of this article  
 5 are declared to be severable.

**CHAPTER 11. TAXATION.**

**ARTICLE 2. ASSESSORS.**

**§11-2-2. Deputy assessors.**

- 1 The assessor in every county shall select his deputies,  
 2 assistants and other employees in the same manner as is  
 3 provided for the selection of deputies, assistants and em-  
 4 ployees of sheriffs and clerks of courts.



**CHAPTER 24**

(Com. Sub. for House Bill No. 833—Originating in the House Committee  
 on Political Subdivisions)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto new sections, designated section five-a and sections five-a-(one) through five-a-(fifty-five), relating to additional compensation for assessors according to county.

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

That article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto new sections, designated section five-a and five-a-(one) through five-a-(fifty-five), to read as follows:

**ARTICLE 2. ASSESSORS.**

- §11-2-5a. Additional compensation; additional duties.
- §11-2-5a(1). Same—Barbour county.
- §11-2-5a(2). Same—Berkeley county.
- §11-2-5a(3). Same—Boone county.
- §11-2-5a(4). Same—Braxton county.
- §11-2-5a(5). Same—Brooke county.
- §11-2-5a(6). Same—Cabell county.
- §11-2-5a(7). Same—Calhoun county.
- §11-2-5a(8). Same—Clay county.
- §11-2-5a(9). Same—Doddridge county.
- §11-2-5a(10). Same—Fayette county.
- §11-2-5a(11). Same—Gilmer county.
- §11-2-5a(12). Same—Grant county.
- §11-2-5a(13). Same—Greenbrier county.
- §11-2-5a(14). Same—Hampshire county.
- §11-2-5a(15). Same—Hancock county.
- §11-2-5a(16). Same—Hardy county.
- §11-2-5a(17). Same—Harrison county.
- §11-2-5a(18). Same—Jackson county.
- §11-2-5a(19). Same—Jefferson county.
- §11-2-5a(20). Same—Kanawha county.
- §11-2-5a(21). Same—Lewis county.
- §11-2-5a(22). Same—Lincoln county.
- §11-2-5a(23). Same—Logan county.
- §11-2-5a(24). Same—Marion county.
- §11-2-5a(25). Same—Marshall county.
- §11-2-5a(26). Same—Mason county.
- §11-2-5a(27). Same—McDowell county.
- §11-2-5a(28). Same—Mercer county.
- §11-2-5a(29). Same—Mineral county.
- §11-2-5a(30). Same—Mingo county.
- §11-2-5a(31). Same—Monongalia county.
- §11-2-5a(32). Same—Monroe county.
- §11-2-5a(33). Same—Morgan county.
- §11-2-5a(34). Same—Nicholas county.
- §11-2-5a(35). Same—Ohio county.
- §11-2-5a(36). Same—Pendleton county.
- §11-2-5a(37). Same—Pleasants county.
- §11-2-5a(38). Same—Pocahontas county.
- §11-2-5a(39). Same—Preston county.
- §11-2-5a(40). Same—Putnam county.
- §11-2-5a(41). Same—Raleigh county.
- §11-2-5a(42). Same—Randolph county.
- §11-2-5a(43). Same—Ritchie county.
- §11-2-5a(44). Same—Roane county.
- §11-2-5a(45). Same—Summers county.
- §11-2-5a(46). Same—Taylor county.
- §11-2-5a(47). Same—Tucker county.
- §11-2-5a(48). Same—Tyler county.
- §11-2-5a(49). Same—Upshur county.
- §11-2-5a(50). Same—Wayne county.
- §11-2-5a(51). Same—Webster county.
- §11-2-5a(52). Same—Wetzel county.
- §11-2-5a(53). Same—Wirt county.
- §11-2-5a(54). Same—Wood county.
- §11-2-5a(55). Same—Wyoming county.

**§11-2-5a. Additional compensation; additional duties.**

1 In addition to the salary or compensation provided  
2 elsewhere in this code, the county court of each county  
3 shall pay to the assessor, on an annual basis, on and  
4 after July one, one thousand nine hundred seventy-one,  
5 additional compensation in accordance with the provisions  
6 of this section and sections five-a-(one) through five-a-  
7 (fifty-five) of this article for such additional duties re-  
8 quired of him by this section.

9 To receive such additional compensation, the following  
10 duties are hereby imposed upon every assessor of this state:

11 1. He shall annually complete a sales ratio analysis  
12 in a manner prescribed by the state tax commissioner.

13 2. He shall present to the tax commissioner a list of  
14 real property transfers of the prior assessment year by  
15 December first annually.

16 3. He shall on or before December first of each year  
17 supply a list of new construction and improvements  
18 exceeding one thousand dollars of the previous assess-  
19 ment year on forms prescribed by the state tax com-  
20 missioner.

21 4. He shall on or before December first of each year  
22 supply a list of new businesses added to the assessment  
23 rolls and businesses that have discontinued operations  
24 in the previous assessment year and been removed from  
25 the assessment rolls.

26 5. He shall provide assistance to the tax commissioner  
27 to disseminate information with respect to the taxation,  
28 classification and valuation of nonutility and public  
29 utility property to the end that all property shall be  
30 more equally and uniformly assessed throughout the  
31 state.

32 6. He shall annually assist the tax commissioner in  
33 determining the current use of such real property in his  
34 county as the tax commissioner may require to accom-  
35 plish a uniform appraisal and assessment of real prop-  
36 erty.

37 At the time of substantial completion of the above  
38 duties each assessor shall certify to the county court  
39 and tax commissioner his performance of the same. When

40 the work has been so certified and completed to the sat-  
41 isfaction of the tax commissioner, the tax commissioner  
42 shall certify to the county court that the assessor has  
43 performed these duties and is entitled to the remuner-  
44 ation provided for in sections five-a(one) through five-a-  
45 (fifty-five) of this article.

**§11-2-5a(1). Same—Barbour county.**

1 For the county of Barbour, six hundred ninety dollars.

**§11-2-5a(2). Same—Berkeley county.**

1 For the county of Berkeley, one thousand six hundred  
2 dollars.

**§11-2-5a(3). Same—Boone county.**

1 For the county of Boone, six hundred twenty-five dol-  
2 lars.

**§11-2-5a(4). Same—Braxton county.**

1 For the county of Braxton, four hundred seventy dol-  
2 lars.

**§11-2-5a(5). Same—Brooke county.**

1 For the county of Brooke, six hundred fifty-five dol-  
2 lars.

**§11-2-5a(6). Same—Cabell county.**

1 For the county of Cabell, six thousand dollars.

**§11-2-5a(7). Same—Calhoun county.**

1 For the county of Calhoun, one hundred ninety dollars.

**§11-2-5a(8). Same—Clay county.**

1 For the county of Clay, one hundred ninety dollars.

**§11-2-5a(9). Same—Doddridge county.**

1 For the county of Doddridge, one hundred ninety dol-  
2 lars.

**§11-2-5a(10). Same—Fayette county.**

1 For the county of Fayette, one thousand five hundred  
2 dollars.

**§11-2-5a(11). Same—Gilmer county.**

1 For the county of Gilmer, three hundred fifteen dollars.

**§11-2-5a(12). Same—Grant county.**

1 For the county of Grant, two hundred fifty dollars.

**§11-2-5a(13). Same—Greenbrier county.**

1 For the county of Greenbrier, one thousand dollars.

**§11-2-5a(14). Same—Hampshire county.**

1 For the county of Hampshire, five hundred thirty dol-  
2 lars.

**§11-2-5a(15). Same—Hancock county.**

1 For the county of Hancock, two thousand two hundred  
2 fifty dollars.

**§11-2-5a(16). Same—Hardy county.**

1 For the county of Hardy, four hundred seventy dollars.

**§11-2-5a(17). Same—Harrison county.**

1 For the county of Harrison, six thousand seven hundred  
2 fifty dollars.

**§11-2-5a(18). Same—Jackson county.**

1 For the county of Jackson, three hundred seventy-five  
2 dollars.

**§11-2-5a(19). Same—Jefferson county.**

1 For the county of Jefferson, nine hundred fifty dollars.

**§11-2-5a(20). Same—Kanawha county.**

1 For the county of Kanawha, twelve thousand dollars.

**§11-2-5a(21). Same—Lewis county.**

1 For the county of Lewis, one thousand dollars.

**§11-2-5a(22). Same—Lincoln county.**

1 For the county of Lincoln, two hundred twenty dollars.

**§11-2-5a(23). Same—Logan county.**

1 For the county of Logan, nine hundred five dollars.

**§11-2-5a(24). Same—Marion county.**

1 For the county of Marion, four thousand eight hundred  
2 seventy-five dollars.

**§11-2-5a(25). Same—Marshall county.**

1 For the county of Marshall, three thousand dollars.



**§11-2-5a(26). Same—Mason county.**

1 For the county of Mason, four hundred forty dollars.

**§11-2-5a(27). Same—McDowell county.**

1 For the county of McDowell, two thousand one hundred  
2 twenty-five dollars.

**§11-2-5a(28). Same—Mercer county.**

1 For the county of Mercer, one thousand six hundred  
2 twenty-five dollars.

**§11-2-5a(29). Same—Mineral county.**

1 For the county of Mineral, eight hundred seventy-five  
2 dollars.

**§11-2-5a(30). Same—Mingo county.**

1 For the county of Mingo, nine hundred five dollars.

**§11-2-5a(31). Same—Monongalia county.**

1 For the county of Monongalia, four thousand six hun-  
2 dred twenty-five dollars.

**§11-2-5a(32). Same—Monroe county.**

1 For the county of Monroe, two hundred eighty dollars.

**§11-2-5a(33). Same—Morgan county.**

1 For the county of Morgan, four hundred eighty dol-  
2 lars.

**§11-2-5a(34). Same—Nicholas county.**

1 For the county of Nicholas, one thousand dollars.

**§11-2-5a(35). Same—Ohio county.**

1 For the county of Ohio, five thousand seven hundred  
2 fifty dollars.

**§11-2-5a(36). Same—Pendleton county.**

1 For the county of Pendleton, two hundred fifty dollars.

**§11-2-5a(37). Same—Pleasants county.**

1 For the county of Pleasants, one hundred twenty-five  
2 dollars.

**§11-2-5a(38). Same—Pocahontas county.**

1 For the county of Pocahontas, four hundred seventy  
2 dollars.

**§11-2-5a(39). Same—Preston county.**

- 1 For the county of Preston, one thousand three hundred
- 2 seventy-five dollars.

**§11-2-5a(40). Same—Putnam county.**

- 1 For the county of Putnam, six hundred twenty-five
- 2 dollars.

**§11-2-5a(41). Same—Raleigh county.**

- 1 For the county of Raleigh, six hundred twenty-five
- 2 dollars.

**§11-2-5a(42). Same—Randolph county.**

- 1 For the county of Randolph, seven hundred fifty dol-
- 2 lars.

**§11-2-5a(43). Same—Ritchie county.**

- 1 For the county of Ritchie, four hundred forty dollars.

**§11-2-5a(44). Same—Roane county.**

- 1 For the county of Roane, five hundred dollars.

**§11-2-5a(45). Same—Summers county.**

- 1 For the county of Summers, six hundred dollars.

**§11-2-5a(46). Same—Taylor county.**

- 1 For the county of Taylor, five hundred thirty dollars.

**§11-2-5a(47). Same—Tucker county.**

- 1 For the county of Tucker, two hundred fifty dollars.

**§11-2-5a(48). Same—Tyler county.**

- 1 For the county of Tyler, three hundred fifteen dollars.

**§11-2-5a(49). Same—Upshur county.**

- 1 For the county of Upshur, nine hundred five dollars.

**§11-2-5a(50). Same—Wayne county.**

- 1 For the county of Wayne, nine hundred forty dollars.

**§11-2-5a(51). Same—Webster county.**

- 1 For the county of Webster, three hundred fifteen dol-
- 2 lars.

**§11-2-5a(52). Same—Wetzel county.**

- 1 For the county of Wetzel, one thousand six hundred
- 2 twenty-five dollars.

**§11-2-5a(53). Same—Wirt county.**

1 For the county of Wirt, one hundred fifty-five dollars.

**§11-2-5a(54). Same—Wood county.**

1 For the county of Wood, four thousand eight hundred  
2 seventy-five dollars.

**§11-2-5a(55). Same—Wyoming county.**

1 For the county of Wyoming, five hundred dollars.

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## CHAPTER 25

(House Bill No. 1130—By Mr. Daugherty and Mr. Romine)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permit closing county courthouses at times other than legal holidays.

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

That section two, article three, 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 3. COUNTY PROPERTY.****§7-3-2. Courthouse, jail and offices.**

1 The county court of every county, at the expense of the  
2 county, shall provide at the county seat thereof a suit-  
3 able courthouse and jail, together with suitable offices  
4 for the judge of the circuit court and judges of courts of  
5 limited jurisdiction, clerks of such courts and of the  
6 county court, assessor, sheriff, prosecuting attorney,  
7 county superintendent of schools, and surveyor, and such  
8 other offices as are or may be required by law: *Provided,*  
9 That such courthouse, including any annex or other fa-  
10 cility housing the courts and offices herein set out, (ex-  
11 cepting such facilities as are on a twenty-four-hour basis),

12 shall be open to the public Monday through Saturday  
13 during the hours prescribed by the county court by an  
14 order duly recorded in the order book of such court, ex-  
15 cluding Sundays and national or state holidays, and may,  
16 with the consent of the county court in counties having  
17 a population in excess of one hundred thousand be closed  
18 on Saturday: *Provided, however,* That the county court  
19 of every county having a population in excess of two  
20 hundred thousand may provide at the county seat or  
21 elsewhere in the county, as the county court shall deter-  
22 mine, a suitable jail or jails. The county court shall keep  
23 the courthouse, jail and such other offices in constant  
24 and adequate repair, and supplied with the necessary  
25 heat, light, furniture, record books, and janitor service,  
26 and, except as to the office for the judge of the circuit  
27 court, with the necessary stationery and postage, and  
28 such other things as shall be necessary; but all of the  
29 public records, books and papers belonging or appertain-  
30 ing to the county surveyor's office shall be delivered to  
31 the clerk of the county court and retained by him in his  
32 official possession and under his control and shall con-  
33 stitute a part of the public records, books and papers of  
34 his office. Such courthouses, jails and offices hereafter  
35 erected shall be built of stone and brick, or stone or  
36 brick, or other equally fireproof materials, and such of-  
37 fices shall be fireproof or be furnished with fireproof  
38 vaults or safes. The jails shall be well secured, and suf-  
39 ficient for the convenient accommodation of those who  
40 may be confined therein, and so that the convicts may be  
41 in apartments separate from each other, and from the  
42 other prisoners; every apartment shall be so constructed  
43 that it can be kept comfortable. The county court may  
44 also provide other necessary offices and buildings,  
45 and may, by purchase or otherwise, acquire so much  
46 land as may be requisite or desirable for county purposes,  
47 and may suitably inclose, improve and embellish the  
48 lands so acquired.

49 Subject to the conditions hereinabove set forth with  
50 respect to the site of the courthouse, jail, and other  
51 offices, the court may, from time to time, as may seem  
52 to it proper, provide, at the expense of the county, a

53 new or other building or buildings to be used for the  
54 courthouse and jail, or for either, together with suit-  
55 able offices, as aforesaid, and for that purpose may ac-  
56 quire, by purchase or otherwise, and hold any lands, or  
57 lands and buildings, which may be necessary, and may  
58 inclose, improve and embellish the same. When such  
59 new or other building or buildings shall be ready for  
60 occupancy, the county court shall make an order de-  
61 claring that, on a day to be therein named, such new  
62 or other building or buildings shall become the court-  
63 house and/or jail of the county, and shall cause copies  
64 of the order to be posted at the front door of the new  
65 as well as of the old courthouse, at least twenty days  
66 before the day named in the order; and on and after  
67 the day so named such new or other building or build-  
68 ings shall be and become, respectively, the courthouse  
69 and/or jail of such county in all respects and for all  
70 purposes. After such change shall have been made the  
71 county court may sell or otherwise dispose of, as may  
72 seem to it proper, the building or buildings previously  
73 used as a courthouse and jail, or either, and the land  
74 on which the same are, or either is, situated, and of  
75 the interest of the county therein.

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## CHAPTER 26

(House Bill No. 527—By Mr. Steptoe)

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[Passed February 12, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of the prosecuting attorney on election days.

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

That section one, 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.****§7-4-1. Duties of prosecuting attorney; further duties upon  
request of attorney general.**

1 It shall be the duty of the prosecuting attorney to  
2 attend to the criminal business of the state in the county  
3 in which he is elected and qualified, and when he has  
4 information of the violation of any penal law committed  
5 within such county, he shall institute and prosecute all  
6 necessary and proper proceedings against the offender,  
7 and may in such case issue or cause to be issued a sum-  
8 mons for any witness he may deem material. Every  
9 public officer shall give him information of the violation  
10 of any penal law committed within his county. It shall  
11 also be the duty of the prosecuting attorney to attend  
12 to civil suits in such county in which the state, or any  
13 department, commission or board thereof, is interested,  
14 and to advise, attend to, bring, prosecute or defend, as  
15 the case may be, all matters, actions, suits and proceed-  
16 ings in which such county or any county board of educa-  
17 tion is interested.

18 It shall be the duty of the prosecuting attorney to keep  
19 his office open in the charge of a responsible person during  
20 the hours polls are open on general, primary and special  
21 county-wide election days, and the prosecuting attorney,  
22 or his assistant, if any, shall be available for the purpose  
23 of advising election officials. It shall be the further duty of  
24 the prosecuting attorney, when requested by the attorney  
25 general, to perform or to assist the attorney general in  
26 performing, in the county in which he is elected, any legal  
27 duties required to be performed by the attorney general,  
28 and which are not inconsistent with the duties of the  
29 prosecuting attorney as the legal representative of such  
30 county. It shall also be the duty of the prosecuting attor-  
31 ney, when requested by the attorney general, to perform  
32 or to assist the attorney general in performing, any legal  
33 duties required to be performed by the attorney general,  
34 in any county other than that in which such prosecuting  
35 attorney is elected, and for the performance of any such  
36 duties in any county other than that in which such prose-

37 cutting attorney is elected he shall be paid his actual ex-  
38 penses.

39 Upon the request of the attorney general the prose-  
40 cuting attorney shall make a written report of the state  
41 and condition of the several causes in which the state  
42 is a party, pending in his county, and upon any matters  
43 referred to him by the attorney general as provided by  
44 law.

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## CHAPTER 27

(House Bill No. 592—By Mr. Rollins)

[Passed February 9, 1971; in effect from passage. 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, detention of crime and bounties.

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

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

### **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

#### **§7-4-2. Rewards; detection of crime; bounties.**

1 The prosecuting attorney of any county, with the  
2 approval of the county court, or of the governor, or of  
3 the court of the county vested with authority to try  
4 criminal offenses, or of the judge thereof in vacation,  
5 may, within his discretion, offer rewards for the appre-  
6 hension of persons charged with crime, or may expend  
7 money for the detection of crime. Any money expended  
8 under this section shall, when approved by the prose-  
9 cuting attorney, be paid out of the county fund, in the  
10 same manner as other county expenses are paid. The  
11 county court may also offer reasonable bounties and  
12 rewards for the destruction of noxious animals, birds of  
13 prey, or weeds in the county, payable out of the county  
14 treasury: *Provided, however,* That nothing herein shall

15 permit or give to the prosecuting attorney of any county,  
16 having a population according to the last official census  
17 of forty-five thousand or less, the right to appoint a full-  
18 time investigator or detector of crime, or to expend any  
19 money for the investigation of any crime committed in his  
20 county beyond the actual expenses of the investigation  
21 of said crime, except in the county of Wyoming, the  
22 prosecuting attorney may appoint an investigator of  
23 crime to be paid an annual salary of not less than one  
24 thousand two hundred dollars nor more than twenty-four  
25 hundred dollars, and actual expenses, the salary to be  
26 fixed within these limits by the county court; except  
27 further in the county of Wayne, the prosecuting attor-  
28 ney may appoint an investigator of crime to be paid an  
29 annual salary of not less than thirty-six hundred dollars  
30 nor more than six thousand dollars, and actual expenses,  
31 the salary within these limits to be fixed by the county  
32 court; except further in the county of Lincoln, the prose-  
33 cuting attorney may appoint an investigator of crime  
34 to be paid an annual salary of not less than one thou-  
35 sand two hundred dollars nor more than two thousand  
36 four hundred dollars, and actual expenses, the salary  
37 within these limits to be fixed by the prosecuting attor-  
38 ney; except further in the county of Mason, the prose-  
39 cuting attorney may appoint an investigator of crime  
40 to be paid a salary of not less than one hundred dollars  
41 nor more than two thousand four hundred dollars and  
42 actual expenses, the salary to be fixed within these limits  
43 by the county court; except further in the county of Mar-  
44 shall, the prosecuting attorney may appoint an investiga-  
45 tor of crime to be paid an annual salary to be fixed by  
46 the county court and actual expenses.

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## CHAPTER 28

(Senate Bill No. 211—By Mr. Ward)

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[Passed March 3, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section six-(thirty), article seven, chapter seven of the code of West Virginia, one



thousand nine hundred thirty-one, as amended, relating to the appointment and compensation of the stenographer to the prosecuting attorney of Mingo county.

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

That section six-(thirty), 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.**

**§7-7-6(30). Assistants, stenographers and clerks for prosecuting attorney—Mingo county.**

- 1 For the county of Mingo, one assistant attorney, not
- 2 more than six thousand dollars; one stenographer, five
- 3 thousand one hundred dollars.



## CHAPTER 29

(Com. Sub. for House Bill No. 676—Originating in the House Committee  
on Political Subdivisions)

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[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

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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 fourteen, relating to mandatory civil service coverage for certain deputy sheriffs in certain counties and permissive civil service coverage for certain deputy sheriffs in other counties on or after the effective date of said article fourteen; relating to appointment, promotion, reinstatement, removal, discharge, suspension and reduction of deputy sheriffs covered by civil service; relating to chief deputy in any county covered by civil service for deputy sheriffs; providing definitions; relating to population determination; relating to a county civil service commission for civil service for deputy sheriffs, the appointment of its members and the removal of such members; relating to the clerk of

and an office and supplies for any such civil service commission; requiring appropriations to carry out provisions of said article fourteen; relating to the powers and duties of any such civil service commission; relating to rules and regulations of any such civil service commission and notice and distribution of such rules and regulations; providing for probationary appointments of deputy sheriffs covered by civil service; relating to application for competitive examination, age requirements and exceptions; relating to competitive and medical examinations for appointment or promotion as a deputy sheriff, and notice of competitive examinations; requiring the state civil service commission to prepare and prescribe competitive examinations for deputy sheriffs; specifying circumstances under which competitive and medical examination shall not be required; relating to training, examination and age of persons employed as deputy sheriffs on the effective date of said article fourteen; relating to the refusal to examine or certify and review of such refusal; relating to eligible lists from which appointments are made; specifying procedures for appointments from an eligible list and procedures for objecting to and removing any name from any such list; relating to filling a vacancy when there is no eligible list; relating to filling vacancies by promotion, and eligibility for promotion; relating to the rights of a chief deputy who was a member of the civil service system for deputy sheriffs at the time he became chief deputy; prohibiting any inquiry as to political or religious opinion or affiliation and prohibiting discrimination on the basis thereof; prohibiting certain political activity of deputy sheriffs and authorizing a petition for vacating an appointment because of political activity; relating to action on such petition and judicial review with respect thereto; requiring training and retraining programs for and satisfactory completion thereof by deputy sheriffs; relating to the removal, discharge, suspension or reduction in rank or pay of deputy sheriffs and judicial review with respect thereto; relating to reduction in number of deputy sheriffs; specifying that deputy sheriffs subject to said article fourteen may not serve as deputy sheriffs after attaining age sixty; establishing various criminal offenses and providing crimi-

nal penalties; establishing procedures for optional civil service coverage of deputy sheriffs; providing a repealer clause; and providing a severability clause.

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

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

**ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.**

- §7-14-1. Appointments and promotions of deputy sheriffs.
- §7-14-2. Definitions; population.
- §7-14-3. Civil service commission.
- §7-14-4. Clerk of the commission.
- §7-14-5. Office and supplies for commission; appropriations required.
- §7-14-6. Powers and duties of commission.
- §7-14-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.
- §7-14-8. Form of application; age requirements; exceptions.
- §7-14-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of deputies serving on effective date of article.
- §7-14-10. Refusal to examine or certify; review thereof.
- §7-14-11. Appointments from eligible list.
- §7-14-12. Noncompetitive examination for filling vacancy; provisional appointment.
- §7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.
- §7-14-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.
- §7-14-15. Political activity of deputy sheriffs prohibited; petition for vacating appointment; action on petition; appeal.
- §7-14-16. Training and retraining programs for all deputies required.
- §7-14-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of deputies; no person subject to article may serve as deputy after age sixty.
- §7-14-18. Offenses and penalties.
- §7-14-19. County courts of counties with a population of less than twenty-five thousand may place deputy sheriffs under civil service; protest and election with respect thereto.
- §7-14-20. Inconsistent acts repealed; once established civil service remains mandatory.
- §7-14-21. Severability.

**§7-14-1. Appointments and promotions of deputy sheriffs.**

- 1 Notwithstanding the provisions of article three, chapter
- 2 six, and article seven, chapter seven of this code, all
- 3 appointments and promotions of full-time deputy sheriffs,

4 as defined in section two of this article, in the offices of  
5 sheriffs of counties of twenty-five thousand population or  
6 more, shall be made only according to qualifications and  
7 fitness to be ascertained by examinations, which, so  
8 far as practicable, shall be competitive, as hereinafter  
9 provided. On and after the effective date of this article,  
10 no person except the chief deputy shall be appointed,  
11 promoted, reinstated, removed, discharged, suspended or  
12 reduced in rank or pay as a full-time deputy sheriff, as  
13 defined in said section two, of any county in the state  
14 of West Virginia subject to the provisions hereof, in  
15 any manner or by any means other than those prescribed  
16 in this article.

#### **§7-14-2. Definitions; population.**

1 (a) For the purpose of this article:

2 (1) "Appointing officer" or "appointing sheriff" shall  
3 mean the sheriff of the county in which the appointment  
4 of a deputy sheriff shall be made pursuant to this article;  
5 and

6 (2) "Deputy sheriffs" or "deputies" shall mean per-  
7 sons appointed by a sheriff as his deputies whose sole  
8 duties as such deputies are within the scope of active,  
9 general law enforcement and as such are authorized to  
10 carry deadly weapons, patrol the highways, perform  
11 police functions, make arrests or safeguard prisoners.

12 (b) For the purpose of this article, population shall  
13 be determined by reference to the last preceding census  
14 taken under the authority of the United States or of the  
15 Legislature of West Virginia.

#### **§7-14-3. Civil service commission.**

1 There shall be a civil service commission in each county  
2 having a population of twenty-five thousand or more.  
3 Each such civil service commission shall consist of three  
4 commissioners, one of whom shall be appointed by the  
5 bar association of such county, one of whom shall be  
6 appointed by the deputy sheriff's association of such  
7 county, and one of whom shall be appointed by the  
8 county court of such county. In the event the bar as-  
9 sociation or deputy sheriff's association shall fail to make

10 an appointment within the time prescribed in this sec-  
11 tion therefor, then such appointment shall be made by  
12 the county court. The persons appointed commissioners  
13 shall be qualified voters of the county for which they are  
14 appointed, and at least two of the commissioners shall  
15 be persons in full sympathy with the purposes of this  
16 article. Not more than two of the commissioners, at any  
17 one time, shall be members of the same political party.  
18 The commissioners in each county shall be appointed as  
19 follows: Within sixty days from the effective date of this  
20 article, the authorities having the power to appoint mem-  
21 bers to the civil service commission shall appoint the  
22 three commissioners, the first to be appointed by the  
23 bar association of the county shall serve for six years  
24 from the date of his appointment, the second to be ap-  
25 pointed by the deputy sheriff's association of the county  
26 shall serve for four years from the date of his appoint-  
27 ment, and the third to be appointed by the county court  
28 of the county shall serve for a term of two years from  
29 the date of his appointment. All subsequent appoint-  
30 ments shall be made for terms of four years. In the  
31 event that any commissioner of the civil service com-  
32 mission shall cease to be a member thereof by virtue  
33 of death, final removal or other cause, a new commis-  
34 sioner shall be appointed to fill the unexpired term of  
35 that commissioner within ten days after said ex-com-  
36 missioner shall have ceased to be a member of the com-  
37 mission. Such appointment shall be made by the authority  
38 who appointed the commissioner who is no longer a  
39 member of the commission. Each year the three mem-  
40 bers of the commission shall, together, elect one of their  
41 number to act as president of the commission for a term  
42 of one year. The county court may at any time remove a  
43 commissioner for good cause, which shall be stated in  
44 writing and made a part of the records of the commission:  
45 *Provided*, That once the county court has removed any  
46 commissioner, such county court shall within ten days  
47 thereafter file in the office of the clerk of the circuit  
48 court of the county a petition setting forth in full the  
49 reason for the removal and praying for the confirmation  
50 of the circuit court of the action of the county court in

51 removing the said commissioner. A copy of the petition  
52 shall be served upon the commissioner so removed  
53 simultaneously with its filing in the office of the clerk of  
54 the circuit court and shall have precedence on the docket  
55 of the circuit court and shall be heard by the court as  
56 soon as practicable upon the request of the removed com-  
57 missioner. All rights hereby vested in the circuit court  
58 may be exercised by the judge thereof in vacation. In the  
59 event that no term of the circuit court is being held at  
60 the time of the filing of the petition, and the judge thereof  
61 cannot be reached in the county wherein the petition was  
62 filed, the petition shall be heard at the next succeeding  
63 term of the circuit court, whether regular or special, and  
64 the commissioner so removed shall remain removed until  
65 a hearing is had upon the petition of the county court.  
66 The circuit court, or the judge thereof in vacation, shall  
67 hear and decide the issues presented by the petition. The  
68 county court or commissioner, as the case may be, against  
69 whom the decision of the circuit court or judge thereof  
70 in vacation shall be rendered shall have the right to  
71 petition the supreme court of appeals for a review of  
72 the decision of the circuit court or the judge thereof in  
73 vacation as in other civil cases. In the event that the  
74 county court shall fail to file its petition in the office of  
75 the clerk of the circuit court, as hereinbefore provided,  
76 within ten days after the removal of the commissioner,  
77 such commissioner shall immediately resume his position  
78 as a member of the civil service commission.

79 Any resident of the county shall have the right at any  
80 time to file charges against and seek the removal of any  
81 member of the civil service commission. The charges shall  
82 be filed in the form of a petition in the office of the clerk  
83 of the circuit court of the county. A copy of the petition  
84 shall be served upon the commissioner sought to be re-  
85 moved. The petition shall be matured for hearing and  
86 heard as a civil action by the circuit court of the county  
87 for which the commissioner serves as a member of the  
88 civil service commission or by the judge thereof in vaca-  
89 tion. The party against whom the decision of the circuit  
90 court or judge thereof in vacation shall be rendered shall  
91 have the right to petition the supreme court of appeals

92 for a review of the decision of the circuit court or judge  
93 thereof in vacation as in other civil cases.

94 No commissioner shall hold any other office (other  
95 than the office of notary public) under the United States,  
96 this state, or any municipality, county or other political  
97 subdivision thereof; nor shall any commissioner serve on  
98 any political party committee or take any active part in  
99 the management of any political campaign.

**§7-14-4. Clerk of the commission.**

1 The clerk of the county court shall be ex officio clerk  
2 of the civil service commission and shall supply to the  
3 commission all necessary clerical and stenographic ser-  
4 vices for the work of the civil service commission.

**§7-14-5. Office and supplies for commission; appropriations required.**

1 It shall be the duty of the county court of every such  
2 county to cause suitable and convenient rooms and ac-  
3 commodations to be assigned and provided, furnished,  
4 heated and lighted for carrying on the work and examina-  
5 tions of the civil service commission. The civil service  
6 commission may order from the proper authorities the  
7 necessary stationery, postage stamps, official seal and  
8 other articles to be supplied, and the necessary printing  
9 to be done, for its official use. It shall be the duty of the  
10 county court and other county officials of every such  
11 county to aid the civil service commission in all proper  
12 ways in carrying out the provisions of this article, and  
13 to allow the reasonable use of public buildings, and to  
14 heat and light the same, for holding examinations and  
15 investigations and in all proper ways to facilitate the  
16 same.

17 The county court of each such county is hereby re-  
18 quired to appropriate sufficient funds for the purpose of  
19 carrying out the provisions of this article.

**§7-14-6. Powers and duties of commission.**

1 The civil service commission in each such county shall:  
2 (1) Prescribe and enforce rules and regulations for  
3 carrying into effect the provisions of this article. All

4 rules and regulations so prescribed may, from time to  
5 time, be added to, amended or rescinded.

6 (2) Keep minutes of its own proceedings and records  
7 of its examinations and other official actions. All rec-  
8 ommendations of applicants for the position of deputy  
9 sheriff received by the commission or by the sheriff  
10 shall be kept and preserved for a period of ten years,  
11 and all such records, recommendations of former em-  
12 ployees excepted, and all written causes of removal, filed  
13 with the commission, shall, subject to reasonable rule  
14 and regulation, be open to public inspection.

15 (3) Make investigations, either sitting as a body or  
16 through a single commissioner, concerning all matters  
17 touching the enforcement and effect of the provisions  
18 of this article and the rules and regulations prescribed  
19 hereunder or concerning the action of any examiner or  
20 subordinate of the commission or any person in the  
21 public service with respect to the execution of this article;  
22 and, in the course of such investigations, each commis-  
23 sioner shall have the power to administer oaths and  
24 affirmations and to take testimony.

25 (4) Have power to subpoena and require the atten-  
26 dance of witnesses and the production of books and papers  
27 pertinent to the investigations and inquiries herein au-  
28 thorized, and examine them and such public records as  
29 it shall require, in relation to any matter which it has  
30 the authority to investigate. The fee of such witnesses  
31 for attendance and travel shall be the same as for wit-  
32 nesses before the circuit courts of this state and shall  
33 be paid from the appropriation for the incidental ex-  
34 penses of the commission. All officers in the public  
35 service and their deputies, clerks, subordinates and em-  
36 ployees shall attend and testify when required to do  
37 so by the commission. Any disobedience to, or neglect  
38 of, any subpoena issued by the commissioners, or any  
39 one of them, to any person, shall be held a contempt  
40 of court, and shall be punished by the circuit court of  
41 the county in which the civil service commission is  
42 located, or the judge thereof in vacation, as if such sub-  
43 poena had been issued by the court. The judge of the



44 circuit court shall, upon the application of any one com-  
45 missioner, in any such case, cause the process of that  
46 court to issue to compel any person or persons, disobeying  
47 or neglecting any such subpoena to appear and to give  
48 testimony and produce evidence before the commis-  
49 sioners, or any one of them, and shall have power to  
50 punish any such contempt.

51 (5) Prepare a position classification and promotion  
52 plan.

53 (6) Make an annual report to the county court and  
54 sheriff showing its own actions, its rules and regulations,  
55 including all exceptions thereto in force, and the prac-  
56 tical effects thereof, and any suggestions it may have  
57 for the more effectual accomplishment of the purposes  
58 of this article. Such report shall be available for public  
59 inspection five days after it shall have been delivered to  
60 the county court and sheriff.

**§7-14-7. Rules and regulations of commission; notice and dis-  
tribution thereof; probationary period for appointees.**

1 The civil service commission in each such county shall  
2 make rules and regulations providing for both competi-  
3 tive and medical examinations for the position of deputy  
4 sheriff in each such county subject to the provisions of  
5 this article, for appointments to the position of deputy  
6 sheriff and for promotions and for such other matters as  
7 are necessary to carry out the purposes of this article.  
8 Any such commission shall have the power and authority  
9 to require by rules and regulations a physical fitness  
10 examination as a part of its competitive examination or  
11 as a part of its medical examination. Due notice of the  
12 contents of all rules and regulations and of any modifica-  
13 tions thereof shall be given, by mail, in due season to the  
14 appointing officer; and said rules and regulations and  
15 any modifications thereof shall also be printed for public  
16 distribution. All original appointments on and after the  
17 effective date of this article, to any position of deputy  
18 sheriff in any county subject to the provisions of this  
19 article shall be for a probationary period of six months:

20 *Provided*, That at any time during the probationary  
21 period the probationer may be discharged for just cause,  
22 in the manner provided in section seventeen of this  
23 article. If, at the close of this probationary period, the  
24 conduct or capacity of the probationer has not been  
25 satisfactory to the appointing sheriff, the probationer  
26 shall be notified, in writing, that he will not receive  
27 absolute appointment, whereupon his employment shall  
28 cease; otherwise, his retention in the position of deputy  
29 sheriff beyond the probationary term shall be equivalent  
30 to his absolute appointment.

**§7-14-8. Form of application; age requirements; exceptions.**

1 The civil service commission in each such county shall  
2 require persons applying for admission to any competitive  
3 examination provided for under this article or under the  
4 rules and regulations of the commission to file in its  
5 office, within a reasonable time prior to the proposed  
6 competitive examination, a formal application in which  
7 the applicant shall state under oath or affirmation:

- 8 (1) His full name, residence and post-office address;
- 9 (2) His United States citizenship, age and the place  
10 and date of his birth;
- 11 (3) His health and his physical capacity for the posi-  
12 tion of deputy sheriff;
- 13 (4) His business, employments and residences for at  
14 least three previous years; and
- 15 (5) Such other information as may reasonably be re-  
16 quired, relative to the applicant's qualifications and fitness  
17 for the position of deputy sheriff.

18 Blank forms for such applications shall be furnished by  
19 the commission, without charge, to all persons requesting  
20 the same. The commission may require, in connection with  
21 the application, such certificates of citizens, physicians or  
22 others, having pertinent knowledge concerning the ap-  
23 plicant, as the good of the service may require.

24 No application for original appointment shall be re-  
25 ceived on and after the effective date of this article,  
26 if the person applying is less than twenty-one years  
27 of age or more than forty-five years of age at the

28 date of his application: *Provided*, That in the event  
29 any applicant formerly served as a deputy sheriff for a  
30 period of more than six months in the county to which  
31 he makes application, and resigned as a deputy sheriff at  
32 a time when there were no charges of misconduct or other  
33 misfeasance pending against him, within a period of  
34 two years next preceding the date of his application, and  
35 at the time of his application resides within the county  
36 in which he seeks appointment by reinstatement, then  
37 such applicant shall be eligible for appointment by rein-  
38 statement in the discretion of the civil service commis-  
39 sion, even though such applicant shall be over the age  
40 of forty-five years, provided he is not sixty years of age  
41 or over, and such applicant, providing his former term  
42 of service as a deputy sheriff so justifies, may be re-  
43 appointed by reinstatement without a competitive ex-  
44 amination, but such applicant shall undergo a medical  
45 examination; and if such applicant shall be so appointed  
46 by reinstatement as aforesaid, he shall be the lowest in  
47 rank in the sheriff's office next above the probationers of  
48 the office.

**§7-14-9. Character and notice of competitive examinations;  
qualifications of applicants; competitive examina-  
tions to be prescribed by state civil service com-  
mission; press representatives; posting eligible list;  
medical examinations; exceptions as to and training  
of deputies serving on effective date of article.**

1 All competitive examinations for appointments or pro-  
2 motions to all positions of deputy sheriff shall be prac-  
3 tical in their character, and shall relate to such matters,  
4 and include such inquiries, as will fairly and fully test  
5 the comparative merit and fitness of the person or per-  
6 sons examined to discharge the duties of the position  
7 sought by him or them. The state civil service commis-  
8 sion shall prepare and prescribe, from time to time, the  
9 competitive examination to be given by the civil service  
10 commission of each such county. All competitive ex-  
11 aminations shall be open to all applicants who have ful-  
12 filled the preliminary requirements specified in other  
13 sections of this article.

14 Adequate public notice of the date, time and place  
15 of every competitive examination held under the pro-  
16 visions of this article, together with information as to  
17 the position to be filled, shall be given at least two weeks  
18 prior to such competitive examination. The commission  
19 shall adopt reasonable rules and regulations for permit-  
20 ting the presence of representatives of the press at any  
21 such competitive examination. The commission shall  
22 post, in a public place at its office, the eligible list, con-  
23 taining the names and grades of those who have passed  
24 such competitive examinations for positions as deputy  
25 sheriffs, under this article, and shall indicate thereon such  
26 appointments as may be made from said list.

27 All applicants for appointment or promotion to any  
28 position as a deputy sheriff in any such county who  
29 have passed the competitive examination specified above  
30 shall, before being appointed or promoted, undergo a  
31 medical examination which shall be conducted under the  
32 supervision of a board composed of two doctors of medi-  
33 cine appointed for such purpose by the sheriff of the  
34 county. Such board must certify that an applicant is  
35 free from any bodily or mental defects, deformity or  
36 diseases which might incapacitate him from the per-  
37 formance of the duties of the position desired and is  
38 physically fit to perform such duties before said appli-  
39 cant shall be appointed or promoted to any position. Not-  
40 withstanding the first sentence of this paragraph, in the  
41 event the commission deems it expedient, the medical  
42 examination may be given prior to the competitive ex-  
43 amination, and if the medical examination is not passed  
44 as aforesaid, the applicant shall not be admitted to the  
45 competitive examination.

46 All deputies who are employed as deputies on the  
47 effective date of this article shall be considered to have  
48 been appointed under the provisions of this article, with-  
49 out regard to their age, provided they are not on said  
50 date sixty years of age or older, and without competitive  
51 examination or medical examination, and shall hold their  
52 positions in accordance therewith for one year from the  
53 effective date of this article. The civil service commis-  
54 sion shall, however, establish or prescribe a training pro-

55 gram for deputies who are employed as such on the  
56 effective date of this article, giving due consideration to  
57 available training personnel and programs. Such depu-  
58 ties must complete such training program and must  
59 score a minimum of sixty points on a written examina-  
60 tion in which one hundred points would be the highest  
61 possible score. The examination shall be given in ac-  
62 cordance with rules and regulations to be promulgated  
63 by the civil service commission of the county. A deputy  
64 failing to qualify under the provisions of this paragraph  
65 may be continued in his position at the discretion of  
66 the sheriff but in no event for a period of more than  
67 one year. Such person may be reexamined at the dis-  
68 cretion of the civil service commission of the county and  
69 may qualify as provided in this paragraph.

**§7-14-10. Refusal to examine or certify; review thereof.**

1 The commission may refuse to examine an applicant,  
2 or after examination to certify as eligible one, who is  
3 found to lack any of the established preliminary require-  
4 ments for the examination or position of deputy sheriff  
5 for which he applies; or who is physically so disabled as  
6 to be rendered unfit for the performance of the duties of  
7 the position of deputy sheriff desired; or who is addicted  
8 to the habitual use of intoxicating liquors or drugs; or  
9 who has been convicted of a felony; or who has been  
10 guilty of infamous or notoriously disgraceful conduct;  
11 or who has been dismissed from public service for de-  
12 linquency or misconduct; or who has made a false state-  
13 ment of any material fact, or practiced or attempted to  
14 practice any deception or fraud in his application, in  
15 any such examination, or in securing his eligibility; or  
16 who refuses to comply with the rules and regulations  
17 of the commission.

18 If any applicant feels aggrieved by the action of the  
19 commission in refusing to examine him, or after examina-  
20 tion in refusing to certify him as eligible, the commission  
21 shall, at the request of such applicant, appoint a date,  
22 time and place for a public hearing, at which time the  
23 applicant may appear, by himself or by counsel or in  
24 person and with counsel, and the commission shall then

25 review its refusal to make such examination or certifica-  
26 tion, and testimony shall be taken. The commission shall  
27 subpoena, at the expense of the applicant, any competent  
28 witnesses requested by him. After such review, the com-  
29 mission shall file in its records the testimony taken and  
30 shall again make a decision, which decision shall be final  
31 and not subject to judicial review, but under no circum-  
32 stances shall the provisions of this article be construed,  
33 in the case of a refusal to examine an applicant for pro-  
34 motion or to certify an applicant as eligible for promotion,  
35 as depriving such applicant of his right to seek a writ of  
36 mandamus, if the application for such writ is made with-  
37 in twenty days from the date of the decision (made  
38 after hearing as aforesaid) refusing to examine or to  
39 certify him as eligible for promotion.

**§7-14-11. Appointments from eligible list.**

1 On and after the effective date of this article, every  
2 position of deputy sheriff, unless filled by promotion,  
3 reinstatement or reduction, shall be filled only in the  
4 manner specified in this section. The appointing sheriff  
5 shall notify the civil service commission of any vacancy  
6 in a position of deputy sheriff which he desires to  
7 fill, and shall request the certification of eligibles. The  
8 commission shall forthwith certify, from the eligible list,  
9 the names of the three persons thereon who received the  
10 highest averages at preceding competitive examinations  
11 held under the provisions of this article within a period  
12 of three years next preceding the date of the prospective  
13 appointment. The appointing sheriff shall, thereupon,  
14 with sole reference to the relative merit and fitness of the  
15 candidates, make an appointment from the three names  
16 so certified: *Provided*, That should he make objection to  
17 the commission to one or more of these persons for any  
18 of the reasons stated in section ten of this article, and  
19 should such objection be sustained by the commission  
20 after a public hearing along the lines of the hearing  
21 provided for in said section ten, if any such hearing is  
22 requested, the commission shall thereupon strike the  
23 name of that person from the eligible list, and certify the  
24 next highest name for each person so stricken. As each

25 subsequent vacancy occurs, in the same or another posi-  
26 tion, precisely the same procedure shall be followed:  
27 *Provided, however,* That after any name has been three  
28 times rejected for the same or another position in favor  
29 of a name or names below it on the same list, the name  
30 shall be stricken from the list. When there are a number  
31 of positions of the same kind to be filled at the same  
32 time, each appointment shall, nevertheless, be made  
33 separately and in accordance with the foregoing pro-  
34 visions. When an appointment is made under the pro-  
35 visions of this section, it shall be, in the first instance, for  
36 the probationary period of six months, as provided in  
37 section seven of this article.

**§7-14-12. Noncompetitive examination for filling vacancy; pro-  
visional appointment.**

1 Whenever there are urgent reasons for filling a vacancy  
2 in any position of deputy sheriff and there is no list of  
3 persons eligible for appointment after a competitive ex-  
4 amination, the appointing sheriff may nominate a person  
5 to the civil service commission for noncompetitive ex-  
6 amination; and if such nominee shall be certified by the  
7 commission as qualified, after such noncompetitive ex-  
8 amination and a medical examination, he may be appoint-  
9 ed provisionally to fill such vacancy until a selection and  
10 appointment can be made after competitive examination  
11 in the manner prescribed in section eleven of this  
12 article; but the provisional appointment shall not con-  
13 tinue for a longer period than three months, nor shall  
14 successive provisional appointments be made to the same  
15 position, under the provisions of this section.

**§7-14-13. Vacancies filled by promotions; eligibility for pro-  
motion; rights of chief deputy.**

1 Vacancies in positions of deputy sheriff on and after  
2 the effective date of this article, shall be filled, so far  
3 as practicable, by promotion from among persons hold-  
4 ing positions in the next lower grade. Promotions shall  
5 be based upon merit and fitness to be ascertained by  
6 competitive examinations to be provided by the civil  
7 service commission and upon the superior qualifications

8 of the persons promoted, as shown by their previous  
9 service and experience: *Provided*, That, except for the  
10 chief deputy, no person shall be eligible for promotion  
11 from the lower grade to the next higher grade until  
12 such person shall have completed at least two years'  
13 service in the next lower grade: *Provided, however*,  
14 That notwithstanding the provisions of section one of  
15 this article, any person occupying the office of chief  
16 deputy in any such county on the effective date of this  
17 article, or thereafter appointed to such office, shall, except  
18 as hereinafter provided in this section, be and shall con-  
19 tinue to be entitled to all of the rights and benefits of  
20 the provisions of this article, except that he may be re-  
21 moved from such office of chief deputy without cause  
22 and the time spent by such person in the office of such  
23 chief deputy shall be added to the time, if any, served  
24 by such person during the entire time he was a deputy  
25 sheriff of such county prior to his appointment as chief  
26 deputy, and shall in all cases of removal, except for  
27 removal for just cause, retain the regular rank within  
28 said sheriff's office which he held, if any, at the time  
29 of his appointment to the office of chief deputy or which  
30 he has attained, if any, during his term of service as chief  
31 deputy. The provisions of this section shall be construed  
32 to apply and to inure to the benefit of all persons who  
33 have ever been subject to the provisions of this article.  
34 The commission shall have the power to determine in  
35 each instance whether an increase in salary constitutes  
36 a promotion.

**§7-14-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.**

1 No question in any form of application or in or during  
2 any examination shall be so framed as to elicit informa-  
3 tion concerning the political or religious opinions or  
4 affiliations of any applicant; nor shall inquiry be made  
5 concerning such opinions or affiliations; and all disclosures  
6 thereof shall be discountenanced. No discrimination shall  
7 be exercised, threatened, or promised by any person in  
8 the sheriff's office against, or in favor of, an applicant,  
9 eligible or deputy in the office of any sheriff of any county



10 subject to the provisions of this article because of his  
11 political or religious opinions or affiliations.

**§7-14-15. Political activity of deputy sheriffs prohibited; petition for vacating appointment; action on petition; appeal.**

1 (a) On and after the effective date of this article, no  
2 deputy sheriff covered by the provisions of this article  
3 shall engage in any political activity of any kind, character  
4 or nature whatsoever, except to cast his vote at any elec-  
5 tion or shall act as an election official in any municipal,  
6 county or state election. Any deputy sheriff violating the  
7 provisions of this section shall have his appointment va-  
8 cated and he shall be removed, in accordance with the  
9 pertinent provisions of this section.

10 (b) Any three residents of the county may file their  
11 written petition with the civil service commission there-  
12 of setting out therein the grounds upon which a deputy  
13 sheriff of such county should be removed for a violation  
14 of subsection (a) of this section. Notice of the filing  
15 of such petition shall be given by the commission to  
16 the accused deputy, which notice shall require him to  
17 file a written answer to the charges set out in the peti-  
18 tion within thirty days of the date of such notice. The  
19 petition and answer thereto, if any, shall be entered  
20 upon the records of the civil service commission. If the  
21 answer is not filed within the time stated, or any ex-  
22 tension thereof for cause which in the discretion of  
23 the civil service commission may be granted, an order  
24 shall be entered by the commission declaring the ap-  
25 pointment of the deputy vacated. If such answer is filed  
26 within the time stated, or any extension thereof for  
27 cause which in the discretion of the civil service com-  
28 mission may be granted, the accused deputy may demand  
29 within such period a public hearing on the charges, or  
30 the civil service commission may, in its discretion and  
31 without demand therefor, set a date and time for a pub-  
32 lic hearing on the charges, which hearing shall be  
33 within thirty days of the filing of said answer, subject,  
34 however, to any continuances which may in the dis-  
35 cretion of the civil service commission be granted. A

36 written record of all testimony taken at such hearing  
37 shall be kept and preserved by the civil service com-  
38 mission, which record shall be sealed and not be open  
39 to public inspection if no appeal be taken from the  
40 action of the commission. The commission at the con-  
41 clusion of the hearing, or as soon thereafter as possible,  
42 shall enter an order sustaining in whole or in part the  
43 charges made, or shall dismiss the charges as unfounded.  
44 In the event the charges are sustained in whole or in  
45 part, the order shall also declare the appointment of  
46 such deputy to be vacated and thereupon the sheriff shall  
47 immediately remove the deputy from his office and from  
48 the payroll of the county. Notice of the action of the  
49 commission shall be given by registered letter to the  
50 county court and the sheriff. If the sheriff fails to im-  
51 mediately comply with the order of the commission, he  
52 shall be punished for contempt, upon application of the  
53 commission to the circuit court of the county.

54 (c) An appeal from the ruling of the commission may  
55 be had in the same manner and within the same time  
56 as specified in section seventeen of this article for an  
57 appeal from a ruling of a commission after hearing held  
58 in accordance with the provisions of said section seven-  
59 teen.

**§7-14-16. Training and retraining programs for all deputies  
required.**

1 (a) The civil service commission of any such county  
2 shall establish or prescribe a training program which  
3 every deputy first appointed a deputy of such county on  
4 or after the effective date of this article, must satisfactorily  
5 complete during his probationary period.

6 (b) The civil service commission of any such county  
7 shall also establish or prescribe retraining programs  
8 which every deputy, whether first appointed such deputy  
9 before or after the effective date of this article, must satis-  
10 factorily complete from time to time after the effective  
11 date of this article, in order to continue as a deputy  
12 sheriff of such county or to be eligible for promotion.  
13 Any training or retraining program established or pre-  
14 scribed by the civil service commission of any such

15 county shall meet the minimum standards prescribed by  
16 the governor's committee on crime, delinquency and  
17 correction established by Executive Order 7-A66, dated  
18 September one, one thousand nine hundred sixty-six.

**§7-14-17. Removal, discharge, suspension or reduction in rank  
or pay; appeal; reduction in number of deputies;  
no person subject to article may serve as deputy  
after age sixty.**

1 (a) On and after the effective date of this article,  
2 no deputy sheriff of any county subject to the provisions  
3 of this article shall be removed, discharged, suspended  
4 or reduced in rank or pay except for just cause, which  
5 shall not be religious or political, except as provided in  
6 section fifteen of this article; and no such deputy shall  
7 on and after the effective date of this article, be removed,  
8 discharged, suspended or reduced except as provided  
9 in this article and in no event until he shall have been  
10 furnished with a written statement of the reasons for such  
11 action. For the purpose of the remainder of this subsection  
12 and subsections (b) and (c) of this section, the term  
13 "suspension" shall mean only (1) a suspension in excess of  
14 fifteen days, or (2) a suspension in any calendar year  
15 which when added to any previous suspension or sus-  
16 pensions within the same calendar year results in a total  
17 period of suspension in excess of fifteen days within such  
18 same calendar year, and for the purpose of the remainder  
19 of this subsection and said subsections (b) and (c), a  
20 member shall not be considered to be suspended or sought  
21 to be suspended unless his suspension meets the foregoing  
22 definition of said term. In every case of such removal, dis-  
23 charge, suspension or reduction, a copy of the statement of  
24 reasons therefor and of the written answer thereto, if the  
25 deputy sought to be removed, discharged, suspended or re-  
26 duced desires to file such written answer, shall be furnish-  
27 ed to the civil service commission and entered upon its  
28 records. If the deputy sought to be removed, discharged,  
29 suspended or reduced shall demand it, the civil service  
30 commission shall grant him a public hearing, which hear-  
31 ing shall be held within a period of ten days from the filing

32 of the charges in writing or the written answer thereto,  
33 whichever shall last occur. At such hearing the burden  
34 shall be upon the removing, discharging, suspending or re-  
35 ducing sheriff, hereinafter in this section referred to as  
36 "removing sheriff," to justify his action, and in the event  
37 the removing sheriff fails to justify his action before the  
38 commission, then the deputy removed, discharged, sus-  
39 pended or reduced shall be reinstated with full pay, forth-  
40 with and without any additional order, for the entire  
41 period during which he may have been prevented from  
42 performing his usual employment, and no charges shall be  
43 officially recorded against his record. A written record  
44 of all testimony taken at such hearing shall be kept and  
45 preserved by the civil service commission, which record  
46 shall be sealed and not be open to public inspection, if no  
47 appeal be taken from the action of the commission.

48 (b) In the event that the civil service commission shall  
49 sustain the action of the removing sheriff, the deputy  
50 removed, discharged, suspended or reduced on or after  
51 the effective date of this article, shall have an im-  
52 mediate right of appeal to the circuit court of the  
53 county. In the event that the commission shall reinstate  
54 the deputy removed, discharged, suspended or reduced,  
55 the removing sheriff shall have an immediate right of  
56 appeal to said circuit court. Any appeal must be taken  
57 within ninety days from the date of entry by the civil  
58 service commission of its final order. Upon an appeal  
59 being taken and docketed with the clerk of the circuit  
60 court of said county, the circuit court shall proceed to  
61 hear the appeal upon the original record made before  
62 the commission and no additional proof shall be permitted  
63 to be introduced. The circuit court's decision shall be  
64 final, but the deputy or removing sheriff, as the case may  
65 be, against whom the decision of the circuit court is  
66 rendered shall have the right to petition the supreme  
67 court of appeals for a review of the circuit court's decision  
68 as in other civil cases. Such deputy or removing sheriff  
69 shall also have the right, where appropriate, to seek in  
70 lieu of an appeal, a writ of mandamus.

71 (c) The removing sheriff and the deputy sought to  
72 be removed, discharged, suspended or reduced shall at

73 all times, both before the civil service commission and  
74 upon appeal, be given the right to employ counsel to  
75 represent them.

76 (d) If for reasons of economy or other reasons it  
77 shall, on and after the effective date of this article,  
78 be deemed necessary by any appointing sheriff to re-  
79 duce the number of his deputies, he shall follow the  
80 procedure set forth in this subsection (d). The reduction  
81 in the numbers of the deputy sheriffs of the county shall  
82 be effected by suspending the last man or men, including  
83 probationers, who have been appointed as deputies.  
84 Such removal shall be accomplished by suspending the  
85 number desired in the inverse order of their appointment:  
86 *Provided*, That in the event the number of deputies  
87 shall again be increased in numbers to the strength  
88 existing prior to such reduction of deputies, the deputies  
89 suspended under the terms of this subsection (d) shall  
90 be reinstated in the inverse order of their suspension  
91 before any new appointments of deputy sheriffs in the  
92 county shall be made.

93 (e) Notwithstanding any other provision of this ar-  
94 ticle, no deputy sheriff in any county subject to the pro-  
95 visions of this article shall, on or after the effective date  
96 of this article, serve as a deputy sheriff in any county sub-  
97 ject to the provisions of this article after he attains the  
98 age of sixty.

#### §7-14-18. Offenses and penalties.

1 Any person who makes an appointment or promotion  
2 to any position, or selects a person for employment, con-  
3 trary to the provisions of this article, or wilfully refuses  
4 or neglects otherwise to comply with, or to conform to,  
5 any of the provisions of this article, or violates any of  
6 such provisions, shall be deemed guilty of a misdemeanor.

7 Any commissioner or examiner, or any other person,  
8 who shall wilfully, by himself or in cooperation with  
9 one or more persons, defeat, deceive or obstruct any per-  
10 son with respect to his right of examination or registra-  
11 tion according to this article, or to any rules and regula-  
12 tions prescribed pursuant thereto, or who shall wilfully  
13 or corruptly, falsely mark, grade, estimate or report

14 upon such examination or proper standing of any person  
15 so examined, registered, or certified, pursuant to the  
16 provisions of this article, or aid in so doing, or who shall  
17 wilfully or corruptly furnish to any person any special  
18 or secret information, for the purpose of either improving  
19 or injuring the prospects or chances of appointment or  
20 promotion to any position of any person so examined,  
21 registered or certified, or to be so examined, registered, or  
22 certified; or who shall impersonate any other person, or  
23 permit or aid in any manner any other person to im-  
24 personate him, in connection with any examination or  
25 registration, or application or request to be examined or  
26 registered, shall, for each offense, be deemed guilty of a  
27 misdemeanor.

28 Any person convicted of any such misdemeanor offense  
29 shall be fined not less than fifty nor more than one  
30 thousand dollars, or imprisoned in the county jail not  
31 more than one year, or both fined and imprisoned, in the  
32 discretion of the court.

**§7-14-19. County courts of counties with a population of less  
than twenty-five thousand may place deputy  
sheriffs under civil service; protest and election  
with respect thereto.**

1 The county court of any county having a population  
2 of less than twenty-five thousand may by order entered of  
3 record provide that the provisions of this article pro-  
4 viding civil service for deputy sheriffs shall apply to  
5 such county on and after the effective date of this article.  
6 A copy of such order, together with a notice advising  
7 the qualified voters of such county of their right to  
8 protest the placing of deputy sheriffs of such county  
9 under civil service, shall be published as a Class II-O  
10 legal advertisement in compliance with the provisions  
11 of article three, chapter fifty-nine of this code and the  
12 publication area for such publication shall be the county.

13 In the event fifteen percent of the qualified voters of  
14 such county protest such order, by petition duly signed  
15 by them in their own handwriting (which petition may  
16 be signed in any number of counterparts) and filed with

17 the county clerk of such county within sixty days after  
18 publication of such copy and notice, such order shall not  
19 become effective unless and until it is ratified by a  
20 majority of the legal votes cast with respect to the ques-  
21 tion of civil service coverage for the deputy sheriffs of  
22 such county by the qualified voters of such county at  
23 a regular or special election. Any such election shall  
24 be conducted and superintended and the results thereof  
25 ascertained as provided by law for regular or special  
26 elections, as the case may be.

27 Whenever the deputy sheriffs of any county are placed  
28 under civil service pursuant to the provisions of this  
29 section, such civil service system for the deputy sheriffs  
30 of such county shall thereupon become mandatory and  
31 all of the provisions of this article shall apply to the  
32 deputy sheriffs of such county with like effect as if said  
33 county had a population of twenty-five thousand or more.

**§7-14-20. Inconsistent acts repealed; once established civil  
service remains mandatory.**

1 All acts and parts of acts of the Legislature, whether  
2 general, special or local, in relation to deputy sheriffs in-  
3 consistent with the provisions of this article shall be,  
4 and the same are, hereby repealed to the extent of such  
5 inconsistency.

6 Any civil service system for deputy sheriffs in any  
7 county with a population of twenty-five thousand or more  
8 shall remain mandatory and shall be governed by the  
9 provisions of this article even if the population of such  
10 county shall at any time decrease below twenty-five thou-  
11 sand.

**§7-14-21. Severability.**

1 If any provision of this article or its application to any  
2 person or circumstance is held unconstitutional or in-  
3 valid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of this article, and  
5 to this end the provisions of this article are hereby  
6 declared to be severable.

## CHAPTER 30

(Com. Sub. for House Bill No. 700—Originating in the House Committee on the Judiciary)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-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 two new sections, designated sections one-ff and one-gg, relating to judicial circuits; creating two replica judicial circuits; relating to the appointment, election and terms of the judges of such two replica judicial circuits; and relating to the terms of court of such replica judicial circuits.

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

That section one, article two, chapter fifty-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 two new sections, designated sections one-ff and one-gg, all to read as follows:

### **ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.**

§51-2-1. Judicial circuits; election and terms of judges; terms of court.

§51-2-1ff. Thirty-second circuit.

§51-2-1gg. Thirty-third circuit.

**§51-2-1. Judicial circuits; election and terms of judges; terms of court.**

1 The state shall be divided into judicial circuits as  
2 follows: The counties of Brooke, Hancock and Ohio  
3 shall constitute the first circuit; the counties of Marshall,  
4 Tyler and Wetzel shall constitute the second circuit; the  
5 counties of Doddridge, Pleasants and Ritchie shall consti-  
6 tute the third circuit; the counties of Wood and Wirt  
7 shall constitute the fourth circuit; the counties of Cal-  
8 houn, Jackson and Roane shall constitute the fifth cir-  
9 cuit; the county of Cabell shall constitute the sixth cir-



10 cuit; the county of Logan shall constitute the seventh  
11 circuit; the county of McDowell shall constitute the  
12 eighth circuit; the county of Mercer shall constitute the  
13 ninth circuit; the county of Raleigh shall constitute the  
14 tenth circuit; the counties of Greenbrier, Monroe, Poca-  
15 hontas and Summers shall constitute the eleventh circuit;  
16 the county of Fayette shall constitute the twelfth circuit;  
17 the county of Kanawha shall constitute the thirteenth  
18 circuit; the counties of Braxton, Clay, Gilmer and Web-  
19 ster shall constitute the fourteenth circuit; the county of  
20 Harrison shall constitute the fifteenth circuit; the county  
21 of Marion shall constitute the sixteenth circuit; the coun-  
22 ty of Monongalia shall constitute the seventeenth cir-  
23 cuit; the county of Preston shall constitute the eighteenth  
24 circuit; the counties of Barbour and Taylor shall con-  
25 stitute the nineteenth circuit; the county of Randolph  
26 shall constitute the twentieth circuit; the counties of  
27 Grant, Mineral and Tucker shall constitute the twenty-  
28 first circuit; the counties of Hampshire, Hardy and Pen-  
29 dleton shall constitute the twenty-second circuit; the  
30 counties of Berkeley, Jefferson and Morgan shall con-  
31 stitute the twenty-third circuit; the county of Wayne  
32 shall constitute the twenty-fourth circuit; the counties  
33 of Lincoln and Boone shall constitute the twenty-fifth  
34 circuit; the counties of Lewis and Upshur shall constitute  
35 the twenty-sixth circuit; the county of Wyoming shall  
36 constitute the twenty-seventh circuit; the county of  
37 Nicholas shall constitute the twenty-eighth circuit; the  
38 counties of Mason and Putnam shall constitute the  
39 twenty-ninth circuit; the county of Mingo shall constitute  
40 the thirtieth circuit; the counties of Berkeley, Jefferson  
41 and Morgan shall constitute the thirty-first circuit;  
42 the counties of Braxton, Clay, Gilmer and Webster shall  
43 constitute the thirty-second circuit; and the counties  
44 of Mineral, Grant and Tucker shall constitute the thirty-  
45 third circuit.

46 There shall be elected on the Tuesday next after the  
47 first Monday in November, one thousand nine hundred  
48 sixty-eight, and every eighth year thereafter, one judge  
49 in each of the circuits herein constituted, except for the  
50 first circuit there shall be two judges elected: *Provided,*

51 That the judge of the thirty-second circuit and the judge  
52 of the thirty-third circuit shall be elected on the Tues-  
53 day next after the first Monday in November, one  
54 thousand nine hundred seventy-two, and every eighth  
55 year thereafter.

56 Within thirty days after the provisions of this section  
57 become effective the governor shall appoint a judge for  
58 the thirty-second circuit and a judge for the thirty-  
59 third circuit in the same manner as appointments are  
60 made to fill vacancies in such offices. Such judge  
61 shall serve until his successor is elected and qualified.

62 The terms of the several circuit judges of the counties  
63 aforesaid shall commence and be held each year as here-  
64 inafter provided.

**§51-2-1ff. Thirty-second circuit.**

1 For the county of Braxton on the first Monday in  
2 February, June and October.

3 For the county of Clay on the third Monday in March,  
4 July and November.

5 For the county of Gilmer on the first Monday in March,  
6 July and November.

7 For the county of Webster on the first Monday in  
8 January, May and September.

**§51-2-1gg. Thirty-third circuit.**

1 For the county of Mineral on the first Monday in  
2 February, June and October.

3 For the county of Grant on the third Monday in  
4 March, July and November.

5 For the county of Tucker on the first Monday in Jan-  
6 uary, May and September.

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## CHAPTER 31

(House Bill No. 554—By Mr. Myles)

[Passed February 9, 1971; in effect from passage. 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.**

**§6-7-4. Salaries of judges of circuit courts; additional compensation from counties.**

1 The salaries of the judges of the circuit courts shall be  
2 paid out of the state treasury and shall, unless otherwise  
3 provided by law, be in the following annual amounts:

4 (1) In circuits having more than forty-five thousand  
5 population, nineteen thousand dollars;

6 (2) In circuits having forty-five thousand population  
7 or less, seventeen thousand five hundred dollars.

8 Any county court or the board of commissioners of  
9 Ohio county may pay the judge of the circuit court addi-  
10 tional compensation, but the salary and additional com-  
11 pensation or combined contribution of the several county  
12 courts and board of commissioners shall not exceed  
13 twenty-five thousand dollars.

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

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## CHAPTER 32

(House Bill No. 857—By Mr. Sparacino)

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[Passed February 27, 1971; in effect July 1, 1971. 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.

*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.**

**§6-7-6. Allowances to circuit judges for stationery, postage and stenographic help; additional stenographic compensation from counties; payments therefor.**

1 Each judge of the circuit court shall be allowed an  
2 amount not to exceed four hundred and twenty-five dol-  
3 lars per month for the payment of stenographic help  
4 necessary in the discharge of the duties of his office, and  
5 each judge shall be allowed an amount not to exceed six  
6 hundred dollars annually for the procurement of neces-  
7 sary stationery, payment of postage, and necessary sup-  
8 plies of his office. The judge shall be reimbursed for the  
9 actual amounts expended by him for stationery, supplies  
10 and postage. Payment for stenographic help shall be  
11 made directly to the person performing the stenographic  
12 work. Such amounts shall be paid monthly out of the  
13 state treasury, but not until the judge submits an itemized  
14 statement covering the same.

15 Any county court or the board of county commissioners  
16 of Ohio county may pay such additional compensation  
17 for stenographic help for the judge of any circuit which  
18 may be necessary in the discharge of the duties of the  
19 office of the judge of such circuit, or any combination  
20 of counties in any circuit may contribute to such additional  
21 stenographic help. Such additional compensation shall  
22 be paid from county funds directly to the person or per-  
23 sons performing such work.

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## CHAPTER 33

(Senate Bill No. 208—By Mr. Brotherton)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred fifty-six, acts of the Legislature, regular session, one thousand nine

hundred sixty-nine, relating to the authorization of the thirteenth judicial circuit of West Virginia to appoint a law assistant; fixing his qualifications and salary limits; and requiring the county court of Kanawha county to fix within said limits and provide the manner of payment of such salary.

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

That chapter one hundred fifty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, be amended and reenacted to read as follows:

**CIRCUIT COURT OF KANAWHA COUNTY.**

**§1. Law assistant; appointment; qualifications; salary.**

1 On or after the effective date of this act, the judge of  
2 the circuit court of Kanawha county, West Virginia  
3 (thirteenth judicial circuit), may appoint a law assistant,  
4 who shall be a person duly licensed to practice law in  
5 this state, and who shall discharge such secretarial duties  
6 as may be assigned to him by the judge; said law assist-  
7 ant, while acting as such, shall not engage in the practice  
8 of law, but shall devote his time to the duties of his office,  
9 and may be removed and his successor appointed at any  
10 time by the judge. Said law assistant shall receive a  
11 salary of not less than fifteen thousand nor more than  
12 eighteen thousand dollars per year payable monthly, and  
13 the county court of Kanawha county shall annually, at  
14 its levy session, fix within said limits and provide for  
15 the payment out of general county funds the amount of  
16 the salary so fixed.

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## CHAPTER 34

(House Bill No. 1049—By Mr. Romine and Mr. White, of Cabell)

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[Passed March 12, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section two, chapter one hundred sixty-eight, acts of the Legislature, regular session,

one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the jurisdiction of the domestic relations court of Cabell county; relating to such court generally; and relating to the salaries of the chief probation officer and probation officer of such court.

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

That section two, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

**DOMESTIC RELATIONS COURT OF CABELL COUNTY.**

**§2. Jurisdiction.**

1 The said domestic relations court shall have jurisdiction  
2 within the said county of Cabell, concurrent with the  
3 circuit court, of all matters and causes arising out of  
4 or pertaining to annulment of marriages, separate main-  
5 tenance suits, divorce, alimony, the custody and main-  
6 tenance of children of litigants and the adjudication of  
7 property rights arising out of the same, and all other  
8 matters and causes coming within the purview of chap-  
9 ter forty-eight of the code of West Virginia, one thou-  
10 sand nine hundred thirty-one, and all amendments and  
11 reenactments thereof concerning domestic relations,  
12 habeas corpus proceedings; of all matters and causes  
13 coming within the purview of chapter forty-nine of the  
14 code of West Virginia, one thousand nine hundred thirty-  
15 one, as enacted by chapter one, acts of the Legislature  
16 of West Virginia, one thousand nine hundred thirty-six,  
17 and of all amendments and reenactments thereof, com-  
18 monly known as the child welfare law; of all matters and  
19 causes coming within the purview of chapter eighteen  
20 of the code of West Virginia, one thousand nine hundred  
21 thirty-one, and all amendments and reenactments thereof,  
22 commonly called the general school law; of all matters  
23 and causes coming within the purview of chapter forty-

24 eight of the code of West Virginia, one thousand nine  
25 hundred thirty-one, and of all amendments and reenact-  
26 ments thereof, commonly known as the reciprocal de-  
27 pendency law; of all matters and causes coming within  
28 the purview of chapter forty-eight of the code of West  
29 Virginia, one thousand nine hundred thirty-one, and all  
30 amendments and reenactments thereof, commonly known  
31 as the adoption law; and of all matters and causes com-  
32 ing within the purview of chapter forty-eight of the code  
33 of West Virginia, one thousand nine hundred thirty-one,  
34 and of all amendments and reenactments thereof, com-  
35 monly known as the change of name law; and of all mat-  
36 ters and causes coming within the purview of chapter  
37 forty-eight of the code of West Virginia, one thousand  
38 nine hundred thirty-one, and of all amendments and  
39 reenactments thereof, commonly known as the main-  
40 tenance of illegitimate children law; and of all matters  
41 and causes coming within the purview of chapter forty-  
42 four, article ten, section fourteen of the code of West  
43 Virginia, one thousand nine hundred thirty-one, and of  
44 all amendments and reenactments thereof, commonly  
45 known as the approval of the compromising of infants'  
46 claims for damages; and of all matters and causes coming  
47 within the purview of chapter forty-eight, article one,  
48 section six-c of the code of West Virginia, one thousand  
49 nine hundred thirty-one, and of all amendments and re-  
50 enactments thereof, commonly known as the issuance of  
51 marriage license in case of emergency or extraordinary  
52 circumstances; and of all matters and causes coming  
53 within the purview of chapter thirty-seven of the code  
54 of West Virginia, one thousand nine hundred thirty-one,  
55 and of all amendments and reenactments thereof, com-  
56 monly known as the approval of the sale, lease or mort-  
57 gage of infants' lands; and of all matters and causes  
58 coming within the purview of chapter sixty-one, article  
59 seven, section two, commonly known as license to carry  
60 weapons; how obtained; and shall have concurrent with  
61 the circuit court of Cabell county, supervision and con-  
62 trol of proceedings before justices and other inferior  
63 tribunals by mandamus, prohibition and certiorari, and  
64 of all matters and causes coming within the purview of all

65 other or future acts of the Legislature touching the sub-  
66 ject matter of any and all said laws and acts, and the  
67 amendments and reenactments thereof, and of the com-  
68 mon law of said state relating to the subject matter  
69 thereof. Independently of any of the foregoing matters,  
70 the said domestic relations court shall also have and is  
71 hereby given what was heretofore recognized as general  
72 equity jurisdiction concurrent with the circuit court, ex-  
73 cepting in cases involving the enforcement of criminal  
74 laws and labor disputes, and excepting cases where it  
75 shall appear from the pleadings that the matter or thing  
76 in controversy exceeds in value the sum of three hun-  
77 dred fifty thousand dollars. The proceedings and modes  
78 of procedure and power and jurisdiction conferred by law  
79 upon the circuit court or the common pleas court in any  
80 and all of said matters and causes are hereby conferred  
81 upon and shall be exercised by said domestic relations  
82 court.

83 The court is authorized and empowered to appoint and  
84 discharge one chief probation officer at a yearly salary of  
85 nine thousand seven hundred fifty dollars and a proba-  
86 tion officer at a yearly salary of nine thousand five hun-  
87 dred dollars, which said salaries shall be paid by the  
88 county court monthly, and in addition thereto the said  
89 county court shall reimburse the said probation officers  
90 of their necessary expenses actually incurred monthly  
91 in the performance of official duties including an allow-  
92 ance of ten cents per mile for their automobile driven  
93 in the performance of official duties. The court is further  
94 authorized and empowered to appoint and discharge such  
95 medical, clerical and secretarial assistance as shall enable  
96 it to discharge all of the duties required of it under the  
97 provisions of this act and the general laws of the state  
98 and such person or persons shall be paid by the county  
99 court monthly upon the written approval of the judge  
100 of the said court.



## CHAPTER 35

(Senate Bill No. 237—By Mr. Poffenbarger)

[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-nine; and to amend and reenact section four of said chapter one hundred eighty-five, as last amended and reenacted by chapter two hundred seventeen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, all relating to the jurisdiction and judge's salary of the juvenile court of Kanawha county.

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

That section two, chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted; and that section four of said chapter one hundred eighty-five, as last amended and reenacted by chapter two hundred seventeen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

### **JUVENILE COURT OF KANAWHA COUNTY.**

§2. Jurisdiction.

§4. Salary.

#### **§2. Jurisdiction.**

1 The court shall have jurisdiction, within Kanawha  
2 county, in all proceedings affecting delinquent, neglected,  
3 defective and state dependent children as set forth  
4 and enumerated in chapter forty-nine of the code of  
5 West Virginia; the adoption of adults and children; the  
6 care, custody, control and disposition of delinquent, men-  
7 tally or physically disabled and neglected children under  
8 the age of eighteen years; to take, in the name of the  
9 state, all manner of recognizance, bonds and obligations  
10 heretofore or hereafter permitted to be taken in all cases  
11 where the person charged with delinquency is under

12 the age of eighteen years and to continue or discharge  
13 such recognizance, bonds and obligations.

14 The court shall have general equity jurisdiction in any  
15 causes or proceedings before it, with full power to grant  
16 injunctions and make monetary awards in matters in-  
17 volving the care, custody, maintenance, preservation and  
18 protection of infants under the age of eighteen years,  
19 who are delinquent, dependent or neglected.

20 The manner and modes of procedure, power and juris-  
21 diction conferred by law upon the circuit court of Ka-  
22 nawha county in any and all of the foregoing matters  
23 and causes are hereby conferred upon and shall be exer-  
24 cised by the juvenile court of Kanawha county.

25 The said court shall also have and exercise such other  
26 jurisdiction and powers, not herein enumerated, as may  
27 have been heretofore or may be hereafter given to the  
28 juvenile courts within the several counties of this state,  
29 and proceedings affecting the treatment and control of  
30 dependent, neglected, defective and delinquent children  
31 under the age of eighteen years, and all general laws  
32 relating to jurisdiction and powers of any court sitting  
33 as a juvenile court are hereby made applicable to said  
34 juvenile court.

35 The court shall also have jurisdiction within Kana-  
36 wha county concurrent with the circuit court of said  
37 county of statutory summary proceedings of the sale,  
38 lease, or mortgage upon the estate of minors, insane per-  
39 sons and convicts.

#### §4. Salary.

1 The judge of the juvenile court of Kanawha county  
2 shall for his services receive the sum of twenty thou-  
3 sand dollars per annum, to be paid in monthly install-  
4 ments out of the county treasury of Kanawha county.  
5 The county court of Kanawha county shall annually  
6 make provisions by appropriate levy and appropriation  
7 for the payment of said salary.

## CHAPTER 36

(House Bill No. 784—By Mr. Scott and Mr. McKenzie)

[Passed February 11, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the criminal court for the county of McDowell, changing the name of said court, enlarging its jurisdiction, fixing the salary of the judge thereof, and as so changed and enlarged to continue its existence.

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

That chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted so as to read as follows:

### **THE INTERMEDIATE COURT OF McDOWELL COUNTY.**

- §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 McDowell 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 McDowell county; expeditious proceeding.
- §18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by the 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. General laws applicable to court and judge.

**§1. Court established.**

1 A court of record of limited jurisdiction is hereby  
2 established and continued in and for the county of Mc-  
3 Dowell, to be held and presided over by a judge elected  
4 or to be elected or appointed as provided by this act,  
5 which court shall be designated and known as "The In-  
6 termediate Court of McDowell County."

**§2. Jurisdiction concurrent with circuit court.**

1 The court, which is the same court originally estab-  
2 lished by chapter thirty-six, acts of the Legislature, reg-  
3 ular session, one thousand eight hundred ninety-three,  
4 but with its name and jurisdiction changed as in this act  
5 provided, shall continue to have jurisdiction within the  
6 county of McDowell, concurrent with the circuit court  
7 of the county, of all felonies, misdemeanors and offenses  
8 committed or which may be committed within the county  
9 of McDowell, and shall also have, concurrent with the  
10 circuit court of the county, jurisdiction, supervision and  
11 control by appeal, mandamus, prohibition and certiorari  
12 of all proceedings before justices of the peace of the  
13 county or the police court, mayor or other constituted  
14 tribunal, board or commission of any city, town or village  
15 in the county. The court shall likewise have jurisdic-  
16 tion within the county of McDowell concurrent with the  
17 circuit court of the county, of all civil actions or proceed-  
18 ings at law, except where it shall appear from the plead-  
19 ings that the matter or thing in controversy in any such  
20 civil action or proceeding at law, exclusive of interests and

21 costs, exceeds in value the sum of fifty thousand dollars,  
22 and all summary proceedings at law and any other man-  
23 ner of action or proceedings at law authorized by the  
24 general laws of West Virginia, as well as of appeals  
25 from judgments of the justices of the county when such  
26 appeals shall lie to the court in the same manner and  
27 under the same regulations as provided in the general  
28 laws for appeals from justices. The court shall likewise  
29 have jurisdiction within the county of McDowell, con-  
30 current with the circuit court of the county, of suits for  
31 divorce, annulment of marriage and separate mainten-  
32 ance, of bastardy proceedings and actions for maintenance  
33 of illegitimate children as provided by the general laws  
34 of West Virginia, and the court shall have jurisdiction  
35 within the county of McDowell, concurrent with the cir-  
36 cuit court of the county, of proceedings for adoption,  
37 and all juvenile and other matters of which the aforesaid  
38 criminal court of McDowell county was given jurisdiction  
39 by the general laws of West Virginia or of which the  
40 court hereby established may be given jurisdiction by  
41 such general laws.

**§3. Judge; election; term; qualifications; removal from office;  
filling vacancy.**

1 The judge of the foresaid criminal court of McDowell  
2 county elected at the general election held in this state  
3 on the Tuesday after the first Monday in November,  
4 one thousand nine hundred sixty-eight, to fill a vacancy  
5 then existing, shall hold his office as judge of the court  
6 and of the court hereby established for the unexpired  
7 term of six years from the first day of January, one thou-  
8 sand nine hundred sixty-six, which term expires on the  
9 last day of December, one thousand nine hundred seventy-  
10 two, and until his successor is duly elected and qualified;  
11 and at the general election in this state to be held on the  
12 Tuesday after the first Monday in November, one thou-  
13 sand nine hundred seventy-two, and every eight years  
14 thereafter, there shall be elected by the legal voters of  
15 the county a judge of the intermediate court of Mc-  
16 Dowell county, who shall be a resident member of the  
17 bar of the county, and shall be disqualified from prac-

18 ticing law in all the courts of this state during his con-  
19 tinuance in office, who shall preside over the court for  
20 the term of eight years from the first day of January  
21 succeeding the election, and shall be, except as to juris-  
22 diction, subject to the laws in force governing circuit  
23 judges. The judge of the court may be removed from  
24 office for the same reasons, and in the same manner,  
25 as judges of circuit courts. And if from any cause the  
26 office shall become vacant, the vacancy shall be filled in  
27 the same manner as in the case of a vacancy in the office  
28 of the judge of the circuit court.

**§4. Salary of judge; payment thereof.**

1 The judge of the intermediate court shall receive for  
2 his services the sum of nineteen thousand dollars per  
3 annum to be paid out of the county treasury of the county  
4 of McDowell.

**§5. General powers and jurisdiction.**

1 To the extent of the jurisdiction conferred by this act  
2 upon the intermediate court, all powers, jurisdiction and  
3 authority conferred by law upon circuit courts in the  
4 trial of cases and in respect to proceedings and modes  
5 of procedure authorized or required therein within the  
6 county of McDowell are hereby conferred upon and  
7 shall be exercised by the intermediate court. And the  
8 judge of the intermediate court shall have the same  
9 powers in vacation as to all matters within the juris-  
10 diction of the court that are now or may hereafter be  
11 conferred by law upon the judge of the circuit court of  
12 the county.

**§6. Presumption of jurisdiction.**

1 It shall not be necessary in any cause or proceeding  
2 in the intermediate court that the facts authorizing it  
3 to take jurisdiction of the cause or proceeding be set  
4 forth upon the record, but jurisdiction shall be presumed  
5 unless the contrary plainly appears from the record.

**§7. Power to punish for contempt.**

1 The intermediate court shall have the same powers to  
2 punish for contempt as are conferred by law upon the  
3 circuit court.

**§8. Terms of court; when and where held.**

1 There shall be held four terms of the intermediate  
2 court in each year, which terms shall commence on the  
3 Tuesday following the second Monday in the months of  
4 January, April, July and October of each year. The  
5 terms of the court shall be held at the courthouse in the  
6 county or in the annex to the courthouse in the county.

**§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.**

1 The intermediate court shall impanel a grand jury at  
2 each term thereof. The intermediate court, at a special  
3 or adjourned term thereof, whenever it shall be proper  
4 to do so, may order a grand jury to be drawn or sum-  
5 moned to attend such term. All of the provisions of  
6 article two, chapter fifty-two of the code of West Vir-  
7 ginia, one thousand nine hundred thirty-one, as amended,  
8 in regard to grand juries in the circuit court shall apply,  
9 as far as applicable, to grand juries in the intermediate  
10 court. The grand and petit jurors serving in the court,  
11 shall be chosen and impaneled in the same manner as  
12 they are chosen and impaneled by law in the circuit  
13 court, and shall receive the same compensation as the  
14 jurors in the circuit court.

**§10. Clerk of court; fees, signing of process, etc., of court and execution thereof.**

1 The clerk of the circuit court of McDowell county shall  
2 act as and perform the duties of the clerk of the inter-  
3 mediate court, and shall collect the same fees as the clerk  
4 of the circuit court for similar services, and exercise the  
5 same powers and duties arising within the jurisdiction  
6 of the intermediate court. All processes, rules and orders  
7 of the court in the exercise of its jurisdiction, shall be  
8 signed by the clerk thereof and be directed to the sheriffs  
9 of the proper counties wherein the same are to be exe-  
10 cuted; and they shall be executed in like manner and with  
11 the same effect as processes issuing from the circuit  
12 court of the county.

**§11. Sheriffs to execute process, duties of sheriff of McDowell county; powers, liabilities and fees of sheriffs and other officers.**

1 The sheriff of McDowell county and the sheriffs of the  
2 several counties in the state shall by themselves or their  
3 deputies execute all processes of the intermediate court,  
4 and those issued by the clerk thereof, directed to them  
5 respectively; and all processes emanating from the in-  
6 termediate court heretofore or hereafter issued by the  
7 clerk thereof shall be directed to and executed by them  
8 in the same manner as is provided by law as to processes  
9 issuing from the circuit court or the clerk thereof. And  
10 the sheriff of McDowell county shall perform the same  
11 duties and services for the intermediate court of Mc-  
12 Dowell county, as he is now by law required to perform  
13 for the circuit court of the county; and in the execution  
14 of processes, rules and orders of the intermediate court,  
15 the officer, and other officers of this state, this county,  
16 the several counties of this state, and municipal corpora-  
17 tions in this state situate, shall have the same powers  
18 and rights, be subject to the same liabilities, govern  
19 themselves by the same rules and principles of law and  
20 the statutes of the state, and be entitled to the same fees  
21 as though the processes, rules and orders issued from  
22 the circuit court of the county.

**§12. Indictments, civil actions and domestic relations cases in circuit court may be certified to intermediate court.**

1 The judge of the circuit court of the county may in his  
2 discretion certify to the intermediate court for trial any  
3 indictment for any felony or misdemeanor which may  
4 hereafter be found by a grand jury impaneled in the  
5 circuit court, as well as any civil action or other pro-  
6 ceeding at law within the jurisdiction of the inter-  
7 mediate court or suit for divorce, annulment of marriage  
8 or separate maintenance which may now be pending or  
9 hereafter instituted in the circuit court, and thereupon  
10 the original papers filed in the circuit court together with  
11 a copy of any order entered in the cause by the court,  
12 including any order or judgment theretofore entered  
13 therein, shall be transferred to the intermediate court,



14 and the cause shall be docketed therein and proceeded  
15 with as though the indictment had been returned or the  
16 cause originally brought and all prior proceedings had  
17 in the intermediate court; and the intermediate court  
18 shall likewise proceed with all indictments for misde-  
19 meanor or felony heretofore found by a grand jury in  
20 the criminal court of McDowell county and all appeals  
21 to the court and other proceedings pending therein as  
22 though the indictment had been returned or the cause  
23 originally brought and all prior proceedings had in the  
24 intermediate court.

**§13. Change of venue.**

1 A change of venue of any cause pending in the inter-  
2 mediate court may be ordered as provided in section  
3 thirteen, article three, chapter sixty-two of the code of  
4 West Virginia, one thousand nine hundred thirty-one, as  
5 amended.

**§14. County court to provide record books, etc., office space and secretarial assistance to judge; effect of certificates of judge or clerk.**

1 It shall be the duty of the county court of McDowell  
2 county to provide all record books, other books, stationery  
3 and postage, as well as office room and such stenographic  
4 or secretarial assistance to the judge of the intermediate  
5 court as may be necessary, and likewise a seal for the  
6 court but full faith and credit shall be given to the record  
7 of the court, and the certificates of its judge or clerk  
8 whether the seal of the court be affixed thereto or not,  
9 in like manner and with the same effect as if the same  
10 were records of the circuit court similarly authenticated.

**§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.**

1 Appeals may be allowed, and writs of error and super-  
2 sedeas awarded to the judgments, decrees and orders of  
3 the intermediate court by the circuit court of McDowell  
4 county, or the judge thereof, in all cases or proceedings  
5 as provided in article four, chapter fifty-eight of the code  
6 of West Virginia, one thousand nine hundred thirty-one,

7 as amended, or elsewhere in the general laws of this  
8 state; and in cases relating to the public revenues the  
9 right of appeal shall belong to the state as well as the  
10 defendant.

**§16. Petitions for appeal, writ of error, etc.; who may present and to whom; laws governing; time limitation.**

1 Any person who is a party to any such cause wishing to  
2 obtain a writ of error, appeal or supersedeas from any  
3 judgment, decree, or order of the intermediate court  
4 may present to the circuit court of McDowell county, or  
5 the judge thereof in vacation, a petition therefor and the  
6 provisions of article four, chapter fifty-eight of the code  
7 of West Virginia, one thousand nine hundred thirty-one,  
8 as amended, concerning appeals to the circuit courts shall  
9 govern the proceedings on such appeal, writ of error or  
10 supersedeas from the intermediate court as to the duties  
11 of the petitioner, the courts or judges and clerks thereof:  
12 *Provided*, That no such appeal, writ of error or super-  
13 sedeas from the intermediate court shall be allowed unless  
14 the petition therefor be presented within four months  
15 from the date of such judgment or order.

**§17. Appeals, etc., docketed in circuit court of McDowell county; expeditious proceeding.**

1 Every appeal, writ of error or supersedeas from the  
2 intermediate court shall be docketed in the circuit court  
3 of McDowell county, and shall be proceeded in as ex-  
4 peditiously as may be practicable.

**§18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by the circuit court.**

1 In a case wherein the appeal, writ of error or super-  
2 sedeas is to the circuit court, and the court or judge  
3 thereof deems the judgment, decree or order plainly  
4 right and rejects it on that ground, if the order of re-  
5 jection so states, no further petition shall afterwards  
6 be presented for the same purpose; but the same petition  
7 with any brief in support thereof and the order of re-  
8 jection with the transcript of the record may be pre-  
9 sented to the supreme court of appeals, or a judge  
10 thereof in vacation, for an appeal, writ of error or super-

11 sedeas, from said order of rejection; and if allowed the  
12 same proceeding may be had thereon as if the same were  
13 a petition originally from the circuit court of the county  
14 to the court of appeals.

**§19. Proceedings on appeals, writs of error, etc., allowed by the circuit court.**

1 The circuit court where an appeal, writ of error or  
2 supersedeas has been allowed by such court, or the judge  
3 thereof in vacation, shall upon the hearing thereof, affirm  
4 the judgment, decree or order, if there be no error therein  
5 prejudicial to the appellant, or reverse the same in whole  
6 or in part if erroneous, and remand the same to the in-  
7 termediate court to be further proceeded in and finally  
8 determined. And the clerk of the circuit court shall as  
9 soon as practicable after the adjournment of the court,  
10 transmit the decision of the circuit court to the clerk of  
11 the intermediate court.

**§20. Authority to grant writs of habeas corpus, requirements for issuance.**

1 The intermediate court of McDowell county, or the  
2 judge thereof in vacation, concurrent with the supreme  
3 court of appeals and the circuit court of the county, shall  
4 have jurisdiction and authority to grant writs of habeas  
5 corpus, as provided in article four, chapter fifty-three of  
6 the code of West Virginia, one thousand nine hundred  
7 thirty-one, as amended, and all provisions of the article  
8 shall be applicable to the granting of such writs by the  
9 intermediate court; but in no case shall such writ be  
10 issued by the intermediate court, or the judge thereof in  
11 vacation, on the application of any person unless such  
12 person by himself or by someone in his behalf shall  
13 apply for such writ by petition and show by affidavit or  
14 other evidence probable cause to believe that such person  
15 is detained in the county of McDowell without lawful  
16 authority.

**§21. Prosecuting attorney to attend terms of court and perform duties required by law.**

1 The prosecuting attorney of McDowell county shall  
2 attend the terms of court of the intermediate court,

3 either by himself or his assistant, and shall perform the  
4 duties of his office in respect to the court and all causes  
5 and proceedings pending therein as required by the gen-  
6 eral laws of this state.

**§22. General laws applicable to court and judge.**

1 To the extent of the jurisdiction and authority hereby  
2 conferred upon the intermediate court, the provisions of  
3 sections three and four, article eight, chapter seven of  
4 the code of West Virginia, one thousand nine hundred  
5 thirty-one, as amended, as well as other provisions of  
6 the general laws of this state to the extent applicable,  
7 shall apply to the intermediate court of McDowell coun-  
8 ty, and the judge thereof in the same manner and to the  
9 same extent as to the circuit court of McDowell county  
10 and the judge thereof.

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## CHAPTER 37

(Senate Bill No. 174—By Mr. Barnett)

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[Passed February 15, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section two, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred twenty, acts of the Legislature, regular session, one thousand nine hundred sixty-seven; and to amend and reenact section four of said chapter thirty-eight, as last amended and reenacted by chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, all relating to the jurisdiction and judge's salary of the intermediate court of Mercer county.

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

That section two, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred twen-

ty, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted; and that section four of said chapter thirty-eight, as last amended and reenacted by chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, be amended and reenacted, all to read as follows:

**INTERMEDIATE COURT OF MERCER COUNTY.**

§2. Jurisdiction concurrent with circuit court.

§4. Salary of judge.

**§2. Jurisdiction concurrent with circuit court.**

1 The said court, which is the same court originally  
2 established by chapter eighteen, acts of the Legislature,  
3 regular session, one thousand eight hundred ninety-  
4 three, but with its name and jurisdiction changed as  
5 in this act provided, shall continue to have jurisdiction  
6 within the county of Mercer, concurrent with the circuit  
7 court of said county, of all felonies, misdemeanors and  
8 offenses committed or which may be committed within  
9 the said county of Mercer, and shall also have, concur-  
10 rent with the circuit court of said county, jurisdiction,  
11 supervision and control by appeal, mandamus, prohibi-  
12 tion and certiorari of all proceedings before justices of  
13 the peace of said county or the police court, mayor or  
14 other constituted tribunal, board or commission of any  
15 city, town or village in said county. The said court shall  
16 likewise have jurisdiction within said county of Mercer,  
17 concurrent with the circuit court of said county, of all  
18 suits and proceedings in equity, in all actions of eject-  
19 ment, and in all civil actions or proceedings at law,  
20 except where it shall appear from the pleadings that  
21 the matter or thing in controversy in any such suit, pro-  
22 ceeding or action, exclusive of interest and costs, exceeds  
23 in value the sum of seventy-five thousand dollars, and  
24 all summary proceedings at law and any other manner  
25 of action or proceeding at law authorized by the general  
26 laws of West Virginia, as well as of appeals from judg-  
27 ments of the justices of said county when such appeals  
28 shall lie to the said court in the same manner and under  
29 the same regulations as provided in the general laws for  
30 appeals from justices. The said court shall likewise have

31 jurisdiction within said county of Mercer, concurrent  
32 with the circuit court of said county, of suits for divorce,  
33 annulment of marriage and separate maintenance, of  
34 bastardy proceedings and actions for maintenance of  
35 illegitimate children as provided by the general laws  
36 of West Virginia, and the said court shall continue to  
37 have jurisdiction within said county of proceedings for  
38 adoption and all juvenile and other matters of which  
39 the aforesaid criminal court of Mercer county was given  
40 jurisdiction by the general laws of West Virginia or of  
41 which the court hereby established may be given juris-  
42 diction by such general laws.

#### §4. Salary of judge.

1 The judge of said intermediate court shall receive for  
2 his services the sum of twenty thousand dollars per  
3 annum to be paid out of the county treasury of said  
4 county of Mercer.

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## CHAPTER 38

(House Bill No. 1175—By Mr. Seibert and Miss Herndon)

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[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section nine, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, as last amended and reenacted by chapter forty-one, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the salary of the judge of the intermediate court of Ohio county.

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

That section nine, chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred twenty-five, as last amended and reenacted by chapter forty-one, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

**INTERMEDIATE COURT OF OHIO COUNTY.****§9. Salary of judge.**

1 The judge shall, from and after the first day of January,  
2 one thousand nine hundred seventy-three, for his services  
3 receive twenty thousand dollars per annum, to be paid  
4 out of the county treasury of the county of Ohio. Until  
5 the first day of January, one thousand nine hundred  
6 seventy-three, the judge shall receive fifteen thousand  
7 dollars per annum for his services, payable as herein-  
8 before provided.

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**CHAPTER 39**

(House Bill No. 1117—By Mr. Calendine and Mr. Farley)

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[Passed March 11, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact sections two and five, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, relating to the jurisdiction of the intermediate court of Wood county and the salary of the judge thereof.

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

That sections two and five, 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:

**INTERMEDIATE COURT OF WOOD COUNTY.****§2. Jurisdiction.****§5. Salary of judge.****§2. Jurisdiction.**

1 The court shall have jurisdiction within Wood county,  
2 concurrent with the circuit court of said county, of ac-  
3 tions, causes, matters, proceedings and suits relating to  
4 (a) those matters within the purview of article one,  
5 chapter forty-eight of the official code of West Virginia,  
6 and of all amendments and reenactments thereof, of

7 which the circuit court now has exclusive jurisdiction,  
8 including the issuance of a marriage license in an emer-  
9 gency or under extraordinary circumstances as now pro-  
10 vided in section six-c of said article and chapter; (b) af-  
11 firmation of marriages, annulment of marriages, separate  
12 maintenance, divorce, alimony, the care, custody, main-  
13 tenance and education of children of litigants and the  
14 adjudication of property rights arising out of same, and  
15 all other causes and matters arising within the provisions  
16 of article two, chapter forty-eight of the official code of  
17 West Virginia, commonly known as "the divorce law,"  
18 and of all amendments and reenactments thereof; (c)  
19 adoption proceedings arising out of article four of the  
20 chapter last aforesaid, and of all amendments and re-  
21 enactments thereof; (d) proceedings for a change of  
22 name arising out of article five of the chapter last afore-  
23 said, and of all amendments and reenactments thereof;  
24 (e) the enforcement of support of dependents arising  
25 out of article nine of the chapter last aforesaid, and of  
26 all amendments and reenactments thereof; (f) the care  
27 and disposition of delinquent, defective, neglected and  
28 dependent children and juvenile offenders arising out of  
29 articles five, six and seven, chapter forty-nine of the  
30 official code of West Virginia, and of all amendments and  
31 reenactments thereof; (g) all proceedings arising out of  
32 article eight, chapter forty-nine of the official code of  
33 West Virginia, known as the "Interstate Compact on  
34 Juveniles," and of all amendments and reenactments  
35 thereof; (h) compulsory school attendance and truancy  
36 arising out of article eight, chapter eighteen of the of-  
37 ficial code of West Virginia, and of all amendments and  
38 reenactments thereof; (i) habeas corpus proceedings in-  
39 volving the award and custody of children under the  
40 age of twenty-one years; (j) the collection of recogni-  
41 zances and bonds taken by said court, or of bonds taken  
42 by the clerk thereof in vacation, to secure the payment  
43 of judgments for fines and costs rendered by said court;  
44 (k) the approval of compromise by fiduciaries of li-  
45 abilities where acting as guardian for an infant in ac-  
46 cordance with the provisions of section seven, article  
47 five, chapter forty-four of the official code of West Vir-



48 ginia, and of all amendments and reenactments thereof;  
49 (l) concerning the transfer of securities the property  
50 of an infant in the name of a fiduciary in accordance  
51 with the provisions of section eight, article five, chapter  
52 forty-four of the official code of West Virginia, and of  
53 all amendments and reenactments thereof; (m) direc-  
54 tion to fiduciaries concerning moneys belonging to a  
55 minor in accordance with the provisions of section one,  
56 article six, chapter forty-four of the official code of West  
57 Virginia, and of all amendments and reenactments there-  
58 of; (n) authority for investment by a fiduciary when the  
59 beneficiary of trust funds is the property of a minor in  
60 accordance with the provisions of section three, article  
61 six, chapter forty-four of the official code of West Vir-  
62 ginia, and of all amendments and reenactments thereof;  
63 (o) instruction of fiduciaries where minor is beneficiary  
64 of an estate or trust as provided in section four, article  
65 six, chapter forty-four of the official code of West Vir-  
66 ginia, and of all amendments and reenactments thereof;  
67 (p) authorization of disbursements by guardians from  
68 income and corpus of the estate of infant wards as pro-  
69 vided in section eight, article ten, chapter forty-four of  
70 the official code of West Virginia, and of all amendments  
71 and reenactments thereof; (q) sale of personal estate  
72 by guardian in accordance with the provisions of section  
73 nine, article ten, chapter forty-four of the official code  
74 of West Virginia, and of all amendments and reenact-  
75 ments thereof; (r) proceedings between guardians and  
76 wards in accordance with the provisions of section thir-  
77 teen, article ten, chapter forty-four of the official code of  
78 West Virginia, and of all amendments and reenactments  
79 thereof; (s) the approval of compromising an infant's  
80 claim for damages in accordance with the provisions of  
81 section fourteen, article ten, chapter forty-four of the  
82 official code of West Virginia, and of all amendments and  
83 reenactments thereof; (t) the transfer of property of  
84 nonresident infant to foreign guardian in accordance  
85 with the provisions of section three, article eleven, chap-  
86 ter forty-four of the official code of West Virginia, and  
87 of all amendments and reenactments thereof; (u) the  
88 transfer of proceeds of sale belonging to nonresident

89 infant to foreign guardian in accordance with section  
90 four, article eleven, chapter forty-four of the official  
91 code of West Virginia, and of all amendments and re-  
92 enactments thereof; (v) the approval of the sale, lease,  
93 mortgage or deeding in trust of infants' lands in ac-  
94 cordance with the provisions of article one, chapter  
95 thirty-seven of the official code of West Virginia, and  
96 of all amendments and reenactments thereof; (w) release  
97 of dower of an infant in accordance with the provisions  
98 of section nine, article one, chapter thirty-seven of the  
99 official code of West Virginia, and of all amendments and  
100 reenactments thereof; (x) all matters coming within the  
101 purview of section one, article one, chapter forty-eight  
102 of the official code of West Virginia, relating to the age  
103 of consent, and of all amendments and reenactments  
104 thereof; (y) all matters and causes coming within the  
105 purview of section two, article seven, chapter sixty-one  
106 of the official code of West Virginia, commonly known as  
107 "license to carry weapons," and of all amendments and  
108 reenactments thereto; and (z) any and all other matters  
109 arising under the present and future laws of the state of  
110 West Virginia, common or statutory, incidental to the  
111 foregoing, including, but not limited to, the disposition of  
112 property and property interests involved in any such  
113 matters, and, as well, the adjudication of any and all  
114 rights, titles and interests necessary or incidental to a  
115 full determination of all such matters pending in said  
116 court.

117 Said court shall have general equity jurisdiction in ac-  
118 tions, causes, matters, proceedings and suits before it  
119 within its jurisdiction with power to grant injunctions  
120 and to require and take recognizances.

121 The proceedings, modes of procedures, power and  
122 jurisdiction conferred by law upon the circuit court of  
123 Wood county in any and all said actions, causes, matters,  
124 proceedings and suits, are hereby conferred upon and  
125 shall be exercised by said court.

126 The judge of said court shall have the same powers in  
127 vacation as to any and all of said actions, causes, matters,  
128 proceedings and suits that are conferred upon the judge  
129 of the circuit court of said county.

130 It shall not be necessary in any such actions, causes,  
131 matters, proceedings or suits to set forth upon the record  
132 the facts authorizing said court to take jurisdiction there-  
133 of, but jurisdiction shall be presumed unless the contrary  
134 plainly appears from the record.

§5. Salary of judge.

1 The judge of said court shall, for his services, receive  
2 the sum of eighteen thousand six hundred dollars per  
3 annum, payable in monthly installments, beginning on  
4 the first day of July, one thousand nine hundred seventy-  
5 one, which amount shall be provided for and paid by the  
6 county court, out of the treasury of Wood county, which  
7 provision as to salary shall not repeal the existing pro-  
8 vision until the said first day of July, one thousand nine  
9 hundred seventy-one. The county court shall annually  
10 make provision by appropriate levy and appropriation  
11 for the payment of said salary.

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## CHAPTER 40

(Com. Sub. for House Bill No. 586—Originating in the House  
Committee on the Judiciary)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section forty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purchase of copper wires, cables, copper trolley wire, aluminum wire, brass bearings or fittings, mercury or lead by junk dealers; requiring the keeping of records in connection therewith; requiring proof of ownership in connection therewith; and providing criminal penalties.

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

That section forty-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.****§61-3-49. Purchase of copper wire, etc., by junk dealers; penalty.**

1 Any junk dealer purchasing copper wires, cables,  
2 copper trolley wire, aluminum wire, brass bear-  
3 ings or fittings, mercury or lead from any person, firm  
4 or corporation, shall accurately list such purchase in a  
5 permanent record showing the kind and character of  
6 junk purchased, date of purchase and from whom pur-  
7 chased, which record shall be open to the inspection of  
8 all law-enforcement officers.

9 It shall be unlawful for any junk dealer to purchase  
10 any of the items hereinbefore mentioned without secur-  
11 ing from the seller a bill of sale, receipt or other proof  
12 of lawful ownership, which shall be retained by such  
13 dealer, and such dealer shall list in a record book the  
14 full name and address of the seller, a complete descrip-  
15 tion of the kind and character of the junk or material  
16 purchased, the hour and day purchased, and the license  
17 number of any automobile or truck which may be used  
18 in making delivery of such junk or materials, which  
19 record shall be open to the inspection of all law-enforce-  
20 ment officers, and be preserved for a period of not less  
21 than one year.

22 Every nonresident junk dealer, before transporting  
23 from the state any of the items hereinbefore mentioned,  
24 shall file with the sheriff of the county where such pur-  
25 chase was made a complete description of the property he  
26 proposes to transport from the state, showing the date  
27 of purchase, the names of the buyer and seller, the party  
28 to whom consigned, and the license number of any auto-  
29 mobile or truck which may be employed in transporting  
30 such junk or materials hereinbefore mentioned.

31 Any person who shall violate any of the provisions of  
32 this section shall be guilty of a misdemeanor, and, upon  
33 conviction before any justice of the peace or court of  
34 competent jurisdiction, shall be fined not less than one  
35 hundred nor more than five hundred dollars.

## CHAPTER 41

(Senate Bill No. 35—By Mr. Hubbard)

[Passed February 16, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, making it a misdemeanor for any person to wilfully interrupt, molest, disturb, disrupt or interfere with the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, and providing penalties.

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

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

### ARTICLE 6. CRIMES AGAINST THE PEACE.

#### §61-6-19. Wilful disruption of governmental processes.

1 If any person wilfully interrupt or molest the orderly  
2 and peaceful process of any department, division, agency  
3 or branch of state government or of its political subdi-  
4 visions, he shall be guilty of a misdemeanor, and, upon  
5 conviction thereof, shall be fined not more than one  
6 hundred dollars, or imprisoned in the county jail not  
7 more than six months, or both fined and imprisoned:  
8 *Provided*, That any assembly in a peaceable, lawful  
9 and orderly manner for a redress of grievances shall  
10 not be a violation of this section.

—o—

## CHAPTER 42

(House Bill No. 518—By Mr. McManus and Mr. Burke)

[Passed March 1, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty-one of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fourteen and fifteen, relating to the purchase, sale, transportation and receipt of rifles, shotguns and other legal firearms or any part thereof.

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

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

**ARTICLE 7. DANGEROUS WEAPONS.**

§61-7-14. Purchase of firearms in contiguous state.

§61-7-15. Sale of firearms to residents of contiguous states.

**§61-7-14. Purchase of firearms in contiguous state.**

1 Any resident of this state, including a corporation or  
2 other business entity maintaining a place of business in  
3 this state, who may lawfully purchase and receive de-  
4 livery of a rifle, shotgun or any other legal firearm, or  
5 any part thereof, in this state, may purchase the same  
6 in a state contiguous to this state and transport or re-  
7 ceive the same into this state provided the sale meets  
8 the lawful requirements of any federal statute, and is  
9 made by a licensed importer, licensed manufacturer,  
10 licensed dealer or private collector.

**§61-7-15. Sale of firearms to residents of contiguous states.**

1 Any importer, manufacturer, dealer or collector who  
2 may lawfully sell rifles, shotguns or other legal firearms,  
3 or any part thereof, in this state, may sell the same to a  
4 resident of a state contiguous to this state, including a  
5 corporation or other business entity, maintaining a place  
6 of business in such state, provided the sale meets the  
7 lawful requirements of this state and the lawful require-  
8 ments of the state of residence of the purchaser, as well  
9 as the lawful requirements of any federal statute.

## CHAPTER 43

(House Bill No. 502—By Mr. Perry and Mr. Jones, of Roane)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine, prohibiting the lewd or licentious touching or fondling or the sexual molesting of any child under the age of twelve years; and providing criminal penalties.

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

That article eight, chapter sixty-one 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-nine, to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-29. Child molesting; penalties.**

1 No person over the age of eighteen years shall in a  
2 lewd or licentious manner touch or fondle or sexually  
3 molest any child under the age of twelve years. Any  
4 person who violates any provision of this section shall  
5 be guilty of a misdemeanor, and, upon conviction thereof,  
6 shall be fined not more than five hundred dollars, or  
7 imprisoned in the county jail not more than one year,  
8 or both fined and imprisoned. A person convicted for any  
9 second or subsequent offense under this section shall be  
10 guilty of a felony and shall be punished by imprisonment  
11 in the penitentiary for not less than one nor more than  
12 five years.

## CHAPTER 44

(Senate Bill No. 317—By Mr. Brotherton and Mr. Carrigan)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-three, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to debt pooling; penalties.

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

That section twenty-three, 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.**

#### **§61-10-23. Debt pooling; definition; offenses; penalty; jurisdiction; pleading and proof.**

1 "Debt pooling" shall mean the rendering in any manner  
2 of advice or services of any and every kind in the estab-  
3 lishment or operation of a plan pursuant to which a debtor  
4 would deposit or does deposit funds for the purpose of  
5 distributing such funds among his creditors. It shall be  
6 unlawful for any person to solicit in any manner a debt  
7 pooling. It shall further be unlawful for any person, ex-  
8 cept licensed attorneys, to make any charge for a debt  
9 pooling by way of fee, reimbursement of costs, or other-  
10 wise, in excess of an amount equal to two percent of  
11 the total amount of money actually deposited pursuant  
12 to a debt pooling: *Provided*, That any nonprofit firm,  
13 corporation or voluntary association may make an addi-  
14 tional charge not exceeding five percent of the total  
15 amount of money actually deposited pursuant to a debt  
16 pooling, to defray costs of counseling services furnished  
17 for the benefit of its clientele of debtors generally with  
18 respect to personal money management. Any person,  
19 whether acting as agent or otherwise, who violates any  
20 provision of this section shall be guilty of a misdemeanor,  
21 and, upon conviction, shall be fined not less than one



22 hundred nor more than two hundred fifty dollars or  
23 confined in jail not less than thirty nor more than sixty  
24 days or both. Justices of the peace and other competent  
25 courts shall have concurrent jurisdiction of offenses under  
26 this section. It shall not be necessary in any warrant  
27 issued or indictment returned under this section to  
28 allege exceptions or provisos contained in this section but  
29 in the trial of an offense subject thereto it shall be the  
30 duty of the state to negative such exceptions and provisos.

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## CHAPTER 45

(Senate Bill No. 352—By Mr. Brotherton and Mr. Carrigan)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one, relating to criminal conspiracy; prohibiting any conspiracy to commit an offense against the state of West Virginia or to defraud the state of West Virginia, the state or any county board of education, or any county or municipality of the state; providing that other provisions of the code shall not be superseded, limited, repealed or affected by said section thirty-one; prohibiting certain defense; and providing criminal penalties.

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

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

### **ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

#### **§61-10-31. Conspiracy; construction of section; penalties.**

1 It shall be unlawful for two or more persons to conspire  
2 (1) to commit any offense against the state or (2) to  
3 defraud the state, the state or any county board of  
4 education, or any county or municipality of the state, if,

5 in either case, one or more of such persons does any act  
6 to effect the object of the conspiracy.

7 Nothing in this section shall be construed to supersede,  
8 limit, repeal or affect the provisions of section eight,  
9 article nine, chapter three; section two, article one,  
10 chapter five; section thirty-eight, article three, chapter  
11 five-a; section seven, article seven, chapter twenty; sec-  
12 tion sixteen, article six, chapter sixty; sections seven,  
13 eight, nine and ten, article six, chapter sixty-one; or sec-  
14 tion one, article eight, chapter sixty-two; all of this code.  
15 It shall not be a defense to any prosecution under this  
16 section thirty-one that the conduct charged or proven is  
17 also a crime under any other provision or provisions of  
18 this code or the common law.

19 Any person who violates the provisions of this section  
20 by conspiring to commit an offense against the state  
21 which is a felony, or by conspiring to defraud the state,  
22 the state or any county board of education, or any county  
23 or municipality of the state, shall be guilty of a felony,  
24 and, upon conviction thereof, shall be punished by im-  
25 prisonment in the penitentiary for not less than one nor  
26 more than five years or by a fine of not more than ten  
27 thousand dollars, or, in the discretion of the court, by both  
28 such imprisonment and fine. Any person who violates the  
29 provisions of this section by conspiring to commit an  
30 offense against the state which is a misdemeanor shall  
31 be guilty of a misdemeanor, and, upon conviction thereof,  
32 shall be punished by confinement in the county jail for  
33 not more than one year or by a fine of not more than  
34 one thousand dollars, or, in the discretion of the court,  
35 by both such confinement and fine.

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## CHAPTER 46

(House Bill No. 612—By Mr. Huffman and Mr. Jones, of Roane)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chap-  
ter sixty-two of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to procedures in the trial of criminal cases; appointment and remuneration of appointed counsel.

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

That section one, article three, 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 3. TRIAL OF CRIMINAL CASES.**

**§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.**

1 When an indictment is found in a court having juris-  
2 diction, in any county, against a person for a felony, the  
3 accused, if in custody, or if he appear in discharge of  
4 his recognizance, or voluntarily, shall, unless good cause  
5 be shown for a continuance, be tried at the same term.  
6 If any witness for the accused be a nonresident of the  
7 state, or absent therefrom in any service or employ-  
8 ment, so that service of a subpoena cannot be had upon  
9 him in this state, or is aged or infirm so that he cannot  
10 attend upon the court at the trial, the accused may  
11 present to the court in which the case is pending, or to  
12 the judge thereof in vacation, an affidavit showing such  
13 facts, and stating therein what he expects to prove by  
14 any such witness, his name, residence, or place of ser-  
15 vice or employment; and if such court or judge be of  
16 the opinion that the evidence of any such witness, as  
17 stated in such affidavit, is necessary and material to the  
18 defense of the accused on his trial, an order may be  
19 made by such court or judge for the taking of the  
20 deposition of any such witness upon such notice to the  
21 prosecuting attorney, of the time and place of taking  
22 the same, as the court or judge may prescribe; and in  
23 such order the court or judge may authorize the em-  
24 ployment of counsel, practicing at or near the place  
25 where the deposition is to be taken, to cross-examine  
26 the witness on behalf of the state, the reasonable ex-  
27 pense whereof shall be paid out of the treasury of the  
28 state, upon certificate of the court wherein the case is

29 pending. Every deposition so taken may, on the motion  
30 of the defendant, so far as the evidence therein con-  
31 tained is competent and proper, be read to the jury on  
32 the trial of the case as evidence therein. A court of record  
33 having criminal jurisdiction may appoint counsel to as-  
34 sist an accused in criminal cases, except traffic viola-  
35 tions and violations of municipal ordinances, at any time  
36 upon request. A copy of the indictment and of the list  
37 of the jurors selected or summoned for his trial, as pro-  
38 vided in section three of this article, shall be furnished  
39 him, upon his request, at any time before the jury is im-  
40 paneled. In every case where the court appoints counsel  
41 for the accused and the accused presents an affidavit  
42 showing that he cannot pay therefor, the court shall,  
43 by order entered of record allow an attorney so ap-  
44 pointed a fee of not to exceed one hundred dollars in  
45 any misdemeanor case, and a fee of not to exceed two  
46 hundred dollars in any felony case. In misdemeanor  
47 cases, the fee so allowed shall be paid out of the general  
48 county fund, and in felony cases shall be paid by the  
49 state auditor as other fees in felony cases are paid. The  
50 amount so paid, in the event the accused shall not prevail,  
51 shall be and constitute a judgment of said court against  
52 the accused to be recovered as any other judgment for  
53 costs.

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## CHAPTER 47

(Senate Bill No. 26—By Mr. Harman)

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[Passed January 29, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six-a, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of correction, public institutions, and the payment of jail fees to county courts for juvenile escapees.

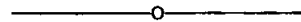
*Be it enacted by the Legislature of West Virginia:*

That section six-a, article thirteen, 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 13. DIVISION OF CORRECTION.**

**§62-13-6a. Payment of jail fees to county courts.**

1 The commissioner of public institutions is hereby  
2 authorized and directed to pay to the county court of  
3 any county, jail fees incurred by escapees of any West  
4 Virginia forestry camp for boys, the West Virginia indus-  
5 trial home for girls or the West Virginia industrial school  
6 for boys, when said escapees are confined in said county  
7 jails. Said jail fee shall not exceed the sum of two dollars  
8 per diem per prisoner.



## CHAPTER 48

(Senate Bill No. 65—By Mr. Holliday and Mr. Sharpe)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend chapter sixty-two 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 enacting the agreement on detainers; defining appropriate court as a court of record with criminal jurisdiction; providing for enforcement of the agreement by all courts, departments, agencies, officers and employees of the state and its political subdivisions; prohibiting escape from temporary custody; providing that application of the "habitual criminal" law is not required; requiring delivery of custody of an inmate pursuant to the operation of the agreement on detainers; and designating the commissioner of public institutions as the central administrator and chief information officer of the agreement on detainers.

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

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

**ARTICLE 14. AGREEMENT ON DETAINERS.**

§62-14-1. Enactment of compact.

§62-14-2. "Appropriate court" defined.

§62-14-3. Enforcement of agreement.

§62-14-4. Application of habitual criminal law not required.

§62-14-5. Escape of prisoner while in temporary custody.

§62-14-6. Delivering custody of prisoner.

§62-14-7. Central administrator and information agent.

**§62-14-1. Enactment of compact.**

1 The agreement on detainers is hereby enacted into law  
2 and entered into by this state with all other jurisdictions  
3 legally joining therein in the form substantially as fol-  
4 lows:

5

**AGREEMENT ON DETAINERS**

6 The contracting states solemnly agree that:

**ARTICLE I**

1 The party states find that charges outstanding against  
2 a prisoner, detainers based on untried indictments, in-  
3 formations or complaints, and difficulties in securing  
4 speedy trial of persons already incarcerated in other  
5 jurisdictions, produce uncertainties which obstruct pro-  
6 grams of prisoner treatment and rehabilitation. Accord-  
7 ingly, it is the policy of the party states and the purpose  
8 of this agreement to encourage the expeditious and order-  
9 ly disposition of such charges and determination of the  
10 proper status of any and all detainers based on untried  
11 indictments, informations or complaints. The party states  
12 also find that proceedings with reference to such charges  
13 and detainers, when emanating from another jurisdiction,  
14 cannot properly be had in the absence of cooperative  
15 procedures. It is the further purpose of this agreement  
16 to provide such cooperative procedures.

**ARTICLE II**

1 As used in this agreement:

2 (a) "State" shall mean a state of the United States;  
3 the United States of America; a territory or possession  
4 of the United States; the District of Columbia; the Com-  
5 monwealth of Puerto Rico.

6 (b) "Sending state" shall mean a state in which a  
7 prisoner is incarcerated at the time that he initiates a  
8 request for final disposition pursuant to Article III hereof  
9 or at the time that a request for custody or availability  
10 is initiated pursuant to Article IV hereof.

11 (c) "Receiving state" shall mean the state in which  
12 trial is to be had on an indictment, information or com-  
13 plaint pursuant to Article III or Article IV hereof.

### ARTICLE III

1 (a) Whenever a person has entered upon a term of im-  
2 prisonment in a penal or correctional institution of a party  
3 state, and whenever during the continuance of the term of  
4 imprisonment there is pending in any other party state  
5 any untried indictment, information or complaint on  
6 the basis of which a detainer has been lodged against  
7 the prisoner, he shall be brought to trial within one  
8 hundred eighty days after he shall have caused to be  
9 delivered to the prosecuting officer and the appropriate  
10 court of the prosecuting officer's jurisdiction written  
11 notice of the place of his imprisonment and his request  
12 for a final disposition to be made of the indictment, in-  
13 formation or complaint: *Provided*, That for good cause  
14 shown in open court, the prisoner or his counsel being  
15 present, the court having jurisdiction of the matter may  
16 grant any necessary or reasonable continuance. The  
17 request of the prisoner shall be accompanied by a cer-  
18 tificate of the appropriate official having custody of the  
19 prisoner, stating the term of commitment under which  
20 the prisoner is being held, the time already served, the  
21 time remaining to be served on the sentence, the amount  
22 of good time earned, the time of parole eligibility of  
23 the prisoner, and any decisions of the state parole agency  
24 relating to the prisoner.

25 (b) The written notice and request for final disposition  
26 referred to in paragraph (a) hereof shall be given or

27 sent by the prisoner to the warden, superintendent or  
28 other official having custody of him, who shall promptly  
29 forward it together with the certificate to the appro-  
30 priate prosecuting official and court by registered or cer-  
31 tified mail, return receipt requested.

32 (c) The warden, superintendent or other official hav-  
33 ing custody of the prisoner shall promptly inform him of  
34 the source and contents of any detainer lodged against  
35 him and shall also inform him of his right to make a  
36 request for final disposition of the indictment, informa-  
37 tion or complaint on which the detainer is based.

38 (d) Any request for final disposition made by a  
39 prisoner pursuant to paragraph (a) hereof shall operate  
40 as a request for final disposition of all untried indict-  
41 ments, informations or complaints on the basis of which  
42 detainers have been lodged against the prisoner from  
43 the state to whose prosecuting official the request for  
44 final disposition is specifically directed. The warden,  
45 superintendent or other official having custody of the  
46 prisoner shall forthwith notify all appropriate prosecut-  
47 ing officers and courts in the several jurisdictions within  
48 the state to which the prisoner's request for final dis-  
49 position is being sent of the proceeding being initiated  
50 by the prisoner. Any notification sent pursuant to this  
51 paragraph shall be accompanied by copies of the pris-  
52 oner's written notice, request, and the certificate. If trial  
53 is not had on any indictment, information or complaint  
54 contemplated hereby prior to the return of the prisoner  
55 to the original place of imprisonment, such indictment,  
56 information or complaint shall not be of any further  
57 force or effect, and the court shall enter an order dis-  
58 missing the same with prejudice.

59 (e) Any request for final disposition made by a pris-  
60 oner pursuant to paragraph (a) hereof shall also be  
61 deemed to be a waiver of extradition with respect to  
62 any charge or proceeding contemplated thereby or in-  
63 cluded therein by reason of paragraph (d) hereof, and  
64 a waiver of extradition to the receiving state to serve  
65 any sentence there imposed upon him, after completion  
66 of his term of imprisonment in the sending state. The



67 request for final disposition shall also constitute a consent  
68 by the prisoner to the production of his body in any  
69 court where his presence may be required in order to  
70 effectuate the purposes of this agreement and a further  
71 consent voluntarily to be returned to the original place  
72 of imprisonment in accordance with the provisions of  
73 this agreement. Nothing in this paragraph shall prevent  
74 the imposition of a concurrent sentence if otherwise  
75 permitted by law.

76 (f) Escape from custody by the prisoner subsequent  
77 to his execution of the request for final disposition re-  
78 ferred to in paragraph (a) hereof shall void the request.

#### ARTICLE IV

1 (a) The appropriate officer of the jurisdiction in which  
2 an untried indictment, information or complaint is pend-  
3 ing shall be entitled to have a prisoner against whom he  
4 has lodged a detainer and who is serving a term of im-  
5 prisonment in any party state made available in accor-  
6 dance with Article V (a) hereof upon presentation of a  
7 written request for temporary custody or availability to  
8 the appropriate authorities of the state in which the  
9 prisoner is incarcerated: *Provided*, That the court having  
10 jurisdiction of such indictment, information or complaint  
11 shall have duly approved, recorded and transmitted the  
12 request: *Provided further*, That there shall be a period  
13 of thirty days after receipt by the appropriate authorities  
14 before the request be honored, within which period the  
15 governor of the sending state may disapprove the request  
16 for temporary custody or availability, either upon his own  
17 motion or upon motion of the prisoner.

18 (b) Upon receipt of the officer's written request as  
19 provided in paragraph (a) hereof, the appropriate authori-  
20 ties having the prisoner in custody shall furnish the  
21 officer with a certificate stating the term of commitment  
22 under which the prisoner is being held, the time already  
23 served, the time remaining to be served on the sentence,  
24 the amount of good time earned, the time of parole eligi-  
25 bility of the prisoner, and any decisions of the state parole  
26 agency relating to the prisoner. Said authorities simultane-

27 ously shall furnish all other officers and appropriate courts  
28 in the receiving state who have lodged detainers against  
29 the prisoner with similar certificates and with notices in-  
30 forming them of the request for custody or availability  
31 and of the reasons therefor.

32 (c) In respect of any proceeding made possible by this  
33 Article, trial shall be commenced within one hundred  
34 twenty days of the arrival of the prisoner in the receiving  
35 state, but for good cause shown in open court, the prisoner  
36 or his counsel being present, the court having jurisdiction  
37 of the matter may grant any necessary or reasonable  
38 continuance.

39 (d) Nothing contained in this Article shall be con-  
40 strued to deprive any prisoner of any right which he may  
41 have to contest the legality of his delivery as provided  
42 in paragraph (a) hereof, but such delivery may not be  
43 opposed or denied on the ground that the executive  
44 authority of the sending state has not affirmatively con-  
45 sented to or ordered such delivery.

46 (e) If trial is not had on any indictment, information  
47 or complaint contemplated hereby prior to the prisoner's  
48 being returned to the original place of imprisonment  
49 pursuant to Article V (e) hereof, such indictment, in-  
50 formation or complaint shall not be of any further  
51 force or effect, and the court shall enter an order dis-  
52 missing the same with prejudice.

#### ARTICLE V

1 (a) In response to a request made under Article III  
2 or Article IV hereof, the appropriate authority in a send-  
3 ing state shall offer to deliver temporary custody of such  
4 prisoner to the appropriate authority in the state where  
5 such indictment, information or complaint is pending  
6 against such person in order that speedy and efficient  
7 prosecution may be had. If the request for final disposition  
8 is made by the prisoner, the offer of temporary custody  
9 shall accompany the written notice provided for in Article  
10 III of this agreement. In the case of a federal prisoner, the  
11 appropriate authority in the receiving state shall be en-  
12 titled to temporary custody as provided by this agreement

13 or to the prisoner's presence in federal custody at the  
14 place for trial, whichever custodial arrangement may be  
15 approved by the custodian.

16 (b) The officer or other representative of a state ac-  
17 cepting an offer of temporary custody shall present the  
18 following upon demand:

19 (1) Proper identification and evidence of his authority  
20 to act for the state into whose temporary custody the  
21 prisoner is to be given.

22 (2) A duly certified copy of the indictment, informa-  
23 tion or complaint on the basis of which the detainer has  
24 been lodged and on the basis of which the request for  
25 temporary custody of the prisoner has been made.

26 (c) If the appropriate authority shall refuse or fail to  
27 accept temporary custody of said person, or in the event  
28 that an action on the indictment, information or complaint  
29 on the basis of which the detainer has been lodged is not  
30 brought to trial within the period provided in Article III  
31 or Article IV hereof, the appropriate court of the juris-  
32 diction where the indictment, information or complaint  
33 has been pending shall enter an order dismissing the same  
34 with prejudice, and any detainer based thereon shall  
35 cease to be of any force or effect.

36 (d) The temporary custody referred to in this agree-  
37 ment shall be only for the purpose of permitting prose-  
38 cution on the charge or charges contained in one or more  
39 untried indictments, informations or complaints which  
40 form the basis of the detainer or detainers or for prose-  
41 cution on any other charge or charges arising out of the  
42 same transaction. Except for his attendance at court and  
43 while being transported to or from any place at which  
44 his presence may be required, the prisoner shall be held  
45 in a suitable jail or other facility regularly used for  
46 persons awaiting prosecution.

47 (e) At the earliest practicable time consonant with  
48 the purposes of this agreement, the prisoner shall be re-  
49 turned to the sending state.

50 (f) During the continuance of temporary custody or  
51 while the prisoner is otherwise being made available for

52 trial as required by this agreement, time being served on  
53 the sentence shall continue to run but good time shall  
54 be earned by the prisoner only if, and to the extent that,  
55 the law and practice of the jurisdiction which imposed  
56 the sentence may allow.

57 (g) For all purposes other than that for which tempo-  
58 rary custody as provided in this agreement is exercised,  
59 the prisoner shall be deemed to remain in the custody of  
60 and subject to the jurisdiction of the sending state and any  
61 escape from temporary custody may be dealt with in the  
62 same manner as an escape from the original place of im-  
63 prisonment or in any other manner permitted by law.

64 (h) From the time that a party state receives custody of  
65 a prisoner pursuant to this agreement until such prisoner  
66 is returned to the territory and custody of the sending  
67 state, the state in which the one or more untried indict-  
68 ments, informations or complaints are pending or in  
69 which trial is being had shall be responsible for the  
70 prisoner and shall also pay all costs of transporting, caring  
71 for, keeping and returning the prisoner. The provisions  
72 of this paragraph shall govern unless the states concerned  
73 shall have entered into a supplementary agreement pro-  
74 viding for a different allocation of costs and responsi-  
75 bilities as between or among themselves. Nothing herein  
76 contained shall be construed to alter or affect any internal  
77 relationship among the departments, agencies and officers  
78 of and in the government of a party state, or between a  
79 party state and its subdivisions, as to the payment of costs,  
80 or responsibilities therefor.

#### ARTICLE VI

1 (a) In determining the duration and expiration dates  
2 of the time periods provided in Articles III and IV of  
3 this agreement, the running of said time periods shall be  
4 tolled whenever and for as long as the prisoner is unable  
5 to stand trial, as determined by the court having juris-  
6 diction of the matter.

7 (b) No provision of this agreement, and no remedy  
8 made available by this agreement, shall apply to any  
9 person who is adjudged to be mentally ill.

**ARTICLE VII**

1 Each state party to this agreement shall designate an  
2 officer who, acting jointly with like officers of other party  
3 states, shall promulgate rules and regulations to carry  
4 out more effectively the terms and provisions of this  
5 agreement, and who shall provide, within and without  
6 the state, information necessary to the effective opera-  
7 tion of this agreement.

**ARTICLE VIII**

1 This agreement shall enter into full force and effect as  
2 to a party state when such state has enacted the same  
3 into law. A state party to this agreement may withdraw  
4 herefrom by enacting a statute repealing the same. How-  
5 ever, the withdrawal of any state shall not affect the  
6 status of any proceedings already initiated by inmates  
7 or by state officers at the time such withdrawal takes  
8 effect, nor shall it affect their rights in respect thereof.

**ARTICLE IX**

1 This agreement shall be liberally construed so as to  
2 effectuate its purposes. The provisions of this agreement  
3 shall be severable and if any phrase, clause, sentence or  
4 provision of this agreement is declared to be contrary to  
5 the constitution of any party state or of the United States  
6 or the applicability thereof to any government, agency,  
7 person or circumstance is held invalid, the validity of  
8 the remainder of this agreement and the applicability  
9 thereof to any government, agency, person or circum-  
10 stance shall not be affected thereby. If this agreement  
11 shall be held contrary to the constitution of any state  
12 party hereto, the agreement shall remain in full force  
13 and effect as to the remaining states and in full force and  
14 effect as to the state affected as to all severable matters.

**§62-14-2. "Appropriate court" defined.**

1 The phrase "appropriate court" as used in the agree-  
2 ment on detainers shall, with reference to the courts of  
3 this state, mean a court of record with criminal jurisdic-  
4 tion.

**§62-14-3. Enforcement of agreement.**

1 All courts, departments, agencies, officers and em-  
2 ployees of this state and its political subdivisions are  
3 hereby directed to enforce the agreement on detainees  
4 and to cooperate with one another and with other party  
5 states in enforcing the agreement and effectuating its  
6 purpose.

**§62-14-4. Application of habitual criminal law not required.**

1 Nothing in this article or in the agreement on detainees  
2 shall be construed to require the application of sections  
3 eighteen and nineteen of article eleven, chapter sixty-one  
4 of the code of West Virginia to any person on account of  
5 any conviction had in a proceeding brought to final dis-  
6 position by reason of the use of said agreement.

**§62-14-5. Escape of prisoner while in temporary custody.**

1 Escape or attempt to escape from custody, whether  
2 within or without this state, while in the temporary  
3 custody of an authority of another state acting pursuant  
4 to the agreement on detainees shall constitute an offense  
5 against the laws of this state to the same extent and  
6 degree as an escape from the institution in which the  
7 prisoner was confined immediately prior to having been  
8 released to temporary custody and shall be punishable  
9 in the same manner as an escape or attempt to escape  
10 from said institution.

**§62-14-6. Delivering custody of prisoner.**

1 It shall be lawful and mandatory upon the warden,  
2 superintendent or other state official in charge of a penal  
3 or correctional institution in this state to give over the  
4 person of any inmate thereof whenever so required by  
5 the operation of the agreement on detainees.

**§62-14-7. Central administrator and information agent.**

1 The commissioner of public institutions shall serve as  
2 the central administrator and chief information officer  
3 for the agreement on detainees, pursuant to the provi-  
4 sions of Article VII of the agreement.

## CHAPTER 49

(Com. Sub. for the Senate Bill No. 350—Originating in the  
Senate Committee on Finance)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section two, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of finance and administration and the commissioner thereof; abolishing the office of commissioner and creating a new office of commissioner; and relating to his term and the compensation of such commissioner.

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

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

### **ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.**

#### **§5A-1-2. Department of finance and administration continued; commissioner; office of commissioner of finance and administration; divisions; directors.**

1 The department of finance and administration is hereby  
2 continued in the executive branch of state government.  
3 The office of commissioner of finance and administration  
4 is hereby abolished and a new office of commissioner of  
5 finance and administration is hereby created. The com-  
6 missioner shall be the chief executive officer of the de-  
7 partment and director of the budget and shall be ap-  
8 pointed by the governor, by and with the advice and  
9 consent of the Senate, for a term not exceeding the term  
10 of the governor. The commissioner shall serve at the  
11 will and pleasure of the governor. On and after July  
12 one, one thousand nine hundred seventy-one, the annual  
13 compensation of the commissioner shall be twenty thou-  
14 sand dollars. There shall be in the department of finance  
15 and administration a budget division, a purchasing divi-  
16 sion and a general services division. Each division shall

17 be headed by a director who shall be appointed by the  
18 commissioner to serve at his will and pleasure.

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## CHAPTER 50

(House Bill No. 597—By Mr. Speaker, Mr. Boiarsky, and Mr. McManus)

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[Passed February 9, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section thirteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the estimate of revenues to be collected by each classification of tax during a fiscal year and the collection of revenues by each classification of tax each month during a fiscal year and the time for certifying said estimate of revenues to the governor and legislative auditor.

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

That section thirteen, 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.**

**§5A-2-13. Estimates of revenue and reports on revenue collections.**

1 At the beginning of each fiscal year the commissioner  
2 shall estimate the revenue to be collected month by  
3 month by each classification of tax for the fiscal year  
4 as it relates to the official estimate of each tax for the  
5 fiscal year and the commissioner shall certify this esti-  
6 mate to the governor and the legislative auditor.

7 The commissioner shall ascertain the collection of the  
8 revenue of the state, and shall determine each month  
9 of the fiscal year the proportion which the amount ac-  
10 tually collected bears to the collection estimated for that  
11 period. The commissioner shall certify to the governor  
12 and the legislative auditor, as soon as possible after the



13 close of each month, and not later than the fifteenth day  
14 of each month, and at such other times as the governor  
15 or legislative auditor may request, the condition of the  
16 state revenues and of the several funds of the state. For  
17 the purposes of this section, the commissioner shall have  
18 the authority to require all necessary estimates and re-  
19 ports from any spending unit of the state government.

20 The first report shall be due not later than the fifteenth  
21 day of August, one thousand nine hundred seventy-one.

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## CHAPTER 51

(House Bill No. 662—By Mr. Speaker, Mr. Boiarsky, and Mr. Potter)

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[Passed February 5, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the commissioner of the department of finance and administration to lease certain space at a price not to exceed fair rental value.

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

That section three, article five, 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 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.**

**§5A-5-3. Selection of grounds, etc.; acquisition by contract or lease.**

1 The commissioner shall have sole authority to select  
2 and to acquire by contract or lease, in the name of the  
3 state, all grounds, buildings, office space or other space,  
4 the rental of which is necessarily required by any spend-  
5 ing unit, upon a certificate from the chief executive officer  
6 of said spending unit that the grounds, buildings, office  
7 space or other space requested is necessarily required  
8 for the proper function of said spending unit and that

9 satisfactory grounds, buildings, office space or other space  
10 is not available on grounds and in buildings now owned  
11 or leased by the state. The commissioner shall, before  
12 executing any rental contract or lease, determine the  
13 fair rental value for the rental of the requested grounds,  
14 buildings, office space or other space, in the condition  
15 in which they exist, and shall contract for or lease said  
16 premises at a price not to exceed the fair rental value  
17 thereof.

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## CHAPTER 52

(House Bill No. 844—By Mr. Seibert)

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[Passed February 20, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section six, article seven, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the information system services division.

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

That section six, article seven, 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 7. INFORMATION SYSTEM SERVICES DIVISION.**

**§5A-7-6. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.**

1 The division shall be responsible for the planning of  
2 an informational and analytical system for use by all  
3 branches of state government. The division shall also  
4 evaluate the economic justification, system design and  
5 suitability of equipment and systems used in state gov-  
6 ernment. The director shall report to the commis-  
7 sioner.

8 The governor shall review such findings and recom-  
9 mendations and is hereby authorized to order the trans-

10 fer, in whole or in part, to the division from any other  
11 department or agency of state government, except the  
12 Legislature, the judiciary and the West Virginia board  
13 of regents, of all data-processing activities, equipment,  
14 and personnel utilized for data-processing purposes:  
15 *Provided*, That any such transfer shall not be effective  
16 until ninety days following the entry of the transfer  
17 order by the governor. The director shall be responsible  
18 for the development of a professional staff to supervise  
19 and train personnel to carry out the technical work of  
20 the division.

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## CHAPTER 53

(Senate Bill No. 39—By Mr. Brotherton)

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[Passed February 4, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact sections twelve, twelve-a and twelve-c, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons authorized to perform marriages, the qualifications and bonding of those so authorized, the performance of marriage ceremonies and records with respect thereto.

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

That sections twelve, twelve-a and twelve-c, article one, 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 1. MARRIAGE.**

§48-1-12. Persons authorized to celebrate marriages.

§48-1-12a. Qualifications of minister, priest or rabbi for celebrating marriages.

§48-1-12c. Ritual for ceremony of marriage by minister, rabbi or priest; record of marriage.

§48-1-12. Persons authorized to celebrate marriages.

- 1 Any minister, priest or rabbi, over the age of twenty-
- 2 one years, who has complied with the provisions of section

3 twelve-a of this article, or a judge of any court of record  
4 in this state, is authorized to celebrate the rites of mar-  
5 riage in all the counties of the state. No person, other  
6 than a minister, priest or rabbi, who has complied with  
7 the provisions of section twelve-a of this article, or a  
8 judge of any court of record in this state, shall hereafter  
9 celebrate the rites of marriage in this state, anything in  
10 any act of the Legislature or of any court to the contrary,  
11 notwithstanding.

12 Wherever in this article the terms "minister," "priest"  
13 or "rabbi" shall appear, the same shall be understood  
14 and held in all respects to include, without being limited  
15 to, a leader or representative of a generally recognized  
16 spiritual assembly, church or religious organization which  
17 does not formally designate or recognize persons as min-  
18 isters, priests or rabbis.

**§48-1-12a. Qualifications of minister, priest or rabbi for cele-  
brating marriages.**

1 When any minister, priest or rabbi shall, before the  
2 county court of any county in this state, or the clerk of  
3 any such court in vacation, produce proof that he is over  
4 the age of twenty-one, duly licensed by, and being in  
5 regular communion with, the religious society of which he  
6 is a member, and give bond in the penalty of fifteen  
7 hundred dollars, with surety approved by such court or  
8 clerk thereof in vacation, such court or clerk may make  
9 an order authorizing him to celebrate the rites of mar-  
10 riage in all the counties of the state: *Provided, however,*  
11 That any minister, priest or rabbi who gives proof  
12 before the county court of any county in this state, or  
13 the clerk of any such court in vacation, of his ordination  
14 or authorization by his respective church, denomination,  
15 synagogue or religious society, shall be exempted from  
16 the giving of such bond.

**§48-1-12c. Ritual for ceremony of marriage by minister, rabbi  
or priest; record of marriage.**

1 A minister, priest or rabbi authorized to celebrate  
2 the rites of marriage shall perform the ceremony of  
3 marriage according to the rites and ceremonies of his

4 religious denomination, church, synagogue or religious  
5 society and the laws of the state of West Virginia.  
6 A record of each marriage performed, with the names  
7 of the parties, their respective places of residence prior to  
8 marriage, and the date of marriage, shall be kept by the  
9 officiating minister, priest or rabbi in the permanent  
10 record of the church, synagogue or religious society which  
11 he serves.

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## CHAPTER 54

(Com. Sub. for Senate Bill No. 38—Originating in the Senate  
Committee on the Judiciary)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to repeal articles eight, eight-a and eight-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new chapter of said code, designated chapter sixty-a, relating to narcotics, marihuana and drugs generally; providing for the adoption of the uniform controlled substances act; establishing criminal offenses; and providing criminal penalties.

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

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

### **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

#### **Article**

- 1. Definitions.**
- 2. Standards and Schedules.**
- 3. Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.**
- 4. Offenses and Penalties.**
- 5. Enforcement and Administrative Provisions.**
- 6. Miscellaneous Provisions.**

**ARTICLE 1. DEFINITIONS.****§60A-1-101. Definitions.**

1 As used in this act:

2 (a) "Administer" means the direct application of a  
3 controlled substance, whether by injection, inhalation,  
4 ingestion, or any other means, to the body of a patient  
5 or research subject by:

6 (1) a practitioner (or, in his presence, by his authorized  
7 agent), or

8 (2) the patient or research subject at the direction and  
9 in the presence of the practitioner.

10 (b) "Agent" means an authorized person who acts on  
11 behalf of or at the direction of a manufacturer, distri-  
12 butor, or dispenser. It does not include a common or con-  
13 tract carrier, public warehouseman, or employee of the  
14 carrier or warehouseman.

15 (c) "Bureau" means the "Bureau of Narcotics and  
16 Dangerous Drugs, United States Department of Justice,"  
17 or its successor agency.

18 (d) "Controlled substance" means a drug, substance,  
19 or immediate precursor in Schedules I through V of article  
20 two.

21 (e) "Counterfeit substance" means a controlled sub-  
22 stance which, or the container or labeling of which,  
23 without authorization, bears the trademark, trade name,  
24 or other identifying mark, imprint, number or device,  
25 or any likeness thereof, of a manufacturer, distributor, or  
26 dispenser other than the person who in fact manufactured,  
27 distributed, or dispensed the substance.

28 (f) "Deliver" or "delivery" means the actual, con-  
29 structive, or attempted transfer from one person to an-  
30 other of a controlled substance, whether or not there is  
31 an agency relationship.

32 (g) "Dispense" means to deliver a controlled substance  
33 to an ultimate user or research subject by or pursuant to  
34 the lawful order of a practitioner, including the prescrib-  
35 ing, administering, packaging, labeling, or compounding  
36 necessary to prepare the substance for that delivery.

37 (h) "Dispenser" means a practitioner who dispenses.

38 (i) "Distribute" means to deliver other than by ad-  
39 ministering or dispensing a controlled substance.

40 (j) "Distributor" means a person who distributes.

41 (k) "Drug" means (1) substances recognized as drugs  
42 in the official "United States Pharmacopoeia, official  
43 Homeopathic Pharmacopoeia of the United States, or  
44 official National Formulary," or any supplement to any of  
45 them; (2) substances intended for use in the diagnosis,  
46 cure, mitigation, treatment, or prevention of disease in  
47 man or animals; (3) substances (other than food) in-  
48 tended to affect the structure or any function of the  
49 body of man or animals; and (4) substances intended  
50 for use as a component of any article specified in clause  
51 (1), (2) or (3) of this subdivision. It does not include  
52 devices or their components, parts, or accessories.

53 (l) "Immediate precursor" means a substitute which  
54 the "West Virginia Board of Pharmacy" (hereinafter in  
55 this act referred to as the state board of pharmacy)  
56 has found to be and by rule designates as being the  
57 principal compound commonly used or produced pri-  
58 marily for use, and which is an immediate chemical inter-  
59 mediary used or likely to be used in the manufacture of  
60 a controlled substance, the control of which is necessary  
61 to prevent, curtail, or limit manufacture.

62 (m) "Manufacture" means the production, preparation,  
63 propagation, compounding, conversion, or processing of  
64 a controlled substance, either directly or indirectly by  
65 extraction from substances of natural origin, or inde-  
66 pendently by means of chemical synthesis, or by a com-  
67 bination of extraction and chemical synthesis, and in-  
68 cludes any packaging or repackaging of the substance or  
69 labeling or relabeling of its container, except that this  
70 term does not include the preparation or compounding  
71 of a controlled substance by an individual for his own  
72 use or the preparation, compounding, packaging, or label-  
73 ing of a controlled substance:

74 (1) by a practitioner as an incident to his administer-  
75 ing or dispensing of a controlled substance in the course  
76 of his professional practice, or

77 (2) by a practitioner, or by his authorized agent under  
78 his supervision, for the purpose of, or as an incident to,  
79 research, teaching, or chemical analysis and not for  
80 sale.

81 (n) "Marihuana" means all parts of the plant "Cannabis  
82 sativa L.," whether growing or not; the seeds thereof;  
83 the resin extracted from any part of the plant; and every  
84 compound, manufacture, salt, derivative, mixture, or prep-  
85 aration of the plant, its seeds, or resin. It does not in-  
86 clude the mature stalks of the plant, fiber produced  
87 from the stalks, oil or cake made from the seeds of the  
88 plant, any other compound, manufacture, salt, derivative,  
89 mixture, or preparation of the mature stalks (except  
90 the resin extracted therefrom), fiber, oil or cake, or  
91 the sterilized seed of the plant which is incapable of  
92 germination.

93 (o) "Narcotic drug" means any of the following,  
94 whether produced directly or indirectly by extraction  
95 from substances of vegetable origin, or independently by  
96 means of chemical synthesis, or by a combination of ex-  
97 traction and chemical synthesis:

98 (1) Opium and opiate, and any salt, compound, deriva-  
99 tive, or preparation of opium or opiate.

100 (2) Any salt, compound, isomer, derivative, or prep-  
101 aration thereof which is chemically equivalent or iden-  
102 tical with any of the substances referred to in clause  
103 (1) of this subdivision, but not including the isoquinoline  
104 alkaloids of opium.

105 (3) Opium poppy and poppy straw.

106 (4) Coca leaves and any salt, compound, derivative,  
107 or preparation of coca leaves, and any salt, compound,  
108 isomer, derivative, or preparation thereof which is chemi-  
109 cally equivalent or identical with any of these sub-  
110 stances, but not including decocainized coca leaves or  
111 extractions of coca leaves which do not contain cocaine  
112 or ecgonine.

113 (p) "Opiate" means any substance having an addiction-  
114 forming or addiction-sustaining liability similar to mor-  
115 phine or being capable of conversion into a drug having



116 addiction-forming or addiction-sustaining liability. It does  
117 not include, unless specifically designated as controlled  
118 under section 201, article two of this act, the dextrorota-  
119 tory isomer of 3-methoxy-n-methylmorphinan and its  
120 salts (dextromethorphan). It does include its racemic  
121 and levorotatory forms.

122 (q) "Opium poppy" means the plant of the species  
123 "Papaver somniferum L.," except its seeds.

124 (r) "Person" means individual, corporation, govern-  
125 ment or governmental subdivision or agency, business  
126 trust, estate, trust, partnership or association, or any  
127 other legal entity.

128 (s) "Poppy straw" means all parts, except the seeds,  
129 of the opium poppy, after mowing.

130 (t) "Practitioner" means:

131 (1) A physician, dentist, veterinarian, scientific investi-  
132 gator, or other person licensed, registered, or other-  
133 wise permitted to distribute, dispense, conduct research  
134 with respect to, or to administer a controlled substance  
135 in the course of professional practice or research in  
136 this state.

137 (2) A pharmacy, hospital, or other institution licensed,  
138 registered, or otherwise permitted to distribute, dispense,  
139 conduct research with respect to, or to administer a  
140 controlled substance in the course of professional prac-  
141 tice or research in this state.

142 (u) "Production" includes the manufacture, planting,  
143 cultivation, growing or harvesting of a controlled sub-  
144 stance.

145 (v) "State," when applied to a part of the United  
146 States, includes any state, district, commonwealth, terri-  
147 tory, insular possession thereof, and any area subject to  
148 the legal authority of the United States of America.

149 (w) "Ultimate user" means a person who lawfully  
150 possesses a controlled substance for his own use or for  
151 the use of a member of his household or for administer-  
152 ing to an animal owned by him or by a member of his  
153 household.

**ARTICLE 2. STANDARDS AND SCHEDULES.**

- §60A-2-201. Authority to control.
- §60A-2-202. Nomenclature.
- §60A-2-203. Schedule I tests.
- §60A-2-204. Schedule I.
- §60A-2-205. Schedule II tests.
- §60A-2-206. Schedule II.
- §60A-2-207. Schedule III tests.
- §60A-2-208. Schedule III.
- §60A-2-209. Schedule IV tests.
- §60A-2-210. Schedule IV.
- §60A-2-211. Schedule V tests.
- §60A-2-212. Schedule V.
- §60A-2-213. Republishing of schedules.

**§60A-2-201. Authority to control.**

- 1 (a) The state board of pharmacy shall administer this
- 2 act and may add substances to or delete or reschedule
- 3 all substances enumerated in the schedule in sections
- 4 204, 206, 208, 210 or 212, pursuant to the provisions of
- 5 article three, chapter twenty-nine-a of this code. In mak-
- 6 ing a determination regarding a substance, the state
- 7 board of pharmacy shall consider the following:
- 8 (1) the actual or relative potential for abuse;
- 9 (2) the scientific evidence of its pharmacological ef-
- 10 fect, if known;
- 11 (3) the state of current scientific knowledge regard-
- 12 ing the substance;
- 13 (4) the history and current pattern of abuse;
- 14 (5) the scope, duration, and significance of abuse;
- 15 (6) the risk to the public health;
- 16 (7) the potential of the substance to produce psychic
- 17 or physiological dependence liability; and
- 18 (8) whether the substance is an immediate precursor
- 19 of a substance already controlled under this article.
- 20 (b) After considering the factors enumerated in sub-
- 21 section (a), the state board of pharmacy shall make
- 22 findings with respect thereto and issue a rule controlling
- 23 the substance if it finds the substance has a potential
- 24 for abuse.
- 25 (c) If the state board of pharmacy designates a sub-
- 26 stance as an immediate precursor, substances which are
- 27 precursors of the controlled precursor shall not be sub-
- 28 ject to control solely because they are precursors of the
- 29 controlled precursor.

30 (d) If any substance is designated, rescheduled, or de-  
31 leted as a controlled substance under federal law and  
32 notice thereof is given to the state board of pharmacy,  
33 the said board shall similarly control the substance under  
34 this act after the expiration of thirty days from publication  
35 in the "Federal Register" of a final order designating a  
36 substance as a controlled substance or rescheduling or  
37 deleting a substance, unless within that thirty-day  
38 period, the state board of pharmacy objects to inclusion,  
39 rescheduling, or deletion. In that case, the state board  
40 of pharmacy shall publish the reasons for objection and  
41 afford all interested parties an opportunity to be heard.  
42 At the conclusion of the hearing, the state board of phar-  
43 macy shall publish its decision, which shall be final un-  
44 less altered by statute. Upon publication of objection to  
45 inclusion, rescheduling, or deletion under this act by  
46 the state board of pharmacy, control under this act is  
47 stayed until the state board of pharmacy publishes its  
48 decision. Each such publication shall be published as a  
49 Class I-O legal advertisement in compliance with the  
50 provisions of article three, chapter fifty-nine of this code,  
51 and the publication area for such publication shall be  
52 each county of the state.

53 (e) Authority to control under this section does not  
54 extend to distilled spirits, wine, malt beverages, or tobac-  
55 co as those terms are defined or used in other chapters  
56 of this code nor to any nonnarcotic substance if such sub-  
57 stance may under the "Federal Food, Drug and Cosmetic  
58 Act" and the law of this state be lawfully sold over the  
59 counter without a prescription.

#### §60A-2-202. Nomenclature.

1 The controlled substances listed or to be listed in the  
2 schedules in sections 204, 206, 208, 210, and 212 are in-  
3 cluded by whatever official, common, usual, chemical, or  
4 trade name designated.

#### §60A-2-203. Schedule I tests.

1 The state board of pharmacy shall place a substance in  
2 Schedule I if it finds that the substance:

3 (1) has high potential for abuse; and

4 (2) has no accepted medical use in treatment in the  
5 United States or lacks accepted safety for use in treat-  
6 ment under medical supervision.

**§60A-2-204. Schedule I.**

1 (a) The controlled substances listed in this section  
2 are included in Schedule I.

3 (b) Any of the following opiates, including their  
4 isomers, esters, ethers, salts, and salts of isomers, esters,  
5 and ethers, unless specifically excepted, whenever the  
6 existence of these isomers, esters, ethers, and salts is  
7 possible within the specific chemical designation:

- 8 (1) Acetylmethadol;
- 9 (2) Allylprodine;
- 10 (3) Alphacetylmethadol;
- 11 (4) Alphameprodine;
- 12 (5) Alphamethadol;
- 13 (6) Benzethidine;
- 14 (7) Betacetylmethadol;
- 15 (8) Betameprodine;
- 16 (9) Betamethadol;
- 17 (10) Betaprodine;
- 18 (11) Clonitazene;
- 19 (12) Dextromoramide;
- 20 (13) Dextrorphan;
- 21 (14) Diampromide;
- 22 (15) Diethylthiambutene;
- 23 (16) Dimenoxadol;
- 24 (17) Dimepheptanol;
- 25 (18) Dimethylthiambutene;
- 26 (19) Dioxaphetyl butyrate;
- 27 (20) Dipipanone;
- 28 (21) Ethylmethylthiambutene;
- 29 (22) Etonitazene;
- 30 (23) Etoxeridine;
- 31 (24) Furethidine;
- 32 (25) Hydroxypethidine;

- 33 (26) Ketobemidone;
- 34 (27) Levomoramide;
- 35 (28) Levophenacymorphan;
- 36 (29) Morpheridine;
- 37 (30) Noracymethadol;
- 38 (31) Norlevorphanol;
- 39 (32) Normethadone;
- 40 (33) Norpipanone;
- 41 (34) Phenadoxone;
- 42 (35) Phenampromide;
- 43 (36) Phenomorphan;
- 44 (37) Phenoperidine;
- 45 (38) Piritramide;
- 46 (39) Proheptazine;
- 47 (40) Properidine;
- 48 (41) Racemoramide;
- 49 (42) Trimeperidine.
- 50 (c) Any of the following opium derivatives, their salts,
- 51 isomers and salts of isomers, unless specifically excepted,
- 52 whenever the existence of these salts, isomers, and salts
- 53 of isomers is possible within the specific chemical desig-
- 54 nation:
- 55 (1) Acetorphine;
- 56 (2) Acetyldihydrocodeine;
- 57 (3) Benzylmorphine;
- 58 (4) Codeine methylbromide;
- 59 (5) Codeine-N-Oxide;
- 60 (6) Cyprenorphine;
- 61 (7) Desomorphine;
- 62 (8) Dihydromorphine;
- 63 (9) Etorphine;
- 64 (10) Heroin;
- 65 (11) Hydromorphanol;
- 66 (12) Methyldesorphine;
- 67 (13) Methyldihydromorphine;
- 68 (14) Morphine methylbromide;

- 69 (15) Morphine methylsulfonate;  
70 (16) Morphine-N-Oxide;  
71 (17) Myrophine;  
72 (18) Nicocodeine;  
73 (19) Nicomorphine;  
74 (20) Normorphine;  
75 (21) Phoclodine;  
76 (22) Thebacon.
- 77 (d) Any material, compound, mixture, or preparation  
78 which contains any quantity of the following hallucino-  
79 genic substances, their salts, isomers, and salts of isomers,  
80 unless specifically excepted, whenever the existence of  
81 these salts, isomers, and salts of isomers is possible  
82 within the specific chemical designation:
- 83 (1) 3,4-methylenedioxy amphetamine;  
84 (2) 5-methoxy-3,4-methylenedioxy amphetamine;  
85 (3) 3,4,5-trimethoxy amphetamine;  
86 (4) Bufotenine;  
87 (5) Diethyltryptamine;  
88 (6) Dimethyltryptamine;  
89 (7) 4-methyl-2,5-dimethoxylamphetamine;  
90 (8) Ibogaine;  
91 (9) Lysergic acid diethylamide;  
92 (10) Marihuana;  
93 (11) Mescaline;  
94 (12) Peyote;  
95 (13) N-ethyl-3-piperidyl benzilate;  
96 (14) N-methyl-3-piperidyl benzilate;  
97 (15) Psilocybin;  
98 (16) Psilocyn;  
99 (17) Tetrahydrocannabinols.

**§60A-2-205. Schedule II tests.**

- 1 The state board of pharmacy shall place a substance  
2 in Schedule II if it finds that:  
3 (1) the substance has high potential for abuse;  
4 (2) the substance has currently accepted medical use

- 5 in treatment in the United States, or currently accepted  
6 medical use with severe restrictions; and  
7 (3) the abuse of the substance may lead to severe  
8 psychic or physical dependence.

**§60A-2-206. Schedule II.**

1 (a) The controlled substances listed in this section  
2 are included in Schedule II.

3 (b) Any of the following substances, except those  
4 narcotic drugs listed in other schedules, whether pro-  
5 duced directly or indirectly by extraction from sub-  
6 stances of vegetable origin, or independently by means  
7 of chemical synthesis, or by combination of extraction  
8 and chemical synthesis:

9 (1) Opium and opiate, and any salt, compound, de-  
10 rivative, or preparation of opium or opiate.

11 (2) Any salt, compound, isomer, derivative, or prepara-  
12 tion thereof which is chemically equivalent or identi-  
13 cal with any of the substances referred to in subdivision  
14 (1), but not including the isoquinoline alkaloids of opium.

15 (3) Opium poppy and poppy straw.

16 (4) Coca leaves and any salt, compound, derivative, or  
17 preparation of coca leaves, and any salt, compound, de-  
18 rivative, or preparation thereof which is chemically  
19 equivalent or identical with any of these substances, but  
20 not including decocainized coca leaves or extractions  
21 which do not contain cocaine or ecgonine.

22 (c) Any of the following opiates, including their  
23 isomers, esters, ethers, salts, and salts of isomers, when-  
24 ever the existence of these isomers, esters, ethers, and  
25 salts is possible within the specific chemical designation:

26 (1) Alphaprodine;

27 (2) Anileridine;

28 (3) Bezitramide;

29 (4) Dihydrocodeine;

30 (5) Diphenoxylate;

31 (6) Fentanyl;

32 (7) Isomethadone;

33 (8) Levomethorphan;

- 34 (9) Levorphanol;  
35 (10) Metazocine;  
36 (11) Methadone;  
37 (12) Methadone—Intermediate, 4-cyano-2-dimethyl-  
38 mino-4, 4-diphenyl butane;  
39 (13) Moramide—Intermediate, 2-methyl-3-morpholino-  
40 1, 1-diphenyl-propane-carboxylic acid;  
41 (14) Pethidine;  
42 (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-  
43 phenylpiperidine;  
44 (16) Pethidine—Intermediate—B, ethyl-4-phenylpiper-  
45 idine-4-carboxylate;  
46 (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpi-  
47 peridine-4-carboxylic acid;  
48 (18) Phenazocine;  
49 (19) Piminodine;  
50 (20) Racemethorphan;  
51 (21) Racemorphan.

**§60A-2-207. Schedule III tests.**

1 The state board of pharmacy shall place a substance  
2 in Schedule III if it finds that:

3 (1) the substance has a potential for abuse less than  
4 the substances listed in Schedules I and II;

5 (2) the substance has currently accepted medical  
6 use in treatment in the United States; and

7 (3) abuse of the substance may lead to moderate or  
8 low physical dependence or high psychological depen-  
9 dence.

**§60A-2-208. Schedule III.**

1 (a) The controlled substances listed in this section  
2 are included in Schedule III.

3 (b) Any material, compound, mixture, or preparation  
4 which contains any quantity of the following substances  
5 having a potential for abuse associated with a stimulant  
6 effect on the central nervous system:

7 (1) Amphetamine, its salts, optical isomers, and salts  
8 of its optical isomers;

9 (2) Phenmetrazine and its salts;



10 (3) Any substance which contains any quantity of  
11 methamphetamine, including its salts, isomers, and salts  
12 of isomers;

13 (4) Methylphenidate.

14 (c) Unless listed in another schedule, any material,  
15 compound, mixture, or preparation which contains any  
16 quantity of the following substances having a potential for  
17 abuse associated with a depressant effect on the central  
18 nervous system:

19 (1) Any substance which contains any quantity of a  
20 derivative of barbituric acid, or any salt of a derivative  
21 of barbituric acid, except those substances which are  
22 specifically listed in other schedules;

23 (2) Chlorhexadol;

24 (3) Glutethimide;

25 (4) Lysergic acid;

26 (5) Lysergic acid amide;

27 (6) Methyprylon;

28 (7) Phencyclidine;

29 (8) Sulfondiethylmethane;

30 (9) Sulfonethylmethane;

31 (10) Sulfonmethane.

32 (d) Nalorphine.

33 (e) Any material, compound, mixture, or preparation  
34 containing limited quantities of any of the following nar-  
35 cotic drugs, or any salts thereof:

36 (1) Not more than 1.8 grams of codeine, or any of  
37 its salts, per 100 milliliters or not more than 90 milli-  
38 grams per dosage unit, with an equal or greater quantity  
39 of an isoquinoline alkaloid of opium;

40 (2) Not more than 1.8 grams of codeine, or any of its  
41 salts, per 100 milliliters or not more than 90 milligrams  
42 per dosage unit, with one or more active, nonnarcotic in-  
43 gredients in recognized therapeutic amounts;

44 (3) Not more than 300 milligrams of dihydrocodeinone,  
45 or any of its salts, per 100 milliliters or not more than  
46 15 milligrams per dosage unit, with a fourfold or greater  
47 quantity of an isoquinoline alkaloid of opium;

48 (4) Not more than 300 milligrams of dihydrocodein-  
49 one, or any of its salts, per 100 milliliters or not more  
50 than 15 milligrams per dosage unit, with one or more  
51 active, nonnarcotic ingredients in recognized therapeutic  
52 amounts;

53 (5) Not more than 1.8 grams of dihydrocodeine, or  
54 any of its salts, per 100 milliliters or not more than 90  
55 milligrams per dosage unit, with one or more active, non-  
56 narcotic ingredients in recognized therapeutic amounts;

57 (6) Not more than 300 milligrams of ethylmorphine,  
58 or any of its salts, per 100 milliliters or not more than 15  
59 milligrams per dosage unit, with one or more ingredients  
60 in recognized therapeutic amounts;

61 (7) Not more than 500 milligrams of opium per 100  
62 milliliters or per 100 grams, or not more than 25 milli-  
63 grams per dosage unit, with one or more active, non-  
64 narcotic ingredients in recognized therapeutic amounts;

65 (8) Not more than 50 milligrams of morphine, or any  
66 of its salts, per 100 milliliters or per 100 grams with one  
67 or more active, nonnarcotic ingredients in recognized  
68 therapeutic amounts.

69 (f) The state board of pharmacy may except by rule  
70 any compound, mixture, or preparation containing any  
71 stimulant or depressant substance listed in subsections  
72 (b) and (c) from the application of all or any part of  
73 this act if the compound, mixture, or preparation contains  
74 one or more active medicinal ingredients not having a  
75 stimulant or depressant effect on the central nervous  
76 system, and if the admixtures are included therein in  
77 combinations, quantity, proportion, or concentration that  
78 vitiate the potential for abuse of the substances which  
79 have a stimulant or depressant effect on the central  
80 nervous system.

#### §60A-2-209. Schedule IV tests.

1 The state board of pharmacy shall place a substance in  
2 Schedule IV if it finds that:

3 (1) the substance has a low potential for abuse rela-  
4 tive to substances in Schedule III;

- 5 (2) the substance has currently accepted medical use  
6 in treatment in the United States; and  
7 (3) abuse of the substance may lead to limited physi-  
8 cal dependence or psychological dependence relative to  
9 the substances in Schedule III.

**§60A-2-210. Schedule IV.**

- 1 (a) The controlled substances listed in this section  
2 are included in Schedule IV.  
3 (b) Any material, compound, mixture, or preparation  
4 which contains any quantity of the following substances  
5 having a potential for abuse associated with a depres-  
6 sant effect on the central nervous system:  
7 (1) Barbital;  
8 (2) Chloral betaine;  
9 (3) Chloral hydrate;  
10 (4) Ethchlorvynol;  
11 (5) Ethinamate;  
12 (6) Methohexital;  
13 (7) Meprobamate;  
14 (8) Methylphenobarbital;  
15 (9) Paraldehyde;  
16 (10) Petrichloral;  
17 (11) Phenobarbital.  
18 (c) The state board of pharmacy may except by rule  
19 any compound, mixture, or preparation containing any  
20 depressant substances listed in subsection (b) from the  
21 application of all or any part of this act if the compound,  
22 mixture, or preparation contains one or more active  
23 medicinal ingredients not having a depressant effect on  
24 the central nervous system, and if the admixtures are  
25 included therein in combinations, quantity, proportion,  
26 or concentration that vitiate the potential for abuse of  
27 the substances which have a depressant effect on the  
28 central nervous system.

**§60A-2-211. Schedule V tests.**

- 1 The state board of pharmacy shall place a substance  
2 in Schedule V if it finds that:

- 3 (1) the substance has low potential for abuse relative  
 4 to the controlled substances listed in Schedule IV;  
 5 (2) the substance has currently accepted medical use  
 6 in treatment in the United States, and  
 7 (3) the substance has limited physical dependence or  
 8 psychological dependence liability relative to the con-  
 9 trolled substances listed in Schedule IV.

**§60A-2-212. Schedule V.**

1 (a) The controlled substances listed in this section are  
 2 included in Schedule V.

3 (b) Any compound, mixture, or preparation contain-  
 4 ing limited quantities of any of the following narcotic  
 5 drugs, which also contains one or more nonnarcotic active  
 6 medicinal ingredients in sufficient proportion to confer  
 7 upon the compound, mixture, or preparation, valuable  
 8 medicinal qualities other than those possessed by the  
 9 narcotic drug alone:

10 (1) Not more than 200 milligrams of codeine, or any  
 11 of its salts, per 100 milliliters or per 100 grams;

12 (2) Not more than 100 milligrams of dihydrocodeine, or  
 13 any of its salts, per 100 milliliters or per 100 grams;

14 (3) Not more than 100 milligrams of ethylmorphine,  
 15 or any of its salts, per 100 milliliters or per 100 grams;

16 (4) Not more than 2.5 milligrams of diphenoxylate and  
 17 not less than 25 micrograms of atropine sulfate per dosage  
 18 unit;

19 (5) Not more than 100 milligrams of opium per 100  
 20 milliliters or per 100 grams.

**§60A-2-213. Republishing of schedules.**

1 The state board of pharmacy shall review and cause  
 2 to be printed the schedules semiannually for two years  
 3 from the effective date of this act, and thereafter an-  
 4 nually; which schedules shall be made available to the  
 5 public.

**ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION  
 AND DISPENSING OF CONTROLLED SUBSTANCES.**

§60A-3-301. Rules; fees.

§60A-3-302. Registration required; effect of registration; exemptions;  
 waiver; inspections.

§60A-3-303. What applicants to be registered; determination of public interest; rights of registrants.

§60A-3-304. Suspension or revocation of registration generally.

§60A-3-305. Order to show cause before denying, suspending, etc., registration; proceedings thereon; when order not required.

§60A-3-306. Records of registrants.

§60A-3-307. Order forms.

§60A-3-308. Prescriptions.

**§60A-3-301. Rules; fees.**

1 The state board of pharmacy shall promulgate rules  
2 and charge reasonable fees relating to the registration and  
3 control of the manufacture and distribution of controlled  
4 substances within this state, and each department, board,  
5 or agency of this state which licenses or registers practi-  
6 tioners authorized to dispense any controlled substance  
7 shall promulgate rules and charge reasonable fees re-  
8 lating to the registration and control of the dispensing  
9 of controlled substances within this state by those practi-  
10 tioners licensed or registered by such department, board,  
11 or agency.

**§60A-3-302. Registration required; effect of registration; ex-  
emptions; waiver; inspections.**

1 (a) Every person who manufactures, distributes, or  
2 dispenses any controlled substance within this state or  
3 who proposes to engage in the manufacture, distribution,  
4 or dispensing of any controlled substance within this  
5 state, must obtain annually a registration issued by the  
6 state board of pharmacy or the appropriate department,  
7 board, or agency, as the case may be, as specified in  
8 section 301, in accordance with its rules.

9 (b) Persons registered by said state board of pharmacy  
10 or said appropriate department, board, or agency, as  
11 the case may be, under this act to manufacture, distribute,  
12 dispense, or conduct research with controlled substances  
13 may possess, manufacture, distribute, dispense, or con-  
14 duct research with those substances to the extent autho-  
15 rized by their registration and in conformity with the  
16 other provisions of this article.

17 (c) The following persons need not register and may  
18 lawfully possess controlled substances under this act:

19 (1) an agent or employee of any registered manu-  
20 facturer, distributor, or dispenser of any controlled sub-

21 stance if he is acting in the usual course of his business  
22 or employment;

23 (2) a common or contract carrier or warehouseman,  
24 or an employee thereof, whose possession of any con-  
25 trolled substance is in the usual course of business or  
26 employment;

27 (3) an ultimate user or a person in possession of any  
28 controlled substance pursuant to a lawful order of a  
29 practitioner or in lawful possession of a Schedule V  
30 substance.

31 (d) The said state board of pharmacy or said appro-  
32 priate department, board, or agency, as the case may be,  
33 may waive by rule the requirement for registration of  
34 certain manufacturers, distributors, or dispensers if it  
35 finds it consistent with the public health and safety.

36 (e) A separate registration is required at each prin-  
37 cipal place of business or professional practice where  
38 the applicant manufactures, distributes, or dispenses con-  
39 trolled substances.

40 (f) The said state board of pharmacy or said appro-  
41 priate department, board, or agency, as the case may be,  
42 may inspect the establishment of a registrant or applicant  
43 for registration in accordance with the rule of said  
44 state board of pharmacy or said appropriate depart-  
45 ment, board, or agency, as the case may be.

**§60A-3-303. What applicants to be registered; determination  
of public interest; rights of registrants.**

1 (a) The state board of pharmacy shall register an  
2 applicant to manufacture or distribute controlled sub-  
3 stances included in Schedules I, II, III, IV and  
4 V unless it determines that the issuance of that reg-  
5 istration would be inconsistent with the public  
6 interest. In determining the public interest, the state  
7 board of pharmacy shall consider the following fac-  
8 tors:

9 (1) maintenance of effective controls against diversion  
10 of controlled substances into other than legitimate medi-  
11 cal, scientific, or industrial channels;

12 (2) compliance with applicable state and local law;

13 (3) any convictions of the applicant under any federal  
14 or state laws relating to any controlled substance;

15 (4) past experience in the manufacture or distribution  
16 of controlled substances, and the existence in the ap-  
17 plicant's establishment of effective controls against diver-  
18 sion;

19 (5) furnishing by the applicant of false or fraudulent  
20 material in any application filed under this act;

21 (6) suspension or revocation of the applicant's federal  
22 registration to manufacture, distribute, or dispense con-  
23 trolled substances as authorized by federal law; and

24 (7) any other factors relevant to and consistent with  
25 the public health and safety.

26 (b) Registration under subsection (a) does not entitle  
27 a registrant to manufacture and distribute controlled  
28 substances in Schedule I or II other than those specified  
29 in the registration.

30 (c) Practitioners must be registered to dispense any  
31 controlled substances or to conduct research with con-  
32 trolled substances in Schedules II through V if they are  
33 authorized to dispense or conduct research under the law  
34 of this state. The appropriate department, board, or agen-  
35 cy, as specified in section 301, need not require separate  
36 registration under this article for practitioners engaging  
37 in research with nonnarcotic controlled substances in  
38 Schedules II through V where the registrant is already  
39 registered under this article in another capacity. Prac-  
40 titioners registered under federal law to conduct research  
41 with Schedule I substances may conduct research with  
42 Schedule I substances within this state upon furnishing  
43 the appropriate department, board, or agency evidence  
44 of that federal registration.

45 (d) Compliance by manufacturers and distributors with  
46 the provisions of the federal law respecting registration  
47 (excluding fees) entitles them to be registered under  
48 this act.

#### §60A-3-304. Suspension or revocation of registration generally.

1 (a) A registration under section 303 to manufacture,  
2 distribute, or dispense a controlled substance may be sus-

3 pended or revoked by the said state board of pharmacy  
4 or said appropriate department, board, or agency, as the  
5 case may be, upon a finding that the registrant:

6 (1) has furnished false or fraudulent material infor-  
7 mation in any application filed under this act;

8 (2) has been convicted of a felony under any state or  
9 federal law relating to any controlled substance; or

10 (3) has had his federal registration suspended or re-  
11 voked to manufacture, distribute, or dispense controlled  
12 substances.

13 (b) The said state board of pharmacy or said appro-  
14 priate department, board, or agency, as the case may be,  
15 may limit suspension or revocation of a registration to  
16 the particular controlled substance with respect to which  
17 grounds for suspension or revocation exist.

18 (c) If the said state board of pharmacy or said appro-  
19 priate department, board, or agency, as the case may be,  
20 suspends or revokes a registration, all controlled sub-  
21 stances owned or possessed by the registrant at the time  
22 of suspension or the effective date of the revocation order  
23 may be placed under seal. No disposition may be made  
24 of substances under seal until the time for taking an  
25 appeal has elapsed or until all appeals have been con-  
26 cluded unless a court, upon application therefor, orders  
27 the sale of perishable substances and the deposit of the  
28 proceeds of the sale with the court. Upon a revocation  
29 order becoming final, all controlled substances may be  
30 forfeited to the state.

31 (d) The said state board of pharmacy or said appro-  
32 priate department, board, or agency, as the case may  
33 be, shall promptly notify the bureau of all orders suspend-  
34 ing or revoking registration and all forfeitures of con-  
35 trolled substances.

**§60A-3-305. Order to show cause before denying, suspending,  
etc., registration; proceedings thereon; when  
order not required.**

1 (a) Before denying, suspending, or revoking a regis-  
2 tration, or refusing a renewal of registration, the said  
3 state board of pharmacy or said appropriate department,  
4 board, or agency, as the case may be, shall serve upon



5 the applicant or registrant an order to show cause why  
6 registration should not be denied, suspended, or revoked,  
7 or why the renewal should not be refused. The order to  
8 show cause shall contain a statement of the basis there-  
9 for and shall call upon the applicant or registrant to  
10 appear before the said state board of pharmacy or said  
11 appropriate department, board, or agency, as the case  
12 may be, at a time and place not less than thirty days  
13 after the date of service of the order, but in the case of a  
14 denial or renewal of registration the show cause order  
15 shall be served not later than thirty days before the  
16 expiration of the registration. These proceedings shall  
17 be conducted in accordance with article five, chapter  
18 twenty-nine-a of this code without regard to any criminal  
19 prosecution or other proceeding. Proceedings to refuse  
20 renewal of registration shall not abate the existing regis-  
21 tration which shall remain in effect pending the out-  
22 come of the administrative hearing.

23 (b) The said state board of pharmacy or said appro-  
24 priate department, board, or agency, as the case may be,  
25 may suspend, without an order to show cause, any regis-  
26 tration simultaneously with the institution of proceedings  
27 under section 304, or where renewal of registration is  
28 refused, if it finds that there is an imminent danger  
29 to the public health or safety which warrants this action.  
30 The suspension shall continue in effect until the conclu-  
31 sion of the proceedings, including judicial review thereof,  
32 unless sooner withdrawn by the said state board of phar-  
33 macy or said appropriate department, board, or agency,  
34 as the case may be, or dissolved by a court of competent  
35 jurisdiction.

**§60A-3-306. Records of registrants.**

1 Persons registered to manufacture, distribute, or dis-  
2 pense controlled substances under this act shall keep  
3 records and maintain inventories in conformance with  
4 the record-keeping and inventory requirements of federal  
5 law and with any additional rules the said state board of  
6 pharmacy or said appropriate department, board or  
7 agency, as the case may be, issues.

**§60A-3-307. Order forms.**

1     Controlled substances in Schedules I and II shall be  
2 distributed by a registrant to another registrant only  
3 pursuant to an order form. Compliance with the provi-  
4 sions of federal law respecting order forms shall be  
5 deemed compliance with this section.

**§60A-3-308. Prescriptions.**

1     (a) Except when dispensed directly by a practitioner,  
2 other than a pharmacy, to an ultimate user, no controlled  
3 substance in Schedule II may be dispensed without the  
4 written prescription of a practitioner.

5     (b) In emergency situations, as defined by rule of the  
6 said appropriate department, board, or agency, Schedule  
7 II drugs may be dispensed upon oral prescription of a  
8 practitioner, reduced promptly to writing and filed by  
9 the pharmacy. Prescription shall be retained in conformity  
10 with the requirements of section 306. No prescription for  
11 a Schedule II substance may be refilled.

12     (c) Except when dispensed directly by a practitioner,  
13 other than a pharmacy, to an ultimate user, a controlled  
14 substance included in Schedule III or IV, which is a  
15 prescription drug as determined under appropriate state  
16 or federal statute, shall not be dispensed without a writ-  
17 ten or oral prescription of a practitioner. The prescription  
18 shall not be filled or refilled more than six months after  
19 the date thereof or be refilled more than five times,  
20 unless renewed by the practitioner.

21     (d) A controlled substance included in Schedule V  
22 shall not be distributed or dispensed other than for a  
23 medical purpose.

**ARTICLE 4. OFFENSES AND PENALTIES.**

§60A-4-401. Prohibited acts A—Penalties.

§60A-4-402. Prohibited acts B—Penalties.

§60A-4-403. Prohibited acts C—Penalties.

§60A-4-404. Penalties under other laws.

§60A-4-405. Bar to prosecution.

§60A-4-406. Distribution to persons under age eighteen.

§60A-4-407. Conditional discharge for first offense of possession.

§60A-4-408. Second or subsequent offenses.

**§60A-4-401. Prohibited acts A—Penalties.**

1 (a) Except as authorized by this act, it is unlawful  
2 for any person to manufacture, deliver, or possess with  
3 intent to manufacture or deliver, a controlled substance.

4 (1) Any person who violates this subsection with  
5 respect to:

6 (i) a controlled substance classified in Schedule I or  
7 II which is a narcotic drug, is guilty if a felony, and, upon  
8 conviction, may be imprisoned in the penitentiary for not  
9 less than one year nor more than fifteen years, or fined  
10 not more than twenty-five thousand dollars, or both;

11 (ii) Any other controlled substance classified in Sched-  
12 ule I, II or III, is guilty of a felony, and, upon conviction,  
13 may be imprisoned in the penitentiary for not less than  
14 one year nor more than five years, or fined not more  
15 than fifteen thousand dollars, or both;

16 (iii) a substance classified in Schedule IV, is guilty  
17 of a felony, and, upon conviction, may be imprisoned in  
18 the penitentiary for not less than one year nor more  
19 than three years, or fined not more than ten thousand  
20 dollars, or both;

21 (iv) a substance classified in Schedule V, is guilty of  
22 a misdemeanor, and, upon conviction, may be confined in  
23 the county jail for not less than six months nor more  
24 than one year, or fined not more than five thousand dol-  
25 lars, or both.

26 (b) Except as authorized by this act, it is unlawful  
27 for any person to create, deliver, or possess with intent  
28 to deliver, a counterfeit substance.

29 (1) Any person who violates this subsection with re-  
30 spect to:

31 (i) a counterfeit substance classified in Schedule I or  
32 II which is a narcotic drug, is guilty of a felony, and, upon  
33 conviction, may be imprisoned in the penitentiary for  
34 not less than one year nor more than fifteen years, or  
35 fined not more than twenty-five thousand dollars, or both;

36 (ii) any other counterfeit substance classified in  
37 Schedule I, II or III, is guilty of a felony, and, upon con-  
38 viction, may be imprisoned in the penitentiary for not

39 less than one year nor more than five years, or fined not  
40 more than fifteen thousand dollars, or both;

41 (iii) a counterfeit substance classified in Schedule IV,  
42 is guilty of a felony, and, upon conviction, may be im-  
43 prisoned in the penitentiary for not less than one year  
44 nor more than three years, or fined not more than ten  
45 thousand dollars, or both;

46 (iv) a counterfeit substance classified in Schedule V,  
47 is guilty of a misdemeanor, and, upon conviction, may  
48 be confined in the county jail for not less than six months  
49 nor more than one year, or fined not more than five  
50 thousand dollars, or both.

51 (c) It is unlawful for any person knowingly or inten-  
52 tionally to possess a controlled substance unless the sub-  
53 stance was obtained directly from, or pursuant to, a valid  
54 prescription or order of a practitioner while acting in  
55 the course of his professional practice, or except as oth-  
56 erwise authorized by this act. Any person who violates  
57 this subsection is guilty of a misdemeanor, and dispo-  
58 sition may be made under section 407, subject to the  
59 limitations specified in said section 407, or upon convic-  
60 tion, such person may be confined in the county jail not  
61 less than ninety days nor more than six months, or fined  
62 not more than one thousand dollars, or both: *Provided*,  
63 That notwithstanding any other provision of this act  
64 to the contrary, any first offense for possession of less  
65 than 15 grams of marihuana shall be disposed of under  
66 said section 407.

#### §60A-4-402. Prohibited acts B—Penalties.

1 (a) It is unlawful for any person:

2 (1) who is subject to article 3 to distribute or dispense  
3 a controlled substance in violation of section 308;

4 (2) who is a registrant, to manufacture a controlled  
5 substance not authorized by his registration, or to dis-  
6 tribute or dispense a controlled substance not authorized  
7 by his registration to another registrant or other autho-  
8 rized person;

9 (3) to refuse or fail to make, keep, or furnish any rec-

10 ord, notification, order form, statement, invoice, or in-  
11 formation required under this act;

12 (4) to refuse an entry into any premises for any in-  
13 spection authorized by this act; or

14 (5) knowingly to keep or maintain any store, shop,  
15 warehouse, dwelling, building, vehicle, boat, aircraft, or  
16 other structure or place, which is resorted to by persons  
17 using controlled substances in violation of this act for the  
18 purpose of using these substances, or which is used for  
19 keeping or selling them in violation of this act.

20 (b) Any person who violates this section is guilty of  
21 a misdemeanor, and, upon conviction, may be confined in  
22 the county jail for not less than six months nor more  
23 than one year, or fined not more than twenty-five thou-  
24 sand dollars, or both.

25 (c) Notwithstanding any other provision of this act  
26 to the contrary, any first offense for distributing less than  
27 15 grams of marihuana without any remuneration shall  
28 be disposed of under section 407.

#### §60A-4-403. Prohibited acts C—Penalties.

1 (a) It is unlawful for any person knowingly or in-  
2 tentionally:

3 (1) to distribute as a registrant a controlled substance  
4 classified in Schedule I or II, except pursuant to an order  
5 form as required by section 307 of this act;

6 (2) to use in the course of the manufacture or distri-  
7 bution of a controlled substance a registration number  
8 which is fictitious, suspended, revoked, or issued to an-  
9 other person;

10 (3) to acquire or obtain possession of a controlled sub-  
11 stance by misrepresentation, fraud, forgery, deception,  
12 or subterfuge;

13 (4) to furnish false or fraudulent material information  
14 in, or omit any material information from, any applica-  
15 tion, report, or other document required to be kept or  
16 filed under this act, or any record required to be kept by  
17 this act; or

18 (5) to make, distribute, or possess any punch, die,  
19 plate, stone, or other thing designed to print, imprint, or  
20 reproduce the trademark, trade name, or other identify-  
21 ing mark, imprint, or device of another or any likeness of  
22 any of the foregoing upon any drug or container or  
23 labeling thereof so as to render the drug a counterfeit  
24 substance.

25 (b) Any person who violates this section is guilty of a  
26 felony, and, upon conviction, may be imprisoned in the  
27 penitentiary for not less than one year nor more than  
28 four years, or fined not more than thirty thousand dollars,  
29 or both.

**§60A-4-404. Penalties under other laws.**

1 Any penalty imposed for violation of this act is in  
2 addition to, and not in lieu of, any civil or administrative  
3 penalty or sanction otherwise authorized by law.

**§60A-4-405. Bar to prosecution.**

1 If a violation of this act is a violation of a federal law  
2 or the law of another state, a conviction or acquittal un-  
3 der federal law or the law of another state for the same  
4 act is a bar to prosecution in this state.

**§60A-4-406. Distribution to persons under age eighteen.**

1 Any person eighteen years of age or over who violates  
2 section 401(a) by distributing a controlled substance  
3 listed in Schedule I or II which is a narcotic drug to a  
4 person under eighteen years of age who is at least three  
5 years his junior is punishable by the fine authorized by  
6 section 401(a)(1)(i), by a term of imprisonment of up  
7 to twice that authorized by section 401(a)(1)(i), or by  
8 both. Any person eighteen years of age or over who vio-  
9 lates section 401(a) by distributing any other controlled  
10 substance listed in Schedules I, II, III, IV and V to a per-  
11 son under eighteen years of age who is at least three  
12 years his junior is punishable by the fine authorized by  
13 section 401(a)(1)(ii), (iii) or (iv), by a term of imprison-  
14 ment up to twice that authorized by section 401(a)(1)(ii),  
15 (iii) or (iv), or both.

**§60A-4-407. Conditional discharge for first offense of possession.**

1 Whenever any person who has not previously been  
2 convicted of any offense under this act or under any  
3 statute of the United States or of any state relating to  
4 narcotic drugs, marihuana, or stimulant, depressant, or  
5 hallucinogenic drugs, pleads guilty to or is found guilty  
6 of possession of a controlled substance under section  
7 401(c), the court, without entering a judgment of guilt  
8 and with the consent of the accused, may defer further  
9 proceedings and place him on probation upon terms and  
10 conditions. Upon violation of a term or condition, the  
11 court may enter an adjudication of guilt and proceed as  
12 otherwise provided. Upon fulfillment of the terms and  
13 conditions, the court shall discharge the person and dis-  
14 miss the proceedings against him. Discharge and dis-  
15 missal under this section shall be without adjudication  
16 of guilt and is not a conviction for purposes of this sec-  
17 tion or for purposes of disqualifications or disabilities  
18 imposed by law upon conviction of a crime, including the  
19 additional penalties imposed for second or subsequent  
20 convictions under section 408. The effect of such dis-  
21 missal and discharge shall be to restore such person in  
22 contemplation of law to the status he occupied prior to  
23 such arrest and trial. No person as to whom such dismis-  
24 sal and discharge have been effected shall be thereafter  
25 held to be guilty of perjury, false swearing, or otherwise  
26 giving a false statement by reason of his failure to dis-  
27 close or acknowledge such arrest or trial in response  
28 to any inquiry made of him for any purpose. There may  
29 be only one discharge and dismissal under this section  
30 with respect to any person.

31 After a period of not less than six months which shall  
32 begin to run immediately upon the expiration of a term  
33 of probation imposed upon any person under this act,  
34 such person may apply to the court for an order to ex-  
35 punge from all official records all recordations of his  
36 arrest, trial, and conviction, pursuant to this section. If  
37 the court determines after a hearing that such person  
38 during the period of such probation and during the  
39 period of time prior to his application to the court under  
40 this section has not been guilty of any serious or re-

41 peated violation of the conditions of such probation, it  
42 shall enter such order.

**§60A-4-408. Second or subsequent offenses.**

1 (a) Any person convicted of a second or subsequent  
2 offense under this act may be imprisoned for a term up  
3 to twice the term otherwise authorized, fined an amount  
4 up to twice that otherwise authorized, or both. When a  
5 term of imprisonment is doubled under section 406,  
6 such term of imprisonment shall not be further increased  
7 for such offense under this subsection (a), even though  
8 such term of imprisonment is for a second or subsequent  
9 offense.

10 (b) For purposes of this section, an offense is con-  
11 sidered a second or subsequent offense, if, prior to his  
12 conviction of the offense, the offender has at any time  
13 been convicted under this act or under any statute of the  
14 United States or of any state relating to narcotic drugs,  
15 marihuana, depressant, stimulant, or hallucinogenic drugs.

16 (c) This section does not apply to offenses under sec-  
17 tion 401 (c).

**ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVI-  
SIONS.**

§60A-5-501. Powers of enforcement personnel.

§60A-5-502. Administrative inspections and warrants.

§60A-5-503. Injunctions.

§60A-5-504. Cooperative arrangements; confidentiality.

§60A-5-505. Forfeitures.

§60A-5-506. Burden of proof; liability of officers.

§60A-5-507. Judicial review.

§60A-5-508. Education and research.

**§60A-5-501. Powers of enforcement personnel.**

1 (a) Any member of the department of public safety,  
2 any sheriff, any deputy sheriff and any municipal police  
3 officer may in the enforcement of the provisions of this  
4 act:

5 (1) carry firearms;

6 (2) execute and serve search warrants, arrest war-  
7 rants, subpoenas, and summonses issued under the au-  
8 thority of this state;

9 (3) make arrests without warrant for any offense



10 under this act committed in his presence, or if he has  
11 probable cause to believe that the person to be arrested  
12 has committed or is committing a violation of this act  
13 which may constitute a felony;

14 (4) make seizures of property pursuant to this act; or

15 (5) perform such other law-enforcement duties as  
16 said state board of pharmacy or said appropriate depart-  
17 ment, board or agency, as specified in section 301, desig-  
18 nates.

19 (b) All officers, agents, inspectors, and representatives  
20 of the said state board of pharmacy and of the said ap-  
21 propriate department, board, or agency, as specified in  
22 section 301, and members of the department of public  
23 safety may execute and serve administrative warrants  
24 issued incident to the enforcement of the provisions of  
25 this act. Any such officer, agent, inspector, and repre-  
26 sentative of the said state board of pharmacy and of the  
27 said appropriate department, board, or agency, as speci-  
28 fied in said section 301, may:

29 (1) execute and serve subpoenas and summonses  
30 issued under the authority of this state;

31 (2) make arrests without warrant for any offense  
32 under this act committed in his presence, or if he has  
33 probable cause to believe that the person to be arrested  
34 has committed or is committing a violation of this act  
35 which may constitute a felony; or

36 (3) make seizures of property pursuant to this act.

37 (c) All prosecuting attorneys and the attorney gen-  
38 eral, or any of their assistants, shall assist in the enforce-  
39 ment of all provisions of this act and shall cooperate with  
40 all agencies charged with the enforcement of the laws  
41 of the United States, of this state, and of all other states  
42 relating to controlled substances.

**§60A-5-502. Administrative inspections and warrants.**

1 (a) Issuance and execution of administrative inspec-  
2 tion warrants shall be as follows:

3 (1) A judge of any court of record in this state having  
4 criminal jurisdiction, and upon proper oath or affirma-  
5 tion showing probable cause, may issue warrants for the

6 purpose of conducting administrative inspections autho-  
7 rized by this act or rules hereunder, and seizures of prop-  
8 erty appropriate to the inspections. For purposes of the  
9 issuance of administrative inspection warrants, probable  
10 cause exists upon showing a valid public interest in the  
11 effective enforcement of this act or rules hereunder,  
12 sufficient to justify administrative inspection of the area,  
13 premises, building, or conveyance in the circumstances  
14 specified in the application for the warrant;

15 (2) A warrant shall issue only upon an affidavit of a  
16 designated officer or employee having knowledge of the  
17 facts alleged, sworn to before the judge and establishing  
18 the grounds for issuing the warrant. If the judge is satis-  
19 fied that grounds for the application exist or that there  
20 is probable cause to believe they exist, he shall issue a  
21 warrant identifying the area, premises, building, or con-  
22 veyance to be inspected, the purpose of the inspection,  
23 and, if appropriate, the type of property to be inspected,  
24 if any. The warrant shall:

25 (i) state the grounds for its issuance and the name of  
26 each person whose affidavit has been taken in support  
27 thereof;

28 (ii) be directed to a person authorized by section 501  
29 to execute it;

30 (iii) command the person to whom it is directed to  
31 inspect the area, premises, building, or conveyance identi-  
32 fied for the purpose specified and, if appropriate, direct  
33 the seizure of the property specified;

34 (iv) identify the item or types of property to be seized,  
35 if any;

36 (v) direct that it be served during normal business  
37 hours and designate the judge to whom it shall be re-  
38 turned;

39 (3) A warrant issued pursuant to this section must be  
40 executed and returned within ten days of its date unless,  
41 upon a showing of a need for additional time, the court  
42 orders otherwise. If property is seized pursuant to a  
43 warrant, a copy shall be given to the person from whom  
44 or from whose premises the property is taken, together  
45 with a receipt for the property taken. The return of the

46 warrant shall be made promptly, accompanied by a writ-  
47 ten inventory of any property taken. The inventory shall  
48 be made in the presence of the person executing the  
49 warrant and of the person from whose possession or  
50 premises the property was taken, if present, or in the  
51 presence of at least one credible person other than the  
52 person executing the warrant. A copy of the inventory  
53 shall be delivered to the person from whom or from  
54 whose premises the property was taken and to the ap-  
55 plicant for the warrant;

56 (4) The judge who has issued a warrant shall attach  
57 thereto a copy of the return and all papers returnable in  
58 connection therewith and file them with the clerk of the  
59 court.

60 (b) Administrative inspections of controlled premises  
61 shall be made in accordance with the following provi-  
62 sions:

63 (1) For purposes of this section only, "controlled  
64 premises" means:

65 (i) places where persons registered or exempted from  
66 registration requirements under this act are required to  
67 keep records; and

68 (ii) places including factories, warehouses, establish-  
69 ments, and conveyances in which persons registered or  
70 exempted from registration requirements under this act  
71 are permitted to hold, manufacture, compound, process,  
72 sell, deliver, or otherwise dispose of any controlled sub-  
73 stance.

74 (2) When authorized by an administrative inspection  
75 warrant issued pursuant to subsection (a), any person  
76 authorized in subsection (b), section 501 of this article  
77 to execute and serve the same, upon presenting the  
78 warrant and appropriate credentials to the owner, oper-  
79 ator, or agent in charge, may enter controlled premises  
80 for the purpose of conducting an administrative inspec-  
81 tion.

82 (3) When authorized by an administrative inspection  
83 warrant, any such person may:

84 (i) inspect and copy records required by this act to  
85 be kept;

86 (ii) inspect, within reasonable limits and in a reason-  
87 able manner, controlled premises and all pertinent equip-  
88 ment, finished and unfinished material, containers and  
89 labeling found therein, and, except as provided in sub-  
90 section (b) (5), all other things therein, including records,  
91 files, papers, processes, controls, and facilities bearing on  
92 violation of this act; and

93 (iii) inventory any stock of any controlled substance  
94 therein and obtain samples thereof.

95 (4) This section does not prevent the inspection with-  
96 out a warrant of books and records pursuant to an admin-  
97 istrative subpoena issued in accordance with any perti-  
98 nent provision of this code, nor does it prevent entries  
99 and administrative inspections, including seizures of prop-  
100 erty, without a warrant:

101 (i) if the owner, operator, or agent in charge of the  
102 controlled premises consents;

103 (ii) in situations presenting imminent danger to  
104 health or safety;

105 (iii) in situations involving inspection of conveyances  
106 if there is reasonable cause to believe that the mobility  
107 of the conveyance makes it impracticable to obtain a  
108 warrant;

109 (iv) in any other exceptional or emergency circum-  
110 stance where time or opportunity to apply for a warrant  
111 is lacking; or,

112 (v) in all other situations in which a warrant is not  
113 constitutionally required.

114 (5) An inspection authorized by this section shall not  
115 extend to financial data, sales data, other than shipment  
116 data, or pricing data unless the owner, operator, or agent  
117 in charge of the controlled premises consents in writing.

#### **§60A-5-503. Injunctions.**

1 (a) The courts of record of this state have and may  
2 exercise jurisdiction to restrain or enjoin violations of  
3 this act.

4 (b) The defendant may demand trial by jury for an al-  
5 leged violation of an injunction or restraining order  
6 under this section.

**§60A-5-504. Cooperative arrangements; confidentiality.**

1 (a) The state board of pharmacy and the appropriate  
2 departments, boards, and agencies, as specified in section  
3 301, shall cooperate with federal and other state agencies  
4 in discharging their responsibilities concerning traffic in  
5 controlled substances and in suppressing the abuse of  
6 controlled substances. To this end, they may:

7 (1) arrange for the exchange of information among  
8 governmental officials concerning the use and abuse of  
9 controlled substances;

10 (2) coordinate and cooperate in training programs con-  
11 cerning controlled substance law enforcement at local  
12 and state levels;

13 (3) cooperate with the bureau by establishing a cen-  
14 tralized unit to accept, catalogue, file, and collect statistics,  
15 including records of drug dependent persons and other  
16 controlled substance law offenders within the state, and  
17 make the information available for federal, state, and  
18 local law-enforcement purposes. They shall not furnish  
19 the name or identity of a patient or research subject whose  
20 identity could not be obtained under subsection (c); and

21 (4) conduct programs of eradication aimed at destroy-  
22 ing wild or illicit growth of plant species from which  
23 controlled substances may be extracted.

24 (b) Results, information, and evidence received from  
25 the bureau relating to the regulatory functions of this act,  
26 including results of inspections conducted by it may be  
27 relied and acted upon by the state board of pharmacy in  
28 the exercise of its regulatory functions under this act.

29 (c) A practitioner engaged in medical practice or re-  
30 search is not required or compelled to furnish the name  
31 or identity of a patient or research subject to the state  
32 board of pharmacy or to the appropriate department,  
33 board, or agency by which he is licensed or registered,  
34 as specified in section 301, nor may he be compelled in  
35 any state or local civil, criminal, administrative, legisla-  
36 tive, or other proceedings to furnish the name or identity  
37 of an individual that the practitioner is obligated to  
38 keep confidential.

39 (d) No mental health organization or hospital shall  
40 be compelled in any state or local civil, criminal, admin-  
41 istrative, legislative or other proceeding to furnish the  
42 name or identity of any person voluntarily requesting  
43 treatment for or rehabilitation from addiction to or de-  
44 pendency upon the use of a controlled substance as defined  
45 in article one of this chapter.

**§60A-5-505. Forfeitures.**

1 (a) The following are subject to forfeiture:

2 (1) all controlled substances which have been manu-  
3 factured, distributed, dispensed, or acquired in violation  
4 of this act;

5 (2) all raw materials, products, and equipment of any  
6 kind which are used, or intended for use, in manufactur-  
7 ing, compounding, processing, delivering, importing, or  
8 exporting any controlled substance in violation of this  
9 act;

10 (3) all property which is used, or intended for use,  
11 as a container for property described in subdivision (1)  
12 or (2);

13 (4) all conveyances, including aircraft, vehicles, or  
14 vessels, which are used, or intended for use, to transport,  
15 or in any manner to facilitate the transportation, for the  
16 purpose of sale or receipt of property described in sub-  
17 division (1) or (2), but:

18 (i) no conveyance used by any person as a common  
19 carrier in the transaction of business as a common carrier  
20 is subject to forfeiture under this section unless it appears  
21 that the owner or other person in charge of the convey-  
22 ance is a consenting party or privy to a violation of  
23 this act;

24 (ii) no conveyance is subject to forfeiture under this  
25 section by reason of any act or omission established by  
26 the owner thereof to have been committed or omitted  
27 without his knowledge or consent;

28 (iii) a conveyance is not subject to forfeiture for a  
29 violation of section 401(c); and,

30 (iv) a forfeiture of a conveyance encumbered by a  
31 bona fide security interest is subject to the interest of

32 the secured party if he neither had knowledge of nor  
33 consented to the act or omission;

34 (5) all books, records, and research products and ma-  
35 terials, including formulas, microfilm, tapes, and data  
36 which are used, or intended for use, in violation of this  
37 act.

38 (b) Property subject to forfeiture under this act may  
39 be seized by any person granted enforcement powers  
40 under this act in subsections (a) and (b), section 501 of  
41 this act (hereinafter in this section referred to as the  
42 "appropriate person") upon process issued by any court  
43 of record having jurisdiction over the property. Seizure  
44 without process may be made if:

45 (1) the seizure is incident to an arrest or a search  
46 under a search warrant or an inspection under an ad-  
47 ministrative inspection warrant;

48 (2) the property subject to seizure has been the sub-  
49 ject of a prior judgment in favor of the state in a criminal  
50 injunction or forfeiture proceeding based upon this act;

51 (3) the appropriate person has probable cause to be-  
52 lieve that the property is directly or indirectly dangerous  
53 to health or safety; or

54 (4) the appropriate person has probable cause to be-  
55 lieve that the property was used or is intended to be  
56 used in violation of this act.

57 (c) In the event of seizure pursuant to subsection (b),  
58 proceedings under subsection (d) shall be instituted  
59 promptly.

60 (d) Property taken or detained under this section shall  
61 not be subject to replevin, but is deemed to be in the  
62 custody of the appropriate person subject only to the  
63 orders and decrees of the court having jurisdiction over  
64 the forfeiture proceedings. When property is seized under  
65 this act, the appropriate person may:

66 (1) place the property under seal;

67 (2) remove the property to a place designated by him;  
68 or

69 (3) require the appropriate administrative agency to

70 take custody of the property and remove it to an appropriate location for disposition in accordance with law.

72 (e) When property is forfeited under this act the appropriate person may:

74 (1) retain it for official use;

75 (2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

81 (3) require the appropriate administrative agency to take custody of the property and remove it for disposition in accordance with law; or

84 (4) forward it to the bureau for disposition.

85 (f) Controlled substances listed in Schedule I which are possessed, transferred, sold, or offered for sale in violation of this act are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

93 (g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

99 (h) The failure, upon demand by the appropriate person, or his authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

**§60A-5-506. Burden of proof; liability of officers.**

1 (a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, in-



3 formation, indictment, or other pleading or in any trial,  
4 hearing, or other proceeding under this act. The burden  
5 of proof of any exemption or exception is upon the per-  
6 son claiming it.

7 (b) In the absence of proof that a person is the duly  
8 authorized holder of an appropriate registration or order  
9 form issued under this act, he is presumed not to be the  
10 holder of the registration or form. The burden of proof  
11 is upon him to rebut the presumption.

12 (c) No liability is imposed by this act upon any au-  
13 thorized state, county, or municipal officer, engaged in the  
14 lawful performance of his duties.

#### §60A-5-507. Judicial review.

1 All final determinations, findings, and conclusions of  
2 the said state board of pharmacy or the appropriate de-  
3 partment, board, or agency, as specified in section 301,  
4 made under this act after hearing are final and con-  
5 clusive decisions of the matters involved. Any person  
6 aggrieved by the decision may obtain review of the de-  
7 cision pursuant to the provisions of articles five and six,  
8 chapter twenty-nine-a of this code.

#### §60A-5-508. Education and research.

1 (a) The said state board of pharmacy and the ap-  
2 propriate departments, boards, and agencies, as specified  
3 in section 301, and the division on alcoholism and drug  
4 abuse in the department of mental health (all herein-  
5 after in this section referred to as "such agencies"), shall  
6 carry out educational programs designed to prevent and  
7 deter misuse and abuse of controlled substances. In  
8 connection with these programs they may:

9 (1) promote better recognition of the problems of mis-  
10 use and abuse of controlled substances within the regu-  
11 lated industry and among interested groups and organi-  
12 zations;

13 (2) assist the regulated industry and interested groups  
14 and organizations in contributing to the reduction of mis-  
15 use and abuse of controlled substances;

16 (3) consult with interested groups and organizations

17 to aid them in solving administrative and organizational  
18 problems;

19 (4) evaluate procedures, projects, techniques, and  
20 controls conducted or proposed as part of educational  
21 programs on misuse and abuse of controlled substances;

22 (5) disseminate the results of research on misuse and  
23 abuse of controlled substances to promote a better pub-  
24 lic understanding of what problems exist and what can  
25 be done to combat them; and

26 (6) assist in the education and training of state and  
27 local law-enforcement officials in their efforts to con-  
28 trol misuse and abuse of controlled substances.

29 (b) Such agencies shall encourage research on mis-  
30 use and abuse of controlled substances. In connection  
31 with the research, and in furtherance of the enforcement  
32 of this act, such agencies may:

33 (1) establish methods to assess accurately the effects  
34 of controlled substances and identify and characterize  
35 those with potential for abuse;

36 (2) make studies and undertake programs of research  
37 to:

38 (i) develop new or improved approaches, techniques,  
39 systems, equipment, and devices to strengthen the en-  
40 forcement of this act;

41 (ii) determine patterns of misuse and abuse of con-  
42 trolled substances and the social effects thereof; and,

43 (iii) improve methods for preventing, predicting, un-  
44 derstanding, and dealing with the misuse and abuse of  
45 controlled substances; and,

46 (3) enter into contracts with public agencies, institu-  
47 tions of higher education, and private organizations or  
48 individuals for the purpose of conducting research, demon-  
49 strations, or special projects which bear directly on mis-  
50 use and abuse of controlled substances.

51 (c) Such agencies may enter into contracts for ed-  
52 ucational and research activities without performance  
53 bonds.

54 (d) Such agencies may authorize persons engaged in  
55 research on the use and effects of controlled substances

56 to withhold the names and other identifying characteris-  
57 tics of individuals who are the subjects of the research.  
58 Persons who obtain this authorization are not compelled  
59 in any civil, criminal, administrative, legislative, or other  
60 proceeding to identify the individuals who are the sub-  
61 jects of research for which the authorization was ob-  
62 tained.

63 (e) Such agencies may authorize the possession and  
64 distribution of controlled substances by persons engaged  
65 in research. Persons who obtain this authorization are  
66 exempt from state prosecution for possession and dis-  
67 tribution of controlled substances to the extent of the  
68 authorization.

#### ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60A-6-601. Pending proceedings.

§60A-6-602. Continuation of orders and rules.

§60A-6-603. Uniformity of interpretation.

§60A-6-604. Short title.

§60A-6-605. Severability.

#### §60A-6-601. Pending proceedings.

1 (a) The provisions of this act shall govern and control  
2 as to any offenses committed in violation thereof on and  
3 after the effective date of this act, and the provisions  
4 of articles eight, eight-a and eight-b, chapter sixteen of  
5 this code shall govern and control as to any offenses  
6 committed in violation of said articles, or any of them,  
7 prior to the effective date of this act, with like effect as  
8 to such prior offenses as if said articles had not been  
9 repealed and this act had not been enacted: *Provided*,  
10 That if the offense being prosecuted is similar to one  
11 set out in article four of this act, then the penalties  
12 under article four apply if they are less than those under  
13 prior law.

14 (b) Civil seizures of forfeitures and injunctive pro-  
15 ceedings commenced prior to the effective date of this  
16 act are not affected by this act.

17 (c) All administrative proceedings pending under  
18 prior laws which are superseded by this act shall be  
19 continued and brought to a final determination in accord

20 with the laws and rules in effect prior to the effective  
21 date of the act. Any substance controlled under prior  
22 law which is not listed within Schedules I through V,  
23 is automatically controlled without further proceedings  
24 and shall be listed in the appropriate schedule.

25 (d) The state board of pharmacy or the appropriate  
26 departments, boards, and agencies, as specified in sec-  
27 tion 301, shall initially permit persons to register who  
28 own or operate any establishment engaged in the manu-  
29 facture, distribution, or dispensing of any controlled  
30 substance prior to the effective date of this act and who  
31 are registered or licensed by the state.

32 (e) This act applies to violations of law, seizures, and  
33 forfeiture, injunctive proceedings, administrative proceed-  
34 ings, and investigations which occur following its effec-  
35 tive date.

**§60A-6-602. Continuation of orders and rules.**

1 Any orders and rules promulgated under any law  
2 affected by this act and in effect on the effective date of  
3 this act and not in conflict with it continue in effect until  
4 modified, superseded or repealed.

**§60A-6-603. Uniformity of interpretation.**

1 This act shall be so applied and construed as to effec-  
2 tuate its general purpose to make uniform the law with  
3 respect to the subject of this act among those states  
4 which enact it.

**§60A-6-604. Short title.**

1 This act may be cited as the Uniform Controlled Sub-  
2 stances Act.

**§60A-6-605. Severability.**

1 If any provision of this act or the application thereof  
2 to any person or circumstance is held invalid, such in-  
3 validity shall not affect other provisions or applications  
4 of the act, and to this end the provisions of this act are  
5 hereby declared to be severable.

## CHAPTER 55

(House Bill No. 795—By Mr. Dinsmore and Mr. McGraw)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one; and section two, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to define the term "minor" as used in article four, section one of the state constitution and as used in the West Virginia election code to mean a person who has not become eighteen years of age, and to permit a minor to vote in a primary election if he will have reached the age of eighteen years on the date of the general election next to be held after such primary election, to provide that citizens of the state who are between the ages of eighteen and twenty-one and who are otherwise qualified to vote shall not be entitled to vote except in elections held on and after July one, one thousand nine hundred seventy-one, within the precincts of the counties and municipalities in which they respectively reside, to permit a minor, otherwise qualified, to register if he shall have attained the age of eighteen years by the time of the next ensuing election, and to provide that on and after the effective date of this act, citizens of the state who are between the ages of eighteen and twenty-one and who are otherwise qualified to vote shall be permitted to register to vote, and the voter registration of any citizen of the state who prior to the effective date of this act registered to vote and who was between the ages of eighteen and twenty-one at the time of registration and who was otherwise qualified to vote shall be valid.

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

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

### Article

1. General Provisions and Definitions.
2. Registration of Voters.

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

§3-1-2. Scope of chapter; definitions.

§3-1-3. Persons entitled to vote.

**§3-1-2. Scope of chapter; definitions.**

1 Unless restricted by the context, the provisions of this  
2 chapter shall apply to every general, primary and spe-  
3 cial election in which candidates are nominated or elected  
4 or in which voters pass upon any public question sub-  
5 mitted to them, except that the provisions hereof shall  
6 be construed to be operative in municipal elections only  
7 in those instances in which they are made expressly so  
8 applicable.

9 Unless the context clearly requires a different mean-  
10 ing, as herein used:

11 "Voter" shall mean any person who possesses the  
12 statutory and constitutional qualifications for voting;

13 "Election" shall mean the procedure whereby the voters  
14 of this state or any subdivision thereof elect persons to  
15 fill public offices, or elect members of a constitutional  
16 convention, or vote on public questions;

17 "Any election" or "all elections" shall include every  
18 general, primary, or special election held in this state,  
19 or in any of its subdivisions, for the purpose of nom-  
20 inating or electing federal or state officers, or county,  
21 city, town or village officers of any subdivision now  
22 existing or hereafter created, or for the purpose of elect-  
23 ing members of a constitutional convention, or for voting  
24 upon any public question submitted to the people of  
25 the state or any of the aforesaid subdivisions;

26 "Office" shall be construed to mean "public office"  
27 which shall include (1) any elective office provided for  
28 by the constitution or laws of the United States or of  
29 this state to which a salary or other compensation at-  
30 taches, and (2) membership in a constitutional conven-  
31 tion;

32 "Candidate" shall mean any person to be voted for at  
33 an election;

34 "Public question" shall mean any issue or proposition,

35 now or hereafter required by the governing body of this  
36 state or any of its subdivisions to be submitted to the  
37 voters of the state or subdivision for decision at elections;

38 The term "minor" as used in article four, section one  
39 of the state constitution and as used in this chapter shall  
40 mean a person who has not become eighteen years of age.

### §3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all  
2 elections held within the precincts of the counties and  
3 municipalities in which they respectively reside. But  
4 no person who has not been registered as a voter as  
5 required by law, or who is a minor, or of unsound mind,  
6 or a pauper, or who is under conviction of treason, felony  
7 or bribery in an election, or who, in the case of state-  
8 county elections has not been a bona fide resident of  
9 the state for one year and of the county in which he  
10 offers to vote for sixty days next preceding such election,  
11 or who, in the case of a special election to elect members  
12 to a constitutional convention, has not been a bona fide  
13 resident of the state for one year and of the county  
14 in which he offers to vote for sixty days next preceding  
15 such election, or who in the case of municipal elections  
16 has not been a bona fide resident of the state for one  
17 year and of the municipality in which he offers to vote  
18 for sixty days next preceding such election, shall be  
19 permitted to vote at such election while such disability  
20 continues. Subject to the qualifications otherwise pre-  
21 scribed in this section, however, a minor shall be per-  
22 mitted to vote in a primary election if he will have  
23 reached the age of eighteen years on the date of the  
24 general election next to be held after such primary elec-  
25 tion.

26 Notwithstanding the foregoing provisions of this sec-  
27 tion, citizens of the state who are between the ages of  
28 eighteen and twenty-one and who are otherwise qualified  
29 to vote shall not be entitled to vote except in elections  
30 held on and after July one, one thousand nine hundred  
31 seventy-one, within the precincts of the counties and mu-  
32 nicipalities in which they respectively reside.

**ARTICLE 2. REGISTRATION OF VOTERS.****§3-2-2. Voter registration requirements.**

1 No voter otherwise qualified shall be permitted to vote  
2 at any election unless he shall have been duly registered  
3 or shall have placed himself within the "challenged  
4 voters" provision of this chapter, and only those persons  
5 who possess the constitutional and statutory qualifica-  
6 tions for voting shall be permitted to register, except  
7 that minors, otherwise qualified, who shall have attained  
8 the age of eighteen years by the time of the next ensuing  
9 election, may be permitted to register.

10 On and after the effective date of this act, citizens of  
11 the state who are between the ages of eighteen and  
12 twenty-one and who are otherwise qualified to vote shall  
13 be permitted to register to vote, and the voter registration  
14 of any citizen of the state who prior to the effective date  
15 of this act registered to vote and who was between the  
16 ages of eighteen and twenty-one at the time of registra-  
17 tion and who was otherwise qualified to vote shall be  
18 valid.

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**CHAPTER 56**

(Senate Bill No. 371—By Mr. Brotherton)

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[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter three 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 persons entitled to vote under the federal Voting Rights Act Amendments of 1970, and authorizing the secretary of state to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as in-



terpreted and limited by the United States supreme court, and making it the duty of all public officers, election officers, boards and commissions having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as have been prescribed by the secretary of state under the foregoing authority vested in that office.

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

That article one, chapter 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 three-a, to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-3a. Persons entitled to vote under federal Voting Rights Act Amendments of 1970; authority of secretary of state.**

1       (1) Any citizen of the United States who is a resident  
2 of the state and who applies, not later than thirty days  
3 immediately prior to any presidential election for regis-  
4 tration or qualification to vote for the choice of electors  
5 for president and vice-president, or for president and  
6 vice-president, in such election, and who is otherwise  
7 qualified to vote, may register to vote, and vote, for  
8 the choice of electors for president and vice-president,  
9 or for president and vice-president, in such election, as  
10 provided by the federal Voting Rights Act Amendments  
11 of 1970.

12       (2) Any citizen of the United States who has moved  
13 his residence from this state within thirty days next  
14 preceding any election for president and vice-president,  
15 and who was otherwise qualified to vote in this state as  
16 of the date of his change of residence and who has not  
17 satisfied the registration requirements of the state to  
18 which he has moved, may vote for the choice of elec-  
19 tors for president and vice-president, or for president  
20 and vice-president, in such election, as provided by the  
21 federal Voting Rights Act Amendments of 1970.

22 (3) Any citizen of the United States who has attained  
23 the age of eighteen years but who has not attained  
24 the age of twenty-one years by the time of the next  
25 ensuing primary or election in which he may vote under  
26 section 302 of the federal Voting Rights Act Amend-  
27 ments of 1970, as interpreted and limited by the United  
28 States supreme court, and who is otherwise qualified  
29 to vote, may vote in any primary or election for those  
30 candidates for whom he is entitled to vote under said  
31 section 302 of the federal Voting Rights Act Amend-  
32 ments of 1970, as interpreted and limited by the United  
33 States supreme court.

34 (4) The secretary of state shall have authority to  
35 make, amend and rescind such rules, regulations, orders  
36 and instructions, and prescribe such registration and  
37 voting procedures, forms (including registration, ballot  
38 and ballot label forms), lists and records, as may be  
39 necessary in order for this state to fully implement,  
40 and comply with, the federal Voting Rights Act Amend-  
41 ments of 1970, as interpreted and limited by the United  
42 States supreme court, and it shall be the duty of all  
43 public officers, election officers, boards and commis-  
44 sioners having any authority or responsibility in con-  
45 nection with any election, to comply with all such rules,  
46 regulations, orders and instructions, and use, make, fol-  
47 low or comply with all such registration and voting  
48 procedures, forms (including registration, ballot and bal-  
49 lot label forms), lists and records as have been pre-  
50 scribed by the secretary of state under the foregoing  
51 authority vested in that office.

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## CHAPTER 57

(Senate Bill No. 165—By Mr. Ward and Mr. Palumbo)

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[Passed March 8, 1971; in effect ninety days from passage. Approved by the Governor.]

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

dred thirty-one, as amended, relating to political party committees.

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

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

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-9. Political party committees; how composed; organization.**

1 At the May primary election in the year one thousand  
2 nine hundred seventy-two and at the May primary elec-  
3 tion in the year one thousand nine hundred seventy-four  
4 and in every fourth year subsequent to the May primary  
5 election held in the year one thousand nine hundred  
6 seventy-four, the voters of each political party in each  
7 senatorial district shall elect two male and two female  
8 members of the state executive committee of the party. In  
9 senatorial districts containing two or more counties, not  
10 more than two such elected committee members shall be  
11 residents of the same county. The committee, when con-  
12 vened and organized as herein provided, shall appoint  
13 three additional members of the committee from the state  
14 at large.

15 At such primary election, the voters of each political  
16 party in each county shall elect one male and one fe-  
17 male member of the party's executive committee of the  
18 congressional district, of the senatorial district in which  
19 such county is situated and of the delegate district in  
20 which such county is situated if such county be situated in  
21 a delegate district. At the same time such voters in  
22 each magisterial district of the county shall elect one  
23 male and one female member of the party's county execu-  
24 tive committee and, in any county containing a city of  
25 ten thousand or more in population, such voters of each  
26 ward of such city within the county shall elect one male  
27 and one female member of such county party executive  
28 committee in addition to the members thereof chosen  
29 from the magisterial district or districts in which such  
30 city is situated.

31 All members of executive committees, selected for

32 each political division as herein provided, shall reside  
33 within the county, district, or ward from which chosen.

34 The term of office of all members of executive com-  
35 mittees so elected at the May primary election in the  
36 year one thousand nine hundred seventy-two shall begin  
37 on the first day of June, following said May primary,  
38 and shall continue for two years thereafter and until  
39 their successors are elected and qualified. The term of  
40 office of all members of executive committees elected  
41 at the May primary in the year one thousand nine  
42 hundred seventy-four, and every four years thereafter,  
43 shall begin on the first day of June, following said May  
44 primary, and shall continue for four years thereafter  
45 and until their successors are elected and qualified.  
46 Vacancies in the state executive committee shall be filled  
47 by the members of the committee for the unexpired  
48 term. Vacancies in the party's executive committee of  
49 a congressional district, senatorial district, delegate dis-  
50 trict or county shall be filled by the party's executive  
51 committee of the county in which such vacancy exists,  
52 and shall be for the unexpired term.

53 As soon as possible after the first day of June, following  
54 the election of the new executive committees, as herein  
55 provided, they shall convene within their respective po-  
56 litical divisions, on the call of the chairman of corre-  
57 sponding outgoing executive committees, or by any mem-  
58 ber of the new executive committee in the event there  
59 is no corresponding outgoing executive committee, and  
60 proceed to select a chairman, a treasurer, and a secre-  
61 tary, and such other officers as they may desire, each  
62 of which officers shall for their respective committees  
63 perform the duties that usually appertain to such offices.

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## CHAPTER 58

(House Bill No. 962—By Mr. Jones, of Roane, and Mr. McGraw)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article three, chapter three of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to voting booths within public view for absentee voting and prohibits the display of campaign material in absentee voting areas.

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

That section two-a, article three, 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 3. VOTING BY ABSENTEES.**

**§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.**

1 Throughout the period during which absent voter bal-  
2 lots may be voted in the clerk's office as provided else-  
3 where in this article, the clerk shall provide or main-  
4 tain in his office one or more booths or compartments,  
5 each containing a table, counter or shelf, and furnished  
6 with proper supplies for preparing ballots, at or in which  
7 voters may conveniently prepare their ballots, so that  
8 in the preparation thereof they may be secure from the  
9 observation of others. Such booths or compartments  
10 shall be so placed within the clerk's office as to be sep-  
11 arate from, but within the clear view of the entrance area  
12 accessible to the public conducting normal business in  
13 the clerk's office. If the compartment to be used for the  
14 purpose of voting is a room otherwise used as a portion  
15 of the clerk's office, the entrance to such room shall be  
16 within the clear view of the entrance area accessible to  
17 the public conducting normal business in the clerk's  
18 office, and no other person, including but not limited to  
19 the circuit clerk and ballot commissioners, shall be per-  
20 mitted to pass through the entrance to such voting room  
21 during the period in which it is occupied by any one  
22 voter while preparing his ballot.

23 Throughout the period during which absent voter bal-  
24 lots may be voted in the clerk's office as provided else-  
25 where in this article, it shall be the duty of the clerk  
26 to prohibit the display in any manner of any literature  
27 or material of any kind urging the voting for or against  
28 any candidate or candidates or public question or ques-  
29 tions within the whole area of the clerk's office or within

30 sixty feet thereof. The clerk is hereby authorized to  
31 direct the sheriff of the county to enforce such prohibition.

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## CHAPTER 59

(House Bill No. 1158—By Mr. Seibert)

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[Passed March 9, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right of one party having power of eminent domain to cross or alter the property and works belonging to another party with such power, and civil action related thereto.

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

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

### ARTICLE 1. RIGHT OF EMINENT DOMAIN.

#### §54-1-9. Crossing or alteration of works of another entity; civil action.

1 If any entity having the power of eminent domain  
2 under other provisions of this article including any rail-  
3 road company, canal company, company organized for  
4 the purpose of transporting oil or natural or manufactured  
5 gas, or both, by means of pipeline, company organized  
6 for the purpose of transporting coal and its derivatives  
7 and all mixtures and combinations thereof with any sub-  
8 stance by means of pipes or otherwise, telephone or tele-  
9 graph company, company operating an electric trans-  
10 mission line, private corporation or public corporation  
11 operating a system of pipelines for transporting water,  
12 private corporation or public corporation operating a  
13 sewer system for public use, the West Virginia depart-  
14 ment of highways, or any county court, deems it neces-  
15 sary in the construction or relocation of its works, or any  
16 part thereof, to cross any other railroad, canal, sewer line,  
17 pipeline, any state or other public road at grade or other-

18 wise, telephone or telegraph line or electric transmis-  
19 sion line, such crossing may be made provided said works  
20 be so constructed as not to impede the passage or trans-  
21 portation of persons, property, commodities or sewage  
22 along, over or through the same. If any such company,  
23 private corporation, public corporation, West Virginia de-  
24 partment of highways or county court desire that the  
25 course of any other railroad, canal, sewer line, pipeline,  
26 state, or other public road, telephone or telegraph line,  
27 electric transmission line, or any stream which is not a  
28 public highway, be altered to avoid the necessity of any  
29 crossing, or of frequent crossings, or to facilitate the cross-  
30 ing thereof, or the construction of a parallel work, the  
31 alteration may be made in such manner as may be agreed  
32 between the said party desiring such alteration and the  
33 owner of such other facility or land to be affected  
34 thereby. In case the parties interested fail to agree upon  
35 such crossing or alteration as is desired, said party de-  
36 siring such crossing or alteration may bring a civil action,  
37 and in such action the court may, in a proper case, order  
38 that any proper crossing, or alteration, may be made  
39 upon payment of just compensation for the property or  
40 interest in property to be taken and upon payment of  
41 damages, if any, to the residue thereof beyond all bene-  
42 fits to be derived thereby. Following said civil action,  
43 and if the court order such crossing or alteration may be  
44 made, said party desiring such crossing or alteration may  
45 thereupon proceed under article two of this chapter to  
46 obtain the right to make such crossing or alteration and  
47 to have determined the amount of compensation and  
48 damages owing as a result thereof.

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## CHAPTER 60

(House Bill No. 547—By Mr. Myles)

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[Passed February 15, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article two, chapter forty-four of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the reference of decedents' estates to commissioners of accounts.

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

That section one, 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.**

**§44-2-1. Reference of decedents' estates; proceedings thereon.**

1 Upon the qualification of any personal representative,  
2 the estate of his decedent shall, by order of the county  
3 court to be then made, be referred to a commissioner of  
4 accounts for proof and determination of debts and claims,  
5 establishment of their priority, determination of the  
6 amount of the respective shares of the legatees and dis-  
7 tributees, and any other matter necessary and proper for  
8 the settlement of the estate: *Provided*, That in counties  
9 where there are two or more such commissioners, the  
10 estates of decedents shall be referred to such commis-  
11 sioners in rotation, in order that, so far as possible, there  
12 may be an equal division of the work: *Provided, how-*  
13 *ever*, That if and when the personal representative shall  
14 file with the clerk of the county court an appraisalment  
15 of the estate, showing its value to be three thousand  
16 dollars or less, then reference to a commissioner of  
17 accounts shall not be necessary, but the personal repre-  
18 sentative shall, within two months from his appointment,  
19 file with the county clerk his report of receipts and dis-  
20 bursements, and, unless some creditor or heir shall within  
21 thirty days thereafter show good cause why the report  
22 is not correct, the personal representative and his bonds-  
23 man shall be discharged.



## CHAPTER 61

(House Bill No. 1010—By Mr. Steptoe and Mr. Halbritter)

[Passed March 8, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four-a, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accounting by personal representatives for certain moneys not capable of payment or distribution at the time of final settlement of estates, and to the payment of such moneys to the general receiver of the circuit court; procedure for the distribution of such moneys under the direction of the circuit court.

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

That section twenty-four-a, 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:

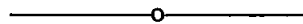
### **ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.**

#### **§44-2-24a. Accounting for money not disposable at time of settlement; subsequent distribution of such money.**

1 Notwithstanding any other provision of law, if an  
2 estate is otherwise ready for final settlement and the  
3 personal representative holds any sum or sums of money  
4 necessary for the payment or distribution of any con-  
5 tingent, unliquidated, unmatured or disputed bequest  
6 or claim, which cannot be paid or distributed because  
7 the whereabouts of the claimant or distributee are un-  
8 known, or cannot be paid or distributed for any other  
9 reason, he may, with the consent of the commissioner  
10 of accounts to whom the estate has been referred, pay  
11 such sum or sums to the general receiver of the circuit  
12 court in the county in which the estate is being ad-  
13 ministered. Any such payment, together with a receipt  
14 therefor, shall be reflected and shown in said commis-  
15 sioner's final report. After said report is confirmed by

16 the county court, such personal representative shall not  
17 be personally liable for any such aforesaid bequest or  
18 claim.

19 Any person entitled to any funds paid to a general  
20 receiver of a circuit court pursuant to the provisions  
21 of this section may petition the circuit court in a sum-  
22 mary proceeding for an order directing the distribu-  
23 tion of such funds. Any person believed to have any  
24 claim to or interest in said funds shall be made a party  
25 defendant to such petition and shall be given such  
26 notice of any hearing thereon as the circuit court may  
27 direct. The circuit court shall enter an order directing  
28 the distribution of said funds to the person or persons  
29 entitled thereto. The costs of said proceedings shall be  
30 paid from the funds.



## CHAPTER 62

(Senate Bill No. 443—By Mr. Brotherton)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter forty-four of said code, relating to investments that may be made by insurers and fiduciaries.

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

That section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article six, chapter forty-four of said code be amended and reenacted, all to read as follows:

### Chapter

**33. Insurance.**

**44. Administration of Estate and Trusts.**

**CHAPTER 33. INSURANCE.****ARTICLE 8. INVESTMENTS.****§33-8-7. Government obligations.**

1 An insurer may invest any of its funds in:

2 (a) Bonds or securities which are the direct obligation  
3 of or which are secured or guaranteed in whole or in  
4 part as to principal and interest by the United States, any  
5 state or territory of the United States or the District  
6 of Columbia, where there exists the power to levy taxes  
7 for the prompt payment of the principal and interest  
8 of such bonds or evidences of indebtedness, and, in bonds  
9 issued by the federal land banks or securities issued by  
10 the federal home loan bank system.

11 (b) Bonds or evidences of indebtedness which are  
12 direct general obligations of any county, district, city,  
13 town, village, school district, park district or other politi-  
14 cal subdivision of this state or any other state or ter-  
15 ritory of the United States or the District of Columbia,  
16 which shall not be in default in the payment of any of  
17 its general obligation bonds, either principal or interest,  
18 at the date of such investment; where they are payable  
19 from ad valorem taxes levied on all the taxable prop-  
20 erty located therein and the total indebtedness after de-  
21 ducting sinking funds and all debts incurred for self-  
22 sustaining public works does not exceed ten per centum  
23 of the actual value of all taxable property therein on  
24 the basis of which the last assessment was made before  
25 the date of such investment.

**CHAPTER 44. ADMINISTRATION OF ESTATES  
AND TRUSTS.****ARTICLE 6. INVESTMENTS BY FIDUCIARIES.****§44-6-2. In what securities fiduciaries may invest trust funds.**

1 Any executor, administrator, guardian, curator, com-  
2 mittee, trustee or other fiduciary whose duty it may be  
3 to loan or invest money entrusted to him as such, may,  
4 without any order of any court, invest the same or any  
5 part thereof in any of the following securities, and with-  
6 out liability for any loss resulting from investments

7 therein: *Provided*, That such fiduciary shall exercise the  
8 judgment and care under the circumstances then pre-  
9 vailing which men of prudence, discretion and intelli-  
10 gence exercise in the management of their own affairs,  
11 not in regard to speculation, but in regard to the per-  
12 manent disposition of their funds, considering the prob-  
13 able income as well as the probable safety of their capi-  
14 tal:

15 (a) In bonds or interest-bearing notes or obligations  
16 of the United States, or those for which the faith of the  
17 United States is distinctly pledged to provide for the  
18 payment of the principal and interest thereof, including,  
19 but not by way of limitation, bonds or debentures is-  
20 sued under the "Federal Farm Loan Act," debentures  
21 issued by "Banks for Cooperatives" under the "Farm  
22 Credit Act of One Thousand Nine Hundred Thirty-Three,"  
23 as amended, debentures issued by the federal national  
24 mortgage association, securities issued by the federal  
25 home loan bank system; and in bonds, interest-bear-  
26 ing notes and obligations issued, guaranteed or assumed  
27 by the International Bank for Reconstruction and Devel-  
28 opment or by the Inter-American Development Bank;

29 (b) In bonds or interest-bearing notes or obligations  
30 of this state;

31 (c) In bonds of any state of the United States which  
32 has not within ten years previous to the making of such  
33 investment defaulted in the payment of any part of either  
34 principal or interest on any of its bonds issued by au-  
35 thority of the Legislature of such state;

36 (d) In the bonds or interest-bearing notes or obliga-  
37 tions of any county, district, school district or independent  
38 school district, municipality or any other political division  
39 of this state that have been issued pursuant to the au-  
40 thority of any law of this state, since the ninth day of  
41 May of the year one thousand nine hundred seven-  
42 teen;

43 (e) In bonds and negotiable notes secured by first  
44 mortgage or first trust deed upon improved real estate  
45 where the amount secured by such mortgage or trust  
46 deed shall not at the time of making the same exceed  
47 eighty percent of the assessed value, or sixty-six and

48 two-thirds percent of the appraised value as determined  
49 by wholly disinterested and independent appraisers,  
50 whichever value shall be the higher, of the real estate  
51 covered by such mortgage or trust deed, and when such  
52 mortgage or trust deed is accompanied by a satisfactory  
53 abstract of title, certificate of title or title insurance  
54 policy, showing good title in the mortgagor when mak-  
55 ing such mortgage or trust deed, and by a fire insurance  
56 policy in an old line company with loss, if any, payable  
57 to the mortgagee or trustee as his interest may appear:  
58 *Provided*, That the rate of interest upon the above  
59 enumerated securities in this subdivision (e), in which  
60 such investments may be made, shall not be less than  
61 two percent, nor more than eight percent, per annum;

62 (f) In savings accounts and time deposits of banks or  
63 trust companies to the extent that such deposits are in-  
64 sured by the federal deposit insurance corporation, or  
65 by any other similar federal instrumentality that may  
66 be hereafter created, provided there shall be such an in-  
67 strumentality in existence and available for the purpose,  
68 or by bonds of solvent surety companies: *Provided*, That  
69 the rate of interest upon such savings accounts or time  
70 deposits shall not be less than the rate paid other de-  
71 positors in such bank or trust company;

72 (g) In shares of state building and loan associations,  
73 or federal savings and loan associations, to the extent  
74 that such shares are insured by the federal savings and  
75 loan insurance corporation, or by any other similar fed-  
76 eral instrumentality that may be hereafter created:  
77 *Provided*, That there shall be such an instrumentality  
78 in existence and available for the purpose, or by bonds  
79 of solvent surety companies: *Provided, however*, That  
80 the dividend rate upon such shares shall not be less than  
81 the rate paid to other shareholders in such associations;

82 (h) In other securities of corporations organized and  
83 existing under the laws of the United States, or of the Dis-  
84 trict of Columbia or any state of the United States includ-  
85 ing, but not by way of limitation, bonds, debentures, notes,  
86 equipment trust obligations or other evidences of indebt-  
87 edness, and shares of common and preferred stocks of such  
88 corporations and securities of any open end or closed

89 end management type investment company or investment  
90 trust registered under the "Federal Investment Company  
91 Act" of one thousand nine hundred forty, as from time  
92 to time amended, which men of prudence, discretion and  
93 intelligence acquire or retain for their own account,  
94 provided, and upon conditions, however, that:

95 (1) No investment shall be made pursuant to the pro-  
96 visions of this subdivision (h) which, at the time such  
97 investment shall be made, will cause the aggregate mar-  
98 ket value thereof to exceed fifty percent of the aggregate  
99 market value at that time of all of the property of the  
100 fund held by such fiduciary. Notwithstanding the afore-  
101 said percentage limitation the cash proceeds of the sale  
102 of securities received or purchased by a fiduciary and  
103 made eligible by this subdivision (h) may be reinvested  
104 in any securities of the type described in this sub-  
105 division (h).

106 (2) No bonds, debentures, notes, equipment trust ob-  
107 ligations or other evidence of indebtedness of such cor-  
108 porations shall be purchased under authority of this  
109 subdivision (h) unless such obligations, if other than  
110 issues of a common carrier subject to the provisions of  
111 section twenty-a of the "Interstate Commerce Act," as  
112 amended, shall be obligations issued, guaranteed or as-  
113 sumed by corporations which have any securities cur-  
114 rently registered with the securities and exchange com-  
115 mission.

116 (3) No common or preferred stocks, other than bank  
117 and insurance company stocks, shall be purchased un-  
118 der authority of this subdivision (h) unless currently  
119 fully listed and registered upon an exchange registered  
120 with the securities and exchange commission as a na-  
121 tional securities exchange. No sale or other liquidation  
122 of any investment shall be required solely because of  
123 any change in the relative market value of those invest-  
124 ments made eligible by this subdivision (h) and those  
125 made eligible by the preceding subdivisions of this sec-  
126 tion. In determining the aggregate market value of the  
127 property of a fund and the percentage of a fund to be  
128 invested under the provisions of this subdivision, a fi-  
129 duciary may rely upon published market quotations as

130 to those investments for which such quotations are avail-  
131 able, and upon such valuations of other investments as  
132 in the fiduciary's best judgment seem fair and reason-  
133 able according to available information.

134 Trust funds received by executors, administrators,  
135 guardians, curators, committees, trustees and other fi-  
136 duciaries may be kept invested in the securities originally  
137 received by them, unless otherwise ordered by a court  
138 having jurisdiction of the matter, as hereinafter provided,  
139 or unless the instrument under which the trust was cre-  
140 ated shall direct that a change of investment be made,  
141 and any such fiduciary shall not be liable for any loss that  
142 may occur by depreciation of such securities.

143 This section shall not apply where the instrument  
144 creating the trust, or the last will and testament of any  
145 testator, or any court having jurisdiction of the matter,  
146 specially directs in what securities the trust funds shall  
147 be invested, and every such court is hereby given power  
148 specially to direct by order or orders, from time to time,  
149 additional securities in which trust funds may be in-  
150 vested, and any investment thereof made in accordance  
151 with any such special direction shall be legal, and no  
152 executor, administrator, guardian, curator, committee,  
153 trustee or other fiduciary shall be held for any loss re-  
154 sulting in any such case.

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## CHAPTER 63

(House Bill No. 724—By Mr. Steptoe)

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[Passed February 19, 1971: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to income and corpus of estates of infant wards.

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

That section eight, article ten, 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 10. GUARDIANS AND WARDS.****§44-10-8. Disbursements and expenditures by guardians from income and corpus of estates of infant wards.**

1 No disbursements, beyond the annual income of the  
2 ward's estate, shall be allowed to any guardian where  
3 the deed or will, under which the estate is derived, does  
4 not authorize it, unless the same shall have been au-  
5 thorized by the circuit court of the county in which the  
6 guardian was appointed or qualified. Any guardian, who  
7 may desire to spend more than the annual income of his  
8 ward's estate for any purpose, shall file in such circuit  
9 court a petition, verified by his oath, setting forth the  
10 reasons why it is necessary to make such expenditures,  
11 to which petition the ward shall be made defendant. The  
12 court shall appoint a guardian ad litem for the ward,  
13 who shall answer such petition, be present at the hear-  
14 ing, and represent the infant. Five days' notice shall be  
15 given to the defendant before such petition can be heard.  
16 At the hearing the evidence may be taken orally, and  
17 the court, if satisfied that such expenditure would be  
18 judicious and proper, may grant the prayer of the peti-  
19 tion. Such petition may be filed and heard before the  
20 judge of such court in vacation as well as in term time.  
21 In the settlement of the guardian's accounts no credit  
22 shall be allowed him by the commissioner of accounts  
23 or the court for expenditures for his ward, except for  
24 expenditures of the annual income of his ward's estate  
25 and for expenditures of such amounts of the principal  
26 of the ward's personal estate as shall have been au-  
27 thorized by the court as provided by this section: *Pro-*  
28 *vided, however,* That if the personal estate in the hands  
29 of the guardian does not exceed in amount the sum of  
30 three thousand dollars, disbursement may be made by  
31 the guardian from the corpus of such personal estate  
32 for the ward's maintenance and education, after first  
33 securing the written approval so to do of and from the  
34 commissioner of accounts to whom the settlement of the  
35 ward's estate was referred.



## CHAPTER 64

(Com. Sub. for House Bill No. 543—Originating in the House  
Committee on the Judiciary)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

AN ACT to amend chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to guardianships for mentally retarded persons; limited and standby guardianships for such persons, the duration of all such guardianships and the application of other provisions of this code with respect to such mentally retarded persons.

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

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

### **ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED PERSONS GENERALLY.**

§44-10A-1. Guardianship of mentally retarded person.

§44-10A-2. Limited guardianship.

§44-10A-3. Duration of guardianship.

§44-10A-4. Standby guardianship.

§44-10A-5. Application of other provisions.

#### **§44-10A-1. Guardianship of mentally retarded person.**

1 When it shall appear to the satisfaction of the county  
2 court that a person is a mentally retarded person as  
3 defined in section three, article one, chapter twenty-  
4 seven of this code, that such condition is certified  
5 as being permanent in nature by at least two physicians,  
6 licensed to practice medicine in this state, or one such  
7 physician and one licensed psychologist having qualifi-  
8 cations to make such certification, and that such person re-  
9 quires in his best interests the appointment of a guardian,  
10 the county court is authorized and empowered, upon ap-  
11 plication of both parents, natural or adoptive, if living, or  
12 upon application of one such parent and the consent of the

13 other, if living, or upon application of any other in-  
14 terested person and the consent of both parents or the  
15 surviving parent if either or both such parents shall be  
16 living, to appoint such guardian.

**§44-10A-2. Limited guardianship.**

1 When it shall appear to the satisfaction of the county  
2 court that such mentally retarded person for whom an  
3 application for guardianship is made is over the age of  
4 twenty-one years and is wholly or substantially self-  
5 supporting by means of his wages or earnings from  
6 employment, the county court is authorized and em-  
7 powered to appoint a limited guardian for such mentally  
8 retarded person who shall receive, manage, disburse  
9 and account for only such property of said mentally  
10 retarded person as shall be received from other than the  
11 wages or earnings of said person.

12 The mentally retarded person for whom a limited  
13 guardian has been appointed shall have the right to  
14 receive and expend any and all wages or other earnings  
15 of his employment and shall have the power to contract  
16 or legally bind himself for any sum of money which in  
17 the aggregate shall not exceed one month's wages or  
18 earnings from such employment or the sum of three  
19 hundred dollars, whichever is less, in any one month.

20 In all other respects the requirements, powers and  
21 duties of a limited guardian shall be the same as those  
22 of a committee as set forth in article eleven, chapter  
23 twenty-seven of this code.

**§44-10A-3. Duration of guardianship.**

1 Such guardianship shall not terminate at the age of  
2 majority or upon marriage and such limited guardianship  
3 shall not terminate upon marriage but shall continue  
4 during the life of such mentally retarded person, or until  
5 terminated by the county court; except that the prior ap-  
6 pointment of a guardian or limited guardian for a men-  
7 tally retarded female shall terminate upon her subse-  
8 quent marriage. A person of the age of twenty-one or  
9 more years for whom a guardian has been previously ap-  
10 pointed and a person for whom a limited guardian has  
11 been previously appointed may, however, petition the

12 county court which made such appointment or the county  
13 court of his county of residence to have the guardianship  
14 or limited guardianship terminated, or, in the alternative,  
15 to have the guardian or limited guardian discharged and  
16 a successor appointed, or to have the guardian designated  
17 as a limited guardian.

18 Upon such a petition for review or upon a petition  
19 for appointment of a guardian in the first instance for  
20 a mentally retarded person over the age of twenty-one  
21 or upon a petition for appointment of a limited guardian  
22 in the first instance for a mentally retarded person, the  
23 county court shall conduct a hearing at which the re-  
24 tarded person shall be present.

#### §44-10A-4. Standby guardianship.

1 (a) Upon application or consent of both parents,  
2 natural or adoptive, if living, or of the surviving parent,  
3 a standby guardian of a mentally retarded person may  
4 be appointed by the county court. The county court  
5 may also upon application or consent of such parents  
6 or surviving parent appoint an alternate to such guar-  
7 dian, to act if such guardian shall die or become in-  
8 capacitated after the death of the last surviving parent  
9 of such retarded person, or if such guardian shall re-  
10 nounce his appointment.

11 (b) Such standby guardian, or alternate in the event  
12 of such guardian's death or incapacity or his renuncia-  
13 tion, shall without further proceedings be empowered  
14 to assume the duties of his office immediately upon  
15 death or adjudication of incompetency of the last sur-  
16 viving of the natural or adoptive parents of such men-  
17 tally retarded person, subject only to confirmation of  
18 his appointment by the county court within sixty days  
19 following assumption of his duties of office.

20 (c) After the appointment of a standby guardian,  
21 the court shall have and retain general jurisdiction over  
22 the mentally retarded person for whom such guardian  
23 shall have been appointed, to take of its own motion or  
24 to entertain and adjudicate such steps and proceedings  
25 relating to such standby guardianship as may be deemed

26 necessary or proper for the welfare of such retarded  
27 person.

**§44-10A-5. Application of other provisions.**

1 To the extent that the context thereof shall admit, the  
2 provisions of article ten of this chapter shall apply to  
3 all proceedings under this article with the same force and  
4 effect as if "a child", "a ward" or "a minor", as therein  
5 referred to, were "a mentally retarded person" as herein  
6 defined, and a "guardian" as therein referred to were a  
7 "guardian of a mentally retarded person", as herein pro-  
8 vided for.

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## CHAPTER 65

(House Bill No. 657—By Mr. Loop)

[Passed February 22, 1971; in effect ninety days from passage. Approved by the  
Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article five, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the release or disclaimer of powers of appointment.

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

That sections one, two, three, four and five, article five, 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 5. RELEASE OR DISCLAIMER OF POWERS OF APPOINTMENT.**

- §36-5-1. Release or disclaimer of general power of appointment.
- §36-5-2. Method of effecting release or disclaimer of power of appointment.
- §36-5-3. Release or disclaimer of other than general power of appointment.
- §36-5-4. Validity of release or disclaimer of power of appointment heretofore made.
- §36-5-5. Other methods of release or disclaimer of power of appointment not affected.

**§36-5-1. Release or disclaimer of general power of appointment.**

1 Any general power, whether exercisable by will, by  
2 deed, by will or deed, or otherwise, to appoint property,  
3 whether real or personal or both, may be released or  
4 disclaimed by the person or persons having such power,  
5 with or without consideration, wholly or partially. Any  
6 such power may be released or disclaimed with respect  
7 to the whole or any part of the property subject thereto;  
8 and any such power may also be released or disclaimed  
9 in such manner as to reduce, limit, or restrict the persons  
10 or objects, or classes of persons or objects, to or among  
11 any one or more of whom, but no others, the property  
12 subject to such power may be appointed by an exercise  
13 thereof, as fully as the creator of such power himself  
14 could have so reduced, limited or restricted the same and  
15 with like effect as if he had.

**§36-5-2. Method of effecting release or disclaimer of power of appointment.**

1 Any release or disclaimer mentioned in section one of  
2 this article may be effected by a written instrument  
3 signed and acknowledged as a deed by the person or  
4 persons having the general power to appoint mentioned  
5 in that section; and such instrument may be delivered by  
6 filing it for record in the office of the clerk of the county  
7 court of the county wherein the will, deed or other in-  
8 strument creating such power is recorded. Such clerk  
9 shall record such instrument of release or disclaimer as  
10 a deed is recorded, index it, and note a reference to the  
11 record thereof on the margin of the record of the will,  
12 deed or other instrument creating such power.

**§36-5-3. Release or disclaimer of other than general power of appointment.**

1 Any other power than a general one, whether exer-  
2 cisable by will, by deed, by will or deed, or otherwise,  
3 to appoint property, real or personal or both, may be  
4 released or disclaimed to the extent that a release or  
5 disclaimer thereof would not be contrary to any manifest  
6 intent or purpose of the creator of such power expressly  
7 set forth in the will, deed or other instrument creating

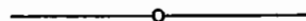
8 such power; and to the extent so releasable or disclaim-  
9 able it may be released or disclaimed in like manner as  
10 above provided in this article for the release or dis-  
11 claimer of a general power of appointment, and with like  
12 effect.

**§36-5-4. Validity of release or disclaimer of power of appointment heretofore made.**

1 Any release or disclaimer of a general or other re-  
2 leasable or disclaimable power of appointment heretofore  
3 made in conformity with the provisions of the foregoing  
4 sections of this article shall be as valid, binding and  
5 effective as if hereafter so made.

**§36-5-5. Other methods of release or disclaimer of power of appointment not affected.**

1 Nothing in this article contained shall affect the validity  
2 of any release or disclaimer of any power of appointment  
3 heretofore or hereafter lawfully effected in any other  
4 form or manner.



## CHAPTER 66

(Senate Bill No. 80—By Mr. Gainer and Mr. Hubbard)

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[Passed February 5, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two, three, four, six, seven, ten and eleven, article seven, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia uniform gifts to minors act, the inclusion of life insurance policies and annuity contracts as possible subjects of gifts to minors, definition of terms, designation of custodians of gifts to minors, and redesignating article as West Virginia uniform gifts to minors act.

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

That sections one, two, three, four, six, seven, ten and eleven, 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. WEST VIRGINIA UNIFORM GIFTS TO MINORS ACT.**

§36-7-1. Definitions.

§36-7-2. Manner of making gift.

§36-7-3. Effect of gift.

§36-7-4. Duties and powers of custodian.

§36-7-6. Exemption of third persons from liability.

§36-7-7. Resignation, death or removal of custodian; bonds; appointment of successor custodian.

§36-7-10. Short title; application of amendments.

§36-7-11. Severability.

**§36-7-1. Definitions.**

1 In this article, unless the context otherwise requires:

2 (a) An "adult" is a person who has attained the age  
3 of twenty-one years.

4 (b) A "bank" is a bank, trust company, national bank-  
5 ing association, savings bank or industrial bank.

6 (c) A "broker" is a person lawfully engaged in the  
7 business of effecting transactions in securities for the  
8 account of others. The term includes a bank which effects  
9 such transactions. The term also includes a person law-  
10 fully engaged in buying and selling securities for his own  
11 account, through a broker or otherwise, as a part of a  
12 regular business.

13 (d) "Court" means the circuit court.

14 (e) "The custodial property" includes:

15 (1) All securities, life insurance policies, annuity con-  
16 tracts and money under the supervision of the same custo-  
17 dian for the same minor as a consequence of a gift or  
18 gifts made to the minor in a manner prescribed in this  
19 article;

20 (2) The income from the custodial property; and

21 (3) The proceeds, immediate and remote, from the  
22 sale, exchange, conversion, investment, reinvestment,  
23 surrender or other disposition of such securities, money,  
24 life insurance policies, annuity contracts and income.

25 (f) A "custodian" is a person so designated in a manner

26 prescribed in this article; the term includes a successor  
27 custodian.

28 (g) A "financial institution" is a bank, a building and  
29 loan association, a federal savings and loan association,  
30 a savings institution chartered and supervised as a sav-  
31 ings and loan or similar institution under federal law  
32 or the laws of a state; an "insured financial institu-  
33 tion" is one, deposits (including a savings, share, cer-  
34 tificate or deposit account) in which are, in whole or  
35 in part, insured by the federal deposit insurance cor-  
36 poration or by the federal savings and loan insurance  
37 corporation.

38 (h) A "guardian" of a minor means the general  
39 guardian, guardian, tutor or curator of his property or  
40 estate appointed or qualified by a court of this state or  
41 another state.

42 (i) An "issuer" is a person who places or authorizes  
43 the placing of his name on a security (other than  
44 as a transfer agent) to evidence that it represents a  
45 share, participation or other interest in his property  
46 or in an enterprise or to evidence his duty or under-  
47 taking to perform an obligation evidenced by the secur-  
48 ity, or who becomes responsible for or in place of any  
49 such person.

50 (j) A "legal representative" of a person is his executor  
51 or the administrator, general guardian, guardian, com-  
52 mittee, conservator, tutor or curator of his property or  
53 estate.

54 (k) A "life insurance policy or annuity contract"  
55 means a life insurance policy or annuity contract is-  
56 sued by an insurance company authorized to do busi-  
57 ness in this state on the life of a minor to whom a gift  
58 of the policy or contract is made in the manner pre-  
59 scribed in this article or on the life of a member of  
60 the minor's family.

61 (l) A "member" of a "minor's family" means  
62 any of the minor's parents, grandparents, broth-  
63 ers, sisters, uncles and aunts, whether of the whole  
64 blood or the half blood, or by or through legal  
65 adoption.



66 (m) A "minor" is a person who has not attained the  
67 age of twenty-one years.

68 (n) A "security" includes any note, stock, treasury  
69 stock, bond, debenture, evidence of indebtedness, collateral  
70 trust certificate, transferable share, voting trust certifi-  
71 cate or, in general, any interest or instrument commonly  
72 known as a security, or any certificate of interest or partic-  
73 ipation in, any temporary or interim certificate, receipt  
74 or certificate of deposit for, or any warrant or right to  
75 subscribe to or purchase, any of the foregoing. The term  
76 does not include a security of which the donor is the  
77 issuer. A security is in "registered form" when it speci-  
78 fies a person entitled to it or to the rights it evidences  
79 and its transfer may be registered upon books maintained  
80 for that purpose by or on behalf of the issuer.

81 (o) A "transfer agent" is a person who acts as authenti-  
82 cating trustee, transfer agent, registrar or other agent  
83 for an issuer in the registration of transfers of its securi-  
84 ties or in the issue of new securities or in the cancellation  
85 of surrendered securities.

86 (p) A "trust company" is a bank or corporation  
87 authorized to exercise trust powers in this state.

#### §36-7-2. Manner of making gift.

1 (a) An adult person may, during his lifetime, make  
2 a gift of a security, a life insurance policy or annuity  
3 contract or money to a person who is a minor on the  
4 date of the gift:

5 (1) If the subject of the gift is a security in registered  
6 form, by registering it in the name of the donor, another  
7 adult person or a trust company, followed, in substance,  
8 by the words: "as custodian for .....under  
9 (name of minor)  
10 the West Virginia Uniform Gifts to Minors Act";

11 (2) If the subject of the gift is a security not in reg-  
12 istered form, by delivering it to an adult other than  
13 the donor or to a trust company, accompanied by a state-  
14 ment of gift in the following form, in substance, signed  
15 by the donor and the person designated as custodian:

16 "GIFT UNDER THE WEST VIRGINIA UNIFORM  
17 GIFTS TO MINORS ACT

18 I, \_\_\_\_\_, hereby deliver to \_\_\_\_\_  
19 (name of donor) (name of custodian)  
20 as custodian for \_\_\_\_\_ under the West Virginia  
21 (name of minor)

22 Uniform Gifts to Minors Act, the following security (ies):  
23 (insert an appropriate description of the security or  
24 securities delivered sufficient to identify it or them)

25 \_\_\_\_\_  
26 (signature of donor)  
27 \_\_\_\_\_ hereby acknowledges receipt of the  
28 (name of custodian)

29 above described security (ies) as custodian for the above  
30 minor under the West Virginia Uniform Gifts to Minors  
31 Act.

32 Dated: \_\_\_\_\_  
33 (signature of custodian)";

34 (3) If the subject of the gift is money, by paying  
35 or delivering it to a broker or a financial institution for  
36 credit to an account in the name of the donor, another  
37 adult or a trust company, followed, in substance, by the  
38 words: "as custodian for \_\_\_\_\_ under the  
39 (name of minor)

40 West Virginia Uniform Gifts to Minors Act";

41 (4) If the subject of the gift is a life insurance policy  
42 or annuity contract, by causing the ownership of the  
43 policy or contract to be registered with the issuing  
44 insurance company in the name of the donor, another  
45 adult or a trust company, followed, in substance, by the  
46 words: "as custodian for \_\_\_\_\_ under the  
47 (name of minor)

48 West Virginia Uniform Gifts to Minors Act."

49 (b) Any gift made in a manner prescribed in sub-  
50 section (a) may be made to only one minor and only  
51 one person may be the custodian.

52 (c) A donor who makes a gift to a minor in a manner  
53 prescribed in subsection (a) shall promptly do all things  
54 within his power to put the subject of the gift in the  
55 possession and control of the custodian, but neither the

56 donor's failure to comply with this subsection, nor his  
57 designation of an ineligible person as custodian, nor  
58 renunciation by the person designated as custodian affects  
59 the consummation of the gift.

**§36-7-3. Effect of gift.**

1 (a) A gift made in a manner prescribed in this article  
2 is irrevocable and conveys to the minor indefeasibly  
3 vested legal title to the security, life insurance policy,  
4 annuity contract or money given, but no guardian of  
5 the minor has any right, power, duty or authority with  
6 respect to the custodial property except as provided in  
7 this article.

8 (b) By making a gift in a manner prescribed in this  
9 article, the donor incorporates in his gift all the provi-  
10 sions of this article and grants to the custodian, and to  
11 any issuer, transfer agent, bank, financial institution,  
12 life insurance company, broker or third person dealing  
13 with a person designated as custodian, the respective  
14 powers, rights and immunities provided in this article.

**§36-7-4. Duties and powers of custodian.**

1 (a) The custodian shall collect, hold, manage, invest  
2 and reinvest the custodial property.

3 (b) The custodian shall pay over to the minor for  
4 expenditure by him, or expend for the minor's benefit, so  
5 much of or all the custodial property as the custodian  
6 deems advisable for the support, maintenance, education  
7 and benefit of the minor in the manner, at the time or  
8 times, and to the extent that the custodian in his discre-  
9 tion deems suitable and proper, with or without court  
10 order, with or without regard to the duty of himself or  
11 of any other person to support the minor or his ability  
12 to do so, and with or without regard to any other income  
13 or property of the minor which may be applicable or  
14 available for any such purpose.

15 (c) The court, on the petition of a parent or guardian  
16 of the minor or of the minor, if he has attained the age  
17 of fourteen years, may order the custodian to pay over  
18 to the minor for expenditure by him or to expend so

19 much of or all the custodial property as is necessary for  
20 the minor's support, maintenance or education.

21 (d) To the extent that the custodial property is not  
22 so expended, the custodian shall deliver or pay it over  
23 to the minor on his attaining the age of twenty-one years  
24 or, if the minor dies before attaining the age of twenty-  
25 one years, he shall thereupon deliver or pay it over to  
26 the estate of the minor.

27 (e) The custodian, notwithstanding statutes restrict-  
28 ing investments by fiduciaries, shall invest and reinvest  
29 the custodial property as would a prudent man of discre-  
30 tion and intelligence who is seeking a reasonable income  
31 and the preservation of his capital, except that he may,  
32 in his discretion and without liability to the minor or his  
33 estate, (i) retain a security given to the minor in a manner  
34 prescribed in this article or (ii) hold money so given in an  
35 account in the financial institution to which it was paid  
36 or delivered by the donor.

37 (f) The custodian may sell, exchange, convert, sur-  
38 render or otherwise dispose of custodial property in the  
39 manner, at the time or times, for the price or prices and  
40 upon the terms he deems advisable. He may vote in  
41 person or by general or limited proxy a security which is  
42 custodial property. He may consent, directly or through  
43 a committee or other agent, to the reorganization, con-  
44 solidation, merger, dissolution or liquidation of an issuer,  
45 a security which is custodial property, and to the sale,  
46 lease, pledge or mortgage of any property by or to such  
47 an issuer, and to any other action by such an issuer. He  
48 may execute and deliver any and all instruments in  
49 writing which he deems advisable to carry out any of his  
50 powers as custodian.

51 (g) The custodian shall register each security which  
52 is custodial property and in registered form in the name  
53 of the custodian, followed, in substance, by the words:  
54 "as custodian for \_\_\_\_\_ under the West Virginia  
55 (name of minor)  
56 Uniform Gifts to Minors Act." Subject to the provisions of  
57 subdivision (ii), subsection (e) of this section, the cus-  
58 todian shall hold all money which is custodial property in

59 an account with a broker or in an insured financial institu-  
60 tion in the name of the custodian, followed, in substance, by  
61 the words: "as custodian for \_\_\_\_\_ under the West  
62 (name of minor)  
63 Virginia Uniform Gifts to Minors Act." The custodian  
64 shall keep all other custodial property separate and dis-  
65 tinct from his own property in a manner to identify it  
66 clearly as custodial property.

67 (h) The custodian shall keep records of all transactions  
68 with respect to the custodial property and make them  
69 available for inspection at reasonable intervals by a  
70 parent or legal representative of the minor or by the  
71 minor, if he has attained the age of fourteen years.

72 (i) A custodian has and holds as powers in trust,  
73 with respect to the custodial property, in addition to the  
74 rights and powers provided in this article, all the rights  
75 and powers which a guardian has with respect to  
76 property not held as custodial property.

77 (j) If the subject of the gift is a life insurance policy  
78 or annuity contract, the custodian:

79 (1) In his capacity as custodian, has all the incidents  
80 of ownership in the policy or contract to the same extent  
81 as if he were the owner, except that the designated  
82 beneficiary of any policy or contract on the life of the  
83 minor shall be the minor's estate and the designated  
84 beneficiary of any policy or contract on the life of a  
85 person other than the minor shall be the custodian as  
86 custodian for the minor for whom he is acting; and

87 (2) May pay premiums on the policy or contract out  
88 of the custodial property.

### §36-7-6. Exemption of third persons from liability.

1 No issuer, transfer agent, bank, life insurance company,  
2 broker or other person or financial institution acting on  
3 the instructions of or otherwise dealing with any person  
4 purporting to act as a donor or in the capacity of a cus-  
5 todian is responsible for determining whether the person  
6 designated as custodian by the purported donor or by  
7 the custodian or purporting to act as a custodian has  
8 been duly designated or whether any purchase, sale or

9 transfer to or by or any other act of any person pur-  
10 porting to act in the capacity of custodian is in accordance  
11 with or authorized by this article, or is obliged to in-  
12 quire into the validity or propriety under this article of  
13 any instrument or instructions executed or given by a  
14 person purporting to act as a donor or in the capacity of  
15 a custodian, or is bound to see to the application by any  
16 person purporting to act in the capacity of a custodian  
17 of any money or other property paid or delivered to him.  
18 No issuer, transfer agent, bank, life insurance company,  
19 broker or other person or financial institution acting on  
20 any instrument of designation of a successor custodian,  
21 executed as provided in subsection (a) of section seven  
22 of this article by a minor to whom a gift has been made  
23 in a manner prescribed in this article and who has  
24 attained the age of fourteen years, is responsible for  
25 determining whether the person designated by the minor  
26 as successor custodian has been duly designated, or is  
27 obliged to inquire into the validity or propriety under  
28 this article of the instrument of designation.

**§36-7-7. Resignation, death or removal of custodian; bonds; ap-  
pointment of successor custodian.**

1 (a) Only an adult member of the minor's family, a  
2 guardian of the minor or a trust company is eligible  
3 to become successor custodian. A custodian may desig-  
4 nate his successor by executing and dating an instru-  
5 ment of designation before a subscribing witness other  
6 than the successor; the instrument of designation may  
7 but need not contain the resignation of the custodian.  
8 If the custodian does not so designate his successor  
9 before he dies or becomes legally incapacitated, and the  
10 minor has attained the age of fourteen years, the minor  
11 may designate a successor custodian by executing an  
12 instrument of designation before a subscribing witness  
13 other than the successor. A successor custodian has all  
14 the rights, powers, duties and immunities of a custodian  
15 designated in a manner prescribed by this article.

16 (b) The designation of a successor custodian as pro-  
17 vided in subsection (a) takes effect as to each item of  
18 the custodial property when the custodian resigns, dies

19 or becomes legally incapacitated and the custodian or  
20 his legal representative:

21 (1) Causes the item, if it is a security in registered  
22 form or a life insurance policy or annuity contract, to be  
23 registered, with the issuing insurance company in the  
24 case of a life insurance policy or annuity contract, in  
25 the name of the successor custodian, followed, in sub-  
26 stance, by the words: "as custodian for \_\_\_\_\_"

27 (name of minor)  
28 under the West Virginia Uniform Gifts to Minors Act;"  
29 and

30 (2) Delivers or causes to be delivered to the successor  
31 custodian any other item of the custodial property,  
32 together with the instrument of designation of the  
33 successor custodian or a true copy thereof and any addi-  
34 tional instruments required for the transfer thereof to  
35 the successor custodian.

36 (c) A custodian who executes an instrument of design-  
37 nation of his successor containing the custodian's resig-  
38 nation as provided in subsection (a) shall promptly do  
39 all things within his power to put each item of the cus-  
40 todial property in the possession and control of the suc-  
41 cessor custodian named in the instrument. The legal  
42 representative of a custodian who dies or becomes legally  
43 incapacitated shall promptly do all things within his  
44 power to put each item of the custodial property in the  
45 possession and control of the successor custodian named  
46 in an instrument of designation executed as provided  
47 in subsection (a) by the custodian or, if none, by the  
48 minor if he has no guardian and has attained the age  
49 of fourteen years, or in the possession and control of  
50 the guardian of the minor if he has a guardian. If the  
51 custodian has executed as provided in subsection (a)  
52 more than one instrument of designation, his legal rep-  
53 resentative shall treat the instrument dated on an earlier  
54 date as having been revoked by the instrument dated  
55 on a later date.

56 (d) If a person designated as custodian or as successor  
57 custodian by the custodian as provided in subsection  
58 (a) is not eligible, dies or becomes legally incapacitated

59 before the minor attains the age of twenty-one years  
60 and if the minor has a guardian, the guardian of the  
61 minor shall be successor custodian. If the minor has  
62 no guardian and if no successor custodian who is eligible  
63 and has not died or become legally incapacitated has  
64 been designated as provided in subsection (a), a donor,  
65 his legal representative, the legal representative of the  
66 custodian or an adult member of the minor's family may  
67 petition the court for the designation of a successor  
68 custodian.

69 (e) A donor, the legal representative of a donor, a  
70 successor custodian, an adult member of the minor's  
71 family, a guardian of the minor or the minor, if he has  
72 attained the age of fourteen years, may petition the  
73 court that, for cause shown in the petition, the custodian  
74 be removed and a successor custodian be designated or,  
75 in the alternative, that the custodian be required to  
76 give bond for the performance of his duties.

77 (f) Upon the filing of a petition as provided in this  
78 section, the court shall grant an order, directed to the  
79 persons and returnable on such notice as the court may  
80 require, to show cause why the relief prayed for in the  
81 petition should not be granted and, in due course, grant  
82 such relief as the court finds to be in the best interests  
83 of the minor.

**§36-7-10. Short title; application of amendments.**

1 This article may be cited as the "West Virginia Uniform  
2 Gifts to Minors Act."

3 Any amendments of this article shall not affect gifts  
4 made in a manner prescribed by the former provisions of  
5 this article nor the powers, duties or immunities con-  
6 ferred by gifts in such manner upon custodians and per-  
7 sons dealing with custodians. This article as amended  
8 shall henceforth apply, however, to all gifts made in a  
9 manner and form prescribed by the former provisions of  
10 this article except insofar as such application impairs  
11 constitutionally vested rights.

**§36-7-11. Severability.**

1 If any provision of this article or the application there-



2 of to any person or circumstance is held invalid, such  
3 invalidity shall not affect other provisions or applications  
4 of this article, and to this end the provisions of this  
5 article are severable.

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## CHAPTER 67

(Senate Bill No. 266—By Mr. Brotherton)

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[Passed February 20, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article four-a, chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to post-conviction review by a writ of habeas corpus; and providing that the court with whose clerk a petition for a writ of habeas corpus for such purpose is filed may examine and review the record or records which are part of the official court files of any court within the same judicial circuit as the court with whose clerk such petition is filed.

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

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

### **ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.**

#### **§53-4A-3. Refusal of writ; granting of writ; direction of writ; how writ made returnable; duties of clerk, attorney general and prosecuting attorney.**

1 (a) If the petition, affidavits, exhibits, records and other  
2 documentary evidence attached thereto, or the record in  
3 the proceedings which resulted in the conviction and  
4 sentence, or the record or records in a proceeding or  
5 proceedings on a prior petition or petitions filed under  
6 the provisions of this article, or the record or records  
7 in any other proceeding or proceedings instituted by the  
8 petitioner to secure relief from his conviction or sen-  
9 tence (if any such record or records are part of the  
10 official court files of the court with whose clerk the

11 petition is filed or are part of the official court files of  
12 any other court within the same judicial circuit as the  
13 court with whose clerk such petition is filed and are thus  
14 available for examination and review by such court)  
15 show to the satisfaction of the court that the petitioner  
16 is entitled to no relief, or that the contention or con-  
17 tentions and grounds (in fact or law) advanced have been  
18 previously and finally adjudicated or waived, the court  
19 shall by order entered of record refuse to grant a writ,  
20 and such refusal shall constitute a final judgment. If it  
21 appears to such court from said petition, affidavits, ex-  
22 hibits, records and other documentary evidence, or any  
23 such available record or records referred to above, that  
24 there is probable cause to believe that the petitioner may  
25 be entitled to some relief, and that the contention or  
26 contentions and grounds (in fact or law) advanced have  
27 not been previously and finally adjudicated or waived,  
28 the court shall forthwith grant a writ, directed to and  
29 returnable as provided in subsection (b) hereof. If any  
30 such record or records referred to above are not a part  
31 of the official court files of the court with whose clerk  
32 the petition is filed or are not part of the official court  
33 files of any other court within the same judicial circuit  
34 as the court with whose clerk such petition is filed and  
35 are thus not available for examination and review by  
36 such court, the determination as to whether to refuse  
37 or grant the writ shall be made on the basis of the pe-  
38 tition, affidavits, exhibits, records and other documentary  
39 evidence attached thereto.

40 (b) Any writ granted in accordance with the provi-  
41 sions of this article shall be directed to the person under  
42 whose supervision the petitioner is incarcerated. Whether  
43 the writ is granted by the supreme court of appeals, a  
44 circuit court, or any statutory court in this state, it shall,  
45 in the discretion of the court, be returnable before (i)  
46 the court granting it, (ii) the circuit court, or a statutory  
47 court, of the county wherein the petitioner is incarce-  
48 rated, or (iii) the circuit court, or the statutory court,  
49 in which, as the case may be, the petitioner was con-  
50 victed and sentenced.

51 (c) The clerk of the court to which a writ granted in  
52 accordance with the provisions of this article is made  
53 returnable shall promptly bring the petition and any  
54 affidavits, exhibits, records and other documentary evi-  
55 dence attached thereto, and the writ to the attention of  
56 the court if the writ was granted by some other court,  
57 and in every case deliver a copy of such petition and  
58 any affidavits, exhibits, records and other documentary  
59 evidence attached thereto and the writ to the prosecuting  
60 attorney of the county, or the attorney general if the writ  
61 is returnable before the supreme court of appeals. The  
62 prosecuting attorney or the attorney general, as the case  
63 may be, shall represent the state in all cases arising under  
64 the provisions of this article.

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## CHAPTER 68

(Senate Bill No. 187—By Mr. Nelson)

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[Passed March 10, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article two, and section one, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the organization and jurisdiction of county and municipal boards of health.

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

That section three, article two, and section one, article two-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**

#### **2. Local Health Officers.**

##### **2a. Alternative Method of Organizing Local Health Agencies.**

### **ARTICLE 2. LOCAL HEALTH OFFICERS.**

**§16-2-3. Counties, or counties and municipalities, may combine in employment of officers and installation and main-**

**tenance of equipment; combined local boards of health.**

1 Any two or more counties, or any county or counties  
2 and any one or more municipalities within or partially  
3 within the said county or counties, may combine to co-  
4 operate with the state department of health, by vote of  
5 the county court in the case of a county and by vote of  
6 the council or other governing body in the case of a  
7 municipality, and may participate in the employment of  
8 trained health officers and other agents and employees,  
9 or in the installation and maintenance of a common lab-  
10 oratory and other equipment. Whenever any such units  
11 shall decide so to cooperate and shall appropriate a sum  
12 or sums of money for such joint or cooperative action, the  
13 state department of health is authorized and empowered  
14 to pay over and contribute to such cooperating units, and  
15 the cooperating units are authorized and empowered to  
16 receive and expend for public purposes, such sum or sums  
17 of money as may be available from funds included in  
18 appropriations made for the state department of health  
19 for such purpose: *Provided*, That the general plan of co-  
20 operation, as well as the principal health officers, execu-  
21 tive agent or laboratory director employed by the co-  
22 operating units, shall first have been approved by the  
23 state board of health. The amount of any such payment  
24 or contribution by the state department of health to such  
25 cooperating units shall be determined in accordance with  
26 regulations established by the state board of health. Such  
27 regulations shall provide a method for determining the  
28 amount of any payment or contribution, and this method  
29 shall be uniformly applied in determining the amount of  
30 any payment or contribution to any such local govern-  
31 mental unit or units.

32 Each county or municipality participating in any such  
33 cooperative action shall select and appoint by vote of the  
34 county court in the case of a county, and by vote of the  
35 council or other governing body in the case of a munici-  
36 pality, not less than one nor more than three persons to  
37 be members of a combined board of health. No such  
38 person shall be selected by, nor represent on, any such  
39 combined board, more than one such county or munici-

40 pality. The number of persons to be selected by each  
41 participating county or municipality as members of such  
42 board, subject to the limitation contained in the two pre-  
43 ceding sentences, shall be agreed upon by the several  
44 counties or municipalities participating.

45 All members of such combined board of health shall  
46 be appointed for terms of five years each, except that the  
47 persons first appointed pursuant to the provisions of this  
48 section, if more than one such person is appointed at the  
49 same time by any one county court or municipal govern-  
50 ing body, shall be individually designated to serve for  
51 terms of one, two and three years, respectively, and if  
52 only one such person is appointed at such time by each  
53 participating county or municipality, the several partici-  
54 pating counties or municipalities shall initially appoint  
55 such persons to serve for individually designated terms,  
56 which shall be agreed upon by the several appointing  
57 authorities, of one, two, three, four and five years, re-  
58 spectively. Upon the expiration of the term of such initial  
59 appointments, the term of each new appointee shall be  
60 five years. Any vacancy on such board shall be filled by  
61 appointment, by the original appointing authority, for the  
62 unexpired term. All members shall serve until their duly  
63 qualified successors have been appointed. The number of  
64 members of such board belonging to one political party  
65 shall not exceed by more than one the number of members  
66 of such board belonging to any other political party.

67 All members of any such board shall be citizens and  
68 residents of the county or municipality they are appointed  
69 to represent. All members shall be eligible for re-  
70 appointment.

71 No member of such board may be removed from office  
72 during the term for which he is appointed, except for  
73 official misconduct, incompetence, neglect of duty or gross  
74 immorality.

75 No member of such board shall receive any compensa-  
76 tion for his services, but each may be reimbursed for  
77 all reasonable and necessary travel and other expenses  
78 actually incurred by him in the performance of his duties  
79 as a member of such board.

80 Any such combined board of health shall consist of the  
81 several members so selected. Such board shall organize  
82 by electing a chairman from among its members. It shall  
83 have the power to adopt, and from time to time amend,  
84 such rules and regulations as it may deem necessary con-  
85 cerning the time and place of its meetings, the procedure  
86 and method of conducting its meetings or business, and  
87 any other matters affecting, or necessary to, the orderly  
88 and efficient discharge of its duties or exercise of its  
89 powers. All powers and duties belonging to or vested in  
90 county boards of health or municipal boards of health  
91 under any provision of the code are hereby vested in,  
92 conferred upon, and declared to be, the powers and duties  
93 of any combined board of health created pursuant to the  
94 provisions of this section. All powers and duties belonging  
95 to or vested in county or municipal health officers, so far as  
96 they are applicable and not in conflict with the provisions  
97 of this section, are hereby vested in, conferred upon, and  
98 declared to be, the powers and duties of any health officer  
99 appointed and employed by any combined board of health.  
100 Any health officer or other employee appointed or em-  
101 ployed by any combined board of health shall be employed  
102 and serve, and may be discharged, at the will and pleasure  
103 of such board. The territorial jurisdiction of any such  
104 combined board of health shall be coextensive with the  
105 boundaries of all of the counties and municipalities which  
106 have been combined to cooperate as herein provided.

107 Upon the formation of a combined local board of health  
108 as herein provided, and during the period that it continues  
109 to exist, there shall be no separate county board of health  
110 or municipal board of health in any county or municipal-  
111 ity represented on the combined board of health.

#### **ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.**

##### **§16-2A-1. County and municipal boards of health authorized; jurisdiction.**

1 Any county or municipality may in its discretion, and  
2 in lieu and instead of the local board of health provided

3 for in article two of this chapter, create, establish and  
4 maintain a county board of health or a municipal board of  
5 health organized pursuant to, and with the powers and  
6 duties prescribed by, the provisions of this article. Such  
7 county board of health may be created and established  
8 by the county court, and such municipal board of health  
9 may be created and established by the governing body of  
10 the municipality. The jurisdiction of such county board  
11 of health shall be coextensive with the territorial limits  
12 of the county and shall include every city, town, and vil-  
13 lage therein which does not have a full-time health officer  
14 of its own employed in the manner, for the purpose, and  
15 to perform the duties set forth in this article. The juris-  
16 diction of such municipal board of health shall be co-  
17 extensive with the territorial limits of the municipality  
18 and an area including all points within a distance of one  
19 mile from the limits of the municipality. The jurisdiction  
20 of any combined local board of health established pursuant  
21 to the provisions of section three, article two of this  
22 chapter shall be coextensive with the combined territorial  
23 limits of the participating municipality or municipalities  
24 and county or counties, and if any municipality be partly  
25 located in a nonparticipating county, the jurisdiction of  
26 the combined local board of health shall extend, neverthe-  
27 less, to include the entire municipality; but the jurisdiction  
28 of any such combined local board of health or of any  
29 county board of health shall not extend to or include any  
30 area within the jurisdiction of any municipal board of  
31 health which has established and is maintaining a separate  
32 full-time municipal health department under the super-  
33 vision of a municipal health officer.

34 In any county in which there is created and established  
35 a county board of health pursuant to the provisions of  
36 this article, the county board of health provided for in  
37 article two of this chapter shall cease to exist and shall  
38 be abolished during such period of time as the county  
39 board of health provided for in this article is maintained  
40 and continued in existence.

## CHAPTER 69

(House Bill No. 646—By Mrs. Withrow and Miss Crandall)

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[Passed March 5, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory immunization of school children, and providing for penalties.

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

That section four, article three, 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 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.**

**§16-3-4. Compulsory immunization of school children; offenses; penalties.**

1 All children entering school for the first time in this  
2 state shall have been immunized against smallpox,  
3 diphtheria, polio, rubeola, rubella, tetanus and whooping  
4 cough. Any person who cannot give satisfactory proof  
5 of having been immunized previously or a certificate  
6 from a reputable physician showing that an immuniza-  
7 tion for any or all smallpox, diphtheria, polio, rubeola,  
8 rubella, tetanus and whooping cough is impossible or  
9 improper or sufficient reason why any or all immuniza-  
10 tions should not be done, shall be immunized for small-  
11 pox, diphtheria, polio, rubeola, rubella, tetanus and  
12 whooping cough prior to being admitted in any of the  
13 schools of the state. No child or person shall be admitted  
14 or received in any of the schools of the state until he  
15 or she has been immunized as hereinafter provided, or  
16 produces a certificate from a reputable physician show-  
17 ing that an immunization for smallpox, diphtheria,  
18 polio, rubeola, rubella, tetanus and whooping cough has  
19 been done or is impossible or improper or other sufficient  
20 reason why such immunizations have not been done.



21 Any teacher, having information concerning any person  
22 who attempts to enter school for the first time without  
23 having been immunized against smallpox, diphtheria,  
24 polio, rubeola, rubella, tetanus and whooping cough  
25 shall report the names of all such persons to the county  
26 health officer. It shall be the duty of the health officer  
27 in counties having a full-time health officer to see that  
28 such persons are immunized before entering school.

29 In counties where there is no full-time health officer  
30 or district health officer, the county court or municipal  
31 council shall appoint competent physicians to do the  
32 immunizations and fix their compensation. The expense  
33 incurred in carrying into effect the provisions of this  
34 section shall be deemed part of the expense of the county,  
35 city, town or village as the case may be, and shall be  
36 charged and paid in the same manner as other expenses.  
37 County health departments shall furnish the biologicals  
38 for this immunization free of charge.

39 Health officers and physicians who shall do this im-  
40 munization work shall give to all persons and children  
41 a certificate free of charge showing that they have been  
42 immunized against smallpox, diphtheria, polio, rubeola,  
43 rubella, tetanus and whooping cough, or he may give the  
44 certificate to any person or child whom he knows to  
45 have been immunized against smallpox, diphtheria, polio,  
46 rubeola, rubella, tetanus and whooping cough. If any  
47 physician shall give any person a false certificate of im-  
48 munization against smallpox, diphtheria, polio, rubeola,  
49 rubella, tetanus and whooping cough, he shall be guilty  
50 of a misdemeanor, and, upon conviction, he shall be  
51 fined not less than twenty-five nor more than one hun-  
52 dred dollars.

53 Any parent or guardian who refuses to permit his or  
54 her child to be immunized against smallpox, diphtheria,  
55 polio, rubeola, rubella, tetanus and whooping cough,  
56 who cannot give satisfactory proof that the child or per-  
57 son has been immunized against smallpox, diphtheria,  
58 polio, rubeola, rubella, tetanus and whooping cough pre-  
59 viously or a certificate from a reputable physician show-  
60 ing that an immunization for any or all is impossible or  
61 improper or sufficient reason why any or all immuniza-

62 tions should not be done, shall be guilty of a misdemeanor,  
63 and, except as herein otherwise provided, shall, upon  
64 conviction, be punished by a fine of not less than ten nor  
65 more than fifty dollars for each offense.

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## CHAPTER 70

(House Bill No. 573—By Mrs. Withrow and Mr. McManus)

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[Passed February 8, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

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

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

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.**

**§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.**

1 All first grade pupils and all students transferring  
2 from a school located outside this state shall furnish a  
3 certificate from a licensed physician stating that a tuber-  
4 culin skin test approved by the director of the department  
5 of health has been made within two months prior to  
6 the beginning of the school year or during the first seven  
7 months of the current school year. Test results must  
8 be recorded on the certificate. Positive reactors to the

9 skin test must be immediately X-rayed, and receive  
10 annual X rays thereafter, or at more frequent intervals  
11 if medically indicated. Pupils found to have tuberculosis  
12 in a communicable stage will not be allowed to attend  
13 school until their disease has been arrested and is no  
14 longer communicable.

15 All school personnel shall have an annual chest X ray  
16 or an approved tuberculin skin test within two months  
17 prior to the beginning of each school year. Positive re-  
18 actors to the skin test are to be immediately X-rayed and  
19 re-x-rayed annually or at more frequent intervals if  
20 medically indicated. Reactors who are annually X-rayed  
21 will not be required to have an annual skin test. School  
22 personnel found to have tuberculosis in a communicable  
23 stage shall have their employment discontinued or sus-  
24 pended until their disease has been arrested and is no  
25 longer communicable. School personnel who have not  
26 had the required examination will be suspended from  
27 employment until reports of examination are confirmed.

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## CHAPTER 71

(House Bill No. 622—By Mr. Shaffer and Mrs. Withrow)

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[Passed February 16, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article four, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to examination and treatment of minors infected with a venereal disease.

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

That section ten, article four, 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 4. VENEREAL DISEASES.

#### §16-4-10. Minors.

1 Notwithstanding any other provision of law, any li-  
2 censed physician may examine, diagnose, or treat any

3 minor with his or her consent for any venereal disease  
 4 without the knowledge or consent of the minor's parent  
 5 or guardian. The physician shall not incur any civil or  
 6 criminal liability in connection therewith except for  
 7 negligence or wilful injury.

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## CHAPTER 72

(Com. Sub. for House Bill No. 738—Originating in the House  
 Committee on the Judiciary)

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[Passed March 10, 1971; in effect ninety days from passage. Approved by the  
 Governor.]

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AN ACT to amend and reenact sections three and three-a, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the grounds and methods for the removal of any member of a public service district board.

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

That sections three and three-a, article thirteen-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 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.**

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; creation of public service boards; appointment and qualifications of members; terms; removal; vacancies; organization.

§16-13A-3a. Provisions for removal of members of public service board.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; creation of public service boards; appointment and qualifications of members; terms; removal; vacancies; organization.

1 From and after the date of the adoption of the order  
 2 creating any such public service district, it shall there-  
 3 after be a public corporation and political subdivision of

4 the state with power of perpetual succession, but without  
5 any power to levy or collect ad valorem taxes. Each such  
6 district shall have power to acquire, own and hold prop-  
7 erty, both real and personal, in its corporate name, and  
8 shall have power to sue, may be sued, may adopt an  
9 official seal and may enter into contracts necessary or  
10 incidental to its purposes, including contracts with any  
11 city, incorporated town or other municipal corporation  
12 located within or without its boundaries for furnishing  
13 wholesale supply of water for the distribution system  
14 of such city, town or other municipal corporation, and  
15 contract for the operation, maintenance, servicing, repair  
16 and extension of any properties owned by it, or for the  
17 operation and improvement or extension by such district  
18 of all or any part of the existing municipally owned public  
19 service properties of any city, incorporated town or other  
20 municipal corporation included within such district:  
21 *Provided*, That no such contract shall extend over a period  
22 of forty years, but provisions may be included therein  
23 for a renewal or successive renewals thereof, and shall  
24 conform to and comply with the rights of the holders  
25 of any outstanding bonds issued by such municipalities  
26 for such public service properties.

27 The powers of each such public service district shall  
28 be vested in and exercised by a public service board  
29 consisting of not less than three members, who shall be  
30 appointed in the following manner:

31 Each city, incorporated town, or other municipal cor-  
32 poration having a population in excess of three thousand,  
33 but not exceeding eighteen thousand, shall be entitled  
34 to appoint one member of such board, and each such city,  
35 incorporated town, or other municipal corporation having  
36 a population in excess of eighteen thousand shall be  
37 entitled to appoint one additional member of such board  
38 for each additional eighteen thousand population. The  
39 members of said board representing such cities, incor-  
40 porated towns or other municipal corporations shall be  
41 residents thereof and shall be appointed by a resolution  
42 of the governing bodies thereof, and upon the filing  
43 of a certified copy or copies of such resolution or reso-  
44 lutions in the office of the clerk of the county court which

45 entered the order creating such district, such persons so  
46 appointed shall thereby become members of said board  
47 without any further act or proceedings. If the number  
48 of members of said board so appointed by the governing  
49 bodies of cities, incorporated towns or other municipal  
50 corporations included in the district shall equal or ex-  
51 ceed three, then no further members shall be appointed  
52 to such board and such members shall be and constitute  
53 the board of said district.

54 If no city, incorporated town or other municipal cor-  
55 poration having a population in excess of three thousand  
56 is included within the district, then the county court  
57 which entered the order creating the district shall appoint  
58 three members of said board, who shall be persons re-  
59 siding within the district, which said three members  
60 shall become members of and constitute the board of  
61 said district without any further act or proceedings.

62 If the number of members of said board appointed  
63 by the governing bodies of cities, incorporated towns or  
64 other municipal corporations included within the dis-  
65 trict shall be less than three, then the county court which  
66 entered the order creating the district shall appoint such  
67 additional member or members of said board, who shall  
68 be persons residing within the district, as shall be neces-  
69 sary to make the number of members of said board equal  
70 three, and said additional member or members shall  
71 thereupon become members of such board; and the mem-  
72 ber or members appointed by the governing bodies of  
73 the cities, incorporated towns or other municipal cor-  
74 porations included within the district and the additional  
75 member or members appointed by such county court  
76 as aforesaid, shall be and constitute the board of  
77 said district. It shall be proper for one person to serve  
78 as a member of the board in one or more public dis-  
79 tricts.

80 The population of any city, incorporated town or other  
81 municipal corporation, for the purpose of determining  
82 the number of members of such board, if any, to be  
83 appointed by the governing body or bodies thereof,  
84 shall be conclusively deemed to be the population stated  
85 for such city, incorporated town or other mu-

86 nicipal corporation in the last official federal  
87 census.

88 The respective terms of office of the members of the  
89 first board shall be fixed by the county court and shall  
90 be as equally divided as may be, that is approximately  
91 one third of the members for a term of two years, a like  
92 number for a term of four, and the term of the remain-  
93 ing member or members for six years, from the first  
94 day of the month during which such appointments are  
95 made. The first members of the board appointed as  
96 aforesaid shall meet at the office of the clerk of the  
97 county court which entered the order creating the dis-  
98 trict as soon as practicable after such appointments and  
99 shall qualify by taking an oath of office: *Provided, how-*  
100 *ever,* That any member or members of the board may  
101 be removed from their respective office as provided in  
102 section three-a of this article.

103 Any vacancy shall be filled for the unexpired term,  
104 and otherwise successor members of the board shall be  
105 appointed for terms of six years, and the terms of office  
106 shall continue until successors have been appointed and  
107 qualified. All successor members shall be appointed in  
108 the same manner as the member succeeded was ap-  
109 pointed.

110 The board shall organize promptly following the first  
111 appointments, and annually thereafter at its first meet-  
112 ing after January one of each year, by selecting one  
113 of its members to serve as chairman and by appointing  
114 a secretary and a treasurer who need not be members  
115 of such board. The secretary shall keep a record of all  
116 proceedings of the board which shall be available for  
117 inspection as other public records. The treasurer shall  
118 be lawful custodian of all funds of the public service  
119 district and shall pay same out on orders authorized  
120 or approved by the board. The secretary and treasurer  
121 shall perform such other duties appertaining to the  
122 affairs of the district and shall receive such salaries as  
123 shall be prescribed by the board. The treasurer shall  
124 furnish bond in an amount to be fixed by the board for  
125 the use and benefit of the district. The members of the  
126 board, and the chairman, secretary and treasurer thereof,

127 shall make available to the county court, at all times,  
128 all of its books and records pertaining to the district's  
129 operation, finances and affairs, for inspection and audit.

**§16-13A-3a. Provisions for removal of members of public  
service board.**

1 The county court or any other appointive body cre-  
2 ating or establishing a public service district under the  
3 provisions of this article shall have the authority to  
4 remove any member of the governing board thereof for  
5 consistent violations of any provisions of this article,  
6 for reasonable cause which shall include but not be  
7 limited to a continued failure to attend meetings of the  
8 board, failure to diligently pursue the objectives for  
9 which the district was created, or failure to perform any  
10 other duty prescribed by law, or for any misconduct in  
11 office, or upon written petition signed by a majority of  
12 the registered voters residing within the public service  
13 district: *Provided*, That such appointee shall only be  
14 removed after a full hearing of any complaint presented  
15 against him and after due notice of such hearing.

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## CHAPTER 73

(House Bill No. 916—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Steptoe)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

AN ACT to amend and reenact sections one, two and five,  
article twenty, chapter sixteen of the code of West Vir-  
ginia, one thousand nine hundred thirty-one, as amended;  
and to further amend said article by adding thereto three  
new sections, designated sections eleven-a, eleven-b and  
eleven-c, all relating to air pollution control; specifying  
a declaration of policy and purpose of the article; relating  
to the clean air amendments of one thousand nine hun-  
dred seventy; defining terms; relating to the powers and  
duties of the air pollution control commission; relating  
to the right to enter and inspect any property, premise or



place in connection with air pollution abatement or control; relating to advisory councils; authorizing consent orders; requiring emission reports and data; relating to the release of records, reports, data or information; relating to the confidentiality of certain matters and providing for a determination and review in connection therewith; requiring permits in connection with stationary sources of air pollutants; relating to rules and regulations of the air pollution control commission; relating to motor vehicle pollution; relating to prohibitions; and providing penalties.

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

That sections one, two and five, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eleven-a, eleven-b and eleven-c, all to read as follows:

**ARTICLE 20. AIR POLLUTION CONTROL.**

- §16-20-1. Declaration of policy and purpose.
- §16-20-2. Definitions.
- §16-20-5. Air pollution control commission—Powers and duties; legal services; rules and regulations; public hearings.
- §16-20-11a. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
- §16-20-11b. Permits required for stationary sources of air pollutants.
- §16-20-11c. Motor vehicle pollution.

**§16-20-1. Declaration of policy and purpose.**

1 It is hereby declared to be the public policy of this state  
 2 and the purpose of this article to achieve and maintain  
 3 such levels of air quality as will protect human health  
 4 and safety, and to the greatest degree practicable, pre-  
 5 vent injury to plant and animal life and property, foster  
 6 the comfort and convenience of the people, promote the  
 7 economic and social development of this state and facili-  
 8 tate the enjoyment of the natural attractions of this state.

9 To these ends it is the purpose of this article to provide  
 10 for a coordinated statewide program of air pollution pre-  
 11 vention, abatement and control; to facilitate cooperation

12 across jurisdictional lines in dealing with problems of air  
13 pollution not confined within single jurisdictions; and to  
14 provide a framework within which all values may be  
15 balanced in the public interest.

16 Further, it is the public policy of this state to fulfill its  
17 primary responsibility for assuring air quality pursuant  
18 to the "Clean Air Amendments of 1970" act of the Con-  
19 gress of the United States. To that end it is the public  
20 policy of this state and the purpose of this article to pro-  
21 vide priorities in the preparation and implementation of  
22 a plan for achieving and maintaining and enforcing na-  
23 tional primary and secondary ambient air quality stan-  
24 dards in the state.

#### §16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 The term "person" shall mean any and all persons,  
3 natural or artificial, including any municipal, public or  
4 private corporation organized or existing under the laws  
5 of this or any other state or country, and any firm,  
6 partnership or association of whatever nature.

7 The term "commission" shall mean the air pollution  
8 control commission, and the term "commissioner" shall  
9 mean a member of said commission.

10 The term "air pollutants" shall mean solids, liquids or  
11 gases which, if discharged into the air, may result in a  
12 statutory air pollution.

13 The term "discharge" shall refer to the release, escape  
14 or emission of air pollutants into the air.

15 The term "statutory air pollution" shall mean and be  
16 limited to the discharge into the air by the act of man  
17 of substances (liquid, solid, gaseous, organic or inor-  
18 ganic) in a locality, manner and amount as to be in-  
19 jurious to human health or welfare, animal or plant life,  
20 or property, or which would interfere with the enjoy-  
21 ment of life or property.

22 The term "director" shall mean the director of the West  
23 Virginia air pollution control commission appointed as  
24 hereinafter provided.

**§16-20-5. Air pollution control commission—Powers and duties; legal services; rules and regulations; public hearings.**

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation  
3 and control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other agen-  
5 cies of the state, political subdivisions of the state, other  
6 states, agencies of the federal government, industries,  
7 and with affected groups in furtherance of the declared  
8 purposes of this article;

9 (3) To encourage and conduct such studies and re-  
10 search relating to air pollution and its control and abate-  
11 ment as the commission may deem advisable and neces-  
12 sary;

13 (4) To adopt and to promulgate reasonable rules and  
14 regulations, not inconsistent with the provisions of this ar-  
15 ticle, relating to the control of air pollution: *Provided*,  
16 That no rule and regulation of the commission shall spec-  
17 ify the design of equipment, type of construction, or par-  
18 ticular method which a person shall use to reduce the  
19 discharge of air pollutants, nor shall any such rule and  
20 regulation apply to any aspect of an employer-employee  
21 relationship;

22 (5) To enter orders requiring compliance with the  
23 provisions of this article and the rules and regulations  
24 lawfully promulgated hereunder;

25 (6) To consider complaints, subpoena witnesses, ad-  
26 minister oaths, make investigations, and hold hearings  
27 relevant to the promulgation of rules and regulations and  
28 the entry of compliance orders hereunder;

29 (7) To encourage voluntary cooperation by munici-  
30 palities, counties, industries and others in preserving the  
31 purity of the air within the state;

32 (8) To employ personnel, including specialists and  
33 consultants, purchase materials and supplies, and enter  
34 into contracts necessary, incident or convenient to the  
35 accomplishment of the purpose of this article;

36 (9) To enter and inspect any property, premise or

37 place on or at which a source of air pollutants is lo-  
38 cated or is being constructed, installed or established  
39 at any reasonable time for the purpose of ascertaining  
40 the state of compliance with this article and rules and  
41 regulations in force pursuant thereto. No person shall  
42 refuse entry or access to any authorized representative  
43 of the commission who requests entry for purposes of  
44 inspection, and who presents appropriate credentials; nor  
45 shall any person obstruct, hamper or interfere with any  
46 such inspection: *Provided, however,* That nothing con-  
47 tained in this article shall be construed to allow a search  
48 of a private dwelling, including the curtilage thereof,  
49 without a proper warrant;

50 (10) Upon reasonable evidence of a violation of this  
51 article, which presents an imminent and serious hazard  
52 to public health, to give notice to the public or to that  
53 portion of the public which is in danger by any and all  
54 appropriate means;

55 (11) To cooperate with, receive and expend money  
56 from the federal government and other sources;

57 (12) To represent the state in any and all matters  
58 pertaining to plans, procedures and negotiations for inter-  
59 state compacts in relation to the control of air pollu-  
60 tion;

61 (13) To appoint advisory councils from such areas of  
62 the state as it may determine. Each such council so ap-  
63 pointed shall consist of not more than five members ap-  
64 pointed from the general public, for each area so desig-  
65 nated. Such members shall possess some knowledge and  
66 interest in matters pertaining to the regulation, control  
67 and abatement of air pollution. The council may advise  
68 and consult with the commission about all matters per-  
69 taining to the regulation, control and abatement of air  
70 pollution within such area;

71 (14) To require any and all persons who are directly  
72 or indirectly discharging air pollutants into the air to  
73 file with the commission such information as the di-  
74 rector may require in a form or manner prescribed by  
75 him for such purpose, including, but not limited to, lo-  
76 cation, size and height of discharge outlets, processes

77 employed, fuels used and the nature and time periods of  
78 duration of discharges. Such information shall be filed  
79 with the director, when and in such reasonable time, and  
80 in such manner as the director may prescribe;

81 (15) To require the owner or operator of any sta-  
82 tionary source discharging air pollutants to install such  
83 monitoring equipment or devices as the director may pre-  
84 scribe and to submit periodic reports on the nature and  
85 amount of such discharges to the commission;

86 (16) To do all things necessary and convenient to pre-  
87 pare and submit a plan or plans for the implementation,  
88 maintenance and enforcement of each primary and sec-  
89 ondary ambient air quality standard for any air pollutant  
90 established pursuant to the "Clean Air Amendments of  
91 1970" act: *Provided*, That in preparing and submitting  
92 each such plan the commission shall establish in such  
93 plan that such standard shall be first achieved, maintained  
94 and enforced by limiting and controlling emissions of  
95 pollutants from commercial and industrial sources and  
96 locations and shall only provide in such plans for limiting  
97 and controlling emissions of pollutants from private  
98 dwellings and the curtilage thereof as a last resort: *Pro-*  
99 *vided further*, That nothing herein contained shall be con-  
100 strued to affect plans for achievement, maintenance and  
101 enforcement of motor vehicle emission standards and of  
102 standards for fuels used in dwellings; and

103 (17) Whenever the commission achieves informally,  
104 by letter, or otherwise, an agreement with any person  
105 that said person will cease and desist in any act resulting  
106 in the discharge of pollutants or do any act to reduce or  
107 eliminate such discharge, such agreement shall be em-  
108 bodied in a consent order and entered as, and shall have  
109 the same effect as, an order entered after a hearing as  
110 provided in section six of this article.

111 The attorney general and his assistants and the prose-  
112 cuting attorneys of the several counties shall render to  
113 the commission without additional compensation such  
114 legal services as the commission may require of them to  
115 enforce the provisions of this article.

116 No rule and regulation of the commission pertaining to  
117 the control, reduction or abatement of air pollution shall

118 become effective until after at least one public hearing  
119 thereon shall have been held by the commission within  
120 the state. Notice to the public of the time and place of  
121 any such hearing shall be given by the commission at  
122 least thirty days prior to the scheduled date of such hear-  
123 ing by advertisement published as a Class II legal adver-  
124 tisement in compliance with the provisions of article  
125 three, chapter fifty-nine of this code, and the publication  
126 area for such publication shall be the county wherein  
127 such hearing is to be held. Full opportunity to be heard  
128 shall be accorded to all persons in attendance and any  
129 person, whether or not in attendance at such hearing,  
130 may submit in writing his views with respect to any such  
131 rule and regulation to the commission within thirty days  
132 after such hearing. After such thirty-day period, no views  
133 or comments shall be received in writing or otherwise,  
134 unless formally solicited by the commission. The pro-  
135 ceedings at the hearing before the commission shall be  
136 recorded by mechanical means or otherwise as may be  
137 prescribed by the commission. Such record of proceedings  
138 need not be transcribed unless requested by an interested  
139 party, in which event the prevailing rates for such tran-  
140 scripts will be required from such interested party.

**§16-20-11a. Records, reports, data or information; confidential-  
ity; proceedings upon request to inspect or  
copy.**

1 All air quality data, emission data, permits, compliance  
2 schedules, commission orders and any other information  
3 required by a federal implementation program (all for  
4 convenience hereinafter referred to in this section as  
5 "records, reports, data or information") obtained under  
6 this article shall be available to the public, except that  
7 upon a showing satisfactory to the director, by any  
8 person, that records, reports, data or information or  
9 any particular part thereof, to which the director has  
10 access under this article if made public, would divulge  
11 methods or processes entitled to protection as trade se-  
12 crets of such person, the director shall consider such rec-  
13 ords, reports, data or information or such particular por-  
14 tion thereof confidential: *Provided*, That such confiden-  
15 tiality shall not apply to the types and amounts of air

16 pollutants discharged, and that such records, reports,  
17 data or information may be disclosed to other officers  
18 or employees of the state concerned with enforcing this  
19 article when relevant to any official proceedings there-  
20 under.

21 All requests to inspect or copy documents must state  
22 with reasonable specificity the documents or type of  
23 documents sought to be inspected or copied. Within five  
24 business days of the receipt of such a request, the di-  
25 rector or his designate shall: (a) Advise the person  
26 making such request of the time and place at which  
27 he may inspect and copy the documents; or (b) deny  
28 the request, stating in writing the reasons for such de-  
29 nial. For purposes of judicial appeal, a written denial  
30 by the director or his designate shall be deemed an  
31 exhaustion of administrative remedies. Any person whose  
32 request for information is denied in whole or in part  
33 may appeal from such denial by filing with the director  
34 a notice of appeal. Such notice shall be filed within  
35 thirty days from the date the request for information  
36 was denied, and shall be signed by the person whose  
37 request was denied or his attorney. The appeal shall  
38 be taken to the circuit court of Kanawha county, where  
39 it shall be heard without a jury. The scope of review  
40 shall be limited to the question of whether the records,  
41 reports, data or other information, or any particular  
42 part thereof (other than emission data), sought to be  
43 inspected or copied, would, if made public, divulge  
44 methods or processes entitled to protection as trade  
45 secrets. The said court shall make findings of fact and  
46 conclusions of law based upon the evidence and testi-  
47 mony. The director, the person whose request was de-  
48 nied, or any other person whose interest shall have been  
49 substantially affected by the final order of the circuit  
50 court may appeal to the supreme court of appeals in the  
51 manner prescribed by law.

**§16-20-11b. Permits required for stationary sources of air pol-  
lutants.**

1 No person shall construct or modify any stationary  
2 source of air pollutants without first obtaining a permit  
3 therefor as hereinafter provided.

4 The commission shall by rule and regulation specify  
5 the class or categories of stationary sources to which  
6 this section shall apply and compliance with this section  
7 shall be required only with respect to such sources as are  
8 specified in such rule and regulation. Application for per-  
9 mits shall be made upon such form, in such manner, and  
10 within such time as the rule and regulation shall prescribe  
11 and shall include such information, as in the judgment of  
12 the director, will enable him to determine whether such  
13 source will be so designed as to operate in conformance  
14 with the provisions of this article or any rules and regula-  
15 tions promulgated thereunder.

16 Within ninety days of the receipt of an application  
17 required pursuant to this section the director shall issue  
18 such permit unless he determines that the proposed  
19 construction or modification will not be in accordance  
20 with this article or rules and regulations promulgated  
21 thereunder, in which case he shall issue an order for  
22 the prevention of such construction or modification.  
23 Failure to issue the permit or such order within the  
24 time prescribed herein shall be deemed a determination  
25 that such construction or modification may proceed:  
26 *Provided*, That it is in accordance with the plans and  
27 specifications or other information required to be sub-  
28 mitted on the application required herein.

29 For the purposes of this section a modification is deemed  
30 to be any physical change in, or change in the method  
31 of operation of, a stationary source which increases the  
32 amount of any air pollutant discharged by such source  
33 or which results in the emission of any air pollutant not  
34 previously discharged.

#### §16-20-11c. Motor vehicle pollution.

1 (a) As the state of knowledge and technology re-  
2 lating to the control of emissions from motor vehicles  
3 may permit or make appropriate, and in furtherance of  
4 the purposes of this article, the commission may provide  
5 by rules and regulations for the control of emissions  
6 from motor vehicles. Such rules and regulations may  
7 prescribe requirements for the installation and use of  
8 equipment designed to reduce or eliminate emissions



9 and for the proper maintenance of such equipment and  
10 of vehicles. Any rules and regulations pursuant to this  
11 section shall be consistent with provisions of federal  
12 law, if any, relating to control of emissions from the  
13 vehicles concerned. The commission shall not require,  
14 as a condition precedent to the initial sale of a vehicle  
15 or vehicular equipment, the inspection, certification or  
16 other approval of any feature or equipment designed for  
17 the control of emissions from motor vehicles, if such  
18 feature or equipment has been certified, approved, or  
19 otherwise authorized pursuant to federal law.

20 (b) Except as permitted or authorized by law, no  
21 person shall fail to maintain in good working order or  
22 remove, dismantle, or otherwise cause to be inoperative  
23 any equipment or feature constituting an operational  
24 element of the air pollution control system or mechanism  
25 of a motor vehicle required by rules and regulations of  
26 the commission to be maintained in or on the vehicle.  
27 Any such failure to maintain in good working order or  
28 removal, dismantling, or causing of inoperability shall  
29 subject the owner or operator to suspension or cancella-  
30 tion of the registration for the vehicle by the department  
31 of motor vehicles. The vehicle shall not thereafter be  
32 eligible for registration until all parts and equipment  
33 constituting operational elements of the motor vehicle  
34 have been restored, replaced or repaired and are in good  
35 working order.

36 (c) The commission shall consult with the depart-  
37 ment of motor vehicles and furnish it with technical in-  
38 formation, including testing techniques, standards and  
39 instructions for emission control features and equip-  
40 ment.

41 (d) When the commission has issued rules and  
42 regulations requiring the maintenance of features or  
43 equipment in or on motor vehicles for the purpose of  
44 controlling emissions therefrom, no motor vehicle shall  
45 be issued an inspection sticker as required by article  
46 sixteen, chapter seventeen-c of this code, unless all such  
47 required features or equipment have been inspected in  
48 accordance with the standards, testing techniques and  
49 instructions furnished by the commission pursuant to

50 this section eleven-c and have been found to meet those  
51 standards.

52 (e) The remedies and penalties provided in this sec-  
53 tion eleven-c, shall apply to violations hereof, and no pro-  
54 visions of sections eight or nine of this article shall apply  
55 thereto.

56 (f) As used in this section "motor vehicle" shall have  
57 the same meaning as in chapter seventeen-c of this code.

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## CHAPTER 74

(House Bill No. 522—By Mr. Harman and Mr. Donley)

[Passed February 17, 1971; in effect 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, relating to blood donations.

*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. BLOOD DONATIONS.

#### §16-21-1. Donations by minors without parental permission.

1 Notwithstanding any other provision of law, any  
2 person eighteen years of age or older may donate blood  
3 without parental or other permission or authorization.

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## CHAPTER 75

(Senate Bill No. 261—By Mr. Hubbard and Mr. Wallace)

[Passed February 23, 1971; in effect 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-

three, providing that the procuring, furnishing, donating, processing, distributing or the using of human whole blood, blood plasma, blood products, blood derivatives, corneas, bones or organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body shall be the rendition of a service and not a sale; and providing that no warranties of any kind or description shall be applicable thereto.

*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-three, to read as follows:

**ARTICLE 23. TRANSFUSION OF BLOOD; TRANSPLANTING HUMAN ORGANS OR TISSUE.**

**§16-23-1. Procuring, etc., human blood, etc., organs or other human tissue declared not a sale; warranties inapplicable.**

1 The procuring, furnishing, donating, processing, dis-  
2 tributing or the using of human whole blood, blood  
3 plasma, blood products, blood derivatives, corneas, bones  
4 or organs or other human tissue for the purpose of  
5 injecting, transfusing or transplanting any of them in  
6 the human body, is declared for all purposes to be the  
7 rendition of a service by every person, firm or corpora-  
8 tion participating therein, whether or not any remunera-  
9 tion is paid therefor, and is declared not to be a sale  
10 of any such items and no warranties of any kind or  
11 description shall be applicable thereto.

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## CHAPTER 76

(Senate Bill No. 159—By Mr. Moreland)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections four and thirteen, article twenty-five, chapter thirty-three of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, relating to health care corporations.

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

That sections four and thirteen, article twenty-five, 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 25. HEALTH CARE CORPORATIONS.**

§33-25-4. Board of directors.

§33-25-13. Contracts to be furnished to subscribers; payments for subscribers by others; wage deductions.

**§33-25-4. Board of directors.**

1 The board of directors of any corporation organized  
2 under this article shall consist of at least seven mem-  
3 bers, all of whom shall be residents of the state of West  
4 Virginia, a majority of whom shall be subscribers to its  
5 services, one of whom shall be a person licensed to prac-  
6 tice medicine under the laws of the state of West Vir-  
7 ginia, one of whom shall be a person connected with  
8 the healing arts, and one of whom shall be a member  
9 of the general public not connected with any contract-  
10 ing party. The members of the board shall serve without  
11 compensation but may be reimbursed for expenses in-  
12 curred in carrying out their duties as members of the  
13 board.

**§33-25-13. Contracts to be furnished to subscribers; payments  
for subscribers by others; wage deductions.**

1 (a) Every such corporation shall deliver to each sub-  
2 scriber to its health care plan a copy of the contract.

3 (b) A corporation may accept from private agencies,  
4 corporations, associations, groups or individuals, pay-  
5 ment for or on behalf of any subscriber of all or any  
6 part of the cost of subscriptions for direct health care  
7 services to be rendered: *Provided*, That no employer or  
8 sponsor may deduct the proportionate share of such  
9 payment attributable to any employee or subscriber from  
10 that employee's or subscriber's wages or salary, without  
11 the prior written consent of the employee or subscriber.

- 12 It shall be unlawful for any governmental agency to  
13 pay subscriptions for or on behalf of any subscriber.

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## CHAPTER 77

(Com. Sub. for House Bill No. 589—Originating in the House  
Committee on the Judiciary

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact sections two, three, four, six, eight, nine, ten and thirteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections seventeen, eighteen and nineteen, prohibiting discrimination in the sale, purchase, lease, rental or financing of housing accommodations and other real property by virtue of race, religion, color, national origin or ancestry; extending the prohibition of employment discrimination to cover employers of twelve or more persons; extending the jurisdiction of article eleven to discrimination by employers, labor organizations, employment agencies and places of public accommodations based upon age or sex; defining the terms age, housing accommodations, real property, real estate broker, real estate salesman and purchaser and owner of housing accommodations or real property; relating to hearings by human rights commission; relating to consent orders; authorizing the human rights commission to hire a hearing examiner and to maintain one branch office; requiring employers, labor organizations, employment agencies and persons operating places of public accommodations to post notices of the human rights commission; extending the statute of limitation to ninety days; providing for injunctive relief in certain housing complaints or cases; and providing exemptions relating to private clubs.

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

That sections two, three, four, six, eight, nine, ten and thir-

teen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections seventeen, eighteen and nineteen, all to read as follows:

**ARTICLE 11. HUMAN RIGHTS COMMISSION.**

§5-11-2. Declaration of policy.

§5-11-3. Definitions.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

§5-11-8. Commission powers; functions; services.

§5-11-9. Unlawful discriminatory practices.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

§5-11-13. Exclusiveness of remedy.

§5-11-17. Posting of law and information.

§5-11-18. Injunctions in certain housing complaints.

§5-11-19. Private club exemption.

**§5-11-2. Declaration of policy.**

1 It is the public policy of the state of West Virginia to  
 2 provide all of its citizens equal opportunity for employ-  
 3 ment, equal access to places of public accommodations,  
 4 and equal opportunity in the sale, purchase, lease, rental  
 5 and financing of housing accommodations or real prop-  
 6 erty. Equal opportunity in the areas of employment and  
 7 public accommodations is hereby declared to be a human  
 8 right or civil right of all persons without regard to race,  
 9 religion, color, national origin, ancestry, sex or age.  
 10 Equal opportunity in housing accommodations or real  
 11 property is hereby declared to be a human right or  
 12 civil right of all persons without regard to race, re-  
 13 ligion, color, national origin or ancestry.

14 The denial of these rights to properly qualified persons  
 15 by reason of race, religion, color, national origin, an-  
 16 cestry, sex or age, is contrary to the principles of free-  
 17 dom and equality of opportunity and is destructive to  
 18 a free and democratic society.

**§5-11-3. Definitions.**

1 When used in this article:

- 2 (a) The term "person" means one or more individ-  
3 uals, partnerships, associations, organizations, corpora-  
4 tions, labor organizations, cooperatives, legal representa-  
5 tives, trustees, trustees in bankruptcy, receivers and other  
6 organized groups of persons;
- 7 (b) The term "commission" means the West Virginia  
8 human rights commission;
- 9 (c) The term "director" means the executive director  
10 of the commission;
- 11 (d) The term "employer" means the state, or any  
12 political subdivision thereof, and any person employing  
13 twelve or more persons within the state: *Provided*, That  
14 such term shall not be taken, understood or construed to  
15 include a private club;
- 16 (e) The term "employee" shall not include any indi-  
17 vidual employed by his parents, spouse, or child, or in the  
18 domestic service of any person;
- 19 (f) The term "labor organization" includes any or-  
20 ganization which exists for the purpose, in whole or in  
21 part, for collective bargaining or for dealing with em-  
22 ployers concerning grievances, terms or conditions of  
23 employment, or for other mutual aid or protection in  
24 relation to employment;
- 25 (g) The term "employment agency" includes any per-  
26 son undertaking with or without compensation to pro-  
27 cure, recruit, refer or place employees. A newspaper en-  
28 gaged in the activity of advertising in the normal course  
29 of its business shall not be deemed to be an employment  
30 agency;
- 31 (h) The term "discriminate" or "discrimination"  
32 means to exclude from, or fail or refuse to extend to, a  
33 person equal opportunities because of race, religion, color,  
34 national origin, ancestry, sex or age, and includes to  
35 separate or segregate;
- 36 (i) The term "unlawful discriminatory practices" in-  
37 cludes only those practices specified in section nine of  
38 this article;
- 39 (j) The term "place of public accommodations" means  
40 any establishment or person, as defined herein, including

41 the state, or any political or civil subdivision thereof,  
42 which offers its services, goods, facilities or accommoda-  
43 tions to the general public, but shall not include any  
44 accommodations which are in their nature private;

45 (k) The term "housing accommodations" means any  
46 building or portion thereof, which is used or intended  
47 for use as the residence or sleeping place of one or more  
48 persons. Nothing contained in this definition or this  
49 article shall apply to the rental of a room or rooms in  
50 a rooming house occupied by the owner as a place of  
51 residence and containing no more than four rented  
52 rooms, or rooms to be rented;

53 (l) The term "real property" includes real estate,  
54 lands, leaseholds, commercial or industrial buildings and  
55 any vacant land offered for sale or rent on which the  
56 construction of a housing accommodation, commercial  
57 or industrial building is intended, and any land operated  
58 as a trailer camp or rented or leased for the use, parking  
59 or storage of mobile homes or house trailers;

60 (m) The term "real estate broker" includes any per-  
61 son, firm or corporation who, for a fee, commission or  
62 other valuable consideration, or by reason of a promise  
63 or reasonable expectation thereof, lists for sale, sells,  
64 exchanges, buys or rents, or offers or attempts to nego-  
65 tiate a sale, exchange, purchase, or rental of real estate  
66 or an interest therein, or collects or offers or attempts to  
67 collect rent for the use of real estate or solicits for pros-  
68 pective purchaser or assists or directs in the procuring  
69 of prospects or the negotiation or closing of any trans-  
70 action which does or is contemplated to result in the sale,  
71 exchange, leasing, renting or auctioning of any real  
72 estate or negotiates, offers or attempts or agrees to nego-  
73 tiate a loan secured or to be secured by mortgage or other  
74 encumbrance upon or transfer of any real estate for  
75 others, or any person who, for pecuniary gain or expec-  
76 tation of pecuniary gain, conducts a public or private  
77 competitive sale of lands or any interest in lands. In the  
78 sale of lots, the term "real estate broker" shall also  
79 include any person, partnership, association or corpora-  
80 tion employed by or on behalf of the owner or owners



81 of lots or other parcels of real estate, at a stated salary,  
82 or upon a commission, or upon a salary and commission,  
83 or otherwise to sell such real estate, or any parts thereof,  
84 in lots or other parcels, and who shall sell or exchange,  
85 or offer or attempt or agree to negotiate the sale or  
86 exchange, of any such lot or parcel of real estate. A  
87 newspaper engaged in the activity of advertising in the  
88 normal course of its business shall not be deemed to be  
89 a real estate broker;

90 (n) The term "real estate salesman" includes any  
91 person who, for compensation, valuable consideration or  
92 commission, or other thing of value, or by reason of a  
93 promise or reasonable expectation thereof, is employed  
94 by and operates under the supervision of a real estate  
95 broker to sell, buy or offer to buy or negotiate the pur-  
96 chase, sale or exchange of real estate, offers or attempts  
97 to negotiate a loan secured or to be secured by a mort-  
98 gage or other encumbrance upon or transfer of real es-  
99 tate for others, or to collect rents for the use of real  
100 estate, or to solicit for prospective purchasers or lessees  
101 of real estate, or who is employed by a licensed real  
102 estate broker to sell or offer to sell lots or other parcels  
103 of real estate, at a stated salary, or upon a commission,  
104 or upon a salary and commission, or otherwise to sell  
105 real estate, or any parts thereof, in lots or other parcels;

106 (o) The term "purchaser" includes any occupant,  
107 prospective occupant, lessee, prospective lessee, renter,  
108 prospective renter, buyer or prospective buyer;

109 (p) The term "owner" shall include the owner, lessee,  
110 sublessee, assignee, manager, agent, or other person,  
111 firm or corporation having the right to sell, rent or lease  
112 any housing accommodation or real property within the  
113 state of West Virginia or any agent of any of these;

114 (q) The term "age" means ages forty through sixty-  
115 five, both inclusive;

116 (r) The term "rooming house" means a house or  
117 building where there are one or more bedrooms which  
118 the proprietor can spare for the purpose of giving lodg-  
119 ings to such persons as he chooses to receive.

**§5-11-4. Human rights commission continued; status, powers and objects.**

1 The West Virginia human rights commission, hereto-  
2 fore created, is hereby continued. The commission shall  
3 have the powers and authority and shall perform the  
4 functions and services as in this article prescribed and  
5 as otherwise provided by law. The commission shall en-  
6 courage and endeavor to bring about mutual understand-  
7 ing and respect among all racial, religious and ethnic  
8 groups within the state and shall strive to eliminate all  
9 discrimination in employment and places of public ac-  
10 commodations by virtue of race, religion, color, national  
11 origin, ancestry, sex or age and shall strive to eliminate  
12 all discrimination in the sale, purchase, lease, rental  
13 or financing of housing and other real property by virtue  
14 of race, religion, color, national origin or ancestry.

**§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.**

1 As soon as practical after the first day of July of each  
2 year, the governor shall call a meeting of the commis-  
3 sion to be convened at the state capitol. The commission  
4 shall at such meeting organize by electing one of its  
5 members as chairman of the commission and one as  
6 vice chairman thereof for a term of one year or until  
7 their successors are elected and qualified. At such meet-  
8 ing the commission shall also elect from its membership  
9 such other officers as may be found necessary and  
10 proper for its effective organization.

11 The governor shall, by and with the advice and con-  
12 sent of the Senate, appoint an executive director to  
13 serve at his will and pleasure. The executive director  
14 shall serve as secretary of the commission. The execu-  
15 tive director shall have a college degree. He shall be  
16 selected with particular reference to his training, ex-  
17 perience and qualifications for the position and shall be  
18 paid an annual salary, payable in monthly installments,  
19 from any appropriations made therefor. The commission,  
20 upon recommendation of the executive director and in  
21 accordance with the requirements of the civil service

22 law, may employ such personnel as may be necessary  
23 for the effective and orderly performance of the functions  
24 and services of the commission. The commission shall  
25 employ a hearing examiner who shall be an attorney,  
26 duly licensed to practice law in the state of West Vir-  
27 ginia, for the conduct of the public hearings authorized  
28 in subdivision (d) (3), section eight of this article.

29 The commission shall equip and maintain its offices at  
30 the state capitol and shall hold its annual organizational  
31 meeting there. The commission may hold other meetings  
32 during the year at such times and places within the state  
33 as may be found necessary, and likewise may maintain  
34 one branch office within the state as determined by the  
35 commission to be necessary for the effective and orderly  
36 performance of the functions and services of the commis-  
37 sion. Any five members of the commission shall consti-  
38 tute a quorum for the transaction of business. Minutes  
39 of its meetings shall be kept by its secretary.

40 The executive director and other commission personnel  
41 shall be reimbursed for necessary and reasonable travel  
42 and subsistence expenses actually incurred in the per-  
43 formance of commission services upon presentation of  
44 properly verified expense accounts as prescribed by law.

**§5-11-8. Commission powers; functions; services.**

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and  
3 local government officers, units, activities and agencies  
4 in the promotion and attainment of more harmonious  
5 understanding and greater equality of rights between  
6 and among all racial, religious and ethnic groups in this  
7 state;

8 (b) To enlist the cooperation of racial, religious and  
9 ethnic units, community and civic organizations, indus-  
10 trial and labor organizations and other identifiable groups  
11 of the state in programs and campaigns devoted to the  
12 advancement of tolerance, understanding and the equal  
13 protection of the laws of all groups and peoples;

14 (c) To receive, investigate and pass upon complaints  
15 alleging discrimination in employment or places of pub-  
16 lic accommodations, because of race, religion, color, na-

17 tional origin, ancestry, sex or age, and complaints alleg-  
18 ing discrimination in the sale, purchase, lease, rental  
19 and financing of housing accommodations or real prop-  
20 erty because of race, religion, color, national origin  
21 or ancestry and to initiate its own consideration  
22 of any situations, circumstances or problems, in-  
23 cluding therein any racial, religious or ethnic group  
24 tensions, prejudice, disorder or discrimination reported  
25 or existing within the state relating to employment,  
26 places of public accommodations, housing accommoda-  
27 tions and real property;

28 (d) To hold and conduct public and private hearings  
29 on complaints, matters and questions before the com-  
30 mission and, in connection therewith, relating to dis-  
31 crimination in employment, or places of public accom-  
32 modations, housing accommodations or real property  
33 and during the investigation of any formal complaint  
34 before the commission relating to employment, places of  
35 public accommodations, housing accommodations or real  
36 property to:

37 (1) Issue subpoenas and subpoenas duces tecum upon  
38 the concurrence of at least five members of the com-  
39 mission, administer oaths, take the testimony of any  
40 person under oath, and make reimbursement for travel  
41 and other reasonable and necessary expenses in connec-  
42 tion with such attendance;

43 (2) Furnish copies of public hearing records to parties  
44 involved therein upon their payment of the reasonable  
45 costs thereof to the commission;

46 (3) Delegate to a panel of one commission member  
47 appointed by the chairman and a hearing examiner who  
48 shall be an attorney, duly licensed to practice law in  
49 West Virginia, the power and authority to hold and con-  
50 duct the hearings, as herein provided, but all decisions  
51 and action growing out of or upon any such hearings  
52 shall be reserved for determination by the commission;

53 (4) To enter into conciliation agreements and con-  
54 sent orders;

55 (5) To apply to the circuit court of the county where  
56 the respondent resides or transacts business for enforce-

57 ment of any conciliation agreement or consent order by  
58 seeking specific performance of such agreement or con-  
59 sent order;

60 (6) To issue cease and desist orders against any per-  
61 son found, after a public hearing, to have violated the  
62 provisions of this article or the rules and regulations of  
63 the commission;

64 (7) To apply to the circuit court of the county where  
65 the respondent resides or transacts business for an order  
66 enforcing any lawful cease and desist order issued by  
67 the commission;

68 (e) To recommend to the governor and Legislature  
69 policies, procedures, practices and legislation in matters  
70 and questions affecting human rights;

71 (f) To delegate to its executive director such powers,  
72 duties and functions as may be necessary and expedient  
73 in carrying out the objectives and purposes of this article;

74 (g) To prepare a written report on its work, functions  
75 and services for each year ending on the thirtieth day of  
76 June and to deliver copies thereof to the governor on or  
77 before the first day of December next thereafter;

78 (h) To do all other acts and deeds necessary and  
79 proper to carry out and accomplish effectively the ob-  
80 jects, functions and services contemplated by the pro-  
81 visions of this article, including the promulgation of  
82 rules and regulations in accordance with the provisions  
83 of article three, chapter twenty-nine-a of this code, im-  
84 plementing the powers and authority hereby vested in  
85 the commission;

86 (i) To create such advisory agencies and conciliation  
87 councils, local, regional or statewide, as in its judgment  
88 will aid in effectuating the purposes of this article, to  
89 study the problem of discrimination in all or specific  
90 fields or instances of discrimination because of race,  
91 religion, color, national origin, ancestry, sex or age; to  
92 foster, through community effort or otherwise, good will,  
93 cooperation and conciliation among the groups and ele-  
94 ments of the population of this state, and to make recom-  
95 mendations to the commission for the development of

96 policies and procedures, and for programs of formal and  
97 informal education, which the commission may recom-  
98 mend to the appropriate state agency. Such advisory  
99 agencies and conciliation councils shall be composed of  
100 representative citizens serving without pay. The com-  
101 mission may itself make the studies and perform the  
102 acts authorized by this subdivision. It may, by voluntary  
103 conferences with parties in interest, endeavor by con-  
104 ciliation and persuasion to eliminate discrimination in  
105 all the stated fields and to foster good will and coopera-  
106 tion among all elements of the population of the state;

107 (j) To accept contributions from any person to assist  
108 in the effectuation of the purposes of this section and to  
109 seek and enlist the cooperation of private, charitable,  
110 religious, labor, civic and benevolent organizations for  
111 the purposes of this section;

112 (k) To issue such publications and such results of  
113 investigation and research as in its judgment will tend  
114 to promote good will and minimize or eliminate discrimi-  
115 nation: *Provided*, That the identity of the parties in-  
116 volved shall not be disclosed.

#### **§5-11-9. Unlawful discriminatory practices.**

1 It shall be an unlawful discriminatory practice, unless  
2 based upon a bona fide occupational qualification, or  
3 except where based upon applicable security regulations  
4 established by the United States or the state of West  
5 Virginia or its agencies or political subdivisions:

6 (a) For any employer to discriminate against an  
7 individual with respect to compensation, hire, tenure,  
8 terms, conditions or privileges of employment if the  
9 individual is able and competent to perform the services  
10 required: *Provided, however*, That it shall not be un-  
11 lawful discriminatory practice for an employer to ob-  
12 serve the provisions of any bona fide pension, retirement,  
13 group or employee insurance, or welfare benefit plan or  
14 system not adopted as a subterfuge to evade the pro-  
15 visions of this subsection;

16 (b) For any employer, employment agency or labor  
17 organization, prior to the employment or admission to

18 membership, to (1) elicit any information or make or keep  
19 a record of or use any form of application or application  
20 blank containing questions or entries concerning the race,  
21 religion, color, national origin, ancestry, sex or age of any  
22 applicant for employment or membership; (2) print or  
23 publish or cause to be printed or published any notice or  
24 advertisement relating to employment or membership in-  
25 dicating any preference, limitation, specification or dis-  
26 crimination based upon race, religion, color, national ori-  
27 gin, ancestry, sex or age; or (3) deny or limit, through a  
28 quota system, employment or membership because of race,  
29 religion, color, national origin, ancestry, sex or age;

30 (c) For any labor organization because of race, re-  
31 ligion, color, national origin, ancestry, sex or age of any  
32 individual to deny full and equal membership rights to  
33 any individual or otherwise to discriminate against such  
34 individuals with respect to hire, tenure, terms, condi-  
35 tions or privileges of employment or any other matter,  
36 directly or indirectly, related to employment;

37 (d) For an employer, labor organization, employ-  
38 ment agency or any joint labor-management committee  
39 controlling apprentice training programs to:

40 (1) Select individuals for an apprentice training pro-  
41 gram registered with the state of West Virginia on any  
42 basis other than their qualifications as determined by  
43 objective criteria which permit review;

44 (2) Discriminate against any individual with respect  
45 to his right to be admitted to or participate in a guidance  
46 program, an apprenticeship training program, on-the-job  
47 training program, or other occupational training or re-  
48 training program;

49 (3) Discriminate against any individual in his pur-  
50 suit of such programs or to discriminate against such a  
51 person in the terms, conditions or privileges of such  
52 programs;

53 (4) Print or circulate or cause to be printed or circu-  
54 lated any statement, advertisement or publication, or  
55 to use any form of application for such programs or  
56 to make any inquiry in connection with such program

57 which expresses, directly or indirectly, discrimination  
58 or any intent to discriminate, unless based upon a bona  
59 fide occupational qualification;

60 (e) For any employment agency to fail or refuse  
61 to classify properly, refer for employment or otherwise  
62 to discriminate against any individual because of his  
63 race, religion, color, national origin, ancestry, sex or age;

64 (f) For any person being the owner, lessee, pro-  
65 prietor, manager, superintendent, agent or employee of  
66 any place of public accommodations to:

67 (1) Refuse, withhold from or deny to any individual  
68 because of his race, religion, color, national origin, ances-  
69 try, sex or age, either directly or indirectly, any of the  
70 accommodations, advantages, facilities, privileges or ser-  
71 vices of such place of public accommodations;

72 (2) Publish, circulate, issue, display, post or mail,  
73 either directly or indirectly, any written or printed  
74 communication, notice or advertisement to the effect that  
75 any of the accommodations, advantages, facilities, priv-  
76 ileges or services of any such place shall be refused, with-  
77 held from or denied to any individual on account of race,  
78 religion, color, national origin, ancestry, sex or age, or that  
79 the patronage or custom thereof of any individual, belong-  
80 ing to or purporting to be of any particular race, re-  
81 ligion, color, national origin, ancestry, sex or age is un-  
82 welcome, objectionable, not acceptable, undesired or not  
83 solicited;

84 (g) For the owner, lessee, sublessee, assignee or  
85 managing agent of, or other person having the right of  
86 ownership or possession of or the right to sell, rent,  
87 lease, assign, or sublease any housing accommodations  
88 or real property or part or portion thereof, or any agent,  
89 or employee of any of them; or for any real estate  
90 broker, real estate salesman, or employee or agent  
91 thereof:

92 (1) To refuse to sell, rent, lease, assign or sublease  
93 or otherwise to deny to or withhold from any person  
94 or group of persons any housing accommodations or  
95 real property, or part or portion thereof, because of race,



96 religion, color, national origin or ancestry of such person  
97 or group of persons;

98 (2) To discriminate against any person or group of  
99 persons because of the race, religion, color, national ori-  
100 gin or ancestry of such person or group of persons  
101 in the terms, conditions, or privileges of the sale, rental,  
102 or lease of any housing accommodations or real prop-  
103 erty, or part or portion thereof, or in the furnishing  
104 of facilities or services in connection therewith;

105 (3) To print, publish, circulate, issue, display, post  
106 or mail, or cause to be printed, published, circulated,  
107 issued, displayed, posted or mailed any statement, ad-  
108 vertisement, publication, or sign or to use any form  
109 of application for the purchase, rental, lease, assignment  
110 or sublease of any housing accommodations or real prop-  
111 erty, or part or portion thereof, or to make any record  
112 or inquiry in connection with the prospective purchase,  
113 rental, lease, assignment or sublease of any housing ac-  
114 commodatons or real property or part or portion thereof,  
115 which expresses, directly or indirectly, any limitation,  
116 specification, or discrimination as to race, religion, color,  
117 national origin or ancestry or any intent to make  
118 any such limitation, specification, or discrimination and  
119 the production of any statement, advertisement, pub-  
120 licity, sign, form of application, record or inquiry pur-  
121 porting to be made by any such person shall be prima  
122 facie evidence in any action that the same was autho-  
123 rized by such person;

124 (h) For any person or financial institution or lender  
125 to whom application is made for financial assistance  
126 for the purchase, acquisition, construction, rehabilitation,  
127 repair or maintenance of any housing accommodations  
128 or real property, or part or portion thereof, or any agent  
129 or employee thereof to:

130 (1) Discriminate against any person or group of per-  
131 sons because of race, religion, color, national origin or  
132 ancestry of such person or group of persons or of the  
133 prospective occupants or tenants of such housing ac-  
134 commodatons or real property, or part or portion thereof,  
135 in the granting, withholding, extending, modifying or  
136 renewing, or in the fixing of the rates, terms, conditions

137 or provisions of any such financial assistance or in the  
138 extension of services in connection therewith;

139 (2) Use any form of application for such financial  
140 assistance or to make any record of inquiry in connec-  
141 tion with applications for such financial assistance which  
142 expresses, directly or indirectly, any limitation, specifi-  
143 cation or discrimination as to race, religion, color, na-  
144 tional origin or ancestry, or any intent to make  
145 any such limitation, specification or discrimination;

146 (i) For any person, employer, employment agency,  
147 labor organization, owner, real estate broker, real estate  
148 salesman or financial institution to:

149 (1) Engage in any form of threats or reprisal, or to  
150 engage in, or hire, or conspire with others to commit  
151 acts or activities of any nature, the purpose of which  
152 is to harass, degrade, embarrass, or cause physical harm  
153 or economic loss or to aid, abet, incite, compel or coerce  
154 any person to engage in any of the unlawful discrimi-  
155 natory practices defined in this section;

156 (2) Wilfully obstruct or prevent any person from  
157 complying with the provisions of this article, or to re-  
158 sist, prevent, impede or interfere with the commission  
159 or any of its members or representatives in the per-  
160 formance of duty under this article;

161 (3) Engage in any form of reprisal or otherwise dis-  
162 criminate against any person because he has opposed  
163 any practices or acts forbidden under this article or  
164 because he has filed a complaint, testified or assisted  
165 in any proceeding under this article;

166 (4) For profit to induce or attempt to induce any  
167 person to sell or rent or to not sell or rent any housing  
168 accommodations or real property by representations re-  
169 garding the entry or prospective entry into the neighbor-  
170 hood of a person or persons of a particular race, religion,  
171 color, national origin or ancestry.

**§5-11-10. Discriminatory practices; investigations, hearings,  
procedures and orders.**

1 Any individual claiming to be aggrieved by an alleged  
2 unlawful discriminatory practice shall make, sign and

3 file with the commission a verified complaint, which shall  
4 state the name and address of the person, employer, labor  
5 organization, employment agency, owner, real estate  
6 broker, real estate salesman or financial institution al-  
7 leged to have committed the unlawful discriminatory  
8 practice complained of, and which shall set forth the  
9 particulars thereof and contain such other information  
10 as may be required by the commission's rules and regu-  
11 lations. The commission upon its own initiative, or the  
12 attorney general, shall, in like manner, make, sign and  
13 file such complaint. Any employer, whose employees, or  
14 some of them, hinder or threaten to hinder compliance  
15 with the provisions of this article, shall file with the  
16 commission a verified complaint, asking for assistance  
17 by conciliation or other remedial action and, during  
18 such period of conciliation or other remedial action,  
19 no hearings, orders or other actions shall be held,  
20 made or taken by the commission against such employer.  
21 Any complaint filed pursuant to this article must be  
22 filed within ninety days after the alleged act of dis-  
23 crimination.

24 After the filing of any complaint, or whenever there  
25 is reason to believe that an unlawful discriminatory  
26 practice has been committed, the commission shall  
27 make a prompt investigation in connection therewith.

28 If it shall be determined after such investigation that  
29 no probable cause exists for substantiating the allega-  
30 tions of the complaint, the commission shall, within ten  
31 days from such determination, cause to be issued and  
32 served upon the complainant written notice of such  
33 determination, and the said complainant or his attorney  
34 may, within ten days after such service, file with the  
35 commission a written request for a meeting with the  
36 commission to show probable cause for substantiating  
37 the allegations of the complaint. If it shall be deter-  
38 mined after such investigation or meeting that probable  
39 cause exists for substantiating the allegations of the  
40 complaint, the commission shall immediately endeavor  
41 to eliminate the unlawful discriminatory practices com-  
42 plained of by conference, conciliation and persuasion.  
43 The members of the commission and its staff shall not

44 disclose what has transpired in the course of such en-  
45 deavors: *Provided*, That the commission may publish  
46 the facts in the case of any complaint which has been  
47 dismissed, and the terms of conciliation when the com-  
48 plaint has been adjusted, without disclosing the identity  
49 of the parties involved.

50 In case of failure so to eliminate such practice or in  
51 advance thereof, if in the judgment of the commission  
52 circumstances so warrant, the commission shall cause  
53 to be issued and served a written notice, together with  
54 a copy of such complaint as the same may have been  
55 amended, in the manner provided by law for the service  
56 of summons in civil actions, requiring the person, em-  
57 ployer, labor organization, employment agency, owner,  
58 real estate broker, real estate salesman or financial in-  
59 stitution named in such complaint, hereinafter referred  
60 to as respondent, to answer the charges of such com-  
61 plaint at a hearing before the commission in the county  
62 where the respondent resides or transacts business at  
63 a time and place to be specified in such notice: *Provided*,  
64 *however*, That said written notice be served at least  
65 thirty days prior to the time set for the hearing.

66 The case in support of the complaint shall be pre-  
67 sented before the commission by one of its attorneys  
68 or agents. The respondent may file a written, verified  
69 answer to the complaint and appear at such hearing in  
70 person or otherwise, with or without counsel, and sub-  
71 mit testimony and evidence. Except as provided in the  
72 immediately preceding proviso, all of the pertinent pro-  
73 visions of article five, chapter twenty-nine-a of this  
74 code shall apply to and govern the hearing and the ad-  
75 ministrative procedures in connection with and follow-  
76 ing such hearing, with like effect as if the provisions  
77 of said article five were set forth in extenso in this sec-  
78 tion.

79 If, after such hearing and consideration of all of the  
80 testimony, evidence and record in the case, the com-  
81 mission shall find that a respondent has engaged in  
82 or is engaging in any unlawful discriminatory practice  
83 as defined in this article, the commission shall issue  
84 and cause to be served on such respondent an order

85 to cease and desist from such unlawful discriminatory  
86 practice and to take such affirmative action, including,  
87 but not limited to, hiring, reinstatement or upgrading  
88 of employees, with or without back pay, admission or  
89 restoration to membership in any respondent labor or-  
90 ganization, or the admission to full and equal enjoy-  
91 ment of the services, goods, facilities, or accommodations  
92 offered by any respondent place of public accommoda-  
93 tion, and the sale, purchase, lease, rental or financial  
94 assistance to any complainant otherwise qualified for  
95 the housing accommodation or real property, denied in  
96 violation of this article, as in the judgment of the com-  
97 mission, will effectuate the purposes of this article, and  
98 including a requirement for report of the manner of  
99 compliance. Such order shall be accompanied by find-  
100 ings of fact and conclusions of law as specified in sec-  
101 tion three, article five, chapter twenty-nine-a of this  
102 code.

103 If, after such hearing and consideration of all of the  
104 testimony, evidence and record in the case, the com-  
105 mission shall find that a respondent has not engaged  
106 in such unlawful discriminatory practice, the commis-  
107 sion shall state its findings of fact and conclusions of  
108 law as aforesaid and shall issue and cause to be served  
109 on the complainant an order dismissing the said com-  
110 plaint as to such respondent.

111 A copy of its order shall be delivered in all cases by  
112 the commission to the complainant, the respondent, the  
113 attorney general and to such other public officers as the  
114 commission may deem proper. Any such order shall not  
115 be enforceable except as provided in section eleven of  
116 this article.

### §5-11-13. Exclusiveness of remedy.

1 Nothing contained in this article shall be deemed to  
2 repeal or supersede any of the provisions of any existing  
3 or hereafter adopted municipal ordinance, municipal  
4 charter or of any law of this state relating to discrimina-  
5 tion because of race, religion, color, national origin, ances-  
6 try, sex or age, but as to acts declared unlawful by section  
7 nine of this article the procedure herein provided shall,

8 when invoked, be exclusive and the final determination  
9 therein shall exclude any other action, civil or crim-  
10 inal, based on the same grievance of the complainant  
11 concerned. If such complainant institutes any action  
12 based on such grievance without resorting to the pro-  
13 cedure provided in this article, he may not subsequently  
14 resort to the procedure herein. In the event of a con-  
15 flict between the interpretation of a provision of this  
16 article and the interpretation of a similar provision con-  
17 tained in any municipal ordinance authorized by charter,  
18 the interpretation of the provision in this article shall  
19 apply to such municipal ordinance.

**§5-11-17. Posting of law and information.**

1 Every employer, labor organization, employment agency  
2 and person operating a place of public accommodations,  
3 as defined herein, subject to this article, shall keep posted  
4 in a conspicuous place or places on his premises a notice  
5 or notices to be prepared or approved by the commission,  
6 which shall set forth excerpts of this article and such other  
7 relevant information which the commission shall deem  
8 necessary.

**§5-11-18. Injunctions in certain housing complaints.**

1 When it appears that a housing unit or units described  
2 in a complaint may be sold, rented or otherwise disposed  
3 of before a determination of the complaint or case has  
4 been made by the commission or during judicial review  
5 of any final order of the commission, the circuit court of  
6 the county in which such housing unit or units are located  
7 may, upon the joint petition of the commission and the  
8 complainant, or if there be more than one complainant,  
9 all such complainants, issue a prohibitive injunction re-  
10 straining the sale, rental or other disposition of such  
11 housing unit or units except in compliance with the  
12 order of the court. No such injunction shall be issued  
13 by the court until the complainant or complainants shall  
14 have posted bond, with good security therefor, in such  
15 penalty as the court or judge awarding it may direct.  
16 The court may include in any such injunction granted  
17 such other conditions as it deems proper and just. Such

18 injunction, if granted, shall be of no more than thirty  
19 days duration. If at the end of such thirty day period  
20 the commission notifies the court that additional time  
21 is needed for the disposal or determination of the com-  
22 plaint or case or the conclusion of such judicial re-  
23 view, the court, for good cause shown, may extend the  
24 period of the injunction for such additional time as the  
25 court deems proper. No such extension shall be granted  
26 except upon the continuation or reposting of the bond  
27 required for the original injunction and any such exten-  
28 sion of the injunction may be granted upon such additional  
29 terms and conditions as to the court seem proper and just.

**§5-11-19. Private club exemption.**

1 Nothing in this article shall prohibit a private club not  
2 in fact open to the public, which as an incident to its  
3 primary purpose or purposes provides lodgings which  
4 it owns or operates for other than a commercial pur-  
5 pose, from limiting the rental or occupancy of such lodg-  
6 ings to its members or guests of members or from  
7 giving preference to its members or guests of members:  
8 *Provided*, That this exemption shall not apply to any  
9 private club not in fact open to the public which owns or  
10 operates residential subdivisions providing lodgings for  
11 rental, occupancy or sale, or which provides real estate  
12 for sale for the construction of single or multi-unit dwell-  
13 ings.

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## CHAPTER 78

(House Bill No. 525—By Mr. Queen)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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

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

That section three, article two, chapter fifty-two of the code

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

**ARTICLE 2. GRAND JURIES.**

**§52-2-3. Summoning jury commissioners; selection and summoning of jurors.**

1 The clerk of any court requiring a grand jury shall,  
2 at least thirty days before the term of court, summon  
3 the jury commissioners to attend at his office at a day  
4 specified, which shall not be less than twenty days before  
5 such term, and select persons for the grand jury, but  
6 the court, or judge thereof, may require such jury com-  
7 missioners to appear forthwith, or at any specified time,  
8 and select grand jurors for either a regular, special or  
9 adjourned term of court. On the day appointed, the jury  
10 commissioners shall appear and draw the names of six-  
11 teen persons from the grand jury box, and the persons  
12 so drawn shall constitute the grand jury, and at the  
13 same time the jury commissioners shall draw the names  
14 of six additional persons from the grand jury box, and  
15 the persons so drawn shall constitute alternate jurors  
16 for the grand jury, and the judge may replace any absent  
17 members of the grand jury from among the alternate  
18 grand jurors. If when drawing the ballots it shall  
19 appear to the commissioners that any person so drawn  
20 is dead, or for any reason disqualified or unable to serve,  
21 they shall destroy the ballot and cancel the name on the  
22 list and draw another in such person's stead. They shall  
23 enter the names of all persons so drawn in a book kept  
24 for that purpose and deliver a list thereof to the clerk,  
25 who shall issue a summons for the persons drawn, di-  
26 rected to the sheriff of the county requiring him to sum-  
27 mon them to appear on the day required and serve as  
28 grand jurors. The provisions of article one of this chap-  
29 ter relating to the drawing and summoning of petit  
30 jurors and drawing ballots and cancellation and marking  
31 thereof, so far as applicable and not inconsistent with  
32 the provisions of this article, shall be observed and govern  
33 the selection of a grand jury, except in that the ballots  
34 shall be drawn from the several envelopes in proportion  
35 as near as may be to the numbers endorsed thereon, but



36 so that at least one ballot shall be drawn from each  
37 envelope.

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## CHAPTER 79

(Senate Bill No. 351—By Mr. Brotherton and Mr. Carrigan)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to grand juries; authorizing a grand jury to sit for as long as one year and in addition to any other grand jury and providing that all of the provisions of said article two shall apply to a grand jury authorized to sit for as long as one year with exceptions with respect to the end of the term of court during which such grand jury was drawn and summoned, the appointment of replacement grand jurors beyond the end of the term and compensation for the members of any such grand jury.

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

That article two, chapter fifty-two 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, to read as follows:

### ARTICLE 2. GRAND JURIES.

**§52-2-14. Grand jury authorized to sit for as long as one year and in addition to any other grand jury; provisions of article applicable with certain exceptions.**

1 Whenever it appears to the judge of any court of  
2 record having criminal jurisdiction that there may be  
3 possible offenses against the criminal laws of this state  
4 which because of their complexity and involvement may  
5 require a grand jury to sit for an extended period of  
6 time, he may, pursuant to the provisions of this sec-  
7 tion, order a grand jury to be drawn and to attend any

8 special, regular or adjourned term of such court in ad-  
9 dition to any other grand jury attending any such term  
10 of court and all of the provisions of this article shall  
11 apply, except as follows:

12 (1) Such grand jury shall sit for one year unless  
13 an order for its discharge be earlier entered upon a  
14 determination by such grand jury, by majority vote,  
15 that its business has been completed, and such grand  
16 jury shall have the power to make presentments or find  
17 indictments at any time while it is sitting, notwith-  
18 standing the end of the term of court during which it  
19 was drawn and summoned;

20 (2) The term limitation specified in the last sentence  
21 of section ten of this article shall not apply to a grand  
22 jury attending pursuant to the provisions of this section  
23 fourteen; and

24 (3) Notwithstanding the first two sentences of sec-  
25 tion thirteen of this article, every person who shall  
26 serve upon a grand jury attending pursuant to the pro-  
27 visions of this section fourteen shall be entitled to re-  
28 ceive for such services not less than eight dollars nor  
29 more than twenty dollars, to be fixed by the court, for  
30 each day he may so serve, for a total period not in ex-  
31 cess of one year, and in addition thereto the same mile-  
32 age as allowed to witnesses, to be paid out of the county  
33 treasury.

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## CHAPTER 80

(House Bill No. 519—By Mr. Steptoe)

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[Passed March 13, 1871; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to repeal section thirteen, article three, chapter fifty  
of the code of West Virginia, one thousand nine hundred  
thirty-one, as amended, relating to service of process on  
the president or cashier of a branch bank.

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

**ARTICLE 3. COMMENCEMENT OF ACTIONS AND PROCESS.****§1. Repeal of section relating to service of process on the president or cashier of a branch bank.**

- 1 Section thirteen, article three, chapter fifty of the code
- 2 of West Virginia, one thousand nine hundred thirty-one,
- 3 as amended, is hereby repealed.

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**CHAPTER 81**

(House Bill No. 503—By Mr. Perry and Mr. Jones, of Roane)

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[Passed March 1, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article eighteen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to various offenses within the criminal jurisdiction of justices of the peace and the penalties which may be imposed upon conviction thereof.

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

That section one, article eighteen, 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 18. CRIMINAL JURISDICTION AND PROCEDURE;  
APPEALS.****§50-18-1. Offenses within criminal jurisdiction of justices;  
penalties.**

- 1 A justice shall have jurisdiction of the following
- 2 offenses committed in his county, or on any river or creek
- 3 adjoining thereto:
- 4 (a) In cases of assault and battery, unless the offense
- 5 was committed on a sheriff or other officer or justice, or
- 6 riotously, or with intent to commit a felony; and no
- 7 compromise with the party injured shall affect or pre-
- 8 vent the trial of such offense by the justice; and if a
- 9 defendant be convicted of such offense he shall be fined
- 10 not less than ten nor more than fifty dollars, or be im-

11  prisoned in the county jail not exceeding thirty days, or  
12  be both fined and imprisoned;

13     (b) In cases of trespass to personal property; and,  
14  if a defendant be convicted of such offense, he shall be  
15  fined not less than five nor more than fifty dollars;

16     (c) In cases for the violation of section fourteen,  
17  article six, chapter sixty-one of this code; and, upon the  
18  conviction of a defendant for a misdemeanor violation  
19  of any of the provisions of said section, he shall be pun-  
20  ished as therein provided;

21     (d) In cases of adultery and fornication; and, if a  
22  defendant be convicted of such offense, he shall be fined  
23  twenty dollars;

24     (e) In cases of petit larceny; and, if a defendant be  
25  convicted of such offense, he shall be fined not less than  
26  ten nor more than fifty dollars, or be imprisoned in the  
27  county jail not exceeding thirty days, or be both fined and  
28  imprisoned;

29     (f) In cases for the violation of article seven, chapter  
30  sixty-one of this code; and, upon the conviction of a  
31  defendant for a violation of any of the provisions of said  
32  article, he shall be punished as therein provided;

33     (g) In any case where the punishment is limited to  
34  a fine not exceeding ten dollars, or to imprisonment for  
35  not more than ten days;

36     (h) In all misdemeanor cases for the violation of the  
37  provisions of chapter sixty of said code as amended;

38     (i) In cases for the violation of section thirteen, article  
39  six, chapter sixty-one of this code; and, upon the con-  
40  viction of a defendant for a violation of any of the pro-  
41  visions of said section, he shall be punished as therein  
42  provided;

43     (j) In all misdemeanor cases for the violation of the  
44  provisions of chapter nineteen of this code. Upon con-  
45  viction of a defendant for a violation of any of the  
46  provisions of chapter nineteen of this code, the defendant  
47  shall be punished as therein provided.

48     Whenever a person has been convicted in the municipi-  
49  pal or police court of any incorporated municipality,

50 such conviction shall be a bar to any criminal proceedings  
51 before a justice for the same offense.

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## CHAPTER 82

(Com. Sub. for House Bill No. 691—Originating in the House  
Committee on the Judiciary.)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact article one-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article one-b, providing a labor-management relations act for the private sector; setting forth a public policy and the purposes of said article; relating to mediation; relating to decisions of the national labor relations board and of the courts with respect to the national labor relations act; defining terms; providing a rule for the determination of the existence of an agency relationship; relating to rights of employees; specifying various unfair labor practices; relating to representatives of employees and petition and election procedures with respect thereto; authorizing intervention; relating to the prevention of unfair labor practices; specifying that said article one-a shall not preempt, limit or restrict various state court actions and remedies; authorizing actions to prevent unfair labor practices; providing that various provisions of the administrative procedures act shall be applicable; relating to suits by or against labor organizations; providing that labor organizations may sue or be sued as entities; relating to the service of summonses, subpoenas and other legal process under said article one-a; providing a severability clause; creating the West Virginia labor-management relations board; relating to its composition, the terms of its members, vacancies on the board and grounds for removal of members; relating to the quorum of such board; providing for an executive secretary of such board; relating to the oath of such board members

and of the executive secretary; relating to the salary and expenses of the members of such board and of the executive secretary; relating to the employees of such board; and relating to rules and regulations of such board.

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

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

**Article**

**1A. Labor-Management Relations Act for the Private Sector.**

**1B. West Virginia Labor-Management Relations Board.**

**ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.**

§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.

§21-1A-2. Definitions; determination of agency.

§21-1A-3. Rights of employees.

§21-1A-4. Unfair labor practices.

§21-1A-5. Representatives and elections.

§21-1A-6. Prevention of unfair labor practices.

§21-1A-7. Suits by or against labor organizations.

§21-1A-8. Severability.

**§21-1A-1. Public policy and purposes of article; mediation; investigation and mediation by commissioner of certain labor disputes; arbitration; construction of article.**

1 (a) It is hereby declared to be the public policy of  
 2 this state and the purposes of this article to encourage  
 3 the practice and procedure of collective bargaining by  
 4 protecting the exercise by employees of full freedom  
 5 of association, self-organization and designation of rep-  
 6 resentatives of their own choosing, for the purpose of  
 7 negotiating the terms and conditions of their employ-  
 8 ment or other mutual aid or protection; to prescribe  
 9 the legitimate rights of both employees and employers  
 10 in their relations; to provide orderly and peaceful pro-  
 11 cedures for preventing the interference by either with  
 12 the legitimate rights of the other; to protect the rights

13 of individual employees in their relations with labor  
14 organizations; to define and prescribe practices on the  
15 part of labor and management which are inimical to  
16 the welfare, prosperity, health and peace of the people  
17 of this state; and to protect the rights of the public in  
18 connection with labor disputes. This article shall be  
19 deemed an exercise of the police power of the state for  
20 the protection of the welfare, prosperity, health and  
21 peace of the people of this state.

22 (b) The commissioner of labor or his designated  
23 representative may investigate and mediate labor dis-  
24 putes between an employer and a labor organization,  
25 whether or not a collective bargaining agreement ex-  
26 ists between such parties providing both parties to such  
27 dispute request in writing such intervention or provided  
28 the commissioner offers such service to both parties and  
29 both parties to the dispute agree in writing to the investi-  
30 gation or mediation. The commissioner may arbitrate  
31 such disputes or arrange for the selection of boards of  
32 arbitration on such terms as all of the parties to such dis-  
33 putes may agree upon. Records of the department re-  
34 lating to labor disputes shall be confidential.

35 (c) This article is patterned after the provisions of the  
36 "National Labor Relations Act," as amended, and except  
37 insofar as the provisions of this article differ from the  
38 provisions of said act, as amended, the decisions of the  
39 national labor relations board and of the courts with  
40 respect to said act, as amended, shall be authoritative in  
41 the interpretation, administration and application of the  
42 provisions of this article.

#### §21-1A-2. Definitions; determination of agency.

1 (a) When used in this article:

2 (1) "Person" includes one or more individuals, labor  
3 organizations, partnerships, associations, corporations,  
4 legal representatives, trustees, trustees in bankruptcy or  
5 receivers.

6 (2) "Employer" includes any person acting as an agent  
7 of an employer, directly or indirectly, who employs fif-  
8 teen or more persons, but shall not include the United

9 States or any wholly owned United States government  
10 corporation, or any federal reserve bank, or any person  
11 subject to the provisions of the "National Labor Relations  
12 Act," as amended, unless the national labor relations  
13 board has declined to assert jurisdiction over such per-  
14 son, or any person subject to the "Railway Labor Act,"  
15 as amended from time to time, or any labor organization,  
16 other than when acting as an employer, or the state of  
17 West Virginia or any political subdivision or agency  
18 thereof, or any corporation or association operating a hos-  
19 pital, if no part of the net earnings inures to the benefit  
20 of any private shareholder or individual.

21 (3) "Employee" includes any employee, and shall not  
22 be limited to the employees of a particular employer,  
23 unless otherwise explicitly provided in this article, and  
24 among others shall include any individual whose work  
25 has ceased as a consequence of, or in connection with, any  
26 current labor dispute or because of any unfair labor  
27 practice, and who has not obtained any other regular and  
28 substantially equivalent employment, but shall not in-  
29 clude any individual employed in the production of agri-  
30 cultural products or the processing or marketing of agri-  
31 cultural products by the producer thereof, or in the do-  
32 mestic service of any family or person at his home, or  
33 any individual employed by his parent or spouse, or any  
34 individual having the status of an independent con-  
35 tractor, or any individual employed as a supervisor, or  
36 any individual employed by any person who is not an  
37 employer as herein defined.

38 (4) "Representative" includes any individual or labor  
39 organization.

40 (5) "Labor organization" means any organization of  
41 any kind, or any agency or employee representation com-  
42 mittee or plan, in which employees participate and which  
43 exists for the purpose, in whole or in part, of dealing  
44 with employers concerning grievances, labor disputes,  
45 wages, rates of pay, hours of employment, or conditions  
46 of work.

47 (6) "Unfair labor practice" means any unfair labor  
48 practice specified in section four of this article.

49 (7) "Labor dispute" or "dispute" includes any contro-



50 versy concerning terms, tenure or conditions of employ-  
51 ment or concerning the association or representation of  
52 persons in negotiating, fixing, maintaining, changing, or  
53 seeking to arrange terms or conditions of employment,  
54 regardless of whether the disputants stand in the proximate  
55 relation of employer and employee.

56 (8) "Supervisor" means any individual having author-  
57 ity, in the interest of the employer, to hire, transfer,  
58 suspend, layoff, recall, promote, discharge, assign, reward  
59 or discipline other employees, or responsibly to direct  
60 them, or to adjust their grievances, or effectively to rec-  
61 ommend such action, if in connection with the foregoing  
62 the exercise of such authority is not of a merely routine  
63 or clerical nature, but requires the use of independent  
64 judgment.

65 (9) "Professional employee" means (a) any employee  
66 engaged in work (i) predominantly intellectual and varied  
67 in character as opposed to routine mental, manual, me-  
68 chanical or physical work; (ii) involving the consistent  
69 exercise of discretion and judgment in its performance;  
70 (iii) of such a character that the output produced or the  
71 result accomplished cannot be standardized in relation to  
72 a given period of time; (iv) requiring knowledge of an  
73 advanced type in a field of science or learning custom-  
74 arily acquired by a prolonged course of specialized in-  
75 tellectual instruction and study in an institution of higher  
76 learning or a hospital, as distinguished from a general  
77 academic education or from an apprenticeship or from  
78 training in the performance of routine mental, manual, or  
79 physical processes; or (b) any employee, who (i) has  
80 completed the courses of specialized intellectual instruc-  
81 tion and study described in (iv) of (a) of this subdivision  
82 (9), and (ii) is performing related work under the  
83 supervision of a professional person to qualify himself  
84 to become a professional employee as defined in (a)  
85 of this subdivision (9).

86 (b) In determining whether any person is acting as  
87 an "agent" of another person so as to make such other  
88 person responsible for his acts, for any purpose under this  
89 article including suits by or against labor organizations,  
90 the question of whether the specific acts performed were

91 actually authorized or subsequently ratified shall not  
92 be controlling.

**§21-1A-3. Rights of employees.**

1 Employees shall have the right to self-organization, to  
2 form, join or assist labor organizations, to bargain collec-  
3 tively through representatives of their own choosing, and  
4 to engage in other concerted activities for the purpose of  
5 collective bargaining or other mutual aid or protection,  
6 and shall also have the right to refrain from any or all  
7 of such activities except to the extent that such right may  
8 be affected by an agreement requiring membership in a  
9 labor organization as a condition of employment as au-  
10 thorized in subdivision (3), subsection (a), section four  
11 of this article.

**§21-1A-4. Unfair labor practices.**

1 (a) It shall be an unfair labor practice for an em-  
2 ployer:

3 (1) To interfere with, restrain or coerce employees in  
4 the exercise of the rights guaranteed in section three of  
5 this article;

6 (2) To dominate or interfere with the formation or  
7 administration of any labor organization or contribute  
8 financial or other support to it: *Provided*, That an em-  
9 ployer shall not be prohibited from permitting employees  
10 to confer with him during working hours without loss  
11 of time or pay;

12 (3) By discrimination in regard to hire or tenure of  
13 employment or any term or condition of employment,  
14 to encourage or discourage membership in any labor or-  
15 ganization: *Provided, however*, That nothing contained  
16 in this article, or in any other statute of this state,  
17 shall preclude an employer from making an agreement  
18 with a labor organization (not established, maintained  
19 or assisted by any action defined in this section as an  
20 unfair labor practice) to require as a condition of em-  
21 ployment membership therein on or after the thirtieth  
22 day following the beginning of such employment or the  
23 effective date of such agreement, whichever is the later,

24 (i) if such labor organization is the representative of

25 the employees as provided in section five of this article,  
26 in the appropriate collective-bargaining unit covered by  
27 such agreement when made, and (ii) unless following an  
28 election held as provided in subsection (d), section five  
29 of this article, within one year preceding the effective  
30 date of such agreement, the board shall have certified  
31 that at least a majority of the employees eligible to vote  
32 in such election have voted to rescind the authority of  
33 such labor organization to make such an agreement:  
34 *Provided further*, That no employer shall justify any  
35 discrimination against an employee for nonmembership  
36 in a labor organization (A) if he has reasonable grounds  
37 for believing that such membership was not available to  
38 the employee on the same terms and conditions gener-  
39 ally applicable to other members, or (B) if he has  
40 reasonable grounds for believing that membership was  
41 denied or terminated for reasons other than the failure  
42 of the employee to tender the periodic dues and the initi-  
43 ation fees uniformly required as a condition of acquir-  
44 ing or retaining membership;

45 (4) To discharge or otherwise discriminate against  
46 an employee because he has filed charges or given testi-  
47 mony under this article; and

48 (5) To refuse to bargain collectively with the repre-  
49 sentatives of his employees, subject to the provisions of  
50 subsection (a), section five of this article.

51 (b) It shall be an unfair labor practice for a labor  
52 organization or its agents:

53 (1) To restrain or coerce (A) employees in the exer-  
54 cise of the rights guaranteed in section three of this  
55 article: *Provided*, That this subdivision shall not impair  
56 the right of a labor organization to prescribe its own  
57 rules with respect to the acquisition or retention of  
58 membership therein; or (B) an employer in the selec-  
59 tion of his representatives for the purposes of collective  
60 bargaining or the adjustment of grievances;

61 (2) To cause or attempt to cause an employer to dis-  
62 criminate against an employee in violation of subdivi-  
63 sion (3), subsection (a) of this section or to discriminate  
64 against an employee with respect to whom membership

65 in such organization has been denied or terminated on  
66 some ground other than his failure to tender the peri-  
67 odic dues and the initiation fees uniformly required as  
68 a condition of acquiring or retaining membership;

69 (3) To refuse to bargain collectively with an em-  
70 ployer, provided it is the representative of his em-  
71 ployees subject to the provisions of subsection (a), sec-  
72 tion five of this article;

73 (4) (i) To engage in or induce or encourage any  
74 individual employed by any person to engage in, a  
75 strike or a refusal in the course of employment to use,  
76 manufacture, process, transport, or otherwise handle or  
77 work on any goods, articles, materials or commodities  
78 or to perform any services; or (ii) to threaten, coerce,  
79 or restrain any person, where in either case an object  
80 thereof is:

81 (A) Forcing or requiring any employer or self-  
82 employed person to join any labor or employer organi-  
83 zation or to enter into any agreement which is pro-  
84 hibited by subsection (e) of this section;

85 (B) Forcing or requiring any person to cease using,  
86 selling, handling, transporting or otherwise dealing in  
87 the products of any other producer, processor or manu-  
88 facturer, or to cease doing business with any other  
89 person, or forcing or requiring any other employer to  
90 recognize or bargain with a labor organization as the  
91 representative of his employees unless such labor or-  
92 ganization has been certified as the representative of  
93 such employees under the provisions of section five of  
94 this article: *Provided*, That nothing contained in this  
95 clause (B) shall be construed to make unlawful, where  
96 not otherwise unlawful, any primary strike or primary  
97 picketing;

98 (C) Forcing or requiring any employer to recognize  
99 or bargain with a particular labor organization as the  
100 representative of his employees if another labor organi-  
101 zation has been certified as the representative of such  
102 employees under the provisions of section five of this  
103 article;

104 (D) Forcing or requiring any employer to assign

105 particular work to employees in a particular labor or-  
106 ganization or in a particular trade, craft or class rather  
107 than to employees in another labor organization or in  
108 another trade, craft or class, unless such employer is  
109 failing to conform to an order of certification of the  
110 board determining the bargaining representative for  
111 employees performing such work: *Provided*, That noth-  
112 ing contained in this subsection (b) shall be construed  
113 to make unlawful a refusal by any person to enter upon  
114 the premises of any employer (other than his own em-  
115 ployer), if the employees of such employer are engaged  
116 in a strike ratified or approved by a representative of  
117 such employees whom such employer is required by law  
118 to recognize;

119 (5) To require of employees covered by an agree-  
120 ment authorized under subdivision (3), subsection (a)  
121 of this section, the payment, as a condition precedent  
122 to becoming a member of such organization, of a fee in  
123 an amount which the board finds excessive or discrimi-  
124 natory under all the circumstances. In making such a  
125 finding, the board shall consider, among other relevant  
126 factors, the practices and customs of labor organizations  
127 in the particular industry, and the wages currently paid  
128 to the employees affected;

129 (6) To cause or attempt to cause an employer to pay  
130 or deliver or agree to pay or deliver any money or other  
131 thing of value, in the nature of an exaction, for services  
132 which are not performed or not to be performed; and

133 (7) To picket or cause to be picketed, or threaten  
134 to picket or cause to be picketed, any employer where  
135 an object thereof is forcing or requiring an employer  
136 to recognize or bargain with a labor organization as the  
137 representative of his employees, or forcing or requiring  
138 the employees of an employer to accept or select such  
139 labor organization as their collective bargaining repre-  
140 sentative, unless such labor organization is currently  
141 certified as the representative of such employees:

142 (A) Where the employer has lawfully recognized in  
143 accordance with this article any other labor organization  
144 and a question concerning representation may not ap-

145 appropriately be raised under subsection (c), section five  
146 of this article;

147 (B) Where within the preceding twelve months a  
148 valid election under subsection (c), section five of this  
149 article has been conducted; or

150 (C) Where such picketing has been conducted without  
151 a petition under subsection (c), section five of this article  
152 being filed within a reasonable period of time not to  
153 exceed fifteen days from the commencement of such  
154 picketing: *Provided*, That when such a petition has been  
155 filed the board shall forthwith, without regard to the  
156 provisions of said subsection (c), section five or the ab-  
157 sence of a showing of a substantial interest on the part  
158 of the labor organization, direct an election in such unit  
159 as the board finds to be appropriate and shall certify the  
160 results thereof. Nothing in this subdivision (7) shall  
161 be construed to permit any act which would otherwise  
162 be an unfair labor practice under this subsection (b).

163 (c) The expressing of any views, argument or opinion,  
164 or the dissemination thereof, whether in written, printed,  
165 graphic or visual form, shall not constitute or be evidence  
166 of an unfair labor practice, or be prohibited under this  
167 article, if such expression contains no threat of reprisal  
168 or force or promise of benefit.

169 (d) For the purposes of this section, to bargain col-  
170 lectively is the performance of the mutual obligation of  
171 the employer and the representative of the employees to  
172 meet at reasonable times and confer in good faith with  
173 respect to wages, hours and other terms and conditions  
174 of employment, or the negotiation of an agreement, or  
175 any question arising thereunder, and the execution of a  
176 written contract incorporating any agreement reached if  
177 requested by either party, but such obligation does not  
178 compel either party to agree to a proposal or require  
179 the making a concession: *Provided*, That where there is  
180 in effect a collective-bargaining contract covering em-  
181 ployees, the duty to bargain collectively shall also mean  
182 that no party to such contract shall terminate or modify  
183 such contract, unless the party desiring such termination  
184 or modification:

185 (1) Gives a written notice to the other party of the  
186 proposed termination or modification sixty days prior  
187 to the expiration date thereof, or in the event such con-  
188 tract contains no expiration date, sixty days prior to the  
189 time it is proposed to make such termination or modifica-  
190 tion;

191 (2) Offers to meet and confer with the other party  
192 for the purpose of negotiating a new contract or a con-  
193 tract containing the proposed modifications;

194 (3) Notifies the commissioner of labor of the exis-  
195 tence of a dispute;

196 (4) Continues in full force and effect, without resort-  
197 ing to strike or lockout, all the terms and conditions of  
198 the existing contract for a period of sixty days after such  
199 notice is given or until the expiration date of such con-  
200 tract, whichever occurs later. The duties imposed upon  
201 employers, employees, and labor organizations by sub-  
202 divisions (2), (3) and (4) of this subsection (d) shall  
203 become inapplicable upon an intervening certification  
204 of the board, under which the labor organization or in-  
205 dividual, which is a party to the contract, has been super-  
206 seded as or ceased to be the representative of the em-  
207 ployees subject to the provisions of subsection (a), section  
208 five of this article, and the duties so imposed shall not be  
209 construed as requiring either party to discuss or agree  
210 to any modification of the terms and conditions contained  
211 in a contract for a fixed period, if such modification is to  
212 become effective before such terms and conditions can  
213 be reopened under the provisions of the contract. Any  
214 employee who engages in a strike within the sixty-day  
215 period specified in this subsection shall lose his status  
216 as an employee of the employer engaged in the particular  
217 labor dispute, for the purposes of sections three, four  
218 and five of this article, but such loss of status for such  
219 employee shall terminate if and when he is reemployed by  
220 such employer.

221 (e) It shall be an unfair labor practice for any labor  
222 organization and any employer to enter into any contract  
223 or agreement, express or implied, whereby such em-  
224 ployer ceases or refrains or agrees to cease or refrain

225 from handling, using, selling, transporting, or otherwise  
226 dealing in any of the products of any other employer, or to  
227 cease doing business with any other person and any such  
228 contract or agreement entered into heretofore or here-  
229 after shall be to such extent unenforceable and void.

**§21-1A-5. Representatives and elections.**

1 (a) Representatives designated or selected for the  
2 purposes of collective bargaining by the majority of the  
3 employees in a unit appropriate for such purposes shall  
4 be the exclusive representatives of all the employees in  
5 such unit for the purposes of collective bargaining with  
6 respect to rates of pay, wages, hours of employment or  
7 other conditions of employment.

8 (b) The board shall decide in each case whether, in  
9 order to assure to employees the fullest freedom in exer-  
10 cising the rights guaranteed by this article, the unit ap-  
11 propriate for the purposes of collective bargaining shall  
12 be the employer unit, craft unit, plant unit, or subdivision  
13 thereof: *Provided*, That the board shall not (1) decide  
14 that any unit is appropriate for such purposes if such  
15 unit includes both professional employees and employees  
16 who are not professional employees unless a majority of  
17 such professional employees vote for inclusion in such  
18 unit; or (2) decide that any craft unit is inappropriate for  
19 such purposes on the ground that a different unit has  
20 been established by a prior board determination, unless  
21 a majority of the employees in the proposed craft unit  
22 vote against separate representation; or (3) decide that  
23 any unit is appropriate for such purposes if it includes,  
24 together with other employees, any individual employed  
25 as a guard to enforce against employees and other persons  
26 rules to protect property of the employer or to protect  
27 the safety of persons on the employer's premises; but no  
28 labor organization shall be certified as the representative  
29 of employees in a bargaining unit of guards if such organi-  
30 zation admits to membership, or is affiliated directly or in-  
31 directly with an organization which admits to member-  
32 ship, employees other than guards.

33 (c) (1) Whenever a petition shall have been filed, in  
34 accordance with such regulations as may be prescribed  
35 by the board:



36 (A) By an employee or group of employees or any  
37 individual or labor organization acting in their behalf  
38 alleging that employees (i) wish to be represented for  
39 collective bargaining and that their employer declines to  
40 recognize their representative as the representative de-  
41 fined in subsection (a) of this section, or (ii) assert that  
42 the individual or labor organization, which has been cer-  
43 tified or is being currently recognized by their employer  
44 as the bargaining representative, is no longer a represen-  
45 tative as defined in subsection (a) of this section; or

46 (B) By an employer, alleging that one or more in-  
47 dividuals or labor organizations have presented to him a  
48 claim to be recognized as the representative defined in  
49 subsection (a) of this section; the board shall investigate  
50 such petition and if it has reasonable cause to believe  
51 that a question of representation exists shall provide for  
52 an appropriate hearing upon due notice. If the board  
53 finds upon the record of such hearing that such a ques-  
54 tion of representation exists, it shall direct an election  
55 by secret ballot and shall certify the results thereof.

56 (2) Any labor organization may intervene in the pro-  
57 cedures provided for in this subsection upon the filing  
58 with the board of a petition alleging that it represents  
59 one or more employees in the unit with respect to which  
60 a question of representation exists. If the board finds the  
61 allegation to be valid and the unit to be appropriate, it  
62 shall order an election and shall order that the name of  
63 such intervening labor organization be included among  
64 the choices on the secret ballot to be used in such elec-  
65 tion. If the board finds that the petition is invalid, the  
66 board may dismiss the petition or permit such petition to  
67 be amended in accordance with the procedures estab-  
68 lished by such board.

69 (3) No election shall be directed in any bargaining  
70 unit or any subdivision within which, in the preceding  
71 twelve-month period, a valid election shall have been  
72 held. Employees engaged in an economic strike who are  
73 not entitled to reinstatement shall be eligible to vote  
74 under such regulations as the board shall find consistent  
75 with the purposes and provisions of this article in any  
76 election conducted within twelve months after the com-

77 mencement of the strike. In any election where none of  
78 the choices on the ballot receives a majority, a runoff  
79 shall be conducted, the ballot providing for a selection  
80 between the two choices receiving the largest and second  
81 largest number of valid votes cast in the election.

82 (4) Nothing contained in this section shall be con-  
83 strued as prohibiting the waiving of hearings by stipula-  
84 tion for the purpose of a consent election in conformity  
85 with regulations of the board.

86 (5) In determining whether a unit is appropriate for  
87 the purposes specified in subsection (b) of this section  
88 the extent to which the employees have organized shall  
89 not be controlling.

90 (d) Upon the filing with the board, by thirty per  
91 centum or more of the employees in a bargaining unit  
92 covered by an agreement between their employer and a  
93 labor organization made pursuant to subdivision (3),  
94 subsection (a), section four of this article, of a petition  
95 alleging that they desire that such authority be rescinded,  
96 the board shall take a secret ballot of the employees in  
97 such unit and certify the results thereof. No election  
98 shall be conducted pursuant to this subsection in any  
99 bargaining unit or any subdivision within which, in the  
100 preceding twelve-month period, a valid election shall  
101 have been held.

#### **§21-1A-6. Prevention of unfair labor practices.**

1 (a) The board is empowered, as hereinafter provided,  
2 to prevent any person from engaging in any unfair labor  
3 practice specified in section four of this article. The  
4 authority and power to prevent unfair labor practices  
5 prescribed in this article is exclusively vested in the  
6 board, and shall be limited to the procedures provided in  
7 this section, except for the rights of action explicitly  
8 granted to and against employers and labor organiza-  
9 tions by section seven of this article: *Provided*, That  
10 nothing contained in this article shall be deemed to pre-  
11 empt, limit or restrict any person in the enforcement or  
12 prosecution of any action now or at any time in the future  
13 in any court of this state to enforce any legal right or  
14 cause of action heretofore or otherwise existing under

15 law, including, but not limited to, any right to injunctive  
16 relief against violence, threats of violence, mass picket-  
17 ing, obstruction, or injury or threatened injury to prop-  
18 erty or person, in connection with labor disputes.

19 (b) Whenever it is charged by a charge filed with  
20 the board that any person has engaged in or is engag-  
21 ing in any such unfair labor practice, the board's exec-  
22 utive secretary, provided for in article one-b of this  
23 chapter, shall have power to investigate such charge  
24 and if he concludes that there is probable cause to be-  
25 lieve that such person has engaged in or is engaging in  
26 such unfair labor practice, to issue and cause to be  
27 served upon such person a complaint stating the charges  
28 in that respect, and containing a notice of hearing be-  
29 fore the board, at a place therein fixed, not less than ten  
30 days after the serving of said complaint: *Provided*, That  
31 no complaint shall issue based upon any unfair labor  
32 practice occurring more than six months prior to the  
33 filing of the charge with the board and the service of a  
34 copy thereof upon the person against whom the charge  
35 is made, unless the person aggrieved thereby was pre-  
36 vented from filing such charge by reason of service in  
37 the armed forces, in which event the six months' period  
38 shall be computed from the day of his discharge. Any  
39 such complaint may be amended by the board in its dis-  
40 cretion at any time prior to the issuance of an order  
41 based thereon. The person so complained of shall have  
42 the right to file an answer to the original or amended  
43 complaint and to appear in person or otherwise at a  
44 hearing scheduled thereon and give testimony. Any such  
45 hearing may be conducted by the board, any member  
46 thereof or any agent of the board designated by the board  
47 for such purpose. In the discretion of the board, member  
48 or agent conducting the hearing, any other person may  
49 be allowed to intervene in the said proceeding and  
50 present testimony. Any scheduled hearing may be con-  
51 tinued by the board, member or agent conducting the  
52 hearing upon its or his own motion or for good cause  
53 shown by any person thereto.

54 (c) All of the pertinent provisions of article five,  
55 chapter twenty-nine-a of this code shall apply to and

56 govern the hearing and the administrative procedures  
57 in connection with and following such hearing, with like  
58 effect as if the provisions of said article five were set  
59 forth in this subsection, with the following modifications  
60 or exceptions:

61 (1) Any such proceeding shall, so far as is practicable,  
62 be conducted in accordance with the rules of evidence  
63 as applied in civil cases in the circuit courts of this  
64 state; and

65 (2) The testimony taken by the board, member or  
66 agent conducting the hearing shall in every case be re-  
67 duced to writing and filed with the board.

68 (d) For the purpose of conducting any such hearing  
69 any member of the board or agent designated to con-  
70 duct such hearing shall have the power and authority  
71 to issue subpoenas and subpoenas duces tecum which  
72 shall be issued and served within the time, for the fees  
73 and shall be enforced, as specified in section one, article  
74 five of said chapter twenty-nine-a, and all of the said  
75 section one provisions dealing with subpoenas and sub-  
76 poenas duces tecum shall apply to subpoenas and sub-  
77 poenas duces tecum issued for the purpose of a hearing  
78 hereunder.

79 (e) Subsequent to the conclusion of the hearing, the  
80 board, in its discretion, may upon notice take further  
81 testimony or hear argument.

82 (f) If upon consideration of the record by the board,  
83 and upon a preponderance of the evidence, the board  
84 shall be of the opinion that any person named in the  
85 complaint has engaged in or is engaging in any such  
86 unfair labor practice, then the board shall state its find-  
87 ings of fact and conclusions of law and shall issue and  
88 cause to be served upon such person, by certified mail,  
89 return receipt requested, an order requiring such per-  
90 son to cease and desist from such unfair labor practice,  
91 and to take such affirmative action including reinstate-  
92 ment of employees, with or without back pay, as will  
93 effectuate the purposes of this article. Such order may  
94 further require such person to make reports from time  
95 to time showing the extent to which such person has  
96 complied with the order. If upon the preponderance of

97 the evidence the board shall not be of opinion that the  
98 person named in the complaint has engaged in or is  
99 engaging in any such unfair labor practice, then the  
100 board shall state its findings of fact and conclusions of  
101 law and shall issue an order dismissing the said com-  
102 plaint. No order of the board shall require the rein-  
103 statement of any individual as an employee who has been  
104 suspended or discharged, or the payment to him of any  
105 back pay, if such individual was suspended or discharged  
106 for cause.

107 (g) The decision of the board shall be final unless  
108 reversed, vacated or modified upon judicial review there-  
109 of in accordance with the provisions of subsection (h)  
110 of this section.

111 (h) The board shall have power to petition the cir-  
112 cuit court of any county wherein the unfair labor prac-  
113 tice in question occurred, for the enforcement of such  
114 order and for appropriate temporary relief or a restrain-  
115 ing order. Any person aggrieved by a final order of the  
116 board granting or denying in whole or in part the relief  
117 sought may obtain a review of such order in the circuit  
118 court of any county wherein the unfair labor practice in  
119 question was alleged to have occurred, and such review  
120 may be had only in such court notwithstanding the pro-  
121 visions of section four, article five, chapter twenty-nine-a  
122 of this code. Upon the filing of any such petition for en-  
123 forcement or review, the court shall have jurisdiction  
124 and power to grant such temporary relief or restraining  
125 order as it deems just and to make and enter a decree  
126 enforcing, modifying, and enforcing as so modified, or  
127 setting aside in whole or in part, the order of the board.  
128 Except as provided above in this subsection any petition  
129 for review shall be governed by the provisions of section  
130 four, article five, chapter twenty-nine-a of this code with  
131 like effect as if the provisions of said section four were  
132 set forth in this subsection (h).

133 (i) The board shall have the power, upon issuance of  
134 a complaint as provided in subsection (b) of this sec-  
135 tion charging that any person has engaged in or is en-  
136 gaging in an unfair labor practice, to petition the cir-  
137 cuit court of the county wherein the unfair labor prac-

138 tice in question is alleged to have occurred or to be  
139 occurring for appropriate temporary injunction or a re-  
140 straining order. Upon the filing of any such petition, the  
141 court shall cause notice thereof to be served upon such  
142 person, and thereupon shall have jurisdiction to grant to  
143 the board such temporary injunction or restraining order  
144 as it deems just and proper.

145 (j) Whenever it is charged that any person has en-  
146 gaged in an unfair labor practice within the meaning  
147 of subparagraphs (A), (B) or (C), subdivision (4), sub-  
148 section (b), section four of this article, or subsection (e)  
149 of said section four or subdivision (7), subsection (b)  
150 of said section four, the preliminary investigation of  
151 such charge shall be made forthwith and given priority  
152 over all cases except cases of like character. If, after  
153 such investigation, the executive secretary of the board  
154 has reasonable cause to believe such charge is true and  
155 that a complaint should issue, he shall, on behalf of the  
156 board, petition the circuit court of any county wherein  
157 the unfair labor practice in question has occurred or is  
158 occurring, for appropriate temporary injunctive relief  
159 pending the final adjudication of the board with respect  
160 to such matter. Upon the filing of any such petition the  
161 circuit court shall have jurisdiction to grant such tem-  
162 porary injunctive relief or temporary restraining order  
163 as it deems just and proper.

164 (k) An appeal from any decision of a circuit court  
165 pursuant to this article may be had, notwithstanding the  
166 provisions of section one, article six, chapter twenty-  
167 nine-a of this code, by filing a petition for a writ of  
168 certiorari with the supreme court of appeals of West  
169 Virginia within sixty days of the date of entry of final  
170 order by the circuit court.

#### §21-1A-7. Suits by or against labor organizations.

1 (a) Suits for violation of contracts between an em-  
2 ployer and a labor organization, or between labor organi-  
3 zations, may be brought in any circuit court of this state  
4 having jurisdiction of the parties.

5 (b) It shall be unlawful for any labor organization  
6 to engage in any activity or conduct defined as an unfair

7 labor practice in subdivision (4), subsection (b), sec-  
8 tion four of this article; and whoever shall be injured in  
9 his business or property by reason of any such viola-  
10 tion may sue therefor in the circuit court of any county  
11 wherein such unfair labor practice occurred, and shall  
12 recover the damages by him sustained and the cost of  
13 the suit.

14 (c) Any labor organization and any employer shall  
15 be bound by the acts of its agents. Notwithstanding any  
16 other provision of law or rule to the contrary, any such  
17 labor organization may sue or be sued as an entity and  
18 in behalf of the employees whom it represents. Any  
19 money judgment against a labor organization in a suit  
20 under this section shall be enforceable only against the  
21 organization as an entity and against its assets, and shall  
22 not be enforceable against any individual member or  
23 his assets.

24 (d) For the purposes of actions and proceedings by  
25 or against labor organizations, the circuit courts of  
26 this state shall be deemed to have jurisdiction of a labor  
27 organization in the county in which such organization  
28 maintains its principal offices, or in any county in which  
29 its duly authorized officers or agents are engaged in  
30 representing or acting for employee members.

31 (e) The service of summons, subpoena, or other legal  
32 process of any circuit court of this state upon an officer or  
33 agent of a labor organization, in his capacity as such,  
34 shall constitute service upon the labor organization.

#### **§21-1A-8. Severability.**

1 If any provision of this article, or the application of  
2 any provision to any person or circumstance, shall be  
3 held invalid, the remainder of this article, or the applica-  
4 tion of any such provision to persons or circumstances  
5 other than those as to which it is held invalid, shall not  
6 be affected thereby.

#### **ARTICLE 1B. WEST VIRGINIA LABOR-MANAGEMENT RELATIONS BOARD.**

§21-1B-1. West Virginia labor-management relations board created; mem-  
bers; appointment and vacancies; quorum; executive secre-  
tary; oath, compensation and expenses; meeting places and  
times.

§21-1B-2. Employees.

§21-1B-3. Rules and regulations.

**§21-1B-1. West Virginia labor-management relations board created; members; appointment and vacancies; quorum; executive secretary; oath, compensation and expenses; meeting places and times.**

1 (a) There is hereby created the "West Virginia Labor-  
2 Management Relations Board" (hereinafter called the  
3 "board") which shall consist of three members, appointed  
4 by the governor by and with the advice and consent of  
5 the Senate, for terms of five years and until their suc-  
6 cessors have been appointed and have qualified, except  
7 that the terms of the members first appointed shall be  
8 for three, four and five years, respectively, as designated  
9 by the governor at the time of their appointment, and  
10 until their successors have been appointed and have  
11 qualified. The governor shall designate one member to  
12 serve as chairman of the board. Not more than two of  
13 the members shall be members of the same political  
14 party. Vacancies shall be filled by appointment by the  
15 governor for the unexpired term of the member whose  
16 office shall be vacant and such appointment shall be made  
17 within sixty days of the occurrence of such vacancy.  
18 Notwithstanding the provisions of section four, article  
19 six, chapter six of this code, any member of the board  
20 may be removed by the governor for neglect of duty,  
21 gross immorality or malfeasance in office, but for no  
22 other cause.

23 (b) A vacancy on the board shall not impair the  
24 right of the remaining members to exercise all of the  
25 powers of the board, and two members of the board  
26 shall, at all times, constitute a quorum of the board,  
27 provided such two members be in agreement as to any  
28 action to be taken. Any member may be appointed any  
29 number of times.

30 (c) There shall be an executive secretary of the board  
31 who shall be an attorney licensed to practice law in this  
32 state, and who shall be appointed by the governor, by  
33 and with the advice and consent of the Senate, for a term  
34 of four years and until his successor has been appointed  
35 and has qualified. Any person may be appointed execu-



36 tive secretary any number of times. The executive sec-  
37 retary of the board shall have final authority, on behalf  
38 of the board, with respect to the investigation of charges  
39 and the issuance of complaints under section six, article  
40 one-a of this chapter and with respect to the prosecution  
41 of such complaints before the board, and shall have such  
42 other duties as the board may prescribe or as may here-  
43 after be provided by law.

44 (d) Before entering upon the performance of his  
45 duties, each member of the board and the executive sec-  
46 retary shall take and subscribe to the oath prescribed  
47 by section five, article four of the constitution.

48 (e) Each member of the board shall be paid one  
49 hundred dollars per diem for actual time spent in the  
50 performances of his duties under article one-a of this  
51 chapter, under this article and under any other article  
52 of this chapter in which the board is expressly assigned  
53 responsibility, jurisdiction and duties to be exercised  
54 and performed. The executive secretary of the board  
55 shall receive an annual salary of twenty thousand dollars.  
56 The members of the board and the executive secretary  
57 shall be reimbursed for all reasonable and necessary  
58 expenses actually incurred in the discharge of their duties  
59 under said article one-a, this article and under any other  
60 article of this chapter in which such board and executive  
61 secretary are expressly assigned responsibility, jurisdic-  
62 tion and duties to be exercised and performed.

63 (f) The principal office of the board shall be in  
64 Charleston, Kanawha county, West Virginia, but it may  
65 meet and exercise any or all of its powers at any other  
66 place within this state. The board may meet as often as  
67 necessary to exercise and perform its responsibilities,  
68 jurisdiction and duties.

#### §21-1B-2. Employees.

1 The board shall have the authority to hire such at-  
2 torneys admitted to practice law in this state and other  
3 employees as it may from time to time find necessary for  
4 the proper exercise and performance of its responsibil-  
5 ities, jurisdiction and duties. Any such attorneys so hired  
6 may, at the direction of the board, appear for and rep-

7 resent the board in any case in any court in which ad-  
8 mitted to practice.

**§21-1B-3. Rules and regulations.**

1 The board shall have the authority from time to time  
2 to make, amend and rescind such rules and regulations as  
3 may be necessary to implement and carry out the pro-  
4 visions of article one-a of this chapter, this article and  
5 any other article of this chapter in which the board is  
6 expressly assigned responsibility, jurisdiction and duties  
7 to be exercised and performed, all such rules and regula-  
8 tions to be promulgated pursuant to chapter twenty-  
9 nine-a of this code.

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## CHAPTER 83

(House Bill No. 610—By Mr. Speaker, Mr. Boiarsky, and Mr. Kopp)

[Passed March 6, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and seven, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wages and maximum hours for certain employees, definitions of terms, credit for board and lodging, offenses and penalties.

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

That sections one, two, three, four and seven, article five-c, 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 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.**

§21-5C-1. Definitions.

§21-5C-2. Minimum wages.

§21-5C-3. Maximum hours; overtime compensation.

§21-5C-4. Credits.

§21-5C-7. Offenses and penalties.

**§21-5C-1. Definitions.**

1 As used in this article:

- 2 (a) "Commissioner" means the commissioner of labor  
3 or his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and  
5 hour director appointed by the commissioner of labor  
6 as chief of the wage and hour division.

7 (c) "Wage" means compensation due an employee by  
8 reason of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia,  
11 its agencies, departments and all its political subdivi-  
12 sions, any individual, partnership, association, public or  
13 private corporation, or any person or group of persons  
14 acting directly or indirectly in the interest of any em-  
15 ployer in relation to an employee; and who employs  
16 during any calendar week six or more employees as herein  
17 defined in any one separate, distinct and permanent loca-  
18 tion or business establishment: *Provided*, That the term  
19 "employer" shall not include any individual, partner-  
20 ship, association, corporation, person or group of persons  
21 or similar unit if eighty percent of the persons employed  
22 by him are subject to any federal act relating to minimum  
23 wage, maximum hours and overtime compensation.

24 (f) "Employee" includes any individual employed by  
25 an employer but shall not include: (1) Any individual  
26 employed by the United States; (2) any individual en-  
27 gaged in the activities of an educational, charitable, religi-  
28 ous, fraternal or nonprofit organization where the em-  
29 ployer-employee relationship does not in fact exist,  
30 or where the services rendered to such organizations  
31 are on a voluntary basis; (3) newsboys, shoeshine boys,  
32 golf caddies, pin boys and pin chasers in bowling lanes;  
33 (4) traveling salesmen and outside salesmen; (5) ser-  
34 vices performed by an individual in the employ of his  
35 parent, son, daughter or spouse; (6) any individual  
36 employed in a bona fide professional, executive or ad-  
37 ministrative capacity; (7) any person whose employ-  
38 ment is for the purpose of on-the-job training; (8) any  
39 person having a physical or mental handicap so severe  
40 as to prevent his employment or employment training  
41 in any training or employment facility other than a  
42 nonprofit sheltered workshop; (9) any individual em-  
43 ployed in a boys or girls summer camp; (10) any  
44 person sixty-two years of age or over who receives

45 old age or survivors benefits from the social se-  
46 curity administration; (11) any individual em-  
47 ployed in agriculture as the word agriculture is  
48 defined in the Fair Labor Standards Act of 1938,  
49 as amended; (12) any individual employed as a fire-  
50 fighter by the state or agency thereof; (13) ushers  
51 in theaters; (14) any individual employed on a part-time  
52 basis who is a student in any recognized school or col-  
53 lege; (15) any individual employed by a local or inter-  
54 urban motorbus carrier; (16) so far as the maximum  
55 hours and overtime compensation provisions of this ar-  
56 ticle are concerned, any salesman, partsman or mechanic  
57 primarily engaged in selling or servicing automobiles,  
58 trailers, trucks, farm implements, or aircraft if employed  
59 by a nonmanufacturing establishment primarily engaged  
60 in the business of selling such vehicles to ultimate pur-  
61 chasers; (17) any employee with respect to whom the  
62 United States Department of Transportation has statu-  
63 tory authority to establish qualifications and maximum  
64 hours of service.

65 (g) "Workweek" means a regularly recurring period  
66 of one hundred sixty-eight hours in the form of seven  
67 consecutive twenty-four-hour periods, need not coincide  
68 with the calendar week, and may begin any day of the  
69 calendar week and any hour of the day.

70 (h) "Hours worked", in determining for the purposes  
71 of sections two and three of this article, the hours for  
72 which an employee is employed, there shall be excluded  
73 any time spent in changing clothes or washing at the  
74 beginning or end of each workday, time spent in walking,  
75 riding or traveling to and from the actual place of per-  
76 formance of the principal activity or activities which  
77 such employee is employed to perform and activities  
78 which are preliminary to or postliminary to said prin-  
79 cipal activity or activities, subject to such exceptions  
80 as the commissioner may by rules and regulations de-  
81 fine.

#### §21-5C-2. Minimum wages.

1 On and after the first day of July, one thousand nine  
2 hundred seventy-one, and until the thirtieth day of June,

3 one thousand nine hundred seventy-two, every em-  
4 ployer shall pay to each of his employees wages at a  
5 rate not less than one dollar and twenty cents per hour;  
6 on and after the first day of July, one thousand nine  
7 hundred seventy-two, and until the thirtieth day of June,  
8 one thousand nine hundred seventy-three, every em-  
9 ployer shall pay to each of his employees wages at a  
10 rate not less than one dollar and forty cents per  
11 hour; on and after the first day of July, one thousand  
12 nine hundred seventy-three, every employer shall pay  
13 to each of his employees wages at a rate not less than  
14 one dollar and sixty cents per hour.

**§21-5C-3. Maximum hours; overtime compensation.**

1 (a) On and after January one, one thousand nine hun-  
2 dred sixty-seven, no employer shall employ any of his  
3 employees for a workweek longer than forty-eight hours,  
4 unless such employee receives compensation for his  
5 employment in excess of the hours above specified at  
6 a rate not less than one and one-half times the regular  
7 rate at which he is employed.

8 (b) As used in this section the "regular rate" at  
9 which an employee is employed shall be deemed to in-  
10 clude all remuneration for employment paid to, or on  
11 behalf of, the employee, but shall not be deemed to  
12 include:

13 (1) Sums paid as gifts; payments in the nature of  
14 gifts made at Christmas time or on other special occa-  
15 sions, as a reward for service, the amounts of which are  
16 not measured by or dependent on hours worked, produc-  
17 tion, or efficiency;

18 (2) Payments made for occasional periods when no  
19 work is performed due to vacation, holiday, illness, failure  
20 of the employer to provide sufficient work, or other sim-  
21 ilar cause; reasonable payments for traveling expenses,  
22 or other expenses, incurred by an employee in the fur-  
23 therance of his employer's interests and properly reim-  
24 bursable by the employer, and other similar payments  
25 to an employee which are not made as compensation  
26 for his hours of employment;

27 (3) Sums paid in recognition of services performed  
28 during a given period if either, (a) both the fact that  
29 payment is to be made and the amount of the payment  
30 are determined at the sole discretion of the employer at  
31 or near the end of the period and not pursuant to any  
32 prior contract, agreement, or promise causing the em-  
33 ployee to expect such payments regularly; or (b) the  
34 payments are made pursuant to a bona fide profit-sharing  
35 plan or trust or bona fide thrift or savings plan, meeting  
36 the requirements of the commissioner set forth in ap-  
37 propriate regulation which he shall issue, having due  
38 regard among other relevant factors, to the extent to  
39 which the amounts paid to the employee are determined  
40 without regard to hours of work, production, or efficiency;  
41 or (c) the payments are talent fees (as such talent fees  
42 are defined and delimited by regulations of the commis-  
43 sioner) paid to performers, including announcers, on  
44 radio and television programs;

45 (4) Contributions irrevocably made by an employer  
46 to a trustee or third person pursuant to a bona fide plan  
47 for providing old-age, retirement, life, accident, or health  
48 insurance or similar benefits for employees;

49 (5) Extra compensation provided by a premium rate  
50 paid for certain hours worked by the employee in any  
51 day or workweek because such hours are hours worked  
52 in excess of eight in a day or in excess of the maximum  
53 workweek applicable to such employee under subsection  
54 (a) or in excess of the employee's normal working hours  
55 or regular working hours, as the case may be;

56 (6) Extra compensation provided by a premium rate  
57 paid for work by the employee on Saturdays, Sundays,  
58 holidays, or regular days of rest, or on the sixth or  
59 seventh day of the workweek, where such premium  
60 rate is not less than one and one-half times the rate  
61 established in good faith for like work performed in  
62 nonovertime hours on other days; or

63 (7) Extra compensation provided by a premium rate  
64 paid to the employee, in pursuance of an applicable em-  
65 ployment contract or collective-bargaining agreement,  
66 for work outside of the hours established in good faith  
67 by the contract or agreement as the basic, normal, or

68 regular workweek where such premium rate is not less  
69 than one and one-half times the rate established in  
70 good faith by the contract or agreement for like work  
71 performed during such workweek.

72 (c) No employer shall be deemed to have violated  
73 subsection (a) by employing any employee for a work-  
74 week in excess of the maximum workweek applicable  
75 to such employee under subsection (a) if such employee  
76 is employed pursuant to a bona fide individual contract,  
77 or pursuant to an agreement made as a result of col-  
78 lective bargaining by representatives of employees, if  
79 the duties of such employee necessitate irregular hours  
80 of work, and the contract or agreement (1) specifies a  
81 regular rate of pay of not less than the minimum hourly  
82 rate provided in section two and compensation at not  
83 less than one and one-half times such rate for all hours  
84 worked in excess of such maximum workweek, and (2)  
85 provides a weekly guaranty of pay for not more than  
86 sixty hours based on the rates so specified.

87 (d) No employer shall be deemed to have violated  
88 subsection (a) by employing any employee for a work-  
89 week in excess of the maximum workweek applicable  
90 to such employee under such subsection if, pursuant to  
91 an agreement or understanding arrived at between the  
92 employer and the employee before performance of the  
93 work, the amount paid to the employee for the number  
94 of hours worked by him in such workweek in excess of  
95 the maximum workweek applicable to such employee  
96 under such subsection:

97 (1) In the case of an employee employed at piece  
98 rates, is computed at piece rates not less than one and  
99 one-half times the bona fide piece rates applicable to  
100 the same work when performed during nonovertime  
101 hours; or

102 (2) In the case of an employee performing two or  
103 more kinds of work for which different hourly or piece  
104 rates have been established, is computed at rates not less  
105 than one and one-half times such bona fide rates applic-  
106 able to the same work when performed during non-  
107 overtime hours; or

108 (3) Is computed at a rate not less than one and one-

109 half times the rate established by such agreement or  
110 understanding as the basic rate to be used in computing  
111 overtime compensation thereunder: *Provided*, That the  
112 rate so established shall be authorized by regulation by  
113 the commissioner as being substantially equivalent to  
114 the average hourly earnings of the employee, exclusive  
115 of overtime premiums, in the particular work over a  
116 representative period of time; and if (i) the employee's  
117 average hourly earnings for the workweek exclusive of  
118 payments described in subdivisions (1) through (7) of  
119 subsection (b) are not less than the minimum hourly  
120 rate required by applicable law, and (ii) extra overtime  
121 compensation is properly computed and paid on other  
122 forms of additional pay required to be included in com-  
123 puting the regular rate.

124 (e) Extra compensation paid as described in subdi-  
125 visions (5), (6) and (7) of subsection (b) shall be credit-  
126 able toward overtime compensation payable pursuant to  
127 this section.

#### §21-5C-4. Credits.

1 In determining whether an employer is paying an  
2 employee wages and overtime compensation as provided  
3 in sections two and three of this article, there shall be  
4 provided in accordance with the regulations which shall  
5 be promulgated by the commissioner a credit of twenty-  
6 five cents an hour for an employee customarily re-  
7 ceiving gratuities, and a reasonable credit for board  
8 and lodging furnished to an employee. The commis-  
9 sioner shall promulgate regulations relating to maximum  
10 allowances to employers for room and board furnished  
11 to employees.

#### §21-5C-7. Offenses and penalties.

1 (a) Any employer who wilfully discharges or in any  
2 manner wilfully discriminates against any employee  
3 because such employee has made complaint to his em-  
4 ployer, or to the commissioner, that he has not been paid  
5 wages in accordance with the wage and hour provisions  
6 of this article, or because such employee has instituted  
7 or is about to institute any civil action, or file any petition  
8 or criminal complaint against the employer by reason



9 of the provisions of this article, or because such em-  
 10 ployee has testified or is about to testify in any ad-  
 11 ministrative proceeding, civil action, or criminal action  
 12 under this article, shall be guilty of a misdemeanor, and,  
 13 upon conviction thereof, shall be fined not less than one  
 14 hundred dollars nor more than five hundred dollars.

15 (b) Any employer, labor organization, employee, or  
 16 other person, alone or in concert, who in any manner  
 17 wilfully discriminates against any person with respect  
 18 to wages, hours of work or overtime compensation be-  
 19 cause of race, religion, color, national origin, ancestry,  
 20 age or sex, shall be guilty of a misdemeanor, and, upon  
 21 conviction thereof, shall be fined not less than two hun-  
 22 dred and fifty nor more than one thousand dollars, or  
 23 imprisoned in the county jail for not more than one  
 24 year, or both fined and imprisoned.

25 (c) Any employer who wilfully violates any other  
 26 provision of this article shall be guilty of a misdemeanor,  
 27 and, upon conviction thereof, shall be fined not more  
 28 than one hundred dollars.

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## CHAPTER 84

(Senate Bill No. 3—By Mr. Holliday)

[Passed February 1, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chap-  
 ter two of the code of West Virginia, one thousand nine  
 hundred thirty-one, as amended, relating to dates of legal  
 holidays and official acts or court proceedings thereon.

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

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

**ARTICLE 2. LEGAL HOLIDAYS; CONSTRUCTION OF STATUTES;  
 DEFINITIONS.**

**§2-2-1. Legal holidays; official acts or court proceedings.**

1 The following days shall be regarded, treated and

2 observed as legal holidays, viz: The first day of Janu-  
3 ary, commonly called "New Year's Day"; the twelfth  
4 day of February, commonly called "Lincoln's Birthday";  
5 the third Monday of February, commonly called "Wash-  
6 ington's Birthday"; the last Monday of May, commonly  
7 called "Memorial Day"; the twentieth day of June,  
8 commonly called "West Virginia Day"; the fourth day  
9 of July, commonly called "Independence Day"; the first  
10 Monday of September, commonly called "Labor Day";  
11 the second Monday of October, commonly called "Co-  
12 lumbus Day"; the fourth Monday of October, commonly  
13 called "Veterans Day"; the fourth Thursday of Novem-  
14 ber, commonly called "Thanksgiving Day"; the twenty-  
15 fifth day of December, commonly called "Christmas  
16 Day"; any national, state or other election day through-  
17 out the district or municipality wherein held; and all  
18 days that may be appointed or recommended by the  
19 governor of this state, or the president of the United  
20 States, as days of thanksgiving, or for the general cessa-  
21 tion of business; and when any of said days or dates  
22 falls on Sunday, then it shall be lawful to observe the  
23 succeeding Monday as such holiday. When the return  
24 day of any summons or other court proceedings or any  
25 notice or time fixed for holding any court or doing any  
26 official act shall fall on any of said holidays, the ensuing  
27 secular day shall be taken as meant and intended: *Pro-*  
28 *vided, however,* That nothing herein contained shall in-  
29 crease nor diminish the legal school holidays provided  
30 for in chapter eighteen-a, article five, section two.

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## CHAPTER 85

(Senate Bill No. 214—By Mr. Moreland)

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[Passed February 26, 1971; in effect ninety days from passage. Became a law without the approval of the Governor.]

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AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amend-

ed, by adding thereto a new section, designated section twenty, relating to acquisition of space within the capitol building for the Legislature and providing for use thereof.

*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 twenty, to read as follows:

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING.**

**§4-1-20. Legislative findings; space in capitol building for use by Legislature.**

1 (a) The Legislature hereby recognizes that in Decem-  
2 ber, one thousand nine hundred sixty-eight, the citizens  
3 advisory commission on the Legislature of West Virginia  
4 concluded its study for strengthening the West Virginia  
5 Legislature; that such commission recommended that the  
6 capitol building be utilized primarily for the space needs  
7 of the Legislature and that certain executive department  
8 offices be moved outside of the capitol building as neces-  
9 sary to provide the Legislature with the space it requires;  
10 and that these recommendations were based upon the  
11 following observations and conclusions of such commis-  
12 sion: (1) There are fifteen committees in the Senate  
13 which consider legislation and twelve committees in the  
14 House of Delegates which consider legislation, (2) the  
15 rules committee of the Senate meets in the office of the  
16 president of the Senate and the rules committee of the  
17 House of Delegates meets in the office of the speaker of  
18 the House of Delegates, (3) the remaining fourteen com-  
19 mittees of the Senate share three permanent committee  
20 rooms, (4) the remaining eleven committees of the House  
21 of Delegates share five permanent committee rooms, (5)  
22 the Legislature does not have a hearing room or a com-  
23 mittee room large enough to accommodate large public  
24 hearings, (6) when any large public hearing is held, the  
25 chamber of the Senate or the House of Delegates must be

26 used, thereby eliminating the desks of the members on  
27 the floor of the chamber as work space for members not  
28 involved in the public hearing, (7) there are no rooms  
29 available in which individual members of the Legislature  
30 may talk with their constituents, (8) that at the very  
31 least offices should be provided for individual members  
32 of the Legislature to be used on a shared basis, (9) there  
33 is a pressing need for additional permanent committee  
34 rooms, with the view that in time all legislative com-  
35 mittees which consider legislation would be assigned  
36 individual committee rooms, (10) that at least during  
37 legislative sessions, all committee chairmen should be  
38 provided, if possible, with a private office, and if not  
39 possible, with offices on a shared basis, (11) there should  
40 be adequate office space for the staff of the Senate and  
41 House of Delegates, and (12) the Legislature should  
42 have at least one hearing room, sufficiently large to seat  
43 one hundred fifty persons in addition to a legislative  
44 committee of twenty-five persons. The Legislature hereby  
45 determines and finds that the recommendations of the  
46 citizens advisory commission on the Legislature of West  
47 Virginia with respect to the space needs of the Legisla-  
48 ture and the observations and conclusions of such com-  
49 mission upon which such recommendations were based  
50 are correct and proper. The remainder of this section is  
51 enacted to implement the recommendations of the com-  
52 mission in this regard.

53 (b) The Legislature shall continue to have the ex-  
54 clusive use of all of the space in the main unit of the  
55 capitol building above the ground floor, the main unit  
56 being that portion of the capitol building connecting the  
57 east and west wings. In addition, the following space  
58 in the capitol building is assigned to and set aside for the  
59 exclusive use of the Legislature, with the use thereof to  
60 be determined by the joint committee on government  
61 and finance:

62 (1) All of the space on the second floor of the east  
63 wing of the capitol building; and

64 (2) All of the space on the second floor of the west

65 wing of the capitol building, except that room designated  
66 and numbered W-212 and the large vault used and occu-  
67 pied by the land division of the state auditor's office,  
68 which said room W-212 and said vault shall continue to  
69 be used and occupied by the office of the state auditor.  
70 The additional space for the Legislature provided for in  
71 subdivisions (1) and (2) of this subsection shall be made  
72 available to the Legislature as soon as possible, but shall  
73 in any event be made available for occupancy by the  
74 Legislature not later than July one, one thousand nine  
75 hundred seventy-two.

76 (c) As soon as the additional space provided for in  
77 subsection (b) of this section is made available for occu-  
78 pancy by the Legislature, then (1) the rooms designated  
79 and numbered E-126, E-128, E-130, E-132, E-134, E-136  
80 and E-138 on the ground floor of the east wing of the  
81 capitol building and the rooms designated and numbered  
82 E-140, 28, 30 and 32 on the ground floor of the main unit  
83 of the capitol building and occupied by the office of  
84 legislative services on the effective date of this section  
85 shall be relinquished by the Legislature for occupancy  
86 by the executive branch of the state government, and  
87 (2) as a substitute for the space on the second floor of  
88 the west wing vacated by the state auditor, and in order  
89 to insure adequate space for the office of the state auditor,  
90 a constitutional officer, all of the ground floor of the west  
91 wing of the capitol building (except the rooms designated  
92 and numbered W-129, W-131, W-133, W-135, W-137, W-139,  
93 W-141, W-148, W-150, W-152, W-154, W-156 and W-158  
94 and except for the space occupied on the effective date  
95 of this section by the office of the department of public  
96 institutions) shall be assigned to and set aside for the  
97 exclusive use of the state auditor.

98 (d) If any provision of this section or the application  
99 thereof to any person or circumstance is held unconstitu-  
100 tional or invalid, such unconstitutionality or invalidity  
101 shall not affect other provisions or applications of the  
102 section, and to this end the provisions of this section are  
103 declared to be severable.

## CHAPTER 86

(Senate Bill No. 326—By Mr. McCourt, Mr. President, and Mr. Carrigan)

[Passed February 12, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to compensation for and expenses of members of the Legislature.

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

That chapter four 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-a, to read as follows:

### ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

#### PART I. GENERAL.

§4-2A-1. Implementation of resolutions of citizens legislative compensation commission; definition.

#### PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

§4-2A-3. Compensation for members of the Legislature during any extraordinary session.

§4-2A-4. Additional compensation for president of Senate and speaker of House of Delegates.

§4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation.

#### PART III. EXPENSES.

§4-2A-6. Travel expenses.

§4-2A-7. Reimbursement for expenses incurred during any session.

§4-2A-8. Interim expenses.

§4-2A-9. Out-of-state expenses.

§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; rules authorized.

#### PART I. GENERAL.

§4-2A-1. Implementation of resolutions of citizens legislative compensation commission; definition.

- 1 The purpose of this article is to implement from time
- 2 to time the resolutions submitted by the citizens legis-

3 lative compensation commission created by section thirty-  
4 three, article six of the West Virginia constitution. For  
5 the purposes of this article, the term "regular session"  
6 shall include any extension of a regular session of the  
7 Legislature.

#### PART II. COMPENSATION.

##### **§4-2A-2. Basic compensation for services; proration.**

1 (a) Each member of the Legislature shall receive as  
2 compensation for his services the sum of three thousand  
3 three hundred dollars per calendar year. For the year  
4 one thousand nine hundred seventy-one, said sum shall  
5 be payable to each member as soon as possible after  
6 the effective date of this article.

7 (b) Beginning in the year one thousand nine hundred  
8 seventy-two and each year thereafter, said sum shall  
9 be payable twice a month during each regular session  
10 of the Legislature, without regard to any extension of  
11 such regular session. In the event of the death, resig-  
12 nation or removal of a member of the Legislature during  
13 the regular session of the Legislature in the year one  
14 thousand nine hundred seventy-two or in any year  
15 thereafter and the appointment and qualification of his  
16 successor during any such regular session, the compen-  
17 sation provided for in this section shall be prorated be-  
18 tween the original member and his successor on the  
19 basis of the number of days served (including Satur-  
20 days and Sundays) as a member of the Legislature by  
21 each during said regular session.

22 (c) In the event of the death, resignation or removal  
23 of a member of the Legislature and the appointment  
24 and qualification of his successor subsequent to the  
25 regular session of the Legislature held in the calendar  
26 year in which such successor was appointed and quali-  
27 fied, none of the compensation provided for in this sec-  
28 tion shall be paid to such successor.

##### **§4-2A-3. Compensation for members of the Legislature during any extraordinary session.**

1 Each member of the Legislature shall receive, in addi-  
2 tion to the basic compensation provided for in section

3 two of this article, additional compensation of thirty-  
4 five dollars per day for each day served during any  
5 extraordinary session of the Legislature, including Satur-  
6 days and Sundays. Such additional compensation shall  
7 be paid from time to time during any such extraordinary  
8 session, as may be prescribed by rules established by the  
9 legislative auditor.

**§4-2A-4. Additional compensation for president of Senate and  
speaker of House of Delegates.**

1 In addition to the basic and additional compensation  
2 provided for in sections two and three of this article,  
3 the president of the Senate and the speaker of the House  
4 of Delegates shall each receive additional compensation of  
5 fifteen dollars per day for each day served during any  
6 regular or extraordinary session as presiding officer, in-  
7 cluding Saturdays and Sundays. Such presiding officer  
8 compensation shall be paid from time to time during any  
9 such session, as may be prescribed by rules established  
10 by the legislative auditor.

**§4-2A-5. Interim compensation for members of joint committee  
on government and finance and commission on  
interstate cooperation.**

1 In addition to the basic and any additional and pre-  
2 siding officer compensation provided for in sections two,  
3 three and four of this article, each member of the joint  
4 committee on government and finance and the commission  
5 on interstate cooperation shall receive interim compen-  
6 sation of thirty-five dollars per day for each day actually  
7 engaged in the performance of interim duties as a mem-  
8 ber of either such committee or commission between  
9 regular sessions of the Legislature: *Provided*, That not  
10 more than twenty-eight members of both such committee  
11 and commission shall be entitled to receive the interim  
12 compensation authorized in this section, and the total  
13 additional interim compensation payable to any such  
14 member and his replacement, if any, on such committee  
15 or commission under the provisions of this section shall  
16 not exceed the sum of one thousand fifty dollars per  
17 calendar year.



## PART III. EXPENSES.

**§4-2A-6. Travel expenses.**

1 Each member of the Legislature shall be entitled to be  
2 reimbursed, upon submission of an expense voucher, for  
3 expenses incurred incident to travel in the performance  
4 of his duties as a member of the Legislature or any com-  
5 mittee of the Legislature, whether such committee is  
6 operating under general law or resolution, including, but  
7 not limited to, attendance at party caucuses held in ad-  
8 vance of the date of the assembly of the Legislature in  
9 regular session in odd-numbered years for the purpose  
10 of selecting candidates for officers of the two houses, at  
11 the rate of ten cents per mile for the most direct usually  
12 traveled route, if travel is by private automobile, or for  
13 actual transportation costs for direct route travel, if  
14 travel is by public carrier, or for any combination of such  
15 means of transportation actually used, plus the cost of  
16 necessary taxi or limousine service, tolls and parking fees  
17 in connection therewith, but during any regular or extra-  
18 ordinary session, travel expenses shall not be paid to any  
19 member for more than one round trip to and from the  
20 seat of government and to and from his place of residence  
21 for each week of any such session.

**§4-2A-7. Reimbursement for expenses incurred during any session.**

1 In addition to reimbursement for any travel expenses,  
2 as provided for in section six of this article, each mem-  
3 ber of the Legislature shall also be entitled to be re-  
4 imbursement, upon submission of an expense voucher there-  
5 for, for all reasonable and necessary expenses actually  
6 incurred in connection with any regular or extraordi-  
7 nary session of the Legislature, but the total of any  
8 and all such reimbursed expenses, exclusive of reim-  
9 bursement for any such travel expenses as aforesaid,  
10 shall not exceed lodging expenses of fifteen dollars per  
11 day or one hundred five dollars per week and meal and  
12 miscellaneous expenses of ten dollars per day or seventy  
13 dollars per week. A receipt for the amount paid for  
14 lodging shall be submitted with the expense voucher,

15 but a receipt shall not be required to be submitted with  
16 any such expense voucher for meal and miscellaneous  
17 expenses. In lieu of reimbursement for lodging ex-  
18 penses pursuant to the provisions of this section, any  
19 member of the Legislature shall be entitled to be re-  
20 imbursed, upon submission of an expense voucher, for  
21 expenses incurred incident to daily travel to and from  
22 his place of residence and to and from the seat of gov-  
23 ernment at a rate of ten cents per mile for the most  
24 direct usually traveled route, but the total of such daily  
25 travel expenses shall not exceed fifteen dollars per day.

**§4-2A-8. Interim expenses.**

1 In addition to any travel expenses and any such reim-  
2 bursements for any and all such session expenses as  
3 provided for in sections six and seven of this article,  
4 each member of the Legislature serving as a member  
5 of any committee of the Legislature established by and  
6 operating under general law and designated for the  
7 performance of interim assignments by the Legislature  
8 or otherwise duly authorized to perform interim assign-  
9 ments between regular sessions of the Legislature shall  
10 also be entitled to be reimbursed, upon submission of  
11 an expense voucher therefor, for all reasonable and nec-  
12 essary expenses actually incurred incident to the per-  
13 formance of duties as a member of any such committee,  
14 but the total of any and all such reimbursed interim  
15 expenses, exclusive of reimbursement for any such travel  
16 and session expenses as aforesaid, shall not under any  
17 circumstances exceed lodging expenses of fifteen dollars  
18 per day or meal and miscellaneous expenses of ten dol-  
19 lars per day for each day actually engaged in the per-  
20 formance of interim duties as a member of any such  
21 committee. A receipt for the amount paid for lodging  
22 shall be submitted with the expense voucher, but a  
23 receipt shall not be required to be submitted with any  
24 such expense voucher for meal and miscellaneous  
25 expenses.

**§4-2A-9. Out-of-state expenses.**

1 In addition to reimbursement for travel expenses as  
2 authorized in section six of this article, each member

3 of the Legislature traveling from West Virginia to an  
4 out-of-state point or points and return incident to the  
5 performance of his duties as a member of the Legis-  
6 lature or any committee of the Legislature, whether  
7 such committee is operating under general law or reso-  
8 lution, shall be entitled to be reimbursed, upon sub-  
9 mission of an expense voucher therefor, at a rate not to  
10 exceed thirty-five dollars per day in lieu of actual and  
11 necessary expenses for lodging and meals. No receipts  
12 shall be required to be submitted with any such ex-  
13 pense voucher.

**§4-2A-10. Affidavits required; approval by legislative auditor  
of vouchers; rules authorized.**

1 Any expense voucher submitted pursuant to the pro-  
2 visions of sections six, seven, eight or nine of this article  
3 must be verified by the affidavit of the member incur-  
4 ring such expense and all such expense vouchers shall  
5 be approved by the legislative auditor prior to submis-  
6 sion for payment.

7 The legislative auditor is hereby authorized to adopt  
8 such rules as may be necessary to implement or effectuate  
9 the provisions of this article.

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## CHAPTER 87

(Senate Bill No. 353—By Mr. Brotherton and Mr. Carrigan)

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[Passed March 11, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter four 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 making the purchasing practices and procedures commission a statutory body; relating to its composition and its general powers, duties and responsibilities; specifically authorizing the commission to sit during any recess of the Senate and House of Delegates; granting the commission the power and authority to subpoena and

compel the attendance of witnesses and the production of books, records, documents, papers and any other tangible thing; authorizing judicial enforcement of any subpoena issued by the commission; and relating to the compensation and expenses of members of the commission and all expenses of the commission.

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

That chapter four 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. PURCHASING PRACTICES AND PROCEDURES COMMISSION.**

§4-5-1. Commission continued as statutory body; composition; appointment and terms of members.

§4-5-2. Powers and duties generally.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

§4-5-4. Compensation and expenses of members; other expenses; how paid; joint committee approval.

**§4-5-1. Commission continued as statutory body; composition; appointment and terms of members.**

1 The purchasing practices and procedures commission,  
 2 heretofore existing under a concurrent resolution of the  
 3 Senate and House of Delegates, is hereby continued as a  
 4 statutory body. The commission shall continue to be  
 5 composed of five members of the Senate, to be appointed  
 6 by the president thereof, no more than three of whom  
 7 shall be appointed from the same political party, and five  
 8 members of the House of Delegates, to be appointed by  
 9 the speaker thereof, no more than three of whom shall be  
 10 appointed from the same political party. The commission  
 11 shall be headed by two cochairmen, one to be selected  
 12 by and from the members appointed from the Senate,  
 13 and one to be selected by and from the members ap-  
 14 pointed from the House of Delegates. All members of  
 15 the commission shall serve until their successors shall  
 16 have been appointed as heretofore provided.

**§4-5-2. Powers and duties generally.**

1 The purchasing practices and procedures commission  
 2 shall have the power, duty and responsibility to:

3 (1) Conduct a comprehensive and detailed investiga-  
4 tion into the purchasing practices and procedures of the  
5 state;

6 (2) Determine if there is reason to believe that the  
7 laws or public policy of the state in connection with pur-  
8 chasing practices and procedures have been violated or  
9 are inadequate;

10 (3) Determine if any criminal or civil statutes relating  
11 to the purchasing practices and procedures in this state  
12 are necessary to protect and control the expenditures of  
13 money by the state;

14 (4) Determine whether to recommend (a) criminal  
15 prosecution for any violations of law or (b) the institu-  
16 tion of any civil action for the recoupment of moneys  
17 paid to vendors in violation of law or (c) both such  
18 criminal prosecution and civil action; and

19 (5) Make such written reports to the members of the  
20 Legislature between sessions thereof as the commission  
21 may deem advisable and on the first day of each regular  
22 session of the Legislature make an annual report to the  
23 Legislature containing the commission's findings and  
24 recommendations including in such report drafts of any  
25 proposed legislation which it deems necessary to carry  
26 such recommendations into effect.

27 The commission is also expressly empowered and au-  
28 thorized to:

29 (1) Sit during any recess of the Senate and House of  
30 Delegates;

31 (2) Recommend to the judge of any circuit court or  
32 of any court of record having criminal jurisdiction that  
33 a grand jury be convened pursuant to the provisions of  
34 section fourteen, article two, chapter fifty-two of this  
35 code, to consider any matter which the commission may  
36 deem in the public interest, and in support thereof make  
37 available to such court and such grand jury the contents  
38 of any reports, files, transcripts of hearings or other evi-  
39 dence pertinent thereto;

40 (3) Employ such legal, technical, investigative, cleri-  
41 cal, stenographic, advisory and other personnel as it  
42 deems needed and, within the appropriation herein speci-

43 fied, fix reasonable compensation of such persons and firms  
44 as may be employed;

45 (4) Consult and confer with all persons and agencies,  
46 public (whether federal, state or local) and private, that  
47 have information and data pertinent to an investigation;  
48 and all state and local governmental personnel and  
49 agencies shall cooperate to the fullest extent with the  
50 commission; and

51 (5) Call upon any department or agency of state or  
52 local government for such services, information and as-  
53 sistance as it may deem advisable.

**§4-5-3. Executive sessions; hearings; subpoena power; enforce-  
ment provisions.**

1 The commission shall have the power and authority to  
2 hold executive sessions for the purpose of establishing  
3 business, policy, an agenda and the interrogation of a wit-  
4 ness or witnesses: *Provided*, That if a witness desires a  
5 public or open hearing he shall have the right to de-  
6 mand the same and shall not be heard otherwise: *Pro-*  
7 *vided, however*, That if a witness desires a hearing in  
8 an executive session, he shall have the right to demand  
9 the same and shall not be heard otherwise. However,  
10 members of the staff of the commission may be per-  
11 mitted to attend executive sessions with permission of  
12 the commission.

13 The commission is hereby empowered and authorized  
14 to examine witnesses and to subpoena such persons and  
15 books, records, documents, papers or any other tangible  
16 things as it believes should be examined to make a com-  
17 plete investigation. All witnesses appearing before the  
18 commission shall testify under oath or affirmation, and  
19 any member of the commission may administer oaths or  
20 affirmations to such witnesses. To compel the attendance  
21 of witnesses at such hearings or the production of any  
22 books, records, documents, papers or any other tangible  
23 thing, the commission is hereby empowered and autho-  
24 rized to issue subpoenas, signed by one of the cochair-  
25 men, in accordance with section five, article one, chapter  
26 four of this code. Such subpoenas shall be served by

27 any person authorized by law to serve and execute legal  
28 process and service shall be made without charge. Wit-  
29 nesses subpoenaed to attend hearings shall be allowed  
30 the same mileage and per diem as is allowed witnesses  
31 before any petit jury in this state.

32 If any person subpoenaed to appear at any hearing  
33 shall refuse to appear or to answer inquiries there pro-  
34 pounded, or shall fail or refuse to produce books, records,  
35 documents, papers or any other tangible thing within his  
36 control when the same are demanded, the commission  
37 shall report the facts to the circuit court of Kanawha  
38 county or any other court of competent jurisdiction and  
39 such court may compel obedience to the subpoena as  
40 though such subpoena had been issued by such court in  
41 the first instance.

**§4-5-4. Compensation and expenses of members; other ex-  
penses; how paid; joint committee approval.**

1 The members of the commission shall receive travel,  
2 interim and out-of-state expenses, as authorized in sec-  
3 tions six, eight and nine, article two-a, chapter four of  
4 this code. Such expenses and all other expenses including  
5 those incurred in the employment of legal, technical, in-  
6 vestigative, clerical, stenographic, advisory and other  
7 personnel shall be paid from the appropriation under  
8 "Account No. 103 for Joint Expenses," but no expense  
9 of any kind whatever shall be incurred unless the approval  
10 of the joint committee on government and finance there-  
11 for is first had and obtained by the commission.

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## CHAPTER 88

(Senate Bill No. 176—By Mr. McCourt, Mr. President, and Mr. Carrigan)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section eleven, article one-a,  
chapter twenty-seven of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating

to designation, powers and duties of a division on alcoholism and drug abuse within the department of mental health; definitions of terms.

*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 amended and reenacted to read as follows:

**ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.**

**§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.**

1 The division on alcoholism, heretofore established in  
2 the department of mental health, shall continue and be  
3 known as the division on alcoholism and drug abuse.

4 The supervisor and personnel of this division shall  
5 assist the director of the department in the establish-  
6 ment of a program for the care, treatment, and reha-  
7 bilitation of alcoholics and drug abusers; for research  
8 into the causes, prevention, and treatment of alcoholism  
9 and drug abuse; for the training of personnel to work  
10 with alcoholics and drug abusers; and for the education  
11 of the public concerning alcoholism and drug abuse.

12 The department's program for the care, treatment, and  
13 rehabilitation of alcoholics and drug abusers may in-  
14 clude, when intended for such purposes, the establish-  
15 ment of special clinics or wards within, attached to, or  
16 upon the grounds of one or more of the state hospitals  
17 under the control of the department of mental health;  
18 the acquisition in the name of the department of real  
19 and personal property and the construction of buildings  
20 and other facilities; the leasing of suitable clinics, hos-  
21 pitals, or other facilities; and the utilization, through  
22 contracts or otherwise, of the available services and as-  
23 sistance of any professional or nonprofessional persons,  
24 groups, organizations or institutions in the development,  
25 promotion and conduct of the department's program.

26 Neither the department of mental health nor the di-  
27 vision on alcoholism and drug abuse shall be required  
28 to accept any alcoholic or drug abuser voluntarily seeking  
29 hospitalization for clinical or hospital care, treatment,



30 or rehabilitation; but the department may accept, pur-  
31 suant to its adopted and promulgated rules and regu-  
32 lations, responsibility for clinical or hospital care, treat-  
33 ment, or rehabilitation of any alcoholic or drug abuser  
34 through arrangements made voluntarily with the de-  
35 partment by him or some person acting in his behalf:  
36 *Provided*, That any such person accepted by the de-  
37 partment on a voluntary basis shall be charged a mini-  
38 mum fee unless he shows, to the satisfaction of the de-  
39 partment, that he is unable to pay the fee.

40 The department shall accept all alcoholics and drug  
41 abusers committed by a county mental hygiene com-  
42 mission in accordance with the procedure of article  
43 six of this chapter; but notwithstanding any provision  
44 in said article six which may be to the contrary, the  
45 supervisor of the division on alcoholism and drug abuse  
46 may, in his discretion, specify the clinic or hospital to  
47 which the alcoholic or drug abuser shall be committed.

48 The department's program of research into the causes,  
49 prevention, and treatment of alcoholism and drug abuse  
50 may include the utilization, through contracts or other-  
51 wise, of the available services and assistance of any pro-  
52 fessional or nonprofessional persons, groups, organizations  
53 or institutions, as well as cooperation with private and  
54 public agencies engaged in research in alcoholism or  
55 drug abuse or rehabilitation of alcoholics or drug abusers.

56 The department's programs shall also provide for the  
57 training of personnel to work with alcoholics and drug  
58 abusers and the informing of the public as well as in-  
59 terested groups and persons concerning alcoholism and  
60 drug abuse and the prevention and treatment thereof.

61 The department may employ such medical, psychi-  
62 atric, psychological, secretarial and other assistance as  
63 may be necessary to carry out the provisions of this  
64 section.

65 As used in this section:

66 (a) "Alcoholic" shall mean any person who chroni-  
67 cally and habitually uses alcoholic beverages to the extent  
68 that he has lost the power of self-control as to the use  
69 of such beverages, or, while chronically and habitually

70 under the influence of alcoholic beverages, endangers  
71 public morals, health, safety or welfare.

72 (b) "Alcoholism" shall mean the condition of abnor-  
73 mal behavior or illness resulting directly or indirectly  
74 from the chronic and habitual use of alcoholic beverages.

75 (c) "Drug abuser" shall mean a person who is in a  
76 state of psychic or physical dependence, or both, arising  
77 from the administration of any controlled substance, as  
78 that term is defined in chapter sixty-a of this code, on  
79 a continuous basis.

80 (d) "Drug abuse" shall mean the use of any controlled  
81 substance, as that term is defined in said chapter sixty-a,  
82 until such time as the user has become dependent upon  
83 or addicted to the same.

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## CHAPTER 89

(House Bill No. 708—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Seibert)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact articles one and two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mines and minerals and the administration and enforcement of the laws pertaining to mines and minerals; defining various terms; providing for a state department of mines; providing for a director of the department of mines, his appointment and term of office; providing for the powers and duties of said director; specifying the eligibility requirements for said director, and specifying his salary; prescribing an oath of office and requiring bond for said director; providing for selection, serving, and removal of mine inspectors, dividing the state into districts and divisions, and providing for the employment, tenure, oath of office and bond required of mine inspectors; providing for the employment of mine safety instructors, and specifying qualifications, and providing for the employ-

ment, compensation, tenure, oath of office and bond required of mine safety instructors; providing for the appointing of mine inspectors to appointive positions within the department of mines, and providing that permanent tenure benefits are not affected; providing for the employment of electrical inspectors, and specifying the qualifications, and providing for salary and expenses, tenure, oath of office, and bond required of electrical inspectors; specifying eligibility requirements for appointment, and qualifications for appointment, and providing for salary, expenses and removal of mine inspectors; providing for a mine inspectors' examining board and specifying salary and expenses and meetings and duties of said board; authorizing the director and inspectors to enter mines, providing for the duties of inspectors to examine mines, providing for the duties of inspectors to examine mines with no advance notice, and providing for reports after fatal accidents; providing for the making and issuing of findings, orders and notices; providing for the duties of mine electrical inspectors, and providing for findings and orders by such inspectors; providing for review of orders by the director; providing for posting of notices, orders, and decisions of mine offices; providing for judicial review of orders and decisions of the director; authorizing the director to institute actions, including injunctions; providing civil penalties and criminal penalties for violations; prohibiting discharge of and discrimination against miners; requiring operators to keep records and make reports; providing for a mine foreman examiner and salary of said examiner; providing for the duties of said examiner; providing for the place and time of examinations; providing for the preparation of examinations; providing for notification and appearance before said examiner; providing for certificates of qualification; providing for distribution of certificates of qualification; providing for a record of such examinations; providing for the withdrawal of certification; creating a board of appeals and prescribing its duties, powers, compensation, expenses and oath of office; authorizing the purchase of mine rescue stations and equipment; authorizing the employment of mine rescue crews and

prescribing their training, compensation and qualifications; providing for mine rescue teams; providing severability clause; relating to mine maps and surveying; requiring plans for ventilation and approval by the director; specifying safety standards for ventilation of mines in general; providing for sealing or ventilating of unused and abandoned parts of mine; relating to the movement of equipment; relating to the employment of mine foremen and specifying qualifications; providing for duties of mine foreman concerning ventilation, loose coal, slate or rock, props, drainage of water and man doors; relating to haulage roads; relating to signals on haulways, lights at mouth and bottom of shaft and operation of cages; relating to boreholes; providing for instruction of employees, annual examinations of persons using flame safety lamps, and providing for records of such examinations; relating to daily inspection of working places and records; relating to safety inspections and gas; relating to dangerous places; relating to examinations of reports of fire bosses; relating to the ascertainment, record and removal of all dangers; relating to notifying of the operator when unable to comply with the law, and duty of the operator; providing for successor of a mine foreman; relating to employment and qualification of fire boss; prescribing duties of fire boss; providing that fire boss to have no superior officers; making it unlawful to enter mine until fire boss reports it safe, with certain exceptions; relating to other duties of fire boss; relating to coal dust and rock dust; relating to roof, face and ribs; requiring operators to carry out roof control programs and plans; specifying safety standards for roof support, roof bolt recovery and mining methods; providing for canopies and cabs and electric face equipment; relating to explosives and blasting; requiring use of authorized explosives and making it unlawful to store or use unauthorized explosives; relating to surface magazines for explosives; specifying safety standards for transportation of explosives; specifying safety standards for underground storage of explosives; specifying safety standards for preparation of shots and blasting practices; specifying safety standards in the event of misfires of

explosives; specifying safety standards for other blasting devices; relating to hoisting; specifying safety standards for hoisting machinery, telephones, safety devices, hoisting engineers, and drum runners; relating to transportation; specifying safety standards for transportation, haulage roads and equipment, shelter holes, signals and inspection and prohibiting certain practices, specifying safety standards for transportation of men by cars, self-propelled equipment and belts; specifying safety standards for belt conveyor and installation and maintenance thereof; relating to electricity generally; specifying safety standards concerning bonding track used as a power conductor; specifying safety standards concerning telephone service or communication facilities; specifying safety standards for electric equipment in gassy mines; specifying safety standards for electric hand held tools; specifying safety standards for illumination; specifying safety standards for welding and cutting; relating to maintenance of face equipment; relating to control of dust and other inhalation hazards; relating to safeguards for mechanical equipment; relating to dust-tight electrical equipment dust control repairs, welding, hand-rails and toeboards; relating to housekeeping; relating to lamphouses; prohibiting smoking in and around surface structures; relating to miscellaneous safety provisions and requirements; providing for duties of persons subject to article and rules and regulations for operators; relating to protective clothing; providing for checking systems of identification of men; prohibiting acts endangering security of mine, and requiring search for intoxicants and matches; relating to fire protection; relating to first-aid equipment; providing for accessible outlets and safe roadways for emergencies; relating to coal storage bins, recovery tunnels and coal storage piles; relating to thermal coal dryers and plants; relating to opening and reopening of mines, approval fees, extension of certificate of approval; providing for nontransferability of certificates and requiring that provisions of this section be printed on certificates; relating to sealing of permanently closed or abandoned mines; relating to mining close to abandoned workings; providing for investi-

gation by department of mines in event of explosion or accident; providing for written report of accidents; providing for preservation of evidence at scene of accident; providing for notification of director and district mine inspector in event of fire in and about mine; relating to shafts and slopes generally; providing general provisions concerning the reopening of old or abandoned mines; relating to monthly reports by operator of mine; relating to examinations to determine compliance with permits; and providing a severability clause.

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

That articles one and two, 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.**

- §22-1-1. Definitions.
- §22-1-2. Department of mines.
- §22-1-3. Director of the department of mines—Appointment; term of office.
- §22-1-4. Same—Powers and duties.
- §22-1-5. Same—Eligibility; salary.
- §22-1-6. Same—Oath and bond.
- §22-1-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
- §22-1-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.
- §22-1-9. Mine inspectors may be appointed to fill vacancy in department; permanent tenure benefits not affected.
- §22-1-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.
- §22-1-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
- §22-1-12. Mine inspectors' examining board.
- §22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
- §22-1-14. Findings, orders and notices.
- §22-1-15. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.
- §22-1-16. Review of orders and notices by the director.
- §22-1-17. Posting of notices, orders, and decisions; delivery to agent of operator; names and addresses to be filed by operators.
- §22-1-18. Judicial review.
- §22-1-19. Injunctions.
- §22-1-20. Penalties.
- §22-1-21. Discrimination.
- §22-1-22. Records and reports.

- §22-1-23. Mine foreman examiner for mine foremen, assistant mine foremen and fire bosses; salary.
- §22-1-24. Duties of the mine foreman examiner.
- §22-1-25. Place and time for examinations.
- §22-1-26. Preparation of examinations; notice of intention to take examination; investigation of applicants.
- §22-1-27. Certificates of qualification heretofore granted.
- §22-1-28. Mine foreman examiner to certify successful applicants to director.
- §22-1-29. Record of examinations.
- §22-1-30. Withdrawal of certification.
- §22-1-31. Board of appeals.
- §22-1-32. Mine rescue stations; equipment.
- §22-1-33. Mine rescue crews.
- §22-1-34. Mine rescue teams.
- §22-1-35. Provisions of article severable.

**§22-1-1. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, the following definitions shall apply  
3 to articles one and two of this chapter:

4 Mine: The term "mine" includes the shafts, slopes,  
5 drifts or inclines connected with excavations penetrating  
6 coal seams or strata, which excavations are ventilated by  
7 one general air current or divisions thereof, and con-  
8 nected by one general system of mine haulage over which  
9 coal may be delivered to one or more points outside the  
10 mine, and the surface structures or equipment connected  
11 therewith which contribute directly or indirectly to the  
12 mining, preparation or handling of coal.

13 Agent: The term "agent" means any person charged  
14 with responsibility for the operation of all or a part of  
15 a mine or the supervision of the miners in a mine.

16 Imminent Danger: The term "imminent danger" means  
17 the existence of any condition or practice in a coal mine  
18 which could reasonably be expected to cause death or  
19 serious physical harm before such condition or practice  
20 can be abated.

21 Department: The term "department" shall mean the  
22 state department of mines provided for in section two  
23 of this article.

24 Director of the Department of Mines: The term "direc-  
25 tor of the department of mines" shall mean the director  
26 of the department of mines provided for in section three  
27 of this article, and is synonymous with the term "chief  
28 of the department of mines."

29 Mine Inspector: The term "mine inspector" shall mean  
30 a state mine inspector provided for in section seven of  
31 this article.

32 Mine Inspectors' Examining Board: The term "mine  
33 inspectors' examining board" shall mean the mine in-  
34 spectors' examining board provided for in section twelve  
35 of this article.

36 Operator: The term "operator" shall mean any firm,  
37 corporation, partnership, or individual operating any coal  
38 mine or part thereof.

39 Person: The term "person" shall mean any individual,  
40 partnership, association, corporation, firm, subsidiary of  
41 a corporation, or other organization.

42 Miner: The term "miner" shall mean any individual  
43 working in a coal mine.

44 Work of Preparing the Coal: The term "work of pre-  
45 paring the coal" shall mean the breaking, crushing, sizing,  
46 cleaning, washing, drying, mixing, storing, and loading  
47 of bituminous coal or lignite, and such other work of  
48 preparing such coal as is usually done by the operator  
49 of the coal mine.

50 Accident: The term "accident" shall mean any mine  
51 explosion, mine ignition, mine fire, or mine inundation, or  
52 injury to, or death of any person.

53 Abandoned Workings: The term "abandoned workings"  
54 shall mean excavation, either caved or sealed, that is de-  
55 serted and in which further mining is not intended, or open  
56 workings which are ventilated and not inspected regularly.

57 Excavations and Workings: The term "excavations and  
58 workings" shall mean any or all parts of a mine excavated  
59 or being excavated, including shafts, slopes, drifts, tunnels,  
60 entries, rooms, and working places, whether abandoned  
61 or in use.

62 Shaft: The term "shaft" shall mean a vertical opening  
63 through the strata that is or may be used for the purpose  
64 of ventilation, drainage, and the hoisting and transporta-  
65 tion of men and material, in connection with the mining  
66 of coal.



67 Slope: The term "slope" shall mean a plane or incline  
68 roadway, usually driven to a coal seam from the surface  
69 and used for the same purposes as a shaft.

70 Drift: The term "drift" shall mean a horizontal or ap-  
71 proximately horizontal opening through the strata or in  
72 a coal seam and used for the same purposes as a shaft.

73 Panel: The term "panel" shall mean workings that  
74 are or have been developed off of submain entries which  
75 do not exceed three thousand feet in length.

76 Active Workings: The term "active workings" shall  
77 mean all places in a mine that are ventilated and in-  
78 spected regularly.

79 Inactive Workings: The term "inactive workings" shall  
80 include all portions of a mine in which operations have  
81 been suspended for an indefinite period, but have not  
82 been abandoned.

83 Superintendent: The term "superintendent" shall mean  
84 the person who shall have, on behalf of the operator,  
85 immediate supervision of one or more mines.

86 Mine Foreman: The term "mine foreman" shall mean  
87 the certified person whom the operator or superintendent  
88 shall place in charge of the inside workings of the mine  
89 and of the persons employed therein.

90 Supervisor: The term "supervisor" shall mean a superin-  
91 tendent, mine foreman, assistant mine foreman, or any per-  
92 son specifically designated by the superintendent or mine  
93 foreman to supervise work or employees and who is acting  
94 pursuant to such specific designation and instructions.

95 Assistant Mine Foreman: The term "assistant mine  
96 foreman" shall mean a certified person designated to  
97 assist the mine foreman in the supervision of a portion  
98 or the whole of a mine or of the persons employed therein.

99 Shot Firer: The term "shot firer" shall mean any person  
100 having had at least two years of practical experience  
101 in coal mines, who has a knowledge of ventilation, mine  
102 roof and timbering, and who has demonstrated his knowl-  
103 edge of mine gases, the use of a flame safety lamp, and  
104 other approved detecting devices by examination and  
105 certification given him by the department of mines.

106 Qualified Person: The term "qualified person" shall  
107 mean a person who has completed an examination and is  
108 considered qualified on record by the department of mines.

109 Interested Persons: The term "interested persons" shall  
110 include the operator, members of any mine safety com-  
111 mittee at the mine affected and other duly authorized  
112 representative of the mine workers and department of  
113 mines.

114 Return Air: The term "return air" shall mean a volume  
115 of air that has passed through and ventilated all the  
116 working places in a mine section.

117 Mechanical Working Section: The term "mechanical  
118 working section" shall mean an area of a mine (1) in  
119 which coal is loaded mechanically, (2) which is comprised  
120 of a number of working places that are generally con-  
121 tiguous, and (3) which is of such size to permit necessary  
122 supervision during shift operation, including preshift and  
123 on-shift examinations and tests required by law.

124 Working Section: The term "working section" shall  
125 mean all areas of the coal mine from the loading point of  
126 the section to and including the working faces.

127 Working Face: The term "working face" shall mean  
128 any place in a coal mine in which work of extracting  
129 coal from its natural deposit in the earth is performed  
130 during the mining cycle.

131 Working Place: The term "working place" shall mean  
132 the area of a coal mine in by the last open crosscut.

133 Working Unit: The term "working unit" shall mean an  
134 area of a mine in which coal is mined with a set of pro-  
135 duction equipment; a conventional mining unit by a single  
136 loading machine; a continuous mining unit by a single  
137 continuous mining machine, which is comprised of a  
138 number of working places.

139 Face Equipment: The term "face equipment" shall  
140 mean mobile or portable mining machinery having elec-  
141 tric motors or accessory equipment normally installed or  
142 operated in by the last open crosscut in an entry or room.

143 Approved: The term "approved" shall mean in strict  
144 compliance with mining law, or, in the absence of law,  
145 accepted by a recognized standardizing body or organiza-

146 tion whose approval is generally recognized as authorita-  
147 tive on the subject.

148 Permissible: The term "permissible" shall mean any  
149 equipment, device, or explosive that has been approved  
150 as permissible by the United States bureau of mines and  
151 meets all requirements, restrictions, exceptions, limita-  
152 tions, and conditions attached to such classification by  
153 the bureau.

154 Certified Electrician: The term "certified electrician"  
155 shall mean any person who is qualified as a mine elec-  
156 trician and who has passed an examination given by the  
157 department of mines.

158 Armored Cable: The term "armored cable" shall mean  
159 a cable provided with a wrapping of metal, usually steel  
160 wires or tapes, primarily for the purpose of mechanical  
161 protection.

162 Borehole Cable: The term "borehole cable" shall mean  
163 a cable designed for vertical suspension in a borehole or  
164 shaft and used for power circuits in the mine.

165 Cable: The term "cable" shall mean a stranded con-  
166 ductor (single conductor cable) or a combination of con-  
167 ductors insulated from one another (multiple conductor  
168 cable).

169 Flame-resistant Cable, Portable: The term "flame-  
170 resistant cable, portable" shall mean a portable flame-  
171 resistant cable that has passed the flame tests of the  
172 federal bureau of mines.

173 Portable (Trailing) Cable: The term "portable (trail-  
174 ing) cable" shall mean a flexible cable or cord used for  
175 connecting mobile, portable or stationary equipment in  
176 mines to a trolley system or other external source of  
177 electric energy where permanent mine wiring is pro-  
178 hibited or is impracticable.

179 Branch Circuit: The term "branch circuit" shall mean  
180 any circuit, alternating current or direct current, con-  
181 nected to and leading from the main power lines.

182 Circuit Breaker: The term "circuit breaker" shall mean  
183 a device for interrupting a circuit between separable  
184 contacts under normal or abnormal conditions.

185 High Voltage: The term "high voltage" shall mean  
186 voltages of more than one thousand volts.

187 Medium Voltage: The term "medium voltage" shall  
188 mean voltages from six hundred sixty-one to one thou-  
189 sand volts.

190 Low Voltage: The term "low voltage" shall mean up  
191 to and including six hundred sixty volts.

192 Lightning Arrestor: The term "lightning arrestor" shall  
193 mean a protective device for limiting surge voltage on  
194 equipment by discharging or by passing surge current; it  
195 prevents continued flow of follow current to ground and  
196 is capable of repeating these functions as specified.

197 Mine Power Center or Distribution Center: The term  
198 "mine power center or distribution center" shall mean a  
199 combined transformer and/or distribution unit, complete  
200 within a metal enclosure from which one or more low-  
201 voltage power circuits are taken.

202 Delta Connected: The term "delta connected" shall  
203 mean a power system in which the windings or trans-  
204 formers or a.c. generators are connected to form a tri-  
205 angular phase relationship, and with phase conductors  
206 connected to each point of the triangle.

207 Wye-connected: The term "wye-connected" shall mean  
208 a power system connection in which one end of each phase  
209 windings or transformers or a.c. generators are connected  
210 together to form a neutral point, and a neutral conductor  
211 may or may not be connected to the neutral point, and  
212 the neutral point may or may not be grounded.

213 Zig-zag Transformer (Grounding Transformer): The  
214 term "zig-zag transformer (grounding transformer)" shall  
215 mean a transformer intended primarily to provide a  
216 neutral point for grounding purposes.

217 Neutral Point: The term "neutral point" shall mean the  
218 connection point of transformer or generator windings  
219 from which the voltage to ground is nominally zero, and  
220 is the point generally used for system groundings in wye-  
221 connected a.c. power system.

222 Neutral (Derived): The term "neutral (derived)" shall  
223 mean a neutral point or connection established by the

224 addition of a "zig-zag" or grounding transformer to a  
225 normally ungrounded power system.

226 **Effectively Grounded:** The term "effectively grounded"  
227 is an expression which means grounded through a  
228 grounding connection of sufficiently low impedance (in-  
229 herent or intentionally added or both) so that fault  
230 grounds which may occur cannot build up voltages in ex-  
231 cess of limits established for apparatus, circuits, or sys-  
232 tems so grounded.

233 **Grounded (Earthed):** The term "grounded (earthed)"  
234 shall mean that the system, circuit, or apparatus referred  
235 to is provided with a ground.

236 **Ground or Grounding Conductor (Mining):** The term  
237 "ground or grounding conductor (mining)," also referred  
238 to as a safety ground conductor, safety ground, and  
239 frame ground, shall mean a metallic conductor used  
240 to connect the metal frame or enclosure of any equip-  
241 ment, device or wiring system with a mine track or  
242 other effective grounding medium.

243 **Board of Appeals:** The term "board of appeals" shall  
244 mean as provided for in section thirty-one of this article.

245 **Certified Person:** The term "certified person," when  
246 used to designate the kind of person to whom the per-  
247 formance of a duty in connection with the operation of  
248 a mine shall be assigned, shall mean a person who is  
249 qualified under the provisions of this law to perform  
250 such duty.

#### **§22-1-2. Department of mines.**

1 There shall be a state department of mines, which shall  
2 have for its purpose the supervision of the execution and  
3 enforcement of the provisions of this chapter, enacted for  
4 the protection of the safety and health of persons em-  
5 ployed within or at the mines within this state, and for  
6 the protection and preservation of mining property and  
7 property used in connection therewith.

#### **§22-1-3. Director of the department of mines—Appointment; term of office.**

1 There shall be a director of the department of mines,  
2 who shall be appointed by the governor with the advice

3 and consent of the Senate and who shall serve for a term  
4 of four years, subject to the provisions of chapter six,  
5 article six, section four of this code, as amended. The  
6 original term of the director of the department of mines  
7 appointed under this section shall commence as of the  
8 effective date of this article, as amended, and all appoint-  
9 ments to such office made thereafter shall be made for a  
10 full term of four years, except that in case of a vacancy,  
11 the appointment shall be made for the unexpired term  
12 only.

**§22-1-4. Same—Powers and duties.**

1 The director of the department of mines shall have  
2 full charge of the department. He shall have the power  
3 and duty to:

4 (1) Supervise and direct the execution and enforce-  
5 ment of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of  
7 mines, fix his compensation and prescribe his powers and  
8 duties.

9 (3) Employ such assistants, clerks, stenographers and  
10 other employees as may be necessary and fix their com-  
11 pensation, except as otherwise provided in this article.

12 (4) Employ mine inspectors, and assign them to divi-  
13 sions or districts in accordance with the provisions of  
14 section seven of this article, and to supervise and direct  
15 such mine inspectors in the performance of their duties.

16 (5) Suspend, for good cause, any mine inspector with-  
17 out compensation for a period not exceeding thirty days  
18 in any calendar year.

19 (6) Prepare report forms to be used by mine inspec-  
20 tors in making their findings, orders and notices, upon  
21 inspections made in accordance with this chapter.

22 (7) Hear and determine applications made by mine  
23 operators for the annulment or revision of orders made  
24 by mine inspectors, and to make inspections of mines, in  
25 accordance with the provisions of this article.

26 (8) Cause a properly indexed permanent and public  
27 record to be kept of all inspections made by himself or  
28 by mine inspectors.

29 (9) Make annually a full and complete written report  
30 of the administration of his department to the governor  
31 of the state for the year ending the thirty-first day of  
32 December. Such report shall include the number of  
33 visits and inspections of mines in the state by mine in-  
34 spectors, the quantity of coal, coke and other minerals  
35 (including oil and gas) produced in the state, the number  
36 of men employed, number of mines in operation, statistics  
37 with regard to health and safety of persons working in  
38 the mines, improvements made, prosecutions, such other  
39 information in relation to the subject of mines, mine in-  
40 spections and needed legislation as he may deem of  
41 public interest and beneficial to the mining interest of  
42 the state. Such reports shall be filed with the governor  
43 on or before the thirtieth day of June next succeeding  
44 the year for which it was made, and shall upon proper  
45 authority be printed and distributed to interested per-  
46 sons.

47 (10) Call or subpoena witnesses, for the purpose of  
48 conducting hearings into mine fires, mine explosions or  
49 any mine accident; to administer oaths and to require  
50 production of any books, papers, records, or other docu-  
51 ments relevant or material to the hearing. Any witness  
52 so called or subpoenaed shall receive forty dollars per  
53 diem and shall receive mileage at the rate of ten cents  
54 for each mile actually traveled, which shall be paid out  
55 of the state treasury upon a requisition upon the state  
56 auditor, properly certified by such witness.

57 (11) Institute civil actions for relief, including perma-  
58 nent or temporary injunctions, restraining orders, or any  
59 other appropriate action in the appropriate federal or  
60 state court whenever any operator or his agent violates  
61 or fails or refuses to comply with any lawful order, notice  
62 or decision issued by the director or his representative.

63 (12) Perform all other duties which are expressly  
64 imposed upon him by the provisions of this chapter.

65 (13) Make all records of the department open for in-  
66 spection of interested persons and the public.

§22-1-5. Same—Eligibility; salary.

1 The director of the department of mines shall be a

2 male citizen of West Virginia, shall be a competent person  
3 of good repute and temperate habits and shall have had  
4 at least fifteen years' experience underground in coal  
5 mines, at least ten of which shall have been underground  
6 in mines in this state. He shall possess a practical knowl-  
7 edge of the different systems of working, ventilating and  
8 draining of coal mines, and a practical and scientific  
9 knowledge of all noxious and dangerous gases found in  
10 such mines. A diploma in mining engineering from the  
11 West Virginia University school of mines or any similarly  
12 accredited engineering school shall be counted as two  
13 years' working experience. The director shall devote  
14 all of his time to the duties of his office and shall not be  
15 directly or indirectly interested financially in any mine  
16 in this state. The salary of the director of the department  
17 of mines shall be twenty-five thousand dollars per year  
18 and traveling expenses, which shall be paid out of the  
19 state treasury upon a requisition upon the state auditor,  
20 properly certified by the director of the department of  
21 mines.

**§22-1-6. Same—Oath and bond.**

1 The director of the department of mines shall, before  
2 entering upon the discharge of his duties, take the oath  
3 of office prescribed by section five, article four of the  
4 constitution, and shall execute a bond in the penalty of  
5 two thousand dollars, with security to be approved by  
6 the governor, conditioned upon the faithful discharge of  
7 his duties, a certificate of which oath and which bond  
8 shall be filed in the office of the secretary of state.

**§22-1-7. Mine inspectors; districts and divisions; employment;  
tenure; oath; bond.**

1 Notwithstanding any other provisions of law, mine in-  
2 spectors shall be selected, serve and be removed as in this  
3 article provided.

4 The director of the department of mines shall divide  
5 the state into not more than forty-five mining districts  
6 and not more than five mining divisions, so as to equalize,  
7 as far as practical, the work of each inspector. He may  
8 assign inspectors to districts, designate and assign not



9 more than one inspector-at-large to each division and one  
10 assistant inspector-at-large. He shall designate the places  
11 of abode of inspectors at points convenient to the mines  
12 of their respective districts, and, in the case of inspectors  
13 and assistant inspectors-at-large, their respective divi-  
14 sions.

15 Except as in the next preceding paragraph provided, all  
16 mine inspectors appointed after the mine inspectors'  
17 examining board has certified to the director of the de-  
18 partment of mines an adequate register of qualified  
19 eligible candidates in accordance with section eleven of  
20 this article, so long as such register contains the names of  
21 at least three qualified eligible candidates, shall be ap-  
22 pointed from the names on such register. Each original  
23 appointment shall be made by the director of the depart-  
24 ment of mines for a probationary period of not more than  
25 one year.

26 The director of the department of mines shall make  
27 each appointment from among the three qualified eligible  
28 candidates on the register having the highest grades:  
29 *Provided*, That the director of the department of mines  
30 may, for good cause, at least thirty days prior to making  
31 an appointment, strike any name from the register. Upon  
32 striking any name from the register, the director of the  
33 department of mines shall immediately notify in writing  
34 each member of the mine inspectors' examining board of  
35 his action, together with a detailed statement of the rea-  
36 sons therefor. Thereafter, the mine inspectors' examining  
37 board, after hearing, if it finds that the action of the di-  
38 rector of the department of mines was arbitrary or un-  
39 reasonable, may order the name of any candidate so  
40 stricken from the register to be reinstated thereon. Such  
41 reinstatement shall be effective from the date of removal  
42 from the register.

43 Any candidate passed over for appointment for three  
44 years shall be automatically stricken from the register.

45 After having served for a probationary period of one  
46 year to the satisfaction of the director of the department  
47 of mines, a mine inspector shall have permanent tenure  
48 until he becomes sixty-five years of age, subject only to

49 dismissal for cause in accordance with the provisions of  
50 section eleven of this article. No mine inspector, while  
51 in office, shall be directly or indirectly interested as  
52 owner, lessor, operator, stockholder, superintendent or  
53 engineer of any coal mine. Before entering upon the dis-  
54 charge of his duties as a mine inspector, he shall take  
55 the oath of office prescribed by the constitution, and shall  
56 execute a bond in the penalty of two thousand dollars,  
57 with security to be approved by the director of the de-  
58 partment of mines, conditioned upon the faithful dis-  
59 charge of his duties, a certificate of which oath and bond  
60 shall be filed in the office of the secretary of state.

61 The district inspectors, inspectors-at-large and assistant  
62 inspectors-at-large, together with the director, shall make  
63 all inspections authorized by articles one and two of this  
64 chapter and shall perform such other duties as are im-  
65 posed upon mine inspectors by articles one, two and six  
66 of this chapter.

**§22-1-8. Mine safety instructors; qualifications; employment;  
compensation; tenure; oath; bond.**

1 The department shall employ eleven or more mine  
2 safety instructors. To be eligible for employment as a  
3 mine safety instructor, the applicant shall be (1) a citizen  
4 of West Virginia, in good health, not less than twenty-  
5 five nor more than sixty-five years of age, and of good  
6 character, reputation and temperate habits, and (2) a  
7 person who has had at least five years' experience in first  
8 aid and mine rescue work and who has had practical  
9 experience with dangerous gases found in coal mines,  
10 and who has a practical knowledge of mines, mining  
11 methods, mine ventilation, sound safety practices, and  
12 applicable mining laws.

13 In order to qualify for appointment as a mine safety  
14 instructor, an eligible applicant shall submit to a written  
15 and oral examination, given by the mine inspectors' ex-  
16 amining board. The examination shall relate to the  
17 duties to be performed by a safety instructor and may,  
18 subject to the approval of the mine inspectors' examining  
19 board, be prepared by the director of West Virginia de-  
20 partment of mines.

21 If the board finds after investigation and examination  
22 that the applicant (1) is eligible for appointment, and (2)  
23 has passed all oral and written examinations with a grade  
24 of at least eighty percent, the board shall add such ap-  
25 plicant's name and grade to a register of qualified eligible  
26 candidates and certify its action to the director of the  
27 department of mines. The director may then appoint one  
28 of the candidates from the three having the highest  
29 grades.

30 The salary for a mine safety instructor shall be not less  
31 than ten thousand dollars per year, with graduations of  
32 two hundred forty dollars annually for a ten-year period  
33 and shall be fixed by the director of the department of  
34 mines, who shall take into consideration ability, per-  
35 formance of duty, and experience. Such instructor shall  
36 devote all of his time to the duties of his office. No re-  
37 imbursement for traveling expenses shall be made except  
38 on an itemized accounting for such expenses submitted  
39 by the instructor, who shall verify upon oath that such  
40 expenses were actually incurred in the discharge of his  
41 official duties.

42 Except as expressly provided in this section to the  
43 contrary, all provisions of this article relating to the  
44 eligibility, qualification, appointment, tenure and removal  
45 of mine inspectors shall be applicable to mine safety in-  
46 structors.

**§22-1-9. Mine inspectors may be appointed to fill vacancy in department; permanent tenure benefits not affected.**

1 Notwithstanding any other provisions of law, if a va-  
2 cancy occurs in any appointive position within the de-  
3 partment of mines, any mine inspector having permanent  
4 tenure, if qualified, may be appointed to such appointive  
5 position without forfeiting any of the benefits which have  
6 accrued to him because of his permanent tenure as a  
7 mine inspector.

**§22-1-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.**

1 The department shall employ five or more electrical  
2 inspectors. To be eligible for employment as an electrical

3 inspector, the applicant shall be: (1) A citizen and  
4 resident of West Virginia, in good health, not less than  
5 twenty-five nor more than fifty-five years of age, and  
6 of good character, reputation and of temperate habits;  
7 and (2) a person who has had seven years' practical  
8 electrical experience in coal mines, or a degree in elec-  
9 trical engineering from an accredited electrical engi-  
10 neering school and one year's practical experience in  
11 underground coal mining.

12 In order to qualify for appointment as a mine electrical  
13 inspector, an eligible applicant shall submit to a written  
14 and oral examination given by the mine inspectors'  
15 examining board. The examination shall relate to the  
16 duties to be performed by an electrical inspector. If the  
17 board finds after investigation and examination that the  
18 applicant (1) is eligible for appointment and (2) has  
19 passed all oral and written examinations with a grade  
20 of at least ninety percent, the board shall add such  
21 applicant's name and grade to a register of qualified  
22 eligible candidates and certify its action to the director  
23 of the department of mines. The director may then  
24 appoint one of the candidates from the three having the  
25 highest grade.

26 The salary of a mine electrical inspector shall be not  
27 less than fourteen thousand five hundred dollars per  
28 year, with graduations of two hundred forty dollars  
29 annually for a ten-year period, and shall be fixed by  
30 the director of the department of mines, who shall take  
31 into consideration ability, performance of duty, and ex-  
32 perience. No reimbursement for traveling expenses shall  
33 be made except on an itemized accounting for such  
34 expense submitted by the electrical inspector, who shall  
35 verify upon oath that such expenses were actually in-  
36 curred in the discharge of his official duties.

37 Mine electrical inspectors, before entering upon the  
38 discharge of their duties, shall take and subscribe to the  
39 oath and shall execute a bond in the same penal sum,  
40 with surety approved by the director of the department  
41 of mines, all as is required by this article in the case of  
42 mine inspectors.

43 Except as expressly provided in this section to the  
44 contrary, all provisions of this article relating to the  
45 eligibility, qualifications, appointment, tenure and re-  
46 moval of mine inspectors shall be applicable to mine  
47 electrical inspectors.

**§22-1-11. Eligibility for appointment as mine inspector; quali-  
fications; salary and expenses; removal.**

1 (a) No person shall be eligible for appointment as a  
2 mine inspector unless, at the time of his probationary  
3 appointment, he (1) is a citizen of West Virginia, in  
4 good health, not less than thirty nor more than fifty-five  
5 years of age, and of good character, reputation and tem-  
6 perate habits; (2) has had at least ten years' practical  
7 experience in coal mines, at least five years of which,  
8 immediately preceding his original appointment, shall  
9 have been in mines in this state: *Provided*, That gradua-  
10 tion from any accredited college of mining engineering  
11 shall be considered the equivalent of two years' practical  
12 experience; (3) has had practical experience with danger-  
13 ous gases found in coal mines; and (4) has a good theoret-  
14 ical and practical knowledge of mines, mining methods,  
15 mine ventilation, sound safety practices and applicable  
16 mining laws.

17 (b) In order to qualify for appointment as a mine  
18 inspector, an eligible applicant shall submit to a written  
19 and oral examination by the mine inspectors' examining  
20 board and furnish such evidence of good health, character  
21 and other facts establishing eligibility as the board may  
22 require. If the board finds after investigation and exami-  
23 nation that an applicant: (1) Is eligible for appointment  
24 and (2) has passed all written and oral examinations, with  
25 a grade of at least eighty percent, the board shall add  
26 such applicant's name and grade to the register of quali-  
27 fied eligible candidates and certify its action to the di-  
28 rector of the department of mines. No candidate's name  
29 shall remain in the register for more than three years  
30 without requalifying.

31 (c) Salaries of district inspectors shall not be less  
than thirteen thousand six hundred dollars per year, with

33 graduations of two hundred forty dollars annually for  
34 a ten-year period; assistant inspector-at-large, not less  
35 than fifteen thousand dollars per year, with graduations  
36 of two hundred forty dollars annually for a ten-year  
37 period; inspectors-at-large, not less than sixteen thou-  
38 sand dollars per year, with graduations of two hundred  
39 forty dollars annually for a ten-year period, and they  
40 shall receive mileage at the rate of not less than ten  
41 cents for each mile actually traveled in the discharge of  
42 their official duties in a privately owned vehicle. Within  
43 the limits provided by law, the salary of each inspector  
44 shall be fixed by the director of the department of mines,  
45 subject to the approval of the mine inspectors' examining  
46 board. In fixing salaries of mine inspectors, the director  
47 of the department of mines shall consider ability, per-  
48 formance of duty and experience. No reimbursement for  
49 traveling expenses shall be made except upon an itemized  
50 account of such expenses submitted by the inspector,  
51 who shall verify upon oath, that such expenses were  
52 actually incurred in the discharge of his official duties.

53 (d) Any mine inspector who has fulfilled the require-  
54 ments of this section with respect to employment and who  
55 has served satisfactorily as a mine inspector for a mini-  
56 mum period of one year and who has terminated his em-  
57 ployment as a mine inspector, upon successfully passing  
58 a physical examination, may be reinstated as a mine in-  
59 spector within two years after terminating his employ-  
60 ment with the approval of the examining board and the  
61 director of the department of mines.

62 (e) A mine inspector, after having received a perma-  
63 nent appointment, shall be removed from office only for  
64 physical or mental impairment, incompetency, neglect of  
65 duty, drunkenness, malfeasance in office, or other good  
66 cause.

67 Proceedings for the removal of a mine inspector may  
68 be initiated by the director of the department of mines  
69 whenever he has reasonable cause to believe and does  
70 believe that adequate cause exists, warranting removal.  
71 Such a proceeding shall be initiated by a verified petition,  
72 filed with the board by the director of the department of  
73 mines, setting forth with particularity the facts alleged.

74 Not less than twenty reputable citizens, who are opera-  
75 tors or employees in mines in the state, may petition the  
76 director of the department of mines for the removal of a  
77 mine inspector. If such petition is verified by at least  
78 one of the petitioners, based on actual knowledge of the  
79 affiant and alleged facts, which, if true, warrant the re-  
80 moval of the inspector, the director of the department  
81 of mines shall cause an investigation of the facts to be  
82 made. If, after such investigation, the director finds that  
83 there is substantial evidence, which, if true, warrants  
84 removal of the inspector, he shall file a petition with the  
85 board requesting removal of the inspector.

86 On receipt of a petition by the director of the depart-  
87 ment of mines seeking removal of a mine inspector, the  
88 board shall promptly notify the inspector to appear be-  
89 fore it at a time and place designated in said notice, which  
90 time shall be not less than fifteen days thereafter. There  
91 shall be attached to the copy of the notice served upon  
92 the inspector a copy of the petition filed with the board.

93 At the time and place designated in said notice, the  
94 board shall hear all evidence offered in support of the  
95 petition and on behalf of the inspector. Each witness  
96 shall be sworn, and a transcript shall be made of all  
97 evidence taken and proceedings had at any such hearing.  
98 No continuance shall be granted except for good cause  
99 shown. The chairman of the board and the director of the  
100 department of mines shall have power to administer oaths  
101 and subpoena witnesses.

102 Any mine inspector who shall wilfully refuse or fail  
103 to appear before the board, or having appeared, shall  
104 refuse to answer under oath any relevant question on the  
105 ground that his testimony or answer might incriminate  
106 him, or shall refuse to waive immunity from prosecution  
107 on account of any relevant matter about which he may  
108 be asked to testify at any such hearing before the board,  
109 shall forfeit his position.

110 If, after hearing, the board finds that the inspector  
111 should be removed, it shall enter an order to that effect.  
112 The decision of the board shall be final and shall not be  
113 subject to judicial review.

**§22-1-12. Mine inspectors' examining board.**

1     There shall be a mine inspectors' examining board con-  
2     sisting of five members who, except for the public rep-  
3     resentative on such board, shall be appointed by the gov-  
4     ernor, by and with the advice and consent of the Senate.  
5     Members so appointed may be removed only for the same  
6     causes and in like manner as elective state officers. One  
7     of the members of the board shall be a representative  
8     of the public, who shall be the director of the school of  
9     mines at West Virginia University. Two members of the  
10    board shall be persons who by reason of previous train-  
11    ing and experience may reasonably be said to represent  
12    the viewpoint of coal mine operators and two members  
13    shall be persons who by reason of previous training and  
14    experience may reasonably be said to represent the view-  
15    point of coal mine workers.

16    The director of the department of mines shall be an  
17    ex officio member of the board and shall serve as secre-  
18    tary of the board, without additional compensation; but  
19    he shall have no right to vote with respect to any matter  
20    before the board.

21    The members of the board, except the public repre-  
22    sentative, shall be appointed for overlapping terms of  
23    eight years, except that the original appointments shall  
24    be for terms of two, four, six and eight years, respec-  
25    tively. Any member whose term expires may be re-  
26    appointed by the governor.

27    Each member of the board shall receive fifty dollars  
28    per diem while actually engaged in the performance of  
29    the work of the board; and shall receive mileage at  
30    the rate of ten cents for each mile actually traveled  
31    going from the home of the member to the place of  
32    the meeting of the board and returning therefrom, which  
33    shall be paid out of the state treasury upon a requisition  
34    upon the state auditor, properly certified by such mem-  
35    bers of the board.

36    The public member shall serve as chairman of the  
37    board. Members of the board, before performing any  
38    duty, shall take and subscribe to the oath required by



39 article four, section five of the constitution of West  
40 Virginia.

41 The mine inspectors' examining board shall meet at  
42 such times and places as shall be designated by the  
43 chairman. It shall be the duty of the chairman to call  
44 a meeting of the board on the written request of three  
45 members or the director of the department of mines.  
46 Notice of each meeting shall be given in writing to each  
47 member by the secretary at least five days in advance  
48 of the meeting. Three members shall constitute a quorum  
49 for the transaction of business.

50 In addition to other duties expressly set forth else-  
51 where in this article, the board shall:

52 (1) Establish, and from time to time revise, forms  
53 of application for employment as mine inspectors and  
54 forms for written examinations to test the qualification  
55 of candidates for that position;

56 (2) Adopt and promulgate reasonable rules and regu-  
57 lations relating to the examination, qualification and  
58 certification of candidates for appointment as mine in-  
59 spectors, and hearings for removal of inspectors, re-  
60 quired to be held by this article. All of such rules and  
61 regulations shall be printed and a copy thereof furnished  
62 by the secretary of the board to any person upon request;

63 (3) Conduct, after public notice of the time and place  
64 thereof, examinations of candidates for appointment as  
65 mine inspector. By unanimous agreement of all mem-  
66 bers of the board, one or more members of the board  
67 or an employee of the department of mines may be desig-  
68 nated to give a candidate the written portion of the  
69 examination;

70 (4) Prepare and certify to the director of the depart-  
71 ment of mines a register of qualified eligible candidates  
72 for appointment as mine inspectors. The register shall  
73 list all qualified eligible candidates in the order of their  
74 grades, the candidate with the highest grade appearing  
75 at the top of the list. After each meeting of the board  
76 held to examine such candidates, and at least annually,  
77 the board shall prepare and submit to the director of  
78 the department of mines a revised and corrected register

79 of qualified eligible candidates for appointment as mine  
80 inspector, deleting from such revised register all persons  
81 (a) who are no longer residents of West Virginia, (b)  
82 who have allowed a calendar year to expire without,  
83 in writing, indicating their continued availability for  
84 such appointment, (c) who have been passed over for  
85 appointment for three years, (d) who have become in-  
86 eligible for appointment since the board originally certi-  
87 fied that such person was qualified and eligible for ap-  
88 pointment as mine inspector, or (e) who, in the judg-  
89 ment of at least four members of the board, should be  
90 removed from the register for good cause;

91 (5) Cause the secretary of the board to keep and pre-  
92 serve the written examination papers, manuscripts, grad-  
93 ing sheets, and other papers of all applicants for ap-  
94 pointment as mine inspector for such period of time as  
95 may be established by the board. Specimens of the  
96 examinations given, together with the correct solution  
97 of each question, shall be preserved permanently by the  
98 secretary of the board;

99 (6) Issue a letter or written notice of qualification to  
100 each successful eligible candidate;

101 (7) Hear and determine proceedings for the removal  
102 of mine inspectors in accordance with the provisions of  
103 this article;

104 (8) Hear and determine appeals of mine inspectors  
105 from suspension orders made by the director pursuant  
106 to the provisions of section four of this article: *Provided,*  
107 That an aggrieved inspector, in order to appeal from  
108 any order of suspension, shall file such appeal in writing  
109 with the mine inspectors' examining board not later than  
110 ten days after receipt of notice of suspension. On such  
111 appeal the board shall affirm the act of the director unless  
112 it be satisfied from a clear preponderance of the evidence  
113 that the director has acted arbitrarily;

114 (9) Make an annual report to the governor and the  
115 director of the department of mines concerning the ad-  
116 ministration of mine inspection personnel in the state  
117 service, making such recommendations as the board con-  
118 siders to be in the public interest.

**§22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.**

1 The director of the department of mines shall have  
2 authority to visit, enter, and examine any mine, whether  
3 underground or on the surface, and may call for the  
4 assistance of any district mine inspector or inspectors  
5 whenever such assistance is necessary in the examina-  
6 tion of any mine. The operator of every coal mine shall  
7 furnish the director of the department of mines or mine  
8 inspector proper facilities for entering such mine and  
9 making examination or obtaining information.

10 If miners at any mine or one of their authorized repre-  
11 sentatives have reason to believe that dangerous condi-  
12 tions are existing or that the law is not being complied  
13 with, they may request the director to have an immediate  
14 investigation made.

15 Mine inspectors shall devote their full time and un-  
16 divided attention to the performance of their duties,  
17 and they shall examine all of the mines in their respec-  
18 tive districts at least four times annually, and as often, in  
19 addition thereto, as the director of the department of  
20 mines may direct, or the necessities of the case or the  
21 condition of the mine or mines may require, with no  
22 advance notice of inspection provided to any person,  
23 and they shall make a personal examination of each  
24 working face and all entrances to abandoned parts of  
25 the mine where gas is known to liberate, for the purpose  
26 of determining whether a danger, described in section  
27 fourteen of this article, exists in any such mine, or whether  
28 any provision of article two of this chapter is being vio-  
29 lated in any such mine.

30 The mine inspector shall visit the scene of each fatal  
31 accident occurring in any mine within his district and  
32 shall make an examination into the particular facts of  
33 such accident; make a report to the director of the  
34 department of mines, setting forth the results of such  
35 examination, including the condition of the mine and  
36 the cause or causes of such fatal accident, if known,

37 and all such reports shall be made available to the in-  
38 terested parties, upon written requests.

39 At the commencement of any inspection of a coal  
40 mine by an authorized representative of the director,  
41 the authorized representative of the miners at the mine  
42 at the time of such inspection shall be given an oppor-  
43 tunity to accompany the authorized representative of the  
44 director on such inspection.

**§22-1-14. Findings, orders and notices.**

1 (a) If, upon any inspection of a coal mine, an au-  
2 thorized representative of the director finds that an im-  
3 minent danger exists, such representative shall determine  
4 the area throughout which such danger exists, and there-  
5 upon shall issue forthwith an order requiring the oper-  
6 ator of the mine or his agent to cause immediately all  
7 persons, except those referred to in subdivisions (1), (2),  
8 (3) and (4), subsection (c) of this section, to be with-  
9 drawn from and to be prohibited from entering such area  
10 until an authorized representative of the director deter-  
11 mines that such imminent danger no longer exists.

12 All employees on the inside and outside of a mine who  
13 are idled as a result of the posting of a withdrawal order  
14 by a mine inspector shall be compensated by the operator  
15 at their regular rates of pay for the period they are idled,  
16 but not more than the balance of such shift. If such order  
17 is not terminated prior to the next working shift, all such  
18 employees on that shift who are idled by such order shall  
19 be entitled to full compensation by the operator at their  
20 regular rates of pay for the period they are idled, but for  
21 not more than four hours of such shift.

22 (b) If, upon any inspection of a coal mine, an au-  
23 thorized representative of the director finds that there  
24 has been a violation of the law, but the violation has  
25 not created an imminent danger, he shall issue a notice  
26 to the operator or his agent, fixing a reasonable time  
27 for the abatement of the violation. If, upon the expira-  
28 tion of the period of time, as originally fixed or subse-  
29 quently extended, an authorized representative of the  
30 director of the department of mines finds that the vio-  
31 lation has not been totally abated, and if he also finds

32 that the period of time should not be further extended,  
33 he shall find the extent of the area affected by the vio-  
34 lation and shall promptly issue an order requiring the  
35 operator of such mine or his agent to cause immediately  
36 all persons, except those referred to in subdivisions (1),  
37 (2), (3) and (4), subsection (c) of this section, to be with-  
38 drawn from, and to be prohibited from entering such area  
39 until an authorized representative of the director deter-  
40 mines that the violation has been abated.

41 (c) The following persons shall not be required to  
42 be withdrawn from or prohibited from entering any area  
43 of the coal mine subject to an order issued under this  
44 section:

45 (1) Any person whose presence in such area is  
46 necessary, in the judgment of the operator or an autho-  
47 rized representative of the director, to eliminate the con-  
48 dition described in the order;

49 (2) any public official whose official duties require  
50 him to enter such area;

51 (3) any representative of the miners in such mine who  
52 is, in the judgment of the operator or an authorized  
53 representative of the director, qualified to make coal  
54 mine examinations or who is accompanied by such a  
55 person and whose presence in such area is necessary  
56 for the investigation of the conditions described in the  
57 order; and

58 (4) any consultant to any of the foregoing.

59 (d) Notices and orders issued pursuant to this section  
60 shall contain a detailed description of the conditions or  
61 practices which cause and constitute an imminent danger  
62 or a violation of any mandatory health or safety standard  
63 and, where appropriate, a description of the area of the  
64 coal mine from which persons must be withdrawn and  
65 prohibited from entering.

66 (e) Each notice or order issued under this section  
67 shall be given promptly to the operator of the coal mine  
68 or his agent by an authorized representative of the di-  
69 rector issuing such notice or order, and all such notices  
70 and orders shall be in writing and shall be signed by

71 such representative and posted on the bulletin board at  
72 the mine.

73 (f) A notice or order issued pursuant to this section  
74 may be modified or terminated by an authorized represen-  
75 tative of the director.

76 (g) Each finding, order, and notice made under this  
77 section shall promptly be given to the operator of the  
78 mine to which it pertains by the person making such  
79 finding, order, or notice.

**§22-1-15. Powers and duties of electrical inspectors as to in-  
spections, findings and orders; reports of electrical  
inspectors.**

1 In order that the electrical inspector may properly per-  
2 form the duties required of him, he shall devote his whole  
3 time and attention to the duties of his office, and he shall  
4 have the right to enter any coal mine for the purpose of  
5 inspecting electrical equipment, and if he finds during his  
6 inspection any defects in the electrical equipment which  
7 are covered by law and may be detrimental to the lives  
8 or health of the workmen, he shall have the authority  
9 to order the operator, in writing, to remedy such defects  
10 within a prescribed time, and to prohibit the continued  
11 operation of such electrical equipment after such time,  
12 unless such defects have been corrected.

13 The electrical inspector shall examine each mine in his  
14 division at least once each year or as often as the director  
15 may deem necessary.

16 It shall be the duty of the electrical inspector, after  
17 completing his examination of a mine, to prepare a report  
18 describing his findings in said mine in a manner and form  
19 designated by the director. The original report shall be  
20 forwarded to the operator or his representative whose  
21 duty it shall be to post it in some conspicuous place open  
22 to examination by any interested person or persons. The  
23 report shall show the date of inspection, a list of equip-  
24 ment, and any other information that the director may  
25 deem necessary.

**§22-1-16. Review of orders and notices by the director.**

1 (a) (1) An operator, issued an order pursuant to the  
2 provisions of section fourteen of this article, or any rep-

3 representative of miners in any mine affected by such order  
4 or by any modification or termination of such order, may  
5 apply to the director for review of the order within thirty  
6 days of receipt thereof or within thirty days of its modi-  
7 fication or termination. An operator, issued a notice pur-  
8 suant to subsection (b), section fourteen of this article, or  
9 any representative of miners in any mine affected by such  
10 notice, may, if he believes that the period of time fixed in  
11 such notice for the abatement of the violation is unreason-  
12 able, apply to the director for review of the notice within  
13 thirty days of the receipt thereof. The applicant shall  
14 send a copy of such application to the representative of  
15 miners in the affected mine, or the operator, as appro-  
16 priate. Upon receipt of such application, the director shall  
17 cause such investigation to be made as he deems appro-  
18 priate. Such investigation shall provide an opportunity  
19 for a public hearing, at the request of the operator or the  
20 representative of miners in such mine, to enable the  
21 operator and the representative of miners in such mine  
22 to present information relating to the issuance and con-  
23 tinuance of such order or the modification or termination  
24 thereof or to the time fixed in such notice. The filing of  
25 an application for review under this law shall not operate  
26 as a stay of any order or notice.

27 (2) The operator and the representative of the miners  
28 shall be given written notice of the time and place of the  
29 hearing at least five days prior to the hearing.

30 (b) Upon receiving the report of such investigation,  
31 the director shall make findings of fact, and he shall issue  
32 a written decision, incorporating therein an order vacat-  
33 ing, affirming, modifying, or terminating the order, or the  
34 modification or termination of such order, or the notice  
35 complained of and incorporate his findings therein.

36 (c) In view of the urgent need for prompt decision of  
37 matters submitted to the director under this law, all ac-  
38 tions which the director takes under this section shall be  
39 taken as promptly as practicable, consistent with adequate  
40 consideration of the issues involved.

41 (d) Pending completion of the investigation required  
42 by this section, the applicant may file with the director a  
43 written request that the director grant temporary relief

44 from any modification or termination of any order,  
45 or from any order issued under section fourteen of this  
46 article, except an order issued under section fifteen of  
47 this article, together with a detailed statement giving  
48 reasons for granting such relief. The director may grant  
49 such relief, under such conditions as he may prescribe, if

50 (1) A hearing has been held in which all parties were  
51 given an opportunity to be heard;

52 (2) the applicant shows that there is substantial like-  
53 lihood that the findings of the director will be favorable  
54 to the applicant; and

55 (3) such relief will not adversely affect the health and  
56 safety of miners in the coal mine.

57 No temporary relief shall be granted in the case of a  
58 notice issued under section fourteen of this article.

**§22-1-17. Posting of notices, orders, and decisions; delivery to  
agent of operator; names and addresses to be filed  
by operators.**

1 (a) At each coal mine there shall be maintained an  
2 office with a conspicuous sign designating it as the office  
3 of the mine, and a bulletin board at such office or at  
4 some conspicuous place near an entrance of the mine, in  
5 such manner that notices, orders, and decisions required  
6 by this law or regulation to be posted on the mine bulletin  
7 board may be posted thereon, be easily visible to all  
8 persons desiring to read them, and be protected against  
9 damage by weather and against unauthorized removal.  
10 A copy of any notice, order, or decision required by this  
11 law to be given to an operator shall be delivered to the  
12 office of the affected mine, and a copy shall be immedi-  
13 ately posted on the bulletin board of such mine by the  
14 operator or his agent.

15 (b) The director shall cause a copy of any notice,  
16 order, or decision required by this law to be given to an  
17 operator to be mailed immediately to a representative of  
18 the miners. Such notice, order, or decision shall be avail-  
19 able for public inspection.

20 (c) In order to insure prompt compliance with any  
21 notice, order, or decision issued under this law, the au-



22 thorized representative of the director may deliver such  
23 notice, order, or decision to an agent of the operator and  
24 such agent shall immediately take appropriate measures  
25 to insure compliance with such notice, order, or decision.

26 (d) Each operator of a coal mine shall file with the  
27 director the name and address of such mine and the name  
28 and address of the person who controls or operates the  
29 mine. Any revisions in such names or addresses shall  
30 be promptly filed with the director. Each operator of a  
31 coal mine shall designate a responsible official at such  
32 mine as the principal officer in charge of health and  
33 safety at such mine, and such official shall receive a copy  
34 of any notice, order, or decision issued under this law  
35 affecting such mine. In any case, where the coal mine  
36 is subject to the control of any person not directly in-  
37 volved in the daily operations of the coal mine, there  
38 shall be filed with the director the name and address of  
39 such person and the name and address of a principal  
40 official of such person who shall have overall responsi-  
41 bility for the conduct of an effective health and safety  
42 program at any coal mine subject to the control of such  
43 person and such official shall receive a copy of any notice,  
44 order, or decision issued affecting any such mine. The  
45 mere designation of a health and safety official under  
46 this subsection shall not be construed as making such  
47 official subject to any penalty under this law.

**§22-1-18. Judicial review.**

1 (a) Any order or decision issued by the director under  
2 this law, except an order or decision under section fourteen  
3 of this article shall be subject to judicial review by the  
4 circuit court of the county in which the mine affected  
5 is located or the circuit court of Kanawha county upon  
6 the filing in such court or with the judge thereof in vaca-  
7 tion of a petition by any person aggrieved by the order  
8 or decision praying that the order or decision be modified  
9 or set aside in whole or in part, except that the court  
10 shall not consider such petition unless such person has  
11 exhausted the administrative remedies available under  
12 this law and files within thirty days from date of such  
13 order or decision.

14 (b) The party making such appeal shall forthwith  
15 send a copy of such petition for appeal, by registered  
16 mail, to the other party. Upon receipt of such petition  
17 for appeal, the director of the department of mines shall  
18 promptly certify and file in such court a complete tran-  
19 script of the record upon which the order or decision  
20 complained of was issued. The court shall hear such  
21 petition on the record made before the director. The  
22 findings of the director, if supported by substantial evi-  
23 dence on the record considered as a whole, shall be con-  
24 clusive. The court may affirm, vacate, or modify any  
25 order or decision or may remand the proceedings to the  
26 director for such further action as it may direct.

27 (c) In the case of a proceeding to review any order  
28 or decision issued by the director under this law, except  
29 an order or decision pertaining to an order issued under  
30 subsection (a), section fourteen of this article or an order  
31 or decision pertaining to a notice issued under subsection  
32 (b), section fourteen of this article, the court may, under  
33 such conditions as it may prescribe, grant such temporary  
34 relief as it deems appropriate pending final determination  
35 of the proceeding if

36 (A) All parties to the proceeding have been notified  
37 and given an opportunity to be heard on a request for  
38 temporary relief;

39 (B) The person requesting such relief shows that  
40 there is a substantial likelihood that he will prevail on  
41 the merits of the final determination of the proceeding;  
42 and

43 (C) Such relief will not adversely affect the health  
44 and safety of miners in the coal mine.

45 (d) The judgment of the court shall be subject to  
46 review only by the supreme court of appeals of West  
47 Virginia upon a writ of certiorari filed in such court  
48 within sixty days from the entry of the order and decision  
49 of the circuit court upon such appeal from the director.

50 (e) The commencement of a proceeding under this  
51 section shall not, unless specifically ordered by the court,  
52 operate as a stay of the order or decision of the director.

53 (f) Subject to the direction and control of the attor-  
54 ney general, attorneys appointed for the director may  
55 appear for and represent him in any proceeding instituted  
56 under this section.

#### §22-1-19. Injunctions.

1 The director may institute a civil action for relief,  
2 including a permanent or temporary injunction, restrain-  
3 ing order, or any other appropriate order in the circuit  
4 court of the county in which the mine is located or the  
5 circuit court of Kanawha county, whenever the operator  
6 or his agent (a) violates or fails or refuses to comply with  
7 any order or decision issued under this law, or (b) inter-  
8 feres with, hinders, or delays the director or his authoriz-  
9 ed representative in carrying out the provisions of this  
10 law, or (c) refuses to admit such representatives to  
11 the mine, or (d) refuses to permit the inspection of  
12 the mine, or the investigation of an accident or occupa-  
13 tional disease occurring in, or connected with, such  
14 mine, or (e) refuses to furnish any information or re-  
15 port requested by the director in furtherance of the  
16 provisions of this law, or (f) refuses to permit access  
17 to, and copying of, such records as the director deter-  
18 mines necessary in carrying out the provisions of this  
19 law. Each court shall have jurisdiction to provide such  
20 relief as may be appropriate. Except as otherwise pro-  
21 vided herein, any relief granted by the court to enforce  
22 an order under clause (a) of this section shall continue  
23 in effect until the completion or final termination of all  
24 proceedings for review of such order under this law,  
25 unless, prior thereto, the circuit court granting such re-  
26 lief sets it aside or modifies it. In any action instituted  
27 under this section to enforce an order or decision issued  
28 by the director after a public hearing, the findings of  
29 the director, if supported by substantial evidence on the  
30 record considered as a whole, shall be conclusive.

#### §22-1-20. Penalties.

1 (a)(1) Any operator of a coal mine in which a viola-  
2 tion occurs of a health or safety standard or who violates  
3 any other provision of this law, shall be assessed a civil

4 penalty by the director under subdivision (3) of this  
5 subsection, which penalty shall be not more than three  
6 thousand dollars for each such violation. Each occur-  
7 rence of a violation of a health or safety standard  
8 may constitute a separate offense. In determining the  
9 amount of the penalty, the director shall consider the  
10 operator's history of previous violations, the appropriate-  
11 ness of such penalty to the size of the business of the  
12 operator charged, the gravity of the violation, and the  
13 demonstrated good faith of the operator charged in at-  
14 tempting to achieve rapid compliance after notification  
15 of a violation.

16 (2) Any miner who wilfully violates any health  
17 and safety standards shall be subject to a civil  
18 penalty assessed by the director under subdivision (3)  
19 of this subsection which penalty shall not be more  
20 than two hundred fifty dollars for each occurrence of  
21 such violation.

22 (3) A civil penalty shall be assessed by the di-  
23 rector only after the person charged with a violation  
24 under this law has been given an opportunity for a  
25 public hearing and the director has determined, by  
26 decision incorporating his findings of fact therein,  
27 that a violation did occur, and the amount of the  
28 penalty which is warranted, and incorporating, when  
29 appropriate, an order therein requiring that the penalty  
30 be paid. Any hearing under this section shall be of  
31 record.

32 (4) If the person against whom a civil penalty is  
33 assessed fails to pay the penalty within the time pre-  
34 scribed in such order, the director shall file a petition  
35 for enforcement of such order in any appropriate circuit  
36 court. The petition shall designate the person against  
37 whom the order is sought to be enforced as the re-  
38 spondent. A copy of the petition shall forthwith be sent  
39 by registered or certified mail to the respondent and to  
40 the representative of the miners at the affected mine  
41 or the operator, as the case may be, and thereupon the  
42 director shall certify and file in such court the record  
43 upon which such order sought to be enforced was issued.

44 The court shall have jurisdiction to enter a judgment  
45 enforcing, modifying, and enforcing as so modified, or  
46 setting aside in whole or in part the order and decision  
47 of the director or it may remand the proceedings to  
48 the director for such further action as it may direct.  
49 The court shall consider and determine de novo all rele-  
50 vant issues, except issues of fact which were or could  
51 have been litigated in review proceedings before a cir-  
52 cuit court under section eighteen of this article, and upon  
53 the request of the respondent, such issues of fact which  
54 are in dispute shall be submitted to a jury. On the  
55 basis of the jury's findings, the court shall determine  
56 the amount of the penalty to be imposed. Subject to  
57 the direction and control of the attorney general, at-  
58 torneys appointed for the director may appear for and  
59 represent him in any action to enforce an order assessing  
60 civil penalties under this subdivision.

61 (b) Any operator who wilfully violates a health or  
62 safety standard, or knowingly violates or fails or re-  
63 fuses to comply with any order issued under section  
64 fourteen of this article, or any order incorporated in a  
65 final decision issued under this article, except an order  
66 incorporated in a decision under subsection (a) of this  
67 section or subsection (b), section twenty-one of this arti-  
68 cle, shall be guilty of a misdemeanor, and, upon conviction  
69 thereof, shall be fined not more than five thousand dollars  
70 or imprisoned in the county jail not more than one year,  
71 or both fined and imprisoned, except that if the con-  
72 viction is for a violation committed after the first convic-  
73 tion of such operator under this law, he shall be fined  
74 not more than ten thousand dollars or imprisoned in  
75 the penitentiary not more than three years, or both  
76 fined and imprisoned.

77 (c) Whenever a corporate operator wilfully violates a  
78 health or safety standard, or knowingly violates or fails or  
79 refuses to comply with any order issued under this law or  
80 any order incorporated in a final decision issued under  
81 this law, except an order incorporated in a decision issued  
82 under subsection (a) of this section or subsection (b),  
83 section twenty-one of this article, any director, officer, or

84 agent of such corporation who knowingly authorized,  
85 ordered, or carried out such violation, failure, or refusal  
86 shall be subject to the same civil penalties, fines, and  
87 imprisonment that may be imposed upon a person under  
88 subsections (a) and (b) of this section.

89 (d) Whoever knowingly makes any false statement, rep-  
90 resentation, or certification in any application, record, re-  
91 port, plan, or other document filed or required to be main-  
92 tained pursuant to this law or any order or decision issued  
93 under this law shall be guilty of a misdemeanor, and, upon  
94 conviction thereof, shall be fined not more than five thou-  
95 sand dollars or imprisoned in the county jail not more  
96 than six months, or both fined and imprisoned.

97 (e) Whoever knowingly distributes, sells, offers for  
98 sale, introduces or delivers in commerce any equipment  
99 for use in a coal mine, including, but not limited to,  
100 components and accessories of such equipment, which  
101 is represented as complying with the provisions of this  
102 law, or with any specification or regulation of the direc-  
103 tor applicable to such equipment, and which does not so  
104 comply, shall be guilty of a misdemeanor, and, upon con-  
105 viction thereof, shall be subject to the same fine and  
106 imprisonment that may be imposed upon a person under  
107 subsection (d) of this section.

#### §22-1-21. Discrimination.

1 (a) No person shall discharge or in any other way dis-  
2 criminate against or cause to be discharged or discrimi-  
3 nated against any miner or any authorized representative  
4 of miners by reason of the fact that such miner or repre-  
5 sentative (1) has notified the director or his authorized  
6 representative of any alleged violation or danger, (2)  
7 has filed, instituted or caused to be filed or instituted  
8 any proceeding under this law, or (3) has testified or is  
9 about to testify in any proceeding resulting from the  
10 administration or enforcement of the provisions of this  
11 law.

12 (b) Any miner or a representative of miners who be-  
13 lieves that he has been discharged or otherwise discrimi-  
14 nated against, or any miner who has not been compen-

15 sated by an operator for lost time due to the posting of a  
16 withdrawal order, may, within thirty days after such vio-  
17 lation occurs, apply to the appeals board for a review of  
18 such alleged discharge, discrimination, or failure to com-  
19 pensate. A copy of the application shall be sent to such  
20 person who shall be the respondent. Upon receipt of such  
21 application, the appeals board shall cause such investi-  
22 gation to be made as it deems appropriate. Such investi-  
23 gation shall provide an opportunity for a public hearing  
24 at the request of any party to enable the parties to pre-  
25 sent information relating to such violation. The parties  
26 shall be given written notice of the time and place of the  
27 hearing at least five days prior to the hearing. Any such  
28 hearing shall be of record. Upon receiving the report of  
29 such investigation, the board shall make findings of fact.  
30 If it finds that such violation did occur, it shall issue a  
31 decision, incorporating an order therein, requiring the  
32 person committing such violation to take such affirmative  
33 action to abate the violation as the board deems appropri-  
34 ate, including, but not limited to, the rehiring or rein-  
35 statement of the miner or representative of miners to his  
36 former position with back pay, and also pay compensa-  
37 tion for idle time as a result of a withdrawal order. If it  
38 finds that there was no such violation, it shall issue an  
39 order denying the application. Such order shall incorpo-  
40 rate the board's findings therein.

41 (c) Whenever an order is issued under this subsection,  
42 at the request of the applicant, a sum equal to the aggre-  
43 gate amount of all costs and expenses including the at-  
44 torney's fees as determined by the board to have been  
45 reasonably incurred by the applicant for, or in connection  
46 with, the institution and prosecution of such proceedings,  
47 shall be assessed against the person committing such vio-  
48 lation.

#### §22-1-22. Records and reports.

1 In addition to such records as are specifically required  
2 by this law, every operator of a coal mine shall establish  
3 and maintain such records, make such reports, and pro-  
4 vide such information, as the director may reasonably  
5 require from time to time to enable him to perform his

6 functions under this law. The director is authorized to  
7 compile, analyze, and publish, either in summary or de-  
8 tailed form, such reports or information so obtained.  
9 Except to the extent otherwise specifically provided by  
10 this law, all records, information, reports, findings, no-  
11 tices, orders, or decisions required or issued pursuant to  
12 or under this law may be published from time to time,  
13 may be released to any interested person, and shall be  
14 made available for public inspection.

**§22-1-23. Mine foreman examiner for mine foremen, assis-  
tant mine foremen and fire bosses; salary.**

1 The director of the department of mines shall appoint  
2 a mine foreman examiner to examine and certify mine  
3 foremen, assistant mine foremen and mine examiners  
4 or fire bosses. Such mine foremen examiners shall be  
5 paid a minimum salary of twelve thousand dollars per  
6 year.

**§22-1-24. Duties of the mine foreman examiner.**

1 The duties of the mine foreman examiner shall be to:  
2 (a) Prepare and conduct examinations of mine fore-  
3 men, assistant mine foremen, and fire bosses;  
4 (b) Prepare and certify to the director of the de-  
5 partment of mines a register of all persons who success-  
6 fully completed the examination with a passing grade  
7 of eighty percent.

**§22-1-25. Place and time for examinations.**

1 The director of the department of mines shall deter-  
2 mine the location where the mine foreman examiner  
3 shall meet for the purpose of holding examinations,  
4 and at least two weeks' notice of the time and place  
5 where the examinations are to be held shall be given.

**§22-1-26. Preparation of examinations; notice of intention to  
take examination; investigation of applicants.**

1 The mine foreman examiner shall, with the approval  
2 of the director, prepare, and from time to time, modify  
3 examinations to be administered applicants for certifica-  
4 tion as mine foreman and fire bosses.



5 All persons who desire to appear for examination  
6 shall notify the mine foreman examiner of their inten-  
7 tions to appear, if possible, not less than ten days prior  
8 to the date set for the examination. The mine foreman  
9 examiner shall inquire into the character and qualifica-  
10 tions of the applicants who present themselves for  
11 examination.

**§22-1-27. Certificates of qualification heretofore granted.**

1 Certificates of qualification of service heretofore  
2 granted shall have equal value with certificates of quali-  
3 fications granted under this law.

**§22-1-28. Mine foreman examiner to certify successful ap-  
plicants to director.**

1 The mine foreman examiner shall certify to the direc-  
2 tor, on a form furnished by him, every person whose  
3 examination shall disclose his fitness for the duties of  
4 mine foreman, assistant mine foreman, and fire boss,  
5 as above classified, and the director shall prepare cer-  
6 tificates of qualification for the successful applicants and  
7 send them to the mine foreman examiner for distribu-  
8 tion.

**§22-1-29. Record of examinations.**

1 The mine foreman examiner shall send to the direc-  
2 tor the answers and all other papers of the applicants,  
3 together with the tally sheets and a list of the ques-  
4 tions and answers as prepared by the mine foreman  
5 examiner which shall be filed in the department as  
6 public documents.

**§22-1-30. Withdrawal of certification.**

1 If a mine foreman, assistant mine foreman or fire  
2 boss is charged by a mine inspector that he has neglected  
3 or failed to perform his prescribed duties in accordance  
4 with the mining laws of the state, then such charge  
5 of neglect of prescribed duties shall be filed with the  
6 director of the department of mines.

7 Upon receipt of the charge, it shall be the duty of the  
8 director to make a thorough investigation of the alle-  
9 gations; and if he finds substantial evidence to sustain

10 the charge, he shall promptly notify the individual  
11 and shall file a petition with the board of appeals re-  
12 questing the withdrawal or suspension of his certificate.

13 On receipt of a petition from the director of the depart-  
14 ment of mines seeking the withdrawal or suspension of a  
15 certificate, the board shall promptly notify the person  
16 so affected to appear before it at a time and place desig-  
17 nated in said notice, which time shall be not less than  
18 fifteen days thereafter. There shall be attached to such  
19 notice a copy of the petition filed with the board.

20 The board shall hear all evidence offered in support of  
21 the petition and on behalf of the person so charged at  
22 the time and place designated in said notice. Each wit-  
23 ness shall be sworn and a transcript shall be made of all  
24 evidence presented at any such hearing. No continuance  
25 shall be granted except for good cause shown.

26 The chairman of the board shall have the power to  
27 administer oaths and subpoena witnesses and require pro-  
28 duction of any books, papers, records or other docu-  
29 ments relevant or material to the inquiry.

30 Any person so charged who shall refuse or fail to  
31 appear before the board shall forfeit his certificate for  
32 three years and such certificate cannot be renewed ex-  
33 cept upon the successful completion of the examination  
34 prescribed by law for mine foreman, assistant mine  
35 foreman and fire boss.

36 If after the hearing the board finds by a preponder-  
37 ance of the evidence that the certificate of the charged  
38 person should be suspended (time shall be fixed by the  
39 board not to exceed three years) or revoked for a period  
40 of three years, it shall enter an order to that effect.  
41 No renewal of the certificate shall be granted except  
42 as herein provided.

#### §22-1-31. Board of appeals.

1 There is hereby created a board of appeals, consisting  
2 of three members. Two members of the board shall be  
3 appointed by the governor, one person who by reason of  
4 previous training and experience may reasonably be said  
5 to represent the viewpoint of miners, and one person

6 who by reason of previous training and experience may  
7 reasonably be said to represent the viewpoint of the  
8 operators. The third person, who shall be chairman of  
9 the board and who must not have had any connection at  
10 any time with the coal industry or an organization repre-  
11 senting miners, shall be selected by the two members  
12 appointed by the governor. The term of office of members  
13 of the board shall be five years.

14 The function and duties of the board shall be to hear  
15 appeals, make determinations on questions of miners'  
16 entitlements due to withdrawal orders and appeals from  
17 discharge or discrimination, and suspension of certification  
18 certificates.

19 The chairman of the board shall have the power to  
20 administer oaths and subpoena witnesses and require  
21 production of any books, papers, records or other docu-  
22 ments relevant or material to the appeal inquiry.

23 Each member of the board shall receive fifty dollars  
24 per diem while actually engaged in the performance of  
25 the work of the board and shall receive mileage at the rate  
26 of ten cents for each mile actually traveled going from  
27 home of the member to the place of the meeting of the  
28 board and returning therefrom, which shall be paid out  
29 of the state treasury upon a requisition upon the state  
30 auditor, properly certified by such members of the board.

31 Board members, before performing any duty, shall take  
32 and subscribe to the oath required by article four, section  
33 five of the constitution of West Virginia.

**§22-1-32. Mine rescue stations; equipment.**

1 The director of the state department of mines is hereby  
2 authorized to purchase, equip and operate for the use  
3 of said department such mine rescue stations and equip-  
4 ment as he may deem necessary.

**§22-1-33. Mine rescue crews.**

1 The director of the state department of mines is hereby  
2 authorized to have trained and employed at the rescue  
3 stations, operated by the department within the state,  
4 such rescue crews as he may deem necessary. Each  
5 member of a rescue crew shall devote four hours each

6 month for training purposes and shall be available at  
7 all times to assist in rescue work at explosions and mine  
8 fires. Regular members shall receive for such services  
9 the sum of thirty-two dollars per month, and captains  
10 shall receive thirty-five dollars per month, payable on  
11 requisition approved by the director of the department  
12 of mines. The director of the department of mines may  
13 remove any member of a rescue crew at any time.

14 After the effective date of this article, it shall be the  
15 duty and responsibility of the department of mines to  
16 see that all rescue teams be properly trained by a  
17 qualified instructor of the department of mines or such  
18 persons who have a certificate of training from the  
19 United States bureau of mines.

20 To qualify for membership of a mine rescue crew, an  
21 applicant shall (a) be not more than fifty years of age;  
22 (b) pass a physical examination by a licensed physician  
23 at least annually; a record that such examination was  
24 taken together with pertinent data relating thereto shall  
25 be kept on file by the operator, and a copy shall be fur-  
26 nished to the director of the department of mines. All  
27 rescue or recovery teams performing recovery work shall  
28 be under the jurisdiction of the department of mines  
29 guided by the mine rescue apparatus and auxiliary  
30 equipment manual.

31 When engaged in rescue work required by an explo-  
32 sion, fire or other emergency at a mine, all members of  
33 mine rescue teams assigned to rescue operations shall,  
34 during the period of their rescue work, be employees  
35 of the operator of the mine where the emergency exists,  
36 and shall be compensated by the operator at the rate  
37 established in the area for such work. In no case shall  
38 this rate be less than the prevailing wage rate in the  
39 industry for the most skilled class of inside mine labor.  
40 During the period of their emergency employment, mem-  
41 bers of mine rescue teams shall be protected by the  
42 workmen's compensation subscription of such emergency  
43 employer.

44 During recovery work and prior to entering any mine  
45 at the start of each shift, all rescue or recovery teams

46 shall be properly informed of existing conditions and  
47 work to be performed by the designated company official  
48 in charge.

49 For every two teams performing rescue or recovery  
50 work underground, one six-member team shall be sta-  
51 tioned at the mine portal.

52 Two-way communication and lifeline or its equivalent  
53 shall be provided inby the fresh air base to all rescue or  
54 recovery teams, and no team member shall be permitted  
55 to advance beyond such communication system.

56 Each rescue or recovery team performing work with  
57 breathing apparatus shall be provided with a backup  
58 team of equal strength, stationed at each fresh air base.

59 A rescue or recovery team shall immediately return  
60 to the fresh air base when any team member's atmos-  
61 pheric pressure depletes to sixty atmospheres.

**§22-1-34. Mine rescue teams.**

1 It shall be the duty of any mine operator employing  
2 fifty or more employees to have available for mine rescue  
3 work a trained mine rescue team, the members of which  
4 shall work in the general area of the mine. In the event  
5 of any fire, explosion or recovery operations in or about  
6 any mine, the director of the department of mines is  
7 hereby authorized to call and assign any rescue team for  
8 the protection of employees and the preservation of prop-  
9 erty. The director also may assign mine rescue and re-  
10 covery work to inspectors, instructors, or other qualified  
11 employees of the department of mines as he may deem  
12 desirable.

**§22-1-35. Provisions of article severable.**

1 The various provisions of this article shall be construed  
2 as separable and severable, and should any of the provi-  
3 sions, sentences, clauses, or parts thereof be construed or  
4 held unconstitutional or for any reason be invalid, the re-  
5 maining provisions of this article shall not be thereby  
6 affected.

**ARTICLE 2. COAL MINES.**

**MINE MAPS**

**§22-2-1. Supervision by professional engineer or licensed land sur-  
veyor; seal and certification; contents; extensions; reposi-**

tory; availability; traversing; copies; archive; final survey and map; penalties.

#### VENTILATION

- §22-2-2. Plan of ventilation; approval by director of department of mines.
- §22-2-3. Fans.
- §22-2-4. Ventilation of mines in general.
- §22-2-5. Unused and abandoned parts of mine.

#### MOVEMENT OF EQUIPMENT

- §22-2-6. Movement of mining equipment.

#### MINE FOREMAN

- §22-2-7. When mine foreman to be employed; qualifications; assistants.
- §22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors.
- §22-2-9. Slopes, incline planes and haulage roads.
- §22-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.
- §22-2-11. Boreholes.
- §22-2-12. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.
- §22-2-13. Daily inspection of working places; records.
- §22-2-14. Safety inspection; removal of gases.
- §22-2-15. Dangerous places.
- §22-2-16. Examinations of reports of fire bosses.
- §22-2-17. Ascertainment, record and removal of all dangers.
- §22-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.
- §22-2-19. Death or resignation of mine foreman; successor.

#### FIRE BOSS

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- §22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
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- §22-2-66. Explosion or accident; notice; investigation by department of mines.
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- §22-2-71. Reopening old or abandoned mines.  
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## MINE MAPS

**§22-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.**

1 The mapping of all coal mines shall be supervised by  
 2 a competent engineer or land surveyor. The work of such  
 3 engineer or land surveyor shall be supervised by either  
 4 a civil engineer or a mining engineer certified by the  
 5 board of engineers, which exists by authority of section  
 6 three, article thirteen, chapter thirty of this code, or a  
 7 licensed land surveyor approved by the board of exam-  
 8 iners of land surveyors as provided by section three,  
 9 article thirteen-a of said chapter thirty. To each map  
 10 supervised by the engineer or land surveyor there shall  
 11 be affixed thereto the seal of a certified or professional  
 12 engineer or licensed land surveyor, which shall be identi-  
 13 cal to the design authorized by the board of engineers,  
 14 as provided in section nine, article thirteen of said chapter  
 15 thirty or board of examiners of land surveyors as pro-  
 16 vided by section eleven, article thirteen-a of said chapter  
 17 thirty. Every map certified shall have the professional  
 18 engineer's or land surveyor's signature and certificate, in  
 19 addition to his seal, in the following form:

20 "I, the undersigned, hereby certify that this map is  
 21 correct and shows all the information, to the best of my  
 22 knowledge and belief, required by the laws of this State,  
 23 and covers the period ending \_\_\_\_\_

24 \_\_\_\_\_ P. E.  
 25 (Either Civil or Mining Engineer  
 26 or Land Surveyor)."

27 The operator of every underground coal mine shall  
 28 make, or cause to be made, an accurate map of such  
 29 mine, on a scale of not less than one hundred, and not  
 30 more than five hundred feet to the inch. The map of such  
 31 mine shall show:



- 32 (1) Name and address of the mine;
- 33 (2) The scale and orientation of the map;
- 34 (3) The property or boundary lines of the mine;
- 35 (4) The shafts, slopes, drifts, tunnels, entries, rooms,  
36 crosscuts and all other excavations and auger and strip  
37 mined areas of the coalbed being mined;
- 38 (5) All drill holes that penetrate the coalbed being  
39 mined;
- 40 (6) Dip of the coalbed;
- 41 (7) The outcrop of the coalbed within the bounds of  
42 the property assigned to the mine;
- 43 (8) The elevations of tops and bottoms of shafts and  
44 slopes, and the floor at the entrance to drift and tunnel  
45 openings;
- 46 (9) The elevation of the floor at intervals of not more  
47 than two hundred feet in:
  - 48 (a) At least one entry of each working section, and  
49 main and cross entries;
  - 50 (b) The last line of open crosscuts of each working  
51 section, and main and cross entries before such sections  
52 and main and cross entries are abandoned; and
  - 53 (c) Rooms advancing toward or adjacent to property  
54 or boundary lines or adjacent mines;
- 55 (10) Contour lines passing through whole number  
56 elevations of the coalbed being mined, the spacing of  
57 such lines not to exceed ten-foot elevation levels, except  
58 that a broader spacing of contour lines may be approved  
59 for steeply-pitching coalbeds by the person authorized  
60 so to do under the federal act; and contour lines may be  
61 placed on overlays or tracings attached to mine maps;
- 62 (11) As far as practicable the outline of existing and  
63 extracted pillars;
- 64 (12) Entries and air courses with the direction of air-  
65 flow indicated by arrows;
- 66 (13) The location of all surface mine ventilation fans,  
67 which location may be designated on the mine map by  
68 symbols;
- 69 (14) Escapeways;

70 (15) The known underground workings in the same  
71 coalbed on the adjoining properties within one thousand  
72 feet of such mine workings and projections;

73 (16) The location of any body of water dammed in  
74 the mine or held back in any portion of the mine, but  
75 such bodies of water may be shown on overlays or trac-  
76 ings attached to the mine maps used to show contour  
77 lines, as provided under subdivision ten of this section;

78 (17) The elevation of any body of water dammed in  
79 the mine or held back in any portion of the mine;

80 (18) The abandoned portion or portions of the mine;

81 (19) The location and description of at least two  
82 permanent base line points coordinated with the under-  
83 ground and surface mine traverses, and the location and  
84 description of at least two permanent elevation bench  
85 marks used in connection with establishing or referencing  
86 mine elevation surveys;

87 (20) Mines above or below;

88 (21) Water pools above;

89 (22) The location of the principal streams and bodies  
90 of water on the surface;

91 (23) Either producing or abandoned oil and gas wells  
92 located within five hundred feet of such mine and any  
93 underground area of such mine;

94 (24) The location of all high pressure pipelines, high  
95 voltage power lines and principal roads;

96 (25) The location of railroad tracks and public high-  
97 ways leading to the mine, and mine buildings of a perma-  
98 nent nature with identifying names shown;

99 (26) Where the overburden is less than one hundred  
100 feet, occupied dwellings; and

101 (27) Such other information as may be required under  
102 the federal act or by the department of mines.

103 The operator of every underground coal mine shall  
104 extend, or cause to be extended, on or before the first  
105 day of March and on or before the first day of September  
106 of each year, such mine map thereof to accurately show  
107 the progress of the workings as of the first day of July  
108 and the first day of January of each year. Such map shall

109 be kept up to date by temporary notations, which shall  
110 include:

111 (1) The location of each working face of each working  
112 place;

113 (2) Pillars mined or other such second mining;

114 (3) Permanent ventilation controls constructed or re-  
115 moved, such as seals, overcasts, undercasts, regulators  
116 and permanent stoppings, and the direction of air cur-  
117 rents indicated; and

118 (4) Escapeways designated by means of symbols.

119 Such map shall be revised and supplemented at inter-  
120 vals prescribed under the federal act on the basis of a  
121 survey made or certified by such engineer or surveyor,  
122 and shall be kept by the operator in a fireproof repository  
123 located in an area on the surface chosen by the operator  
124 to minimize the danger of destruction by fire or other  
125 hazard.

126 Such map and any revision and supplement thereof  
127 shall be available for inspection by a federal mine in-  
128 spector, by mine health and safety instructors, by miners  
129 in the mine and their representatives and by operators  
130 of adjacent coal mines and by persons owning, leasing or  
131 residing on surface areas of such mines or areas adjacent  
132 to such mines, and a copy of such map and any revision  
133 and supplement thereof shall be promptly filed with the  
134 department of mines. The operator shall also furnish to  
135 persons expressly entitled thereto under the federal act,  
136 upon request, one or more copies of such maps and any  
137 revision and supplement thereof. Such map or revision  
138 and supplement thereof shall be kept confidential and its  
139 contents shall not be divulged to any other person,  
140 except to the extent necessary to carry out the provisions  
141 of the federal act and this chapter and in connection with  
142 the functions and responsibilities of the secretary of  
143 housing and urban development.

144 Surveying calculations and mapping of underground  
145 coal mines which were or are opened or reopened after  
146 July one, one thousand nine hundred sixty-nine, shall be  
147 done by the rectangular coordinate traversing method  
148 and meridians carried through and tied between at least

149 two parallel entries of each development panel and panels  
150 or workings adjacent to mine boundaries or abandoned  
151 workings. These surveys shall originate from at least  
152 three permanent survey monuments on the surface of  
153 the mine property. The monuments shall be clearly  
154 referenced and described in the operator's records. Eleva-  
155 tions shall be tied to either the United States geological  
156 survey or the United States coast and geodetic survey  
157 bench mark system, be clearly referenced and described  
158 on such map.

159 Underground coal mines operating on July one, one  
160 thousand nine hundred sixty-nine, and not using the  
161 rectangular coordinate traversing method shall, within  
162 two years of such date, convert to this procedure for sur-  
163 veying calculations and mapping. Meridians shall be  
164 carried through and tied between at least two parallel  
165 entries of each development panel and panels or workings  
166 adjacent to mine boundaries or abandoned workings.  
167 These surveys shall originate from at least three perma-  
168 nent survey monuments on the surface of the mine prop-  
169 erty. The monuments shall be clearly referenced and  
170 described in the coal mine operator's records. Elevations  
171 shall be tied to either the United States geological survey  
172 or the United States coast and geodetic survey bench  
173 mark system, be clearly referenced and described on such  
174 map.

175 The operator of such underground coal mine shall, by  
176 reasonable proof, demonstrate to the director of the de-  
177 partment of mines or to any federal mine inspector con-  
178 cerned, at any time, that a diligent search was made for  
179 all existing and available maps and survey data for the  
180 workings on the adjoining properties. The operator shall  
181 further be able to show proof to the director of the de-  
182 partment of mines or to any federal mine inspector  
183 concerned, that a suitable method was used to insure  
184 accuracy in the methods used in transposing other work-  
185 ings to the map of such mine.

186 There shall be an archive of underground coal mine  
187 maps maintained at the office of the director of the  
188 department of mines. The archive shall:

189 (1) Be secured in a fireproof and burglarproof vault;  
190 (2) Have an appropriate map identification system;  
191 and

192 (3) Have adequate map microfilming facilities.

193 Whenever an operator permanently closes or abandons  
194 an underground coal mine, or temporarily closes an un-  
195 derground coal mine for a period of more than ninety  
196 days, he shall promptly notify the department of mines  
197 and the federal mine inspector of the district in which  
198 such mine is located of such closure. Within sixty days  
199 of the permanent closure or abandonment of an under-  
200 ground coal mine, or, when an underground coal mine  
201 is temporarily closed, upon the expiration of a period of  
202 ninety days from the date of closure, the operator shall  
203 file with the department of mines and such federal mine  
204 inspector a copy of the mine map revised and supple-  
205 mented to the date of the closure. Such copy of the mine  
206 map shall be certified by a certified or professional engi-  
207 neer or licensed surveyor as aforesaid and shall be avail-  
208 able for public inspection.

209 Any person having a map or surveying data of any  
210 worked out or abandoned underground coal mine shall  
211 make such map or data available to the department of  
212 mines to copy or reproduce such material.

213 Any person who fails or refuses to discharge any duty  
214 imposed upon him by this section shall be guilty of a  
215 misdemeanor, and, upon conviction thereof, shall be fined  
216 not less than five hundred dollars nor more than one  
217 thousand dollars.

## VENTILATION

### **§22-2-2. Plan of ventilation; approval by director of department of mines.**

1 Every operator of a coal mine, before making any new  
2 or additional openings, shall submit to the director of the  
3 department of mines, for his information and approval, a  
4 general plan showing the proposed system of ventilation  
5 and ventilating equipment of the openings, with their  
6 location and relative positions to adjacent developments;  
7 no such new or additional openings shall be made until  
8 approved by the director of the department of mines.

9 The director of the department of mines shall promptly  
10 approve any such plans submitted, if the proposed system  
11 of ventilation and ventilating equipment meet the require-  
12 ments of this article.

### §22-2-3. Fans.

1 (a) The ventilation of mines, the systems for which  
2 extend for more than two hundred feet underground and  
3 which are opened after the effective date of this article,  
4 shall be produced by a mechanically operated fan or  
5 mechanically operated fans. Ventilation by means of  
6 a furnace is prohibited in any mine. The fan or fans  
7 shall be kept in continuous operation, unless written  
8 permission to do otherwise be granted by the director  
9 of the department of mines. In case of interruption  
10 to a ventilating fan or its machinery whereby the  
11 ventilation of the mine is interrupted, immediate  
12 action shall be taken by the mine operator or his  
13 management personnel, in all mines, to cut off the  
14 power and withdraw the men from the face regions  
15 or other areas of the mine affected. If ventilation  
16 is restored in fifteen minutes, the face regions and  
17 other places in the affected areas where gas (methane)  
18 is likely to accumulate, shall be reexamined by a cer-  
19 tified person; and if found free of explosive gas,  
20 power may be restored and work resumed. If ven-  
21 tilation is not restored in fifteen minutes, all under-  
22 ground employees shall be removed from the mine,  
23 all power shall be cut off in a timely manner, and  
24 the underground employees shall not return until  
25 ventilation is restored and the mine examined by cer-  
26 tified persons, mine examiners, or other persons hold-  
27 ing a certificate to make preshift examination.

28 (b) All main fans installed after the effective date of  
29 this article shall be located on the surface in fireproof  
30 housings offset not less than fifteen feet from the nearest  
31 side of the mine opening, equipped with fireproof air  
32 ducts, provided with explosion doors or a weak wall, and  
33 operated from an independent power circuit. In lieu of  
34 the requirements for the location of fans and pressure-  
35 relief facilities, a fan may be directly in front of, or over

36 a mine opening: *Provided*, That such opening is not in  
37 direct line with possible forces coming out of the mine if  
38 an explosion occurs: *Provided, however*, That there is  
39 another opening having a weak-wall stopping or ex-  
40 plosion doors that would be in direct line with forces  
41 coming out of the mine. All main fans shall be provided  
42 with pressure-recording gauges or water gauges. A daily  
43 inspection shall be made of all main fans and machinery  
44 connected therewith by a certified electrician and a rec-  
45 ord kept of the same in a book prescribed for this pur-  
46 pose or by adequate facilities provided to permanently  
47 record the performance of the main fans and to give warn-  
48 ing of an interruption to a fan.

49 (c) Auxiliary fans and tubing shall be permitted to be  
50 used in lieu of or in conjunction with line brattice to  
51 provide adequate ventilation to the working faces:  
52 *Provided*, That auxiliary fans be so located and oper-  
53 ated to avoid recirculation of air at any time. Auxiliary  
54 fans shall be approved and maintained as permissible.

55 (d) If the auxiliary fan is stopped or fails, the elec-  
56 trical equipment in the place shall be stopped and the  
57 power disconnected at the power source until ventilation  
58 in the working place is restored. During such stoppage,  
59 the ventilation shall be by means of the primary air  
60 current conducted into the place in a manner to pre-  
61 vent accumulation of methane.

62 (e) In places where auxiliary fans and tubing are used,  
63 the ventilation between shifts, weekends, and idle shifts  
64 shall be provided to face areas with line brattice or the  
65 equivalent to prevent accumulation of methane.

66 (f) If the air passing through the auxiliary fan or  
67 tubing contains gas in excess of one percent, the current  
68 shall at once be switched off and the trailing cable shall  
69 forthwith be disconnected from the power supply until  
70 the place is pronounced safe.

71 (g) The director may require that when continuous  
72 mine equipment is being used, all face ventilating sys-  
73 tems using auxiliary fans and tubing shall be provided  
74 with machine-mounted diffuser fans, and such fans shall  
75 be continuously operated during mining operations.

76 (h) In the event of a fire or explosion in any coal mine,  
77 the ventilating fan or fans shall not intentionally be  
78 started, stopped, speed increased or decreased or the di-  
79 rection of the air current changed without the approval  
80 of the general mine foreman, and, if he is not immediately  
81 available, a representative of the state department of  
82 mines. A duly authorized representative of the employees  
83 should be consulted if practical under the circumstances.

**§22-2-4. Ventilation of mines in general.**

1 (a) The operator or mine foreman of every coal mine,  
2 whether worked by shaft, slope, or drift, shall provide  
3 and hereafter maintain for every such mine adequate  
4 ventilation. In all mines the quantity of air passing  
5 through the last open crosscut between the intake and  
6 return in any pair or set of entries shall be not less than  
7 nine thousand cubic feet of air per minute and as much  
8 more as is necessary to dilute and render harmless and  
9 carry away flammable and harmful gases. All working  
10 faces in a working section between the intake and return  
11 airway entries shall be ventilated with a minimum  
12 quantity of three thousand cubic feet of air per minute  
13 and as much more as is necessary to dilute and render  
14 harmless and carry away flammable and harmful gases.  
15 The quantity of air reaching the last crosscut in pillar  
16 sections may be less than nine thousand cubic feet of air  
17 per minute if at least nine thousand cubic feet of air  
18 per minute is being delivered to the intake of the pillar  
19 line. The air current shall under any conditions have  
20 a sufficient volume and velocity to reduce and carry away  
21 smoke from blasting and any flammable or harmful  
22 gases. All active underground working places in a mine  
23 shall be ventilated by a current of air containing not less  
24 than nineteen and five-tenths percent of oxygen, not more  
25 than five-tenths percent of carbon dioxide, and no harm-  
26 ful quantities of other noxious or poisonous gases.

27 (b) Airflow shall be maintained in all intake and  
28 return air courses of a mine, and where multiple fans  
29 are used, neutral areas created by pressure equalization  
30 between main fans shall not be permitted. Production  
31 activities in working faces shall cease while tubing, line



32 brattice, or other ventilation devices are being installed  
33 inby the machine operator.

34 (c) Properly installed and adequately maintained line  
35 brattice or other approved devices shall be continuously  
36 used from the last open crosscut of an entry or room  
37 of each working section to provide adequate ventilation  
38 to the working faces for the miners and to remove flam-  
39 mable, explosive, and noxious gases, dust, and explo-  
40 sive fumes. When damaged by falls or otherwise, such  
41 line brattice or other devices shall be repaired imme-  
42 diately.

43 (d) Brattice cloth used underground shall be of flame-  
44 resistant material. The space between the line brattice  
45 or other approved device and the rib shall be large  
46 enough to permit the flow of a sufficient volume and  
47 velocity of air to keep the working face clear of flam-  
48 mable, explosive, and noxious gases, dust and explosive  
49 fumes.

50 (e) Each working unit newly developed in virgin  
51 coal hereafter, shall be ventilated by a separate split  
52 of air: *Provided*, That areas already under development  
53 and in areas where physical conditions prevent com-  
54 pliance with this provision, the director of the depart-  
55 ment of mines may grant temporary relief from com-  
56 pliance until such time as physical conditions make com-  
57 pliance possible. The quantity of air reaching the last  
58 crosscut shall not be less than nine thousand cubic feet  
59 of air per minute and shall under any condition have  
60 sufficient volume and velocity to reduce and carry away  
61 smoke and flammable or harmful gases from each work-  
62 ing face in the section.

63 (f) As working places advance, crosscuts for air  
64 shall be made not more than eighty feet apart. Where  
65 necessary to render harmless and carry away noxious  
66 or flammable gases, line brattice or other approved  
67 methods of ventilation shall be used so as to properly  
68 ventilate the face. All crosscuts between the main in-  
69 take and return airways not required for passage of air  
70 and equipment shall be closed with stoppings substan-  
71 tially built with incombustible or fire-resistive material

72 so as to keep working places well ventilated. In mines  
73 where it becomes necessary to provide larger pillars for  
74 adequate roof support, working places shall not be driven  
75 more than two hundred feet without providing a con-  
76 nection that will allow the free flow of air currents. In  
77 such cases, a minimum of twelve thousand cubic feet  
78 of air a minute shall be delivered to the last open  
79 crosscut and as much more as is necessary to dilute and  
80 render harmless and carry away flammable and noxious  
81 gases.

82 (g) In special instances for the construction of side-  
83 tracks, haulageways, airways, or openings in shaft bot-  
84 tom or slope bottom layouts where the size and strength  
85 of pillars is important, the director of the department  
86 of mines may issue a permit approving greater distances.  
87 The permit shall specify the conditions under which such  
88 places may be driven.

89 (h) In all mines a system of bleeder openings or air  
90 courses designed to provide positive movement of air  
91 through and/or around abandoned or caved areas, suf-  
92 ficient to prevent dangerous accumulation of gas in  
93 such areas and to minimize the effect of variations in  
94 atmospheric pressure shall be made a part of pillar  
95 recovery plans projected after the effective date of this  
96 article.

97 (i) If a bleeder return is closed as a result of roof  
98 falls or water during pillar recovery operations, pillar  
99 operations may continue without reopening the bleeder  
100 return if at least twenty thousand cubic feet of air per  
101 minute is delivered to the intake of the pillar line.

102 (j) No operator or mine foreman shall permit any  
103 person to work where he is unable to maintain the quan-  
104 tity and quality of the air current as heretofore required:  
105 *Provided*, That such provisions shall not prohibit the  
106 employment of men to make place of employment safe.

107 (k) The ventilation of any mine shall be so arranged  
108 by means of airlocks, overcasts, or undercasts, that the  
109 use of doors on passageways where men or equipment  
110 travel may be kept to a minimum. Where doors are used  
111 in a mine they shall be erected in pairs so as to pro-

112 vide a ventilated airlock unless the doors are operated  
113 mechanically.

114 (l) A crosscut shall be provided at or near the face  
115 of each entry or room before such places are abandoned.

116 (m) Overcasts or undercasts shall be constructed of  
117 incombustible material and maintained in good condition.

#### §22-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned  
2 after the effective date of this article shall be sealed or  
3 ventilated. If such workings are sealed, the sealing shall  
4 be done with incombustible material in a manner pre-  
5 scribed by the director of the department of mines, and  
6 one or more of the seals of every sealed area shall be  
7 fitted with a pipe and cap or valve to permit the sampling  
8 of gases and measuring of hydrostatic pressure behind  
9 the seals. For the purpose of this section, working within  
10 a panel shall not be deemed to be abandoned until such  
11 panel is abandoned.

12 (b) Air that has passed through an abandoned area  
13 or an area which is inaccessible or unsafe for inspection  
14 or air that has been used to ventilate seals shall not  
15 be used to ventilate any working place in any mine.  
16 No air which has been used to ventilate an area from  
17 which the pillars have been removed shall be used to  
18 ventilate any working place in a mine, except that such  
19 air, if it does not contain 0.25 volume percent or more  
20 of methane, may be used to ventilate enough advancing  
21 working places immediately adjacent to the line of  
22 retreat to maintain an orderly sequence of pillar re-  
23 covery on a set of entries. Before sealed areas, temporary  
24 or permanent are reopened, the director of the department  
25 of mines shall be notified.

#### MOVEMENT OF EQUIPMENT

##### §22-2-6. Movement of mining equipment.

1 Mining equipment being transported or trammed un-  
2 derground, other than ordinary sectional movements,  
3 shall be transported or trammed by qualified personnel

4 under the supervision of a certified foreman. When equip-  
5 ment is being transported or trammed, no person shall  
6 be permitted to be in by the equipment in the ventilating  
7 split that is passing over such equipment. To avoid acci-  
8 dental contact with power lines, face equipment shall  
9 be insulated and assemblies removed, if necessary, so as  
10 to provide clearance.

#### MINE FOREMAN

##### §22-2-7. When mine foreman to be employed; qualifications; assistants.

1 In every coal mine where five or more persons are em-  
2 ployed in a period of twenty-four hours, the operators  
3 shall employ a mine foreman who shall be a competent  
4 and practical person, holding a certificate of competency  
5 for such position issued to him by the department of  
6 mines after an examination by such department. In order  
7 to receive a certificate of competency to qualify as mine  
8 foreman, he shall at the time he takes the examination,  
9 be a citizen, resident or employed in a mine in this state,  
10 of good moral character and temperate habits, having had  
11 at least three years' experience in the underground work-  
12 ing, ventilation and drainage of coal mines, or be a grad-  
13 uate of the school of mines of West Virginia University  
14 or of another accredited mining engineering school and  
15 have had one year's practical experience in coal mines:  
16 *Provided, however,* That in order to serve as a mine fore-  
17 man he shall have had at least five years' practical ex-  
18 perience, and if such service be at a gassy mine then at  
19 least two years of such experience shall have been in a  
20 gassy mine: *Provided further,* That any person holding a  
21 mine foreman's certificate issued by any other state may  
22 act in the capacity of mine foreman in any mine in this  
23 state until the next regular mine foreman's examination  
24 held by the department, but not to exceed a maximum of  
25 ninety days.

26 In mines in which the operations are so extensive that  
27 all the duties devolving upon the mine foreman cannot  
28 be discharged by one man, competent persons having had  
29 at least three years' experience in coal mines may be  
30 designated as assistants, who shall act under the mine

31 foreman's instructions and the mine foreman shall be  
32 responsible for their conduct in the discharge of their  
33 duties under such designation.

**§22-2-8. Duties; ventilation; loose coal, slate or rocks; props;  
drainage of water; man doors.**

1 (a) The duties of the mine foreman shall be to keep a  
2 careful watch over the ventilating apparatus, the airways,  
3 traveling ways, pumps and drainage. He shall see that, as  
4 the miners advance their excavations, proper break-  
5 throughs are made so as to ventilate properly the mine;  
6 that all loose coal, slate and rock overhead in the working  
7 places and along the haulways are removed or carefully  
8 secured so as to prevent danger to persons employed in  
9 such mines, and that sufficient suitable props, caps, tim-  
10 bers, roof bolts, or other approved methods of roof sup-  
11 ports are furnished for the places where they are to be  
12 used and delivered at suitable points. The mine foreman  
13 shall have all water drained or hauled out of the working  
14 places where practicable, before the miners enter, and  
15 such working places shall be kept dry as far as practicable  
16 while the miners are at work. It shall be the duty of the  
17 mine foreman to see that proper crosscuts are made, and  
18 that the ventilation is conducted by means of such cross-  
19 cuts through the rooms by means of checks or doors placed  
20 on the entries or other suitable places, and he shall not  
21 permit any room to be opened in advance of the ventila-  
22 tion current. The mine foreman or other certified persons  
23 designated by him, shall measure the air current with an  
24 anemometer or other approved device at least weekly at  
25 the inlet and outlet at or near the faces of the advanced  
26 headings, and shall keep a record of such measurements  
27 in a book or upon a form prescribed by the director of the  
28 department of mines. Signs directing the way to outlets  
29 or escapeways shall be conspicuously placed throughout  
30 the mine.

31 (b) After the effective date of this article, hinged man  
32 doors, at least thirty inches square or the height of the  
33 coal seam, shall be installed between the intake and the  
34 return at intervals of three hundred feet when the height  
35 of the coal is below forty-eight inches and at intervals

36 of five hundred feet when the height of the coal is above  
37 forty-eight inches.

**§22-2-9. Slopes, incline planes and haulage roads.**

1 The mine foreman shall require that all slopes, incline  
2 planes and haulage roads used by any person in the mine  
3 shall conform to the provisions of this article.

**§22-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.**

1 On all haulways, where hauling is done by machinery  
2 of any kind, the mine foreman shall provide for a proper  
3 system of signals, and a conspicuous light or approved trip  
4 reflector on the rear of every trip or train of cars when  
5 in motion in a mine. When hoisting or lowering of men  
6 occurs in the morning before daylight, or in the evening  
7 after darkness, at any mine operated by shaft, the mine  
8 foreman shall provide and maintain at the shaft mouth a  
9 light of stationary character, sufficient to show the land-  
10 ing and all surrounding objects distinctly, and sufficient  
11 light of a stationary character shall be located at the  
12 bottom of the shaft so that persons coming to the bottom  
13 may clearly discern the cages and other objects contigu-  
14 ous thereto. The mine foreman shall require that no cages  
15 on which men are riding shall be lifted or lowered at a  
16 rate of speed greater than one thousand feet per minute  
17 and that no mine cars, either empty or loaded, shall be  
18 hoisted while men are being lowered, and no cage having  
19 an unstable self-dump platform shall be used for the  
20 carrying of workmen unless the same is provided with  
21 some device by which it may be securely locked when  
22 men are being hoisted or lowered into the mine. *Provided,*  
23 *however,* That during the initial development of a mine,  
24 and only until the shafts are joined, men shall be per-  
25 mitted to ride cages with one empty car which has been  
26 bolted or strapped to the cage.

**§22-2-11. Boreholes.**

1 It shall further be the duty of the mine foreman to  
2 have boreholes kept not less than twenty feet in advance  
3 of the face, one each twenty feet on sides of the working

4 places that are being driven toward and in dangerous  
5 proximity to an abandoned mine or part of a mine which  
6 may contain inflammable gases or which is filled with  
7 water. These holes shall be drilled whenever any work-  
8 ing place in an underground mine approaches within fifty  
9 feet of abandoned workings in such mine, as shown by  
10 surveys made and certified by a competent engineer or  
11 surveyor, or within two hundred feet of any abandoned  
12 workings of such mine which cannot be inspected.

**§22-2-12. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.**

1 The department of mines shall prescribe and establish  
2 a course of instruction in mine safety and particularly in  
3 dangers incident to such employment in mines and in  
4 mining laws and rules, which course of instruction shall  
5 be successfully completed within twelve weeks after any  
6 person shall be first employed as a miner. It shall further  
7 be the duty and responsibility of the department of  
8 mines to see that such course shall be given to all per-  
9 sons as above provided after their first being employed  
10 in any mine in this state.

11 It shall be the duty of the mine foreman or the assistant  
12 mine foreman of every coal mine in this state to see that  
13 every person employed to work in such mine shall, before  
14 beginning work therein, be instructed in the particular  
15 danger incident to his work in such mine, and be fur-  
16 nished a copy of the mining laws and rules of such mine.  
17 Every inexperienced person so employed shall work  
18 under the direction of the mine foreman, his assistant, or  
19 such other experienced worker as may be designated by  
20 the mine foreman or assistant, until he is familiar with  
21 the danger incident to his work.

22 Persons whose duties require them to use a flame safety  
23 lamp or other approved methane detectors shall be  
24 examined at least annually as to their competence by a  
25 qualified official from the West Virginia department of  
26 mines and a record of such examination shall be kept  
27 by the operator and the department of mines.

**§22-2-13. Daily inspection of working places; records.**

1 The mine foreman or his assistants shall visit and care-  
2 fully examine each working place in the mine at least  
3 once every two hours each shift while the miners of  
4 such places are at work, and shall direct that each work-  
5 ing place shall be secured by props, timbers, roof bolts,  
6 or other approved methods of roof support or both where  
7 necessary to the end that the working places shall be  
8 made safe. Should the mine foreman or his assistants  
9 find a place to be in a dangerous condition, they shall not  
10 leave the place until it is made safe, or shall remove the  
11 persons working therein until the place is made safe by  
12 some competent person designated for that purpose.

13 He shall place his initials, time and the date at or near  
14 each place he examines. He shall also record any danger-  
15 ous conditions and practices found during his examination  
16 in a book provided for that purpose.

**§22-2-14. Safety inspection; removal of gases.**

1 It shall be the duty of the mine foreman, or other  
2 certified person designated by him, to examine all work-  
3 ing places under his supervision for hazards at least once  
4 every two hours during each coal-producing shift, or  
5 oftener if necessary for safety. In all mines such examina-  
6 tions shall include tests with a permissible flame safety  
7 lamp or other approved detector for methane and oxygen  
8 deficiency. It shall also be his duty to remove as soon as  
9 possible after its discovery any accumulations of explo-  
10 sive or noxious gases in active workings, and where prac-  
11 ticable, any accumulations of explosive or noxious gases  
12 in the worked out and abandoned portions of the mine.

**§22-2-15. Dangerous places.**

1 The mine foreman shall direct and see that all danger-  
2 ous places and the entrance or entrances to worked out  
3 and abandoned places in all mines are properly dangered  
4 off across the openings.

**§22-2-16. Examinations of reports of fire bosses.**

1 The mine foreman shall also, each day, read carefully  
2 and countersign with ink or indelible pencil all reports



3 entered in the record book of the fire bosses, and he  
4 shall supervise the fire boss or fire bosses, except as  
5 hereinafter provided in section twenty-two of this article.

**§22-2-17. Ascertainment, record and removal of all dangers.**

1 The mine foreman shall give prompt attention to the  
2 removal of all dangers reported to him by his assistants,  
3 the fire boss, or any other person working in the  
4 mine, and in case it is impracticable to remove the danger  
5 at once, he shall notify all persons whose safety is men-  
6 aced thereby to remain away from the area where the  
7 dangerous condition exists. He or his assistants or certi-  
8 fied persons designated by him, shall at least once each  
9 week travel and examine the air courses, roads and open-  
10 ings that give access to old workings or falls, and make  
11 a record of the condition of all places where danger has  
12 been found, with ink or indelible pencil in a book pro-  
13 vided for that purpose.

**§22-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.**

1 The mine foreman shall notify, in writing, the oper-  
2 ator or superintendent of the mine, and the director of  
3 the department of mines, of his inability to comply with  
4 any of the requirements of this law, and it shall then  
5 become the duty of such operator or superintendent  
6 promptly to attend to the matter complained of by the  
7 mine foreman so as to enable him to comply with the  
8 provisions hereof. Every operator of a mine shall furnish  
9 all supplies necessary for the mine foreman to comply  
10 with the requirements of this law after being requested  
11 to do so in writing by the mine foreman.

**§22-2-19. Death or resignation of mine foreman; successor.**

1 In case of the death or resignation of a mine foreman,  
2 the superintendent or manager shall appoint a certified  
3 man to act as mine foreman.

**FIRE BOSS**

**§22-2-20. When fire boss to be employed; qualifications.**

1 Every operator shall employ a mine examiner known as  
2 a fire boss, who shall hold a certificate of competency for

3 such position issued to him by the department of mines  
4 after taking an examination held by the department of  
5 mines. In order to receive a certificate of competency to  
6 qualify as a fire boss, he shall at the time he takes the  
7 examination, be a citizen, resident or employed in a mine  
8 in this state, having had at least three years' experience  
9 in the underground working, ventilation and drainage of  
10 coal mines; he shall have such knowledge of methane and  
11 other dangerous gas or gases as to be able to detect the  
12 same with a permissible flame safety lamp; he shall have  
13 a practical knowledge of the subject of ventilation of  
14 mines and the machinery and appliances used for that  
15 purpose; and he shall also be a person of good moral char-  
16 acter and temperate habits.

**§22-2-21. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.**

1 It shall be the duty of the fire boss, or a certified person  
2 acting as such, to prepare a danger signal (a separate sig-  
3 nal for each shift) with red color at the mine entrance at  
4 the beginning of his shift or prior to his entering the mine  
5 to make his examination and, except for those persons  
6 already on assigned duty, no person except the mine  
7 owner, operator, or agent, and only then in the case of  
8 necessity, shall pass beyond this danger signal until the  
9 mine has been examined by the fire boss or other certified  
10 person and the mine or certain parts thereof reported by  
11 him to be safe. When reported by him to be safe, the dan-  
12 ger sign or color thereof shall be changed to indicate that  
13 the mine is safe in order that employees going on shift  
14 may begin work. Each person designated to make such  
15 fire boss examinations shall be assigned a definite under-  
16 ground area of such mine, and, in making his examination  
17 shall examine all active working places in the assigned  
18 area and make tests with a permissible flame safety lamp  
19 for accumulations of methane and oxygen deficiency;  
20 examine seals and doors; examine and test the roof, face,  
21 and ribs in the working places and on active roadways  
22 and travelways, approaches to abandoned workings and  
23 accessible falls in active sections. He shall place his

24 initials and the date at or near the face of each place he  
25 examines. Should he find a condition which he considers  
26 dangerous to persons entering such areas, he shall place a  
27 conspicuous danger sign at all entrances to such place or  
28 places. Only persons authorized by the mine management  
29 to enter such places for the purpose of eliminating the  
30 dangerous condition shall enter such place or places while  
31 the sign is posted. Upon completing his examination he  
32 shall report by suitable communication system or in per-  
33 son the results of this examination to a certified person  
34 designated by mine management to receive and record  
35 such report, at a designated station on the surface of the  
36 premises of the mine or underground, before other per-  
37 sons enter the mine to work in such coal-producing shifts.  
38 He shall also record the results of his examination with  
39 ink or indelible pencil in a book prescribed by the di-  
40 rector of the department of mines kept for such purpose  
41 at a place on the surface of the mine designated by mine  
42 management. All records of daily and weekly reports, as  
43 prescribed herein, shall be open for inspection by interest-  
44 ed persons.

**§22-2-22. Fire bosses to have no superior officers.**

1 In the performance of the duties devolving upon fire  
2 bosses, or certified persons acting as such, they shall have  
3 no superior officers, but all the employees working inside  
4 of such mine or mines shall be subordinate to them in  
5 their particular work.

**§22-2-23. Unlawful to enter mine until fire boss reports it safe; exceptions.**

1 No person shall enter such mine or mines for any pur-  
2 pose at the beginning of work upon each shift therein  
3 until such signal or warning has been given by the fire  
4 boss or bosses as to the safety thereof, as by statute pro-  
5 vided, except under the direction of the fire boss or bosses,  
6 and then for the purpose of assisting in making the mine  
7 safe: *Provided, however,* That men regularly employed  
8 on a shift during which the mine is being preshift exam-  
9 ined by a fire boss or certified person shall be permitted to  
10 leave or enter the mine in the performance of their duties.

**§22-2-24. Authority of fire boss to perform other duties.**

1 Notwithstanding any other provision in this article con-  
2 tained, any person who holds a certificate issued by the  
3 state department of mines certifying his competency to  
4 act as fire boss may perform the duties of a fire boss and  
5 any other duties, statutory or otherwise, for which he is  
6 qualified, in the same mine or section and on the same  
7 day or shift.

**COAL DUST AND ROCK DUST****§22-2-25. Control of coal dust; rock dusting.**

1 (a) In all mines, dangerous accumulations of fine, dry  
2 coal and coal dust shall be removed from the mine, and  
3 all dry and dusty operating sections and haulageways and  
4 conveyors and back entries shall be rock dusted or dust  
5 allayed by such other methods as may be approved by the  
6 director of the department of mines.

7 (b) All mines or locations in mines that are too wet  
8 or too high in incombustible content for a coal dust ex-  
9 plosion to initiate or propagate are not required to be  
10 rock dusted during the time any of these conditions pre-  
11 vail. Coal dust and other dust in suspension in unusual  
12 quantities shall be allayed by sprinkling or other dust  
13 allaying devices.

14 (c) In all dry and dusty mines or sections thereof, rock  
15 dust shall be applied and maintained upon the roof, floor  
16 and sides of all operating sections, haulageways and paral-  
17 lel entries connected thereto by open crosscuts. Back  
18 entries shall be rock dusted. Rock dust shall be so ap-  
19 plied to include the last open crosscut of rooms and  
20 entries, and to within forty feet of faces. Rock dust shall  
21 be maintained in such quantity that the incombustible  
22 content of the mine dust that could initiate or propagate  
23 an explosion shall not be less than sixty-five percent, but  
24 the incombustible content in back entries shall not be  
25 less than eighty percent.

26 (d) Rock dust shall not contain more than five per-  
27 cent by volume of quartz or free silica particles and shall  
28 be pulverized so that one hundred percent will pass

29 through a twenty mesh screen and seventy percent or  
30 more will pass through a two hundred mesh screen.

### ROOF—FACE—RIBS

#### §22-2-26. Roof control programs and plans.

1 (a) Each operator shall undertake to carry out on a  
2 continuing basis a program to improve the roof control  
3 system of each coal mine and the means and measures to  
4 accomplish such system. The roof and ribs of all active  
5 underground roadways, travelways, and working places  
6 shall be supported or otherwise controlled adequately to  
7 protect persons from falls of the roof or ribs. A roof control  
8 plan and revisions thereof suitable to the roof conditions  
9 and mining system of each coal mine and approved by the  
10 director of the department of mines shall be adopted and  
11 set out in printed form on or before the first day of July,  
12 one thousand nine hundred seventy-one. The plan shall  
13 show the type of support and spacing approved by the  
14 director. Such plan shall be reviewed periodically, at  
15 least every six months by the director, taking into con-  
16 sideration any falls of roof or rib or inadequacy of sup-  
17 port of roof or ribs. No person shall proceed beyond the  
18 last permanent support unless adequate temporary support  
19 is provided or unless such temporary support is not re-  
20 quired under approved roof control plan and the absence  
21 of such support will not pose a hazard to the miners. A  
22 copy of the plan shall be furnished to the director of the  
23 department of mines or his authorized representative and  
24 shall be available to the miners and their representatives.

25 (b) The operator, in accordance with the approved  
26 plan, shall provide at or near each working face and at  
27 such other locations in the coal mines as the director may  
28 prescribe, an ample supply of suitable materials of proper  
29 size with which to secure the roof of all working places  
30 in a safe manner. Safety posts, jacks, or other approved  
31 devices shall be used to protect the workmen when roof  
32 material is being taken down, crossbars are being in-  
33 stalled, roof bolt holes are being drilled, roof bolts are  
34 being installed, and in such other circumstances as may  
35 be appropriate. Loose roof and overhanging or loose

36 faces and ribs shall be taken down or supported. Except  
37 in the case of recovery work, supports knocked out shall  
38 be replaced promptly.

**§22-2-27. Roof support; examination and testing; correction of dangerous condition; roof bolt recovery.**

1 (a) The method of mining followed in any coal mine  
2 shall not expose the miner to unusual dangers from roof  
3 falls. The width of roadways shall not exceed fourteen  
4 feet unless additional support is added cross sectional.  
5 During the development of intersections, the roof between  
6 the tangents of the arches in the entry or room shall be  
7 supported with artificial roof supports prior to the de-  
8 velopment of such intersections. All areas where the arch  
9 is broken shall be considered as having unsupported roof  
10 and such roof should have artificial roof supports in-  
11 stalled prior to any other work being performed in the  
12 area.

13 (b) Where miners are exposed to danger from falls  
14 of roof, face, and ribs, the operator shall examine and  
15 test the roof, face, and ribs before any work or machine is  
16 started, and as frequently thereafter as may be necessary  
17 to insure safety. When dangerous conditions are found,  
18 they shall be corrected immediately.

19 (c) Roof bolts shall not be recovered where complete  
20 extraction of pillars is attempted, where adjacent to clay  
21 veins or at the locations of other irregularities, whether  
22 natural or otherwise, that induce abnormal hazards.  
23 Where roof bolt recovery is permitted, it shall be con-  
24 ducted only in accordance with methods prescribed in the  
25 approved roof control plan, and shall be conducted by  
26 experienced miners and only where adequate temporary  
27 support is provided.

**§22-2-28. Canopies or cabs; electric face equipment.**

1 An authorized representative of the director may re-  
2 quire in any coal mine where the height of the coal bed  
3 permits that electric face equipment, including shuttle  
4 cars, be provided with substantially constructed canopies  
5 or cabs to protect the miners operating such equipment  
6 from roof falls and from rib and face rolls.

**EXPLOSIVES AND BLASTING****§22-2-29. Use of authorized explosives; storage or use of unauthorized explosives.**

1 Permissible explosives or permissible blasting devices  
2 only shall be used in blasting coal or other material in  
3 underground coal mines. It shall be unlawful to have,  
4 use or store any nonpermissible explosives or nonper-  
5 missible blasting devices in any coal mine or on the  
6 premises of the mine, without a permit from the director.

**§22-2-30. Surface magazines for explosives.**

1 Separate surface magazines shall be provided for stor-  
2 age of explosives, detonators and blasting heater ele-  
3 ments. Surface magazines shall be constructed of incom-  
4 bustible materials, be reasonably bulletproof and with  
5 no metal or sparking material exposed inside the maga-  
6 zine. Surface magazines shall be provided with doors  
7 constructed of at least one-fourth inch steel plate lined  
8 with a two-inch thickness of wood or the equivalent,  
9 properly screened ventilators, and with no openings ex-  
10 cept for entrances and ventilation, and shall be kept  
11 locked securely when unattended. The area for a distance  
12 of at least twenty-five feet in all directions shall be kept  
13 free of materials of a combustible nature; suitable warn-  
14 ing signs shall be erected, so located that a bullet passing  
15 directly through the face of the sign will not strike the  
16 magazine. The location of magazines shall be not less  
17 than two hundred feet from any mine openings, occupied  
18 buildings or public roads unless barricaded. If magazines  
19 are illuminated electrically, the lamps shall be of vapor-  
20 proof type, properly installed and wired, and smoking  
21 and open lights shall be prohibited in or near any  
22 magazine.

**§22-2-31. Transportation of explosives.**

1 Individual containers used to carry permissible explo-  
2 sives or detonators shall be constructed of substantial,  
3 nonconductive materials, kept closed and maintained in  
4 good condition. When explosives or detonators are trans-  
5 ported underground in cars moved by means of locomo-

6 tives, ropes, or other motive power, they shall be in sub-  
7 stantially covered cars or in special substantially-built  
8 covered containers used specifically for transporting  
9 detonators or explosives. Any container used for trans-  
10 portation or storage of explosives shall be properly identi-  
11 fied or marked. Explosives or detonators shall not be  
12 hauled into or out of a mine within five minutes pre-  
13 ceding or following a man trip. Where explosives and  
14 detonators are transported underground by belts, they  
15 shall be handled in the following manner: In the original  
16 and unopened cases, in special closed cases constructed  
17 of nonconductive material, or in suitable, individual  
18 containers. Clearance requirements shall be a minimum  
19 of eighteen inches; stop controls shall be provided at load-  
20 ing and unloading points, and an attendant shall super-  
21 vise the loading and unloading. Neither explosives nor  
22 detonators shall be transported on flight or shaking con-  
23 veyors, mechanical loading machines, locomotives,  
24 scrapers, cutting machines, drill trucks, or any self-  
25 propelled mobile equipment. If explosives and detonators  
26 are transported in the same explosives car or in the same  
27 special container, they shall be separated by at least four  
28 inches of hardwood partition or the equivalent; the bodies  
29 of such cars or containers shall be constructed or lined  
30 with nonconductive material. No hand loader shall take  
31 into any mine any larger quantity of explosives or deto-  
32 nators than he may reasonably expect to use in any one  
33 shift.

**§22-2-32. Underground storage of explosives.**

1 Explosives and detonators stored underground shall  
2 be kept in section boxes or magazines of substantial con-  
3 struction with no metal exposed on the inside, and be  
4 located at least fifteen feet from roadways and power  
5 wires in a well rock-dusted location, protected from falls  
6 of roof. If not kept in separate boxes or magazines not  
7 less than five feet apart, they may be kept in the same  
8 box or magazine if separated by at least a four-inch  
9 hardwood partition or the equivalent. Not more than a  
10 forty-eight hour supply of explosives or detonators shall  
11 be stored underground in section boxes or magazines.



12 These boxes or magazines shall be kept at least one  
13 hundred feet from the faces and out of the direct line  
14 of blasting.

**§22-2-33. Preparation of shots; blasting practices.**

1 (a) Only a certified "shot firer" designated by mine  
2 management shall be permitted to handle explosives  
3 and do blasting. Only electric detonators of proper  
4 strength fired with permissible shot firing units shall  
5 be used except under special permits as hereinafter  
6 provided, and drillholes shall be stemmed with at least  
7 twenty-four inches of incombustible material, or at least  
8 one half of the length of the hole shall be stemmed if  
9 the hole is less than four feet in depth, unless other per-  
10 missible stemming devices or methods are used. Drill-  
11 holes shall not be drilled beyond the limits of the cut,  
12 and as far as practicable, cuttings and dust shall be  
13 cleaned from the holes before the charge is inserted.  
14 Charges of explosives exceeding one and one-half pounds,  
15 but not exceeding three pounds, shall be used only if  
16 drillholes are six feet or more in depth. Ample warn-  
17 ing shall be given before shots are fired, and care shall  
18 be taken to determine that all persons are in the clear  
19 before firing. Men shall be removed from adjoining  
20 places and other places when there is danger of shots  
21 blowing through. No shots shall be fired in any place  
22 known to liberate explosive gas, until such place has  
23 been properly examined by a competent person who is  
24 designated by mine management for that purpose, and  
25 no shots shall be fired in any place where gas is detected  
26 with a permissible flame safety lamp until such gas has  
27 been removed by means of ventilation. After firing any  
28 shot, or shots, the person firing the same shall not return  
29 to the working face until the smoke has been cleared  
30 away and then he shall make a careful examination of  
31 working face before leaving the place or before per-  
32 forming any other work in the place.

33 (b) Multiple shooting in coal or rock or both is au-  
34 thorized only under permit issued by the director of  
35 the department of mines. Permission to shoot more than  
36 ten shots simultaneously may be granted by the director

37 only after consultation with interested persons, and such  
38 shooting will be performed by special methods and under  
39 precautions prescribed by the director. All multiple  
40 shooting in bottom or roof rock shall be performed in  
41 intake air, except by special permit from the director  
42 of the department of mines, after consultation with in-  
43 terested persons as heretofore provided. Multiple blast-  
44 ing of more than ten shots performed under any permit  
45 granted by the director under this section shall be done  
46 only on noncoal-producing shifts or idle days, except as  
47 may be provided as a condition of the permit granted.

48 (c) Regular or short interval delay detonators may  
49 be used for blasting purposes with written permission  
50 from the director of the department of mines. Regular  
51 delay detonators shall not be used for blasting coal, but  
52 may be used for grading above or below coal seams and  
53 during shaft, slope, tunnel work and in faults or wants.  
54 Where short-interval delay detonators are permitted by  
55 said director to be used, the shot firing circuit must be  
56 tested with a blasting galvanometer before firing, and  
57 the leg wires connected in series. No instantaneous,  
58 regular, or zero-delay detonators are to be fired in con-  
59 junction with short-interval delay detonators. The delay  
60 interval between dependent rows must not be less than  
61 twenty-five milliseconds or more than one hundred milli-  
62 seconds, and the entire series of any one round shall  
63 not provide a delay of more than five hundred milli-  
64 seconds between the first and last shot. The total number  
65 of charged holes to be fired during any one round must  
66 not exceed the limit permitted by the director. Misfires  
67 must be tested with a blasting galvanometer before  
68 removing.

69 (d) Electrical equipment shall not be operated in the  
70 face areas, and only work in connection with timbering  
71 and general safety shall be performed while boreholes  
72 are being charged. Shots shall be fired promptly after  
73 charging. Mudcaps (adobes) or any other unconfined  
74 shots shall not be permitted in any coal mine. No solid  
75 shooting shall be permitted without written permission  
76 of the department of mines.

77 (e) Blasting cables shall be well insulated and shall  
78 be as long as may be necessary to permit persons au-  
79 thorized to fire shots to get in a safe place out of the  
80 line of fire. The cable, when new, shall be at least one  
81 hundred twenty-five feet in length and never less than  
82 one hundred feet. Shooting cables shall be kept away  
83 from power wires and all other sources of electric cur-  
84 rent, connected to the leg wires by the person who fires  
85 the shot, staggered as to length or well separated at the  
86 detonator leg wires, and shunted at the battery until  
87 ready to connect to the blasting unit.

**§22-2-34. Misfires of explosives.**

1 (a) Where misfires occur with electric detonators, a  
2 waiting period of at least five minutes shall elapse before  
3 anyone returns to the shot. After such failure, the blast-  
4 ing cable shall be disconnected from the source of power  
5 and the battery ends short-circuited before electric con-  
6 nections are examined.

7 (b) Explosives shall be removed by firing a separate  
8 charge at least two feet away from and parallel to the  
9 misfired charge or by washing the stemming and the  
10 charge from the borehole with water, or by inserting and  
11 firing a new primer after the stemming has been washed  
12 out.

13 (c) A careful search of the working place, and, if  
14 necessary, of the coal after it reaches the tippie shall be  
15 made after blasting a misfired hole, to recover any un-  
16 detonated explosive.

17 (d) The handling of a misfired shot shall be under the  
18 direct supervision of the mine foreman or a certified per-  
19 son designated by him.

**§22-2-35. Other blasting devices.**

1 (a) The provisions governing the handling, storage,  
2 transportation and use of permissible explosives shall  
3 apply to all other blasting devices employing a heater  
4 element when used underground.

5 (b) Where compressed air is used for blasting, the  
6 airlines shall be grounded at the compressor and, if prac-

7 tical, at other low-resistant ground connections along the  
8 lines. They shall not be connected in any way to rails,  
9 waterlines, or other electric return conductors and shall  
10 be adequately insulated and protected where they cross  
11 electric wires, underneath track, or at places where equip-  
12 ment passes over or under. Steel, copper, or other air-  
13 lines connected therewith shall not be handled or re-  
14 paired when air pressure is in the line. Shutoff valves  
15 shall be installed every thousand feet in all compressed-  
16 air blasting lines and at all points where branch lines  
17 leave the main line and blowdown valves shall not be less  
18 than fifty feet from the face and shall be around a corner.

19 (c) When misfires occur with any other blasting de-  
20 vices, they shall be handled in a safe manner and under  
21 the supervision of the mine foreman or a certified person  
22 designated by him.

### HOISTING

#### §22-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 (a) The operator of every coal mine worked by shaft  
2 shall provide and maintain a metal tube, telephone or  
3 other approved means of communication from the top to  
4 the bottom and intermediate landings of such shafts,  
5 suitably adapted to the free passage of sound, through  
6 which conversation may be held between persons at the  
7 top and at the bottom of the shaft; a standard means of  
8 signaling; an approved safety catch, bridle chains, auto-  
9 matic stopping device, or automatic overwind; a sufficient  
10 cover overhead on every cage used for lowering or hoist-  
11 ing persons; an approved safety gate at the top of the  
12 shaft; and an adequate brake on the drum of every ma-  
13 chine used to lower or hoist persons in such shaft. Such  
14 operator shall have the machinery used for lowering and  
15 hoisting persons into or out of the mine kept in safe con-  
16 dition, equipped with a reliable indicator, and inspected  
17 once in each twenty-four hours by a qualified electrician.  
18 Where a hoisting engineer is required, he shall be readily  
19 available at all times when men are in the mine. He  
20 shall operate the empty cage up and down the shaft at  
21 least one round trip at the beginning of each shift, and

22 after the hoist has been idle for one hour or more before  
23 hoisting or lowering men; there shall be cut out around  
24 the side of the hoisting shaft or driven through the solid  
25 strata at the bottom thereof, a traveling way, not less  
26 than five feet high and three feet wide to enable a per-  
27 son to pass the shaft in going from one side of it to the  
28 other without passing over or under the cage or other  
29 hoisting apparatus. Positive stop blocks or derails shall  
30 be placed near the top and at all intermediate landings  
31 of slopes and surface inclines and at approaches to all  
32 shaft landings. A waiting station with sufficient room,  
33 ample clearance from moving equipment, and adequate  
34 seating facilities shall be provided where men are re-  
35 quired to wait for man trips or man cages, and the men  
36 shall remain in such station until the man trip or man  
37 cage is available.

38 (b) No operator of any coal mine worked by shaft,  
39 slope, or incline, shall place in charge of any engine or  
40 drum used for lowering or hoisting persons employed in  
41 such mine any but competent and sober engineers or drum  
42 runners; and no engineer or drum runner in charge of  
43 such machinery shall allow any person, except such as  
44 may be designated for this purpose by the operator, to  
45 interfere with any part of the machinery; and no person  
46 shall interfere with any part of the machinery; and no  
47 person shall interfere with or intimidate the engineer or  
48 drum runner in the discharge of his duties. Where the  
49 mine is operated or worked by shaft or slope, a minimum  
50 space of two and one-half square feet per person shall be  
51 available for each person on any cage or car where men  
52 are transported. In no instance shall more than twenty  
53 men be transported on a cage or car without the ap-  
54 proval of the director of the department of mines. No  
55 person shall ride on a loaded cage or car in any shaft,  
56 slope, or incline: *Provided*, That this shall not prevent  
57 any trip rider from riding in the performance of his au-  
58 thorized duties. No engineer shall be required for auto-  
59 matically operated cages, elevators, or platforms. Cages  
60 and elevators shall have an emergency power source un-  
61 less provided with other escapeway facilities.

62 (c) Each automatic elevator shall be provided with a

63 telephone or other effective communication system by  
64 which aid or assistance can be obtained promptly.

65 (d) A "stop" switch shall be provided in the automatic  
66 elevator compartment that will permit the elevator to be  
67 stopped at any location in the shaft.

## TRANSPORTATION

### §22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 (a) The roadbed, rails, joints, switches, frogs, and  
2 other elements of all haulage roads shall be constructed,  
3 installed and maintained in a manner consistent with  
4 speed and type of haulage operations being conducted to  
5 insure safe operation.

6 (b) Track switches, except room and entry develop-  
7 ment switches, shall be provided with properly installed  
8 throws, bridle bars, and guard rails; switch throws and  
9 stands, where possible, shall be placed on the clearance  
10 side.

11 (c) Haulage roads on entries developed after the effec-  
12 tive date of this article shall have a continuous, un-  
13 obstructed clearance of at least twenty-four inches from  
14 the farthest projection of any moving equipment on the  
15 clearance side.

16 (d) On haulage roads where trolley lines are used, the  
17 clearance shall be on the side opposite the trolley lines.

18 (e) On the trolley wire or "tight" side, after the effec-  
19 tive date of this article, there shall be at least twelve  
20 inches of clearance from the farthest projection of any  
21 moving equipment.

22 (f) Warning lights or reflective signs or tapes shall be  
23 installed along haulage roads at locations of abrupt or  
24 sudden changes in the overhead clearance.

25 (g) The clearance space on all haulage roads shall be  
26 kept free of loose rock, coal, supplies or other material:  
27 *Provided*, That not more than twenty-four inches need  
28 be kept free of such obstructions.

29 (h) Ample clearance shall be provided at all points

30 where supplies are loaded or unloaded along haulage  
31 roads or conveyors.

32 (i) Shelter holes shall be provided along haulage  
33 entries driven after the effective date of this article where  
34 locomotive, rope or animal haulage is used. Such shelter  
35 holes shall be spaced not more than one hundred feet  
36 apart; they shall be on the side of the entry opposite the  
37 trolley wire.

38 (j) Shelter holes made after the effective date of this  
39 article shall be at least five feet in depth, not more than  
40 four feet in width, and as high as the traveling space.  
41 Room necks and crosscuts may be used as shelter holes  
42 even though their width exceeds four feet.

43 (k) Shelter holes shall be kept clear of refuse and  
44 other obstructions.

45 (l) After the effective date of this article, shelter holes  
46 shall be provided at switch throws and manually oper-  
47 ated permanent doors.

48 (m) No steam locomotive shall be used in mines where  
49 men are actually employed in the extraction of coal, but  
50 this shall not prevent operation of a steam locomotive  
51 through any tunnel haulway or part of a mine that is not  
52 in actual operation and producing coal.

53 (n) Underground equipment powered by internal  
54 combustion engines using petroleum products, alcohol, or  
55 any other compound shall not be used in a coal mine.

56 (o) Locomotives, personnel carriers, mine cars, supply  
57 cars, shuttle cars, and all other haulage equipment shall  
58 be maintained in a safe operating condition. Each locomo-  
59 tive shall be equipped with a suitable lifting jack and  
60 handle. An audible warning device and headlights shall  
61 be provided on each locomotive and each shuttle car.  
62 All other mobile equipment, using the face areas of the  
63 mine, purchased after the effective date of this article,  
64 shall be provided with a conspicuous light or other ap-  
65 proved device so as to reduce the possibility of collision.

66 (p) No persons other than those necessary to operate  
67 a trip or car shall ride on any loaded car or on the outside  
68 of any car. Where pusher locomotives are not used, the

69 locomotive operator shall have an assistant to assist him  
70 in his duties.

71 (q) The pushing of trips, except for switching pur-  
72 poses, is prohibited on main haulage roads: *Provided*,  
73 That this does not prohibit the use of a pusher locomotive  
74 to assist the locomotive pulling a trip. Motormen and  
75 trip riders shall use care in handling locomotives and cars.  
76 It shall be their duty to see that there is a conspicuous  
77 light on the front and rear of each trip or train of cars  
78 when in motion: *Provided*, That trip lights need not be  
79 used on cars being shifted to and from loading machines,  
80 on cars being handled at loading heads during gathering  
81 operations at working faces, or on trips being pulled by  
82 animals. No person except the operator or his assistant  
83 shall ride on locomotives or loaded cars.

84 (r) No motorman, trip rider or brakeman shall get on  
85 or off cars, trips, or locomotives while they are in motion,  
86 except that a trip rider or brakeman may get on or off  
87 the rear end of a slowly moving trip or the stirrup of a  
88 slowly moving locomotive to throw a switch, align a  
89 derail or open or close a door.

90 (s) Flying or running switches and riding on the front  
91 bumper of a car or locomotive are prohibited. Back poling  
92 shall be prohibited except with precaution to the nearest  
93 turning point (not over eighty feet), or when going up  
94 extremely steep grades and then only at slow speed. The  
95 operator of a shuttle car shall face in the direction of  
96 travel except during the loading operation when he shall  
97 face the loading machine.

98 (t) (1) A system of signals, methods, or devices shall  
99 be used to provide protection for trips, locomotives and  
100 other equipment coming out onto tracks used by other  
101 equipment.

102 (2) In a mine where more than one thousand tons of  
103 coal are produced daily and where coal is transported  
104 by track haulage, a dispatcher shall be on duty when  
105 there is movement of traffic underground, including times  
106 when there is no coal in transit.

107 (3) Traffic shall move only at the direction of the  
108 dispatcher.



109 (4) The dispatcher's only duty shall be to direct  
110 traffic.

111 (5) Any dispatcher's station provided after the effec-  
112 tive date of this article shall be on the surface.

113 (6) All self-propelled equipment shall be equipped  
114 with two-way communications.

115 (u) Motormen shall inspect locomotives, and report  
116 any mechanical defects found to the proper supervisor  
117 before a locomotive is put in operation.

118 (v) A locomotive following another trip shall main-  
119 tain a distance of at least three hundred feet from the  
120 rear end of the trip ahead, unless such locomotive is  
121 coupled to the trip ahead.

122 (w) Positive stopblocks or derails shall be installed  
123 on all tracks near the top and at landings of shafts, slopes,  
124 and surface inclines. Positive-acting stopblocks or derails  
125 shall be used where necessary to protect persons from  
126 danger of runaway haulage equipment.

**§22-2-38. Transportation of men by cars; self-propelled equip-  
ment; belts.**

1 (a) Man trips shall be pulled, unless self-propelled,  
2 at safe speeds consistent with the condition of roads  
3 and type of equipment used, but not to exceed twelve  
4 miles an hour, except where special substantially covered  
5 man-trip cars are used. Each man trip shall be under  
6 the charge of a certified person or other competent  
7 person designated by a mine foreman or assistant mine  
8 foreman. It shall be operated independently of any  
9 loaded trip of coal or other heavy material, but may  
10 transport tools, small machine parts and supplies. When  
11 mine cars are used for man trips on steep grades, a loco-  
12 motive shall be used on each end of the trip.

13 (b) Cars on the man trip shall not be overloaded, and  
14 sufficient cars in good mechanical condition shall be  
15 provided.

16 (c) No person shall ride under the trolley wire unless  
17 suitably covered man cars are used.

18 (d) Men shall not load or unload before the cars in  
19 which they are to ride, or are riding, come to a full stop.

20 Men shall proceed in an orderly manner to and from  
21 man trips.

22 (e) When belts are used for transporting men, a  
23 minimum clearance of eighteen inches shall be main-  
24 tained between the belt and the roof or crossbars, pro-  
25 jecting equipment, cap pieces, overhead cables, wiring  
26 and other objects. Where the height of the coal seam  
27 permits, the clearance shall not be less than twenty-four  
28 inches.

29 (f) The belt speed shall not exceed two hundred fifty  
30 feet per minute where the minimum overhead clearance  
31 is eighteen inches, or three hundred feet per minute  
32 where the minimum overhead clearance is twenty-four  
33 inches, while men are loading, unloading, or being trans-  
34 ported. A signaling system or method shall be provided  
35 for stopping the belt and men shall ride not less than  
36 six feet apart.

37 (g) An assistant mine foreman or some other person  
38 designated by the mine foreman shall supervise the load-  
39 ing and unloading of belts and man trips. Where men  
40 are required to regularly cross over belts, adequate and  
41 safe facilities shall be provided.

42 (h) Positive-acting stop controls shall be installed  
43 along all belt conveyors used to transport men, and such  
44 controls shall be readily accessible, and maintained so  
45 that the belt can be stopped or started at any location.

46 (i) Belt conveyors used for regularly scheduled man  
47 trips shall be stopped while men are loading or unload-  
48 ing.

49 (j) There shall be at least thirty-six inches of side  
50 clearance where men board or leave such belt conveyors.

51 (k) Adequate illumination including colored lights  
52 or reflective signs shall be installed at all loading and  
53 unloading stations. Such colored lights and reflective  
54 signs shall be so located as to be observable to all per-  
55 sons riding the belt conveyor.

56 (l) Telephone or other suitable communications shall  
57 be provided at points where men are regularly loaded  
58 on or unloaded from belt conveyors.

59 (m) After supplies have been transported on man-  
60 trip cars, such cars shall be examined for unsafe condi-  
61 tions prior to the transportation of men.

**§22-2-39. Belt conveyor; installation; maintenance.**

1 (a) On or after July 1, 1971, all conveyor belts ac-  
2 quired for use underground shall be flame-resistant con-  
3 veyor belts.

4 (b) A clear travelway at least twenty-four inches  
5 wide shall be provided on both sides of all belt conveyors  
6 installed after July 1, 1971. Where roof supports are  
7 installed within twenty-four inches of a belt conveyor, a  
8 clear travelway at least twenty-four inches wide shall  
9 be provided on the side of such support farthest from  
10 the conveyor.

11 (c) On belt conveyors that do not transport men,  
12 stop and start controls shall be installed at intervals not  
13 to exceed one thousand feet. Such controls shall be  
14 properly installed and positioned so as to be readily  
15 accessible.

16 (d) Persons shall not cross moving belt conveyors,  
17 except where suitable crossing facilities are provided.

18 (e) All belt conveyors shall be inspected for frozen  
19 rollers, rock falls, and fires, following the last produc-  
20 tion shift each week, also before holidays, vacation peri-  
21 ods, and each production shift, with records kept of daily  
22 inspection.

23 (f) Deluge-type water sprays, water sprinklers, dry  
24 chemical sprinkler system or foam generators (designed  
25 to be automatically activated in the event of a fire or rise  
26 in the temperature at or near the belt drive) shall be in-  
27 stalled at each main and secondary conveyor drive.

28 (g) All underground belt conveyors shall be equipped  
29 with slippage and sequence switches.

30 (h) Telephones or other suitable communications  
31 shall be provided at points where supplies are regularly  
32 loaded or unloaded from the belt conveyors.

33 (i) After supplies have been transported on belt con-  
34 veyors, such belts shall be examined for unsafe condi-  
35 tions prior to the transportation of men.

## ELECTRICITY

## §22-2-40. General provisions.

1 (a) Operators of coal mines in which electricity is  
2 used as a means of power shall comply with the following  
3 provisions:

4 (1) All surface transformers, unless of a construction  
5 which will eliminate shock hazards, or unless installed  
6 at least eight feet above ground, shall be enclosed in  
7 a house or surrounded by a fence at least six feet high.  
8 If the enclosure is of metal, it shall be grounded effec-  
9 tively. The gate or door to the enclosure shall be kept  
10 locked at all times, unless authorized persons are present.

11 (2) Underground transformers shall be air cooled or  
12 cooled with noninflammable liquid or inert gas.

13 (3) Underground stations containing transformers or  
14 circuit breakers filled with inflammable oil shall be pro-  
15 vided with doorsills or their equivalent, which will  
16 confine the oil if leakage or explosion occurs, and shall  
17 be of fireproof construction.

18 (4) Transformers shall be provided with adequate  
19 overload protection.

20 (5) "Danger—High Voltage" signs shall be posted con-  
21 spicuously on all transformer enclosures, high-potential  
22 switchboards and other high-potential installations.

23 (6) Insulating platforms of rubber or other suitable  
24 nonconductive material shall be kept in place at each  
25 switchboard and at stationary machinery where shock  
26 hazards exist.

27 (7) Capacitors used for power factor connection shall  
28 be noninflammable liquid filled. Suitable drain-off resis-  
29 tors or other means to protect workmen against electric  
30 shock following removal of power shall be provided.

31 (8) All unattended underground loading points where  
32 electric driven hydraulic systems are used shall utilize  
33 a fireproof oil or emulsion.

34 (9) Before electrical changes are made to permissible  
35 equipment for use in a mine, they shall be approved by  
36 the director of the department of mines.

37 (10) Reverse current protection shall be provided at

38 storage battery charging stations to prevent the storage  
39 batteries from energizing the power circuits in the event  
40 of power failure.

41 (11) On and after July 1, 1971:

42 (A) All junction or distribution boxes used for  
43 making multiple power connections inby the last open  
44 crosscut shall be permissible.

45 (B) All hand-held electric drills, blower and ex-  
46 haust fans, electric pumps, and such other low horse-  
47 power electric face equipment which are taken into or  
48 used inby the last open crosscut of any coal mine shall  
49 be permissible.

50 (C) All electric face equipment which is taken  
51 into or used inby the last open crosscut of any coal mine  
52 classified gassy prior to July 1, 1972, shall be permissible.

53 (D) All other electric face equipment which is taken  
54 into or used inby the last crosscut of any coal mine,  
55 after March 30, 1974, which has not been classified under  
56 any provision of law as a gassy mine prior to July 1, 1970,  
57 shall be permissible.

58 (12) Permissible electric face equipment; coal seams  
59 above water table. On and after March 30, 1974, all electric  
60 face equipment, which is taken into and used inby the  
61 last open crosscut of any coal mine which is operated  
62 entirely in coal seams located above the water table and  
63 which has not been classified under any provision of law  
64 as a gassy mine prior to March 30, 1970, and in which  
65 one or more openings were made prior to December 30,  
66 1970, shall be permissible.

67 (13) The phrase "coal seams above the water table"  
68 means coal seams in a mine which are located at an ele-  
69 vation above a river or the tributary of a river into which  
70 a local surface water system naturally drains.

71 (14) On and after July 1, 1971, in mines operated in  
72 coal seams which are located at elevations above the  
73 water table:

74 (A) All junction or distribution boxes used for  
75 making multiple power connections inby the last open  
76 crosscut shall be permissible; and

77 (B) All hand-held electric drills, blower and ex-  
78 haust fans, electric pumps, and all other electric-driven  
79 mine equipment, except low horsepower rock dusting  
80 equipment, that employs an electric current supplied by  
81 either a power conductor or battery and consumes not  
82 more than two thousand two hundred fifty watts of  
83 electricity, which is taken into or used inby the last open  
84 crosscut, shall be permissible. On and after March 30,  
85 1974, in mines operated entirely in coal seams which are  
86 located at elevations above the water table, all electric  
87 face equipment which is taken into or used inby the last  
88 crosscut shall be permissible.

89 (15) The operator of each coal mine shall maintain  
90 in permissible condition all electric face equipment, which  
91 is taken into or used inby the last open crosscut of any  
92 mine after March 30, 1974.

93 (16) Except where permissible power connection units  
94 are used, all power-connection points outby the last open  
95 crosscut shall be in intake air.

96 (17) All power circuits and electric equipment shall  
97 be deenergized before work is done on such circuits  
98 and equipment, except when necessary for trouble shoot-  
99 ing or testing.

100 (18) Energized trolley wires may be repaired only by  
101 a person trained to perform electrical work and to main-  
102 tain electrical equipment and the operator of a mine shall  
103 require that such persons wear approved and tested in-  
104 sulated shoes and wireman's gloves.

105 (19) No electrical work shall be performed on low-,  
106 medium-, or high-voltage distribution circuits or equip-  
107 ment, except by a qualified person or by a person trained  
108 to perform electrical work and to maintain electrical  
109 equipment under the direct supervision of a qualified  
110 person. Disconnecting devices shall be locked out and  
111 suitably tagged by the persons who perform such work,  
112 except that in cases where locking out is not possible,  
113 such devices shall be opened and suitably tagged by such  
114 persons. Locks or tags shall be removed only by the  
115 persons who installed them, or, if such persons are un-

116 available, by persons authorized by the operator or his  
117 agent.

118 (20) All electric equipment shall be frequently ex-  
119 amined, tested, and properly maintained by a qualified  
120 person to assure safe operating conditions. When a poten-  
121 tially dangerous condition is found on electric equip-  
122 ment, such equipment shall be removed from service until  
123 such condition is corrected. A record of such examinations  
124 shall be kept and made available to an authorized repre-  
125 sentative of the director of the department of mines and  
126 to the miners in such mine.

127 (21) All electric conductors shall be sufficient in size  
128 and have adequate current-carrying capacity and be of  
129 such construction that a rise in temperature resulting  
130 from normal operation will not damage the insulating  
131 material.

132 (22) All electrical connections or splices in conductors  
133 shall be mechanically and electrically efficient, and suit-  
134 able connectors shall be used. All electrical connections  
135 or splices in insulated wire shall be reinsulated at least  
136 to the same degree of protection as the remainder of the  
137 wire.

138 (23) Cables shall enter metal frames of motors, splice  
139 boxes, and electric compartment only through proper  
140 fittings. When insulated wire, other than cables pass  
141 through metal frames, the holes shall be substantially  
142 bushed with insulated bushings.

143 (24) All power wire (except trailing cables on mobile  
144 equipment, specially designed cables conducting high-  
145 voltage power to underground rectifying equipment or  
146 transformers, or bare or insulated ground and return  
147 wires) shall be supported on well-installed insulators and  
148 shall not contact combustible material, roof or ribs.

149 (25) Power wires and cables, except trolley wires,  
150 trolley feeder wires and bare signal wires, shall be in-  
151 sulated adequately and fully protected.

152 (26) Automatic circuit-breaking devices or fuses of the  
153 correct type and capacity shall be installed so as to  
154 protect all electric equipment and circuits against short  
155 circuit and overloads. Three-phase motors on all electric

156 equipment shall be provided with overload protection  
157 that will deenergize all three phases in the event that  
158 any phase is overloaded.

159 (27) Incandescent lamps installed along haulageways  
160 and at other locations shall not contact combustible  
161 material, and if powered from trolley or direct current  
162 feeder circuits, need not be provided with separate short  
163 circuits or overload protection, if the lamp is not more  
164 than eight feet in distance from such circuits.

165 (28) In all main power circuits, disconnecting switches  
166 shall be installed underground within five hundred feet  
167 of the bottoms of shafts and boreholes through which  
168 main power circuits enter the underground area of the  
169 mine and within five hundred feet of all other places  
170 where main power circuits enter the underground area  
171 of the mine.

172 (29) All electric equipment shall be provided with  
173 switches or other controls that are safely designed, con-  
174 structed and installed.

175 (30) Each underground, exposed power conductor that  
176 leads underground shall be equipped with suitable light-  
177 ning arrestors of approved type within one hundred  
178 feet of the point where the circuit enters the mine.  
179 Lightning arrestors shall be connected to a low-resistance  
180 grounding medium on the surface which shall be sep-  
181 arated from neutral ground by a distance of not less  
182 than twenty-five feet.

183 (31) Except for areas of a coal mine inby the last open  
184 crosscut, incandescent lamps may be used to illuminate  
185 underground areas. When incandescent lamps are used in  
186 a track entry or belt entry or near track entries to illumi-  
187 nate special areas other than structures, the lamps shall be  
188 installed in weatherproof sockets located in positions such  
189 that the lamps will not come in contact with any combus-  
190 tible material. Lamps used in all other places must be of  
191 substantial construction and be fitted with a glass enclos-  
192 ure.

193 (32) An authorized representative may require in any  
194 mine that electric face equipment be provided with de-



195 vices that will permit the equipment to be deenergized  
196 quickly in the event of an emergency.

197 (33) On and after July 1, 1971, an authorized repre-  
198 sentative of the director shall require manually operated  
199 emergency stop switches, designed to deenergize the trac-  
200 tion motor circuit when the contactors or controller fail to  
201 open, to be installed on all battery powered tractors, taken  
202 into or used in by the last open crosscut of any entry or  
203 room.

204 (34) Trailing cables used in coal mines shall meet  
205 the requirements for flame-resistant cables.

206 (35) Short circuit protection for trailing cables shall  
207 be provided by an automatic circuit breaker or other no  
208 less effective device approved by the director of the de-  
209 partment of mines of adequate current-interrupting capac-  
210 ity in each ungrounded conductor. Disconnecting devices  
211 used to disconnect power from trailing cables shall be  
212 plainly marked and identified and such devices shall be  
213 equipped or designed in such a manner that it can be de-  
214 termined by visual observation that the power is dis-  
215 connected.

216 (36) When two or more trailing cables junction to  
217 the same distribution center, means shall be provided to  
218 assure against connecting a trailing cable to the wrong  
219 size circuit breaker.

220 (37) One temporary splice may be made in any trail-  
221 ing cable. Such trailing cable may only be used for the  
222 next twenty-four-hour period. No temporary splice shall  
223 be made in a trailing cable within twenty-five feet of the  
224 machine, except cable reel equipment. Temporary splices  
225 in trailing cables shall be made in a workmanlike manner  
226 and shall be mechanically strong and well insulated. Trail-  
227 ing cables or hand cables which have exposed wires or  
228 which have splices that heat or spark under load shall not  
229 be used. As used in this section, the term "splice" means a  
230 mechanical joining of one or more conductors that have  
231 been severed.

232 (38) When permanent splices in trailing cables are  
233 made, they shall be:

234 (A) Mechanically strong with adequate electrical  
235 conductivity and flexibility,

236 (B) Effectively insulated and sealed so as to ex-  
237 clude moisture, and

238 (C) Vulcanized or otherwise treated with suitable  
239 materials to provide flame-resistant qualities and good  
240 bonding to the outer jacket.

241 (39) Trailing cables shall be clamped to machines in  
242 a manner to protect the cables from damage and to pre-  
243 vent strain on the electrical connections.

244 (40) Trailing cables shall be adequately protected to  
245 prevent damage by mobile equipment.

246 (41) Trailing cable and power cable connections to  
247 junction boxes shall not be made or broken under load.

248 (42) All metallic sheaths, armors, and conduits en-  
249 closing power conductors shall be electrically continuous  
250 throughout and shall be grounded by methods approved  
251 by an authorized representative of the director of the  
252 department of mines.

253 (43) Metallic frames, casings and other enclosures of  
254 electric equipment that can become alive through failure  
255 of insulation or by contact with energized parts shall be  
256 grounded.

257 (44) In instances where single-phase 110-220-volt cir-  
258 cuits are used to feed electrical equipment, the only  
259 method of grounding that will be approved is the con-  
260 nection of all metallic frames, casings and other en-  
261 closures of such equipment to a separate grounding con-  
262 ductor which establishes a continuous connection to a  
263 grounded center tap of the transformer.

264 (45) The attachment of grounding wires to a mine  
265 track or other grounded power conductor will be ap-  
266 proved if separate clamps, suitable for such purpose, are  
267 used and installed to provide a solid connection.

268 (46) The frames of all offtrack direct-current machines  
269 and the enclosures of related detached components shall  
270 be effectively grounded or otherwise maintained at no  
271 less safe voltages.

272 (47) Installation of silicon diodes shall be restricted to  
273 electric equipment receiving power from a direct-current  
274 system with one polarity grounded. Where such diodes  
275 are used on circuits having a nominal voltage rating of  
276 two hundred fifty, they must have a forward current  
277 rating of four hundred amperes or more, and have a  
278 peak inverse voltage rating of four hundred or more.  
279 Where such diodes are used on circuits having nominal  
280 voltage rating of five hundred fifty, they must have a for-  
281 ward current rating of two hundred fifty amperes or more,  
282 and have a peak inverse voltage rating of eight hundred  
283 or more.

284 (48) In addition to the grounding diode, a polarizing  
285 diode must be installed in the machine control circuit to  
286 prevent operation of the machine when the polarity of a  
287 trailing cable is reversed.

288 (49) When installed on permissible equipment, all  
289 grounding diodes, over-current devices, and polarizing  
290 diodes must be placed in explosion-proof compartments.

291 (50) High-voltage lines, both on the surface and under-  
292 ground, shall be deenergized and grounded before work  
293 is performed on them, except that repairs may be per-  
294 mitted, in the case of energized surface high-voltage lines,  
295 if such repairs are made by a qualified person in accor-  
296 dance with procedures and safeguards, including, but not  
297 limited to, a requirement that the operator of such mine  
298 provide, test, and maintain protective devices in making  
299 such repairs.

300 (51) When two or more persons are working on an  
301 energized high-voltage surface line simultaneously, and  
302 any one of them is within reach of another, such persons  
303 shall not be allowed to work on different phases or on  
304 equipment with different potentials.

305 (52) All persons performing work on energized high-  
306 voltage surface lines shall wear protective rubber gloves,  
307 sleeves, and climber guards if climbers are worn. Pro-  
308 tective rubber gloves shall not be worn wrong side out  
309 or without protective leather gloves. Protective devices  
310 worn by a person assigned to perform repairs on high-  
311 voltage surface lines shall be worn continuously from the

312 time he leaves the ground until he returns to the ground,  
313 and, if such devices are employed for extended periods,  
314 such person shall visually inspect the equipment assigned  
315 him for defects before each use, and, in no case, less than  
316 twice each day.

317 (53) Disconnecting or cutout switches on energized  
318 high-voltage surface lines shall be operated only with in-  
319 sulated sticks, fuse tongs, or pullers which are adequately  
320 insulated and maintained to protect the operator from the  
321 voltage to which he is exposed. When such switches are  
322 operated from the ground, the person operating such de-  
323 vices shall wear protective rubber gloves.

324 (54) Solely for purposes of grounding ungrounded  
325 high-voltage power systems, grounded messenger wires  
326 used to suspend the cables of such systems may be used  
327 as a grounding medium.

328 (55) When not in use, power circuits underground  
329 shall be deenergized on idle days and idle shifts, except  
330 that rectifiers and transformers may remain energized.

331 (56) High-voltage circuits entering the underground  
332 area of any coal mine shall be protected by suitable cir-  
333 cuit breakers of adequate interrupting capacity. Such  
334 breakers shall be equipped with devices to provide pro-  
335 tection against undervoltage, grounded phase, short  
336 circuit, and overcurrent.

337 (57) Circuit breakers protecting high-voltage circuits  
338 entering an underground area of any coal mine shall be lo-  
339 cated on the surface and in no case installed either under-  
340 ground or within a drift.

341 (58) One circuit breaker may be used to protect two or  
342 more branch circuits, if the circuit breaker is adjusted to  
343 afford overcurrent protection for the smallest conductor.

344 (59) The grounding resistor, where required, shall be  
345 of the proper ohmic value to limit the voltage drop in the  
346 grounding circuit external to the resistor to not more than  
347 one hundred volts under fault conditions. The grounding  
348 resistor shall be rated for maximum fault current contin-  
349 uously and insulated from ground for a voltage equal to  
350 the phase-to-phase voltage of the system.

351 (60) High-voltage circuits extending underground and

352 supplying portable mobile or stationary high-voltage  
353 equipment shall contain either a direct or derived neutral  
354 which shall be grounded through a suitable resistor at the  
355 source transformers, and a grounding circuit, originating  
356 at the grounded side of the grounding resistor, shall extend  
357 along with the power conductors and serve as a grounding  
358 conductor for the frames of all high-voltage equipment  
359 supplied power from that circuit, except that the director  
360 or his authorized representative may permit ungrounded  
361 high-voltage circuits to be extended underground to feed  
362 stationary electrical equipment if such circuits are either  
363 steel armored or installed in grounded, rigid steel conduit  
364 throughout their entire length, and upon his finding that  
365 such exception does not pose a hazard to the miners. With-  
366 in one hundred feet of the point on the surface where high-  
367 voltage circuits enter the underground portion of the  
368 mine, disconnecting devices shall be installed and so  
369 equipped or designed in such a manner that it can be de-  
370 termined by visual observation that the power is discon-  
371 nected, except that the director or his authorized repre-  
372 sentative may permit such devices to be installed at a  
373 greater distance from such area of the mine if he deter-  
374 mines, based on existing physical conditions, that such in-  
375 stallation will be more accessible at a greater distance and  
376 will not pose any hazard to the miners.

377 (61) On and after July 1, 1971, high-voltage resistance  
378 grounded systems serving portable or mobile equipment  
379 shall include a fail-safe ground check circuit to monitor  
380 continuously the grounding circuit to assure continuity,  
381 and the fail-safe ground check circuit shall cause the cir-  
382 cuit breaker to open when either the ground or pilot check  
383 wire is broken, or other no less effective device approved  
384 by the director or his authorized representative to assure  
385 such continuity.

386 (62) Underground high-voltage cables used in resis-  
387 tance grounded systems shall be equipped with metallic  
388 shields around each power conductor with one or more  
389 ground conductors having a total cross-sectional area of  
390 not less than one half the power conductor, and with an in-  
391 sulated internal or external conductor not smaller than  
392 No. 10 (A.W.G.) for the ground continuity check circuit.

393 (63) All such cables shall be adequate for the intended  
394 current and voltage. Splices made in such cables shall pro-  
395 vide continuity of all components.

396 (64) Single-phase loads, such as transformer primar-  
397 ies, shall be connected phase-to-phase.

398 (65) All underground high-voltage transmission cables  
399 shall be installed only in regularly inspected air courses  
400 and haulageways, and shall be covered, buried, or placed  
401 so as to afford protection against damage, guarded where  
402 men regularly work or pass under them unless they are  
403 six and one-half feet or more above the floor or rail, se-  
404 curely anchored, properly insulated, and guarded at ends,  
405 and covered, insulated, or placed to prevent contact with  
406 trolley wires and other low-voltage circuits.

407 (66) Disconnecting devices shall be installed at the be-  
408 ginning of branch lines in underground high-voltage cir-  
409 cuits and equipped or designed in such a manner that it  
410 can be determined by visual observation that the circuit is  
411 deenergized when the switches are open.

412 (67) Circuit breakers and disconnecting switches un-  
413 derground shall be marked for identification.

414 (68) In the case of high-voltage cables used as trailing  
415 cables, temporary splices shall not be used and all perm-  
416 anent splices shall be made in accordance with the manu-  
417 facturers' specifications.

418 (69) Frames, supporting structures and enclosures of  
419 stationary, portable, or mobile underground high-voltage  
420 equipment and all high-voltage equipment supplying  
421 power to such equipment receiving power from resistance  
422 grounded systems shall be effectively grounded to the  
423 high-voltage ground.

424 (70) Low- and medium-voltage power circuits serving  
425 three-phase alternating current equipment serving por-  
426 table or mobile equipment shall be protected by suitable  
427 circuit breakers of adequate interrupting capacity which  
428 are properly tested and maintained as prescribed by the  
429 director. Such breakers shall be equipped with devices to  
430 provide protection against undervoltage, grounded phase,  
431 short circuit, and overcurrent.

432 (71) Power centers and portable transformers shall be

433 deenergized before they are moved from one location to  
434 another, except that, when equipment powered by sources  
435 other than such centers or transformers is not available,  
436 the director may permit such centers and transformers to  
437 be moved while energized, if he determines that another  
438 equivalent or greater hazard may otherwise be created,  
439 and if they are moved under the supervision of a qualified  
440 person, and if such centers and transformers are examined  
441 prior to such movement by such person and found to be  
442 grounded by methods approved by an authorized repre-  
443 sentative of the director and otherwise protected from  
444 hazards to the miner. A record shall be kept of such exam-  
445 inations. High-voltage cables, other than trailing cables,  
446 shall not be moved or handled at any time while ener-  
447 gized, except that such centers and transformers are mov-  
448 ed while energized as permitted under this section, ener-  
449 gized high-voltage cables attached to such centers and  
450 transformers may be moved only by a qualified person  
451 and the operator of such mine shall require that such per-  
452 son wear approved and tested insulated wireman's gloves.

453 (72) Low- and medium-voltage three-phase alternat-  
454 ing-current circuits used underground shall contain either  
455 a director or derived neutral which shall be grounded  
456 through a suitable resistor at the power center, and a  
457 grounding circuit, originating at the grounded side of  
458 the grounding resistor, shall extend along with the  
459 power conductors and serve as a grounding conductor  
460 for the frames of all the electrical equipment supplied  
461 power from the circuit, except that the director or his  
462 authorized representative may permit ungrounded low-  
463 and medium-voltage circuits to be used underground to  
464 feed such stationary electrical equipment if such cir-  
465 cuits are either steel armored or installed in grounded  
466 rigid steel conduit throughout their entire length. The  
467 grounding resistor, where required, shall be of the proper  
468 ohmic value to limit the ground fault current to twenty-  
469 five amperes. The grounding resistor shall be rated for  
470 maximum fault current continuously and insulated from  
471 ground for a voltage equal to the phase-to-phase voltage  
472 of the system.

473 (73) On or before July 1, 1972, low- and medium-voltage  
474 resistance grounded systems serving portable or mobile  
475 equipment shall include a fail-safe ground check circuit to  
476 monitor continuously the grounding circuit to assure con-  
477 tinuity which ground check circuit shall cause the circuit  
478 breaker to open when either the ground or pilot check  
479 wire is broken, or other not less effective device approved  
480 by the director or his authorized representative to assure  
481 such continuity, except that an extension of time, not in  
482 excess of twelve months, may be permitted by the direc-  
483 tor on a mine-to-mine basis if he determines that such  
484 equipment is not available. Cable couplers shall be con-  
485 structed so that the ground check continuity conductor  
486 shall be broken first and the ground conductors shall be  
487 broken last when the coupler is being uncoupled.

488 (74) Disconnecting devices shall be installed in con-  
489 junction with circuit breakers serving portable or mobile  
490 equipment to provide visual evidence that the power is  
491 connected.

492 (75) Circuit breakers shall be marked for identification.

493 (76) Single-phase loads shall be connected phase-to-  
494 phase.

495 (77) Trailing cables for medium-voltage circuits shall  
496 include grounding conductors, a ground check conductor,  
497 and grounded metallic shields around each power con-  
498 ductor or a ground metallic shield over the assembly, ex-  
499 cept that on equipment employing cable reels, cables with-  
500 out shields may be used if the insulation is rated two  
501 thousand volts or more.

502 (78) Trolley wires and trolley feeder wires shall be  
503 provided with cutout switches at intervals of not more  
504 than two thousand feet and near the beginning of all  
505 branch lines.

506 (79) Trolley wires and trolley feeder wires shall be  
507 provided with overcurrent protection.

508 (80) Trolley wires and trolley feeder wires, high-volt-  
509 age cables, and transformers shall not be located within  
510 fifteen feet of the last open crosscut and shall be kept at  
511 least one hundred fifty feet from pillar workings.

512 (81) Trolley wires, trolley feeder wires, and bare sig-



513 nal wires shall be insulated adequately where they pass  
514 through doors and stoppings and where they cross other  
515 power wires and cables. Trolley wires and trolley feeder  
516 wires shall be guarded adequately:

517 (A) At all points where men are required to work  
518 or pass regularly under the wires.

519 (B) On both sides of all doors and stoppings.

520 (C) At man-trip stations.

521 (82) Temporary guards shall be provided where track-  
522 men and other persons work in proximity to trolley  
523 wires and trolley feeder wires.

524 (83) Adequate precaution shall be taken to insure that  
525 equipment being moved along haulageways will not come  
526 in contact with trolley wires or trolley feeder wires.

527 (84) Trolley and feeder wires shall be installed as fol-  
528 lows: Where installed on permanent haulage, they shall  
529 be:

530 (A) At least six inches outside the track gauge line.

531 (B) Kept taut and not permitted to touch the roof,  
532 rib, or crossbars. Particular care shall be taken where  
533 they pass through door openings to preclude bare wires  
534 from coming in contact with combustible material.

535 (C) Installations of trolley wire hangers shall be  
536 provided within three feet of each splice in a trolley wire.

#### §22-2-41. Bonding track used as power conductor.

1 Where track is used as a power conductor, rails and  
2 switches on main entries shall be bonded and cross-  
3 bonded in such manner as to assure adequate return. At  
4 least one rail on secondary track-haulage roads shall be  
5 welded or bonded at every joint, and cross bonds shall be  
6 installed at intervals of not more than two hundred feet:  
7 *Provided, however,* That rail joints in such secondary  
8 haulage roads need not be bonded where a copper feeder  
9 adequate in size parallels the track and is electrically  
10 connected thereto at intervals of not more than two  
11 hundred feet by cross bonds.

#### §22-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communica-  
2 tion facilities shall be provided in all mines between the

3 surface and each working section that is more than one  
4 thousand five hundred feet from the main portal.

5 Telephone lines, other than cables, shall be carried on  
6 insulators, installed on the opposite side from power or  
7 trolley wires, and where they cross power or trolley wires,  
8 they shall be insulated adequately.

9 Lightning arresters shall be provided at the points  
10 where telephone circuits enter the mine.

**§22-2-43. Electric equipment in mines.**

1 (a) Electric equipment shall not be taken into or  
2 operated in any place where methane can be detected  
3 with a flame safety lamp or other approved methane de-  
4 tector at any point not less than eight inches from the  
5 roof, face, or rib.

6 (b) In all mines, electric haulage locomotives operated  
7 from trolley wire and other electrical equipment or de-  
8 vices which may ignite gas shall not be used in return  
9 air, unless permission is granted by the director of the  
10 department of mines for a specified area. For the purpose  
11 of this provision, air used to ventilate a section of a mine  
12 shall not be considered return air until such time as the  
13 air has ventilated all of the workings in the section.

14 (c) No person shall be placed in charge of a coal-  
15 cutting machine in any mine who is not a qualified  
16 person, capable of determining the safety of the roof and  
17 sides of the working places and of detecting the pres-  
18 ence of explosive gas, unless they are accompanied by a  
19 certified or qualified person who has passed such an  
20 examination.

21 (d) In any mine no machine shall be brought in by the  
22 last breakthrough next to the working face until the  
23 machine man shall have made an inspection for gas in  
24 the place where the machine is to work. If explosive  
25 gas in excess of one percent is found in the place, the  
26 machine shall not be taken in until the danger is removed.

27 (e) In working places a safety lamp, or other suit-  
28 able approved apparatus for the detection of explosive  
29 gas, shall be provided for use with each mining machine  
30 when working, and should any indication of explosive

31 gas in excess of one percent appear on the flame of the  
32 safety lamp, or on other apparatus used for the detection  
33 of explosive gas, the person in charge shall immediately  
34 stop the machine, cut off the current at the nearest switch  
35 and report the condition to the mine foreman or super-  
36 visor. The machine shall not again be started in such  
37 place until the condition found has been corrected and  
38 been pronounced safe by a certified person.

39 (f) No electric equipment shall be operated in a mine  
40 for a longer period than twenty minutes without an ex-  
41 amination as above described being made for gas; and  
42 if gas is found in excess of one percent, the current shall  
43 at once be switched off the machine, and the trailing  
44 cable shall forthwith be disconnected from the power  
45 supply until the place is pronounced safe.

46 (g) Machine runners and helpers shall use care while  
47 operating mining machines. They shall not permit any  
48 person to remain near the machine while it is in opera-  
49 tion. They shall examine the roof of the working place to  
50 see that it is safe before starting to operate the machine.  
51 They shall not move the machine while the cutter chain  
52 is in motion.

**§22-2-44. Hand-held electric drills and rotating tools; trailing cables.**

1 Electric drills and other electrically operated rotating  
2 tools intended to be held in the hand shall have the  
3 electric switch constructed so as to break the circuit when  
4 the hand releases the switch and shall be equipped with  
5 friction or safety clutches.

**§22-2-45. Installation of lighting.**

1 Electric lights or other approved methods of lighting  
2 shall be installed so that they do not come in contact  
3 with combustible materials, and the wires shall be sup-  
4 ported by suitable insulators and fastened securely to the  
5 power conductors.

**§22-2-46. Welding and cutting.**

1 (a) A record shall be kept of oxygen and gas tanks  
2 or cylinders taken into a mine and the date shall be

3 recorded when they are removed from the mine. No  
4 more tanks or cylinders than necessary to perform effi-  
5 ciently the work shall be permitted underground at one  
6 time.

7 (b) Propane torches may be used in lieu of blow-  
8 torches.

9 (c) Welding and cutting may be done in mines: *Pro-*  
10 *vided*, That all equipment and gauges are maintained in  
11 safe condition and not abused, that suitable precautions  
12 are taken against ignition of methane, coal dust, or com-  
13 bustible materials, that means are provided for prompt  
14 extinguishment of fires accidentally started, and that  
15 only persons who have demonstrated competency in  
16 welding and cutting are entrusted to do this work. Ade-  
17 quate eye protection shall be used by all persons doing  
18 welding or cutting, and precautions shall be taken to  
19 prevent other persons from exposure that might be harm-  
20 ful to their eyes.

21 (d) Transportation of oxygen and gas tanks or cylinders  
22 shall be permitted on self-propelled machinery or belt con-  
23 veyors specially equipped for safe holding of the contain-  
24 ers in transportation. In no instance, shall such transporta-  
25 tion be permitted in conjunction with any man trip.

26 (e) Empty oxygen and gas tanks or cylinders shall be  
27 marked "empty" and shall be removed from the mine  
28 promptly in safe containers provided for transportation  
29 of the same.

30 (f) When tanks and cylinders are not in use and when  
31 they are being transported, valve protection caps and  
32 plugs shall be placed on all tanks or cylinders for which  
33 caps and plugs are available. No oxygen tanks, gas tanks  
34 or cylinders shall be transported with the hoses and  
35 gauges attached thereto.

36 (g) In all mines a certified person shall examine for  
37 gas with permissible flame safety lamps or other ap-  
38 proved detectors before and during welding or cutting  
39 in, at or near working faces. The safety of the equipment  
40 and methods used in such cases shall be subject to ap-  
41 proval of the director of the department of mines. If  
42 equipment is mobile, it shall be removed outby the last

43 open breakthrough before cutting and welding may be  
44 performed on such equipment.

**§22-2-47. Responsibility for care and maintenance of face equipment.**

1 Mine operators shall maintain face equipment in safe  
2 operating condition. Equipment operators shall exercise  
3 reasonable care in the operation of the equipment en-  
4 trusted to them and shall promptly report defects known  
5 to them.

**§22-2-48. When respiratory equipment to be worn; control of dust.**

1 Men exposed for short periods to gas-, dust-, fume-,  
2 and mist-inhalation hazards shall wear permissible res-  
3 piratory equipment. Dust shall be controlled by the use  
4 of permissible dust collectors or other approved methods.

**SAFEGUARDS FOR MECHANICAL EQUIPMENT**

**§22-2-49. Safeguards for mechanical equipment.**

1 (a) The cutter chains of mining machines shall be  
2 locked securely by mechanical means or electrical inter-  
3 locks while such machines are parked or being trammed.  
4 Loading machines shall not be trammed with loading arms  
5 in motion, except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts of  
7 machinery which are within seven feet of the floor,  
8 ground or platform level, unless isolated, shall be guarded  
9 adequately. Repair pits shall be kept covered or guarded  
10 at all times when not in use. Machinery shall not be  
11 lubricated or repaired while in motion, except where safe  
12 remote lubricating devices are used. Machinery shall not  
13 be started until the person lubricating or repairing it has  
14 given a clear signal. Guards which have been removed  
15 shall be replaced before the machinery is again put into  
16 use. Provision shall be made to prevent accumulations  
17 of spilled lubricants.

18 (c) Mechanically operated grinding wheels shall be  
19 equipped with safety washers, substantial retaining hoods,  
20 and, unless goggles are used, eye shields.

## SURFACE STRUCTURES AND PRACTICES

**§22-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.**

1 (a) In unusually dusty locations, electric motors,  
2 switches and controls shall be of dust-tight construction,  
3 or enclosed with reasonably dust-tight housings or en-  
4 closures.

5 (b) After July 1, 1971, all structures erected on the  
6 surface within one hundred feet of any mine opening shall  
7 be of fireproof construction.

8 (c) Means and methods shall be provided to assure that  
9 structures and the immediate area surrounding the same  
10 shall be reasonably free of coal dust accumulations.

11 (d) Where coal is dumped at or near air intake open-  
12 ings, reasonable provisions shall be made to prevent dust  
13 from entering the mine.

14 (e) Where repairs are being made to the plant, proper  
15 scaffolding and proper overhead protection shall be pro-  
16 vided for workmen wherever necessary.

17 (f) Welding shall not be done in dusty atmospheres  
18 and dusty locations shall be well cleaned, and fire-  
19 fighting apparatus shall be readily available during  
20 welding.

21 (g) Stairways, elevated platforms and runways shall  
22 be equipped with handrails. Railroad car trimmer plat-  
23 forms are excepted from such requirement.

24 (h) Elevated platforms and stairways shall be pro-  
25 vided with toeboards where necessary, and they shall be  
26 kept clear of refuse and ice and maintained in good repair.

27 (i) Personnel who are required frequently and regu-  
28 larly to travel on belts or chain conveyors extended to  
29 heights of more than ten feet shall be provided with  
30 adequate space and protection in order that they may  
31 work safely. Permanent ladders extending more than ten  
32 feet shall be provided with back guards. Walkways  
33 around thickeners that are less than four feet above the

34 walkway shall be adequately guarded. Employees re-  
35 quired to work over thickeners shall wear a safety har-  
36 ness adequately secured, unless walkways or other suit-  
37 able safety devices are provided.

**§22-2-51. Housekeeping.**

1 Good housekeeping shall be practiced in and around  
2 mine buildings and yards. Such practices include cleanli-  
3 ness, orderly storage of materials, and the removal of  
4 possible sources of injury, such as stumbling hazards, pro-  
5 truding nails and broken glass.

**§22-2-52. Storage of flammable liquids in lamphouse.**

1 Naphtha or other flammable liquids in lamphouses shall  
2 be kept in approved containers or other safe dispensers.

**§22-2-53. Smoking in and around surface structures.**

1 Smoking in or about surface structures shall be re-  
2 stricted to places where it will not cause fire or an ex-  
3 plosion.

**MISCELLANEOUS SAFETY PROVISIONS AND  
REQUIREMENTS**

**§22-2-54. Duties of persons subject to article; rules and regula-  
tions of operators.**

1 (a) It shall be the duty of the operator, mine foreman,  
2 supervisors, mine examiners, and other officials to comply  
3 with and to see that others comply with the provisions  
4 of this article.  
5 (b) It shall be the duty of all employees and check-  
6 weighmen to comply with this article and to cooperate  
7 with management and the department of mines in  
8 carrying out the provisions hereof.  
9 (c) Reasonable rules and regulations of an operator  
10 for the protection of employees and preservation of  
11 property that are in harmony with the provisions of this  
12 article and other applicable laws shall be complied with.  
13 They shall be printed on cardboard or in book form in  
14 the English language and posted at some conspicuous

15 place about the mine or mines, and given to each employee  
16 upon request.

**§22-2-55. Protective equipment and clothing.**

1 (a) Welders and helpers shall use proper shields or  
2 goggles to protect their eyes. All employees shall have  
3 approved goggles or shields and use the same where  
4 there is a hazard from flying particles, or other eye  
5 hazards.

6 (b) Employees engaged in haulage operations and all  
7 other persons employed around moving equipment on the  
8 surface and underground shall wear snug-fitting clothing.

9 (c) Protective gloves shall be worn when material  
10 which may injure hands is handled, but gloves with  
11 gauntleted cuffs shall not be worn around moving  
12 equipment.

13 (d) Safety hats and safety-toed shoes shall be worn  
14 by all men while in or around a mine.

15 (e) Approved safety goggles or eyeshields shall be  
16 worn by all persons while being transported in open-type  
17 man trips.

18 (f) A self-rescue device approved by the director of  
19 the department of mines shall be worn by each person  
20 underground or kept within his immediate reach, and  
21 such device shall be provided by the operator. The self-  
22 rescue device shall be adequate to protect such miner for  
23 one hour or longer. Each operator shall train each miner  
24 in the use of such device, and refresher training courses  
25 for all underground employees shall be held during each  
26 calendar year.

**§22-2-56. Checking systems.**

1 Each mine shall have a check-in and check-out system  
2 that will provide positive identification upon the person  
3 of every individual underground. An accurate record of  
4 the men in the mine, which shall consist of a written  
5 record, a check board, or a time-clock record, shall be  
6 kept on the surface in a place that will not be affected  
7 in the event of an explosion. Said record shall bear a  
8 number or name identical to the identification check  
9 fastened to the belt of all persons going underground.



**§22-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.**

1 (a) No miner, workman or other person shall know-  
2 ingly injure any shaft, lamp, instrument, air course, or  
3 brattice, or obstruct or throw open airways, or carry  
4 matches or open lights in the places worked by safety  
5 lights, or disturb any part of the machinery or ap-  
6 pliances, open a door closed for directing ventilation and  
7 not close it again, or enter any part of a mine against  
8 caution, or disobey any order of any mine foreman or  
9 assistant mine foreman given in carrying out any of the  
10 provisions of this section.

11 (b) Open lights, smoking, and smokers' articles, in-  
12 cluding matches, are prohibited in all mines. No person  
13 shall at any time enter mines with or carry therein any  
14 matches, pipes, cigars, cigarettes, or any device for mak-  
15 ing lights or fire not authorized or approved. The operator  
16 shall at frequent intervals search, or cause to be search-  
17 ed, any person, including his clothing and material be-  
18 longings, entering or about to enter the mine, or inside  
19 the mine, to prevent such person from taking or carrying  
20 therein any of the above-mentioned articles.

21 (c) No person shall at any time carry into any mine  
22 any intoxicants or enter any mine while under the in-  
23 fluence of intoxicants.

**§22-2-58. Fire protection.**

1 (a) Suitable fire protection shall be provided at sur-  
2 face installations of fans, shops, tipples, and preparation  
3 plants, substations, hoist rooms and compressor stations.

4 (b) Fire drills and demonstration of various types of  
5 available fire-fighting equipment shall be held for em-  
6 ployees at least every six months.

7 (c) The location of pipelines, locations of valves, and  
8 fire taps shall be shown on a map of the mine and kept  
9 available at the mine office at all times.

10 (d) Each coal mine shall be provided with suitable  
11 fire-fighting equipment adapted for the size and condition  
12 of the mine. Fire-fighting equipment required under this  
13 article shall meet the following requirements:

14 (1) Waterlines shall be capable of delivering fifty gal-  
15 lons of water at a nozzle pressure of fifty pounds per  
16 square inch.

17 (2) A portable water car shall be of at least one thou-  
18 sand gallons capacity, and shall have at least three hun-  
19 dred feet of fire hose with nozzles. A portable water car  
20 shall be capable of providing a flow through the hose of  
21 fifty gallons of water per minute at a nozzle pressure of  
22 fifty pounds per square inch.

23 (3) A portable chemical car shall carry enough chemi-  
24 cals to provide a fire extinguishing capacity equivalent to  
25 that of a portable water car.

26 (4) A portable foam-generating machine shall have fa-  
27 cilities and equipment for supplying the machine with  
28 thirty gallons of water per minute at thirty pounds per  
29 square inch for a period of thirty-five minutes.

30 (5) A portable fire extinguisher shall be either a  
31 multipurpose dry chemical type, containing a nominal  
32 weight of five pounds of dry powder and enough expel-  
33 lant to apply the powder; or a foam-producing type con-  
34 taining at least two and one-half gallons of foam-produc-  
35 ing liquid and enough expellant to supply the foam. Only  
36 fire extinguishers approved by the Underwriters Labora-  
37 tories, Inc. or Factor Mutual Laboratories, carrying ap-  
38 propriate labels as to type and purpose shall be used after  
39 July 1, 1971, and all new portable fire extinguishers ac-  
40 quired for use in a coal mine shall be of the multipurpose  
41 dry chemical type, having a 2A 10BC or higher rating.

42 (6) The fire hose shall be rubber-lined, mildew-proof  
43 and the cover shall be of flame-resistant qualities, meeting  
44 requirements for hose in Bureau of Mines Schedule 2G,  
45 except that the test flame shall be applied to the outer  
46 surface rather than to an open end. The bursting pres-  
47 sure shall be at least four times higher than the static  
48 water at the mine location; the maximum water pres-  
49 sure in the hose nozzle shall not exceed 100 p.s.i.g.

50 (e) Each working section of coal mines producing  
51 three hundred tons or more per shift shall be provided  
52 with two portable fire extinguishers and two hundred  
53 forty pounds of bagged rock dust; waterlines shall ex-

54 tend to each section loading point and be equipped with  
55 enough fire hose to reach each working face unless the  
56 section loading point is provided with one of the fol-  
57 lowing: (1) Two portable water cars or (2) two portable  
58 chemical cars, or (3) one portable water car or one  
59 portable chemical car and either a portable foam-gener-  
60 ating machine or a portable high-pressure rock-dusting  
61 machine, fitted with at least two hundred fifty feet of  
62 hose and supplied with at least sixty sacks of rock dust.

63 (f) In all coal mines, waterlines shall be installed  
64 parallel to the entire length of belt conveyors and shall  
65 be equipped with fire hose outlets with valves at three-  
66 hundred-foot intervals along each belt conveyor and at  
67 tailpieces. At least five hundred feet of fire hose with  
68 fittings suitable for connection with each belt conveyor  
69 waterline system shall be stored at strategic locations  
70 along the belt conveyor. Waterlines may be installed in  
71 entries adjacent to the conveyor entry belt as long as  
72 the outlets project into the belt conveyor entry. Each  
73 working section of coal mines producing less than three  
74 hundred tons of coal per shift shall be provided with  
75 two portable fire extinguishers, two hundred forty pounds  
76 of bagged rock dust and at least five hundred gallons  
77 of water and at least three pails of ten-quart capacity.  
78 In lieu of the five hundred gallon water supply, a water-  
79 line with sufficient hose to reach the working places, a  
80 portable water car of five hundred fifty gallons capac-  
81 ity, or a portable all-purpose dry powder chemical car  
82 of at least one hundred twenty-five pounds capacity may  
83 be provided.

84 (g) In mines producing three hundred tons of coal  
85 or more per shift, waterlines shall be installed parallel  
86 to all haulage tracks using mechanized equipment in the  
87 track or adjacent entry and shall extend to the loading  
88 point of each working section. Waterlines shall be  
89 equipped with outlet valves at intervals of not more  
90 than five hundred feet, and five hundred feet of fire hose  
91 with fittings suitable for connection with such water-  
92 lines shall be provided at strategic locations. Two porta-  
93 ble water cars, readily available, may be used in lieu  
94 of waterlines prescribed under this subsection.

95 (h) In mines producing less than three hundred tons  
96 of coal per shift, there shall be provided at five-hundred-  
97 foot intervals in all main and secondary haulage roads:  
98 (1) A tank of water of at least fifty-five gallon capacity  
99 with at least three pails of not less than ten-quart ca-  
100 pacity, or (2) not less than two hundred forty pounds  
101 of bagged rock dust.

102 (i) Each track or off-track locomotive, self-propelled  
103 man-trip car, or personnel carrier shall be equipped with  
104 one portable fire extinguisher.

105 (j) Two portable fire extinguishers shall be provided  
106 at each permanent electrical installation. One portable  
107 fire extinguisher and two hundred forty pounds of rock  
108 dust shall be provided at each temporary electrical in-  
109 stallation.

110 (k) Two portable fire extinguishers and two hundred  
111 forty pounds of rock dust shall be provided at each per-  
112 manent underground oil storage station. One portable  
113 fire extinguisher shall be provided at each working sec-  
114 tion where twenty-five gallons or more of oil are stored  
115 in addition to extinguishers required under subsection  
116 (e) of this section.

117 (l) One portable fire extinguisher or two hundred  
118 forty pounds of rock dust and water shall be provided  
119 at locations where welding, cutting, or soldering with  
120 arc or flame is being done.

121 (m) At each wooden door through which power lines  
122 pass there shall be one portable fire extinguisher or two  
123 hundred forty pounds of rock dust within twenty-five  
124 feet of the door on the intake air side.

125 (n) At each mine producing three hundred tons of  
126 coal or more per shift, there shall be readily available  
127 the following materials at locations not exceeding two  
128 miles from each working section:

129 (1) One thousand board feet of brattice boards

130 (2) Two rolls of brattice cloth

131 (3) Two handsaws

132 (4) Twenty-five pounds of 8° nails

133 (5) Twenty-five pounds of 10° nails

- 134 (6) Twenty-five pounds of 16° nails  
135 (7) Three claw hammers  
136 (8) Twenty-five bags of wood fiber plaster or ten  
137 bags of cement (or equivalent material for stoppings)  
138 (9) Five tons of rock dust.  
139 (o) At each mine producing less than three hundred  
140 tons of coal per shift, the above materials shall be avail-  
141 able at the mine: *Provided, however,* That the emergency  
142 materials for one or more mines may be stored at a  
143 central warehouse or building supply company and such  
144 supply must be the equivalent of that required for all  
145 mines involved and within one hour's delivery time  
146 from each mine. This exception shall not apply where  
147 the active working sections are more than two miles from  
148 the surface.

**§22-2-59. First-aid equipment.**

- 1 (a) Each operator of an underground coal mine shall  
2 maintain a supply of first-aid equipment at each of the  
3 following locations:  
4 (1) At the mine dispatcher's office and on the surface  
5 in close proximity to the mine entry.  
6 (2) At the bottom of each regularly traveled slope  
7 or shaft; however, where the bottom of such slope or  
8 shaft is not more than one thousand feet from the sur-  
9 face, such first-aid supplies may be maintained on the  
10 surface at the entrance of the mine.  
11 (3) At a point in each working section not more than  
12 five hundred feet outby the active working face or faces.  
13 (b) The first-aid equipment required to be maintained  
14 shall include at least the following:  
15 (1) One stretcher  
16 (2) One broken-back board  
17 (3) Twenty-four triangular bandages  
18 (4) Eight four-inch bandage compresses  
19 (5) Sixteen two-inch bandage compresses  
20 (6) Twelve one-inch adhesive compresses  
21 (7) One foille

- 22 (8) Two cloth blankets  
23 (9) One rubber blanket  
24 (10) Two tourniquets  
25 (11) One one-ounce bottle of aromatic spirits of am-  
26 monia  
27 (12) Two inflatable plastic arm splints  
28 (13) Two inflatable plastic leg splints  
29 (14) Six small splints, metal or wooden  
30 (15) Two cold packs  
31 (c) All first-aid supplies required to be maintained  
32 under the section shall be stored in suitable sanitary,  
33 dust-tight, moisture-proof containers and such supplies  
34 shall be accessible to the miners.  
35 (d) No first-aid material shall be removed or diverted  
36 without authorization, except in case of accident in or  
37 about the mine.  
38 (e) On all occasions when a person becomes sick or  
39 injured underground to the extent that he must go to  
40 the surface, he shall be accompanied by one or more  
41 persons.

**§22-2-60. Accessible outlets; safe roadways for emergencies.**

- 1 (a) No operator or mine foreman of any coal mine  
2 shall employ any person to work in such mine, or per-  
3 mit any persons to be in the mine for the purpose of  
4 working therein unless they are provided with two  
5 openings or outlets to each seam, separated by natural  
6 strata, such openings to be not less than three hundred  
7 feet apart, if the mine be worked by shaft; if the mine  
8 be worked by shaft and slope, such openings shall be  
9 separated by one hundred feet of natural strata; and  
10 not less than fifty feet apart at the outlets, if worked  
11 by slope or drift; but this requirement of a distance  
12 of three hundred feet between openings or outlets to  
13 shaft mines shall not apply where such openings or  
14 outlets have been made prior to the effective date of  
15 this article.  
16 (b) At least two separate and distinct travelable pas-  
17 sageways shall be maintained to insure passage at all

18 times to any person, including disabled persons, and  
19 which shall be designated as escapeways; at least one  
20 which is ventilated with intake air shall be provided  
21 from each working section continuous to the nearest  
22 available opening on the surface, and shall be main-  
23 tained in safe condition and properly marked. Mine  
24 openings shall be adequately protected to prevent the  
25 entrance into the underground area of the mine of sur-  
26 face fires, fumes, smoke and floodwater. Escape facilities  
27 approved by the director of the department of mines,  
28 properly maintained and frequently tested, shall be  
29 present at or in each escape shaft or slope to allow all  
30 persons, including disabled persons to escape quickly  
31 to the surface in event of an emergency. Return airways  
32 entries designated as escapeways shall be provided with  
33 permissible two-way communication systems to the sur-  
34 face, and such systems shall be located at points not to  
35 exceed every four thousand feet.

36 (c) Escapeways shall be inspected and traveled at least  
37 once each week by a certified mine examiner who shall  
38 place his initials and the date in a conspicuous place or  
39 places and who shall file a written report thereon which  
40 shall be kept on the surface.

41 (d) When new coal mines are opened, not more than  
42 twenty men shall be allowed at any one time in any mine  
43 until a connection has been made between the two mine  
44 openings, and such connections shall be made as soon as  
45 possible.

46 (e) When only one opening is available because of  
47 final mining of pillars, not more than twenty miners  
48 shall be allowed in such mine at any one time, and the  
49 distance between the mine opening and working face  
50 shall not exceed five hundred feet.

**§22-2-61. Coal storage bins; recovery tunnels; coal storage  
piles.**

1 (a) Coal storage bins hereafter constructed with verti-  
2 cal sides fifty feet or over in height shall be pro-  
3 vided with ventilators or louvers or both to provide  
4 adequate ventilation. Where roofs are constructed over

5 coal storage bins, adequate ventilation shall be provided  
6 by stacks, ventilators, louvers or mechanical means.

7 (b) Where cutting or welding is performed at any  
8 location where coal is stored, means of prompt ex-  
9 tinguishment of any fire accidentally started shall be  
10 provided, and the area where cutting or welding is per-  
11 formed shall be adequately watered down and rock-  
12 dusted.

13 (c) A qualified person shall test for methane with a  
14 methane detector prior to and during cutting and welding  
15 operations inside or underneath a coal storage bin.

16 (d) Electric motors, switches and controls for coal  
17 storage bins hereafter acquired shall be of dust-tight  
18 construction.

19 (e) Repairs to electric equipment shall not be made  
20 when the surrounding atmosphere contains dangerous  
21 amounts of gas or dust.

22 (f) Where electric lights are used in recovery tunnels  
23 of over one hundred feet in length, the wiring shall be in  
24 rigid conduit and shall be enclosed in waterproof  
25 receptacles.

26 (g) An escapeway shall be provided from any recovery  
27 tunnel hereafter constructed to a safe place on the surface;  
28 such escapeway shall be at least thirty inches in diameter  
29 and where inclined, a ladder shall be provided to extend  
30 full length of the escapeway to facilitate emergency exit.

31 (h) Extreme caution shall be exercised by all em-  
32 ployees required to work at or near coal storage piles  
33 during coal recovery operations to avoid injury by coal  
34 slides or by being in or drawn into a chute.

#### §22-2-62. Thermal coal dryers and plants.

1 Thermal coal dryer plants shall be hereafter construct-  
2 ed, maintained and operated in compliance with the  
3 following provisions:

4 (1) Good housekeeping shall be practiced in and  
5 around thermal dryer plants.

6 (2) Adequate fire-fighting facilities shall be provided  
7 on all floors.



8           (3) When welding and cutting operations are to be  
9 performed in a dryer structure, the area shall be wetted  
10 down thoroughly and adequate fire-fighting apparatus  
11 shall be readily available during the operation.

12           (4) Only qualified persons shall be permitted to oper-  
13 ate dryers; however, this provision shall not prohibit  
14 qualified persons from training other persons to become  
15 qualified operators.

16           (5) Dryer control panels shall be provided with  
17 audible and visible alarm devices; such devices should be  
18 adjusted to function at somewhat less than maximum  
19 dryer temperature.

20           (6) A bypass or relief stack equipped with an auto-  
21 matically operated damper shall be provided for by-  
22 passing gases from the heating units to the outside atmos-  
23 phere during emergency or normal shutdown operations.

24           (7) Thermal coal dryers hereafter installed shall  
25 not be enclosed except that roofs may be used. When-  
26 ever it is deemed necessary to enclose thermal dryers,  
27 such equipment shall be in a fireproof structure.

28           (8) Dryer installations and discharge stacks shall be  
29 protected with adequate explosion release vents that open  
30 to the outside atmosphere.

31           (9) Thermal coal dryers shall be located at a safe  
32 distance from tipples, cleaning plants, mine openings and  
33 surface buildings, such as oil storage areas, explosive  
34 magazines, and other buildings where coal dust, sparks  
35 and flames are likely to enter and become ignited or other-  
36 wise cause danger of fires.

37           (10) Dryers shall be equipped with quick-response  
38 heat control devices which, in the event of superelevated  
39 temperatures, will automatically divert the hot inlet gases  
40 into a bypass stack, thereby bypassing the drying cham-  
41 ber and at the same time stopping the fuel from being  
42 supplied to the air heater.

43           (11) All dryers, conveyors and other fine coal trans-  
44 porting machines shall be constructed as dust-tight as  
45 practicable. Where necessary, such equipment shall be  
46 provided with removable covers for inspection and

47 cleaning and shall be provided with vent pipes to the  
48 outside atmosphere to permit the escape of distilled  
49 gases.

50 (12) Dryers shall be examined thoroughly after  
51 normal and emergency shutdown for fires and coal dust  
52 accumulations.

53 (13) Dryer controls, valves, and mechanical equip-  
54 ment shall be frequently inspected, and no dryer shall be  
55 operated with defective mechanical equipment.

56 (14) The gauges of temperature control instruments  
57 shall be of the recording type.

58 (15) Operating rules suitable for the characteristics  
59 of each dryer system and the materials processed shall  
60 be developed and shall be available at the control panel.

61 (16) Electrical equipment, electrical wiring and light-  
62 ing fixtures shall be of dust-tight construction.

63 (17) Adequate illumination shall be provided.

64 (18) Dryers shall not be operated beyond their rated  
65 evaporation capacity.

66 (19) Fluid bed dryers shall be provided with water  
67 sprays of sufficient capacity for use in event of fire.

68 (20) After shutdowns, thermal dryers shall be  
69 cleared of hot coals so as to minimize ignitions on succeed-  
70 ing startups.

71 (21) Thermal coal dryers previously installed in a  
72 tipple or cleaning plant shall be separated where practic-  
73 able from other working areas by substantial partitions  
74 capable of providing greater resistance to explosion pres-  
75 sures than an exterior wall or walls.

76 (22) When it is necessary to use extension cables  
77 for emergency illumination, such lighting devices shall  
78 be dust-tight and adequately guarded. When it becomes  
79 necessary to perform work in dryer system bins or any  
80 other dusty areas, permissible cap lamps shall be used  
81 for illumination.

**§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval;**

**certificates not transferable; section to be printed on certificates.**

1 (a) After the effective date of this section, no mine  
2 shall be opened or reopened unless prior approval has  
3 been obtained from the director of the department of  
4 mines, which approval shall not be unreasonably with-  
5 held. The operator shall pay for such approval a fee of  
6 ten dollars, which payment shall be tendered with the  
7 operator's application for such approval: *Provided*, That  
8 mines producing coal solely for the operator's use shall  
9 be issued a permit without charge if coal production will  
10 be less than fifty tons a year.

11 (b) Within thirty days after January first of each  
12 year, the operator of each mine holding a certificate  
13 evidencing approval of the director to open a mine, shall  
14 apply for the extension of such certificate of approval for  
15 an additional year. Such approval, evidenced by a certifi-  
16 cate of the director, shall be granted as a matter of right  
17 and without charge if, at the time such application is  
18 made, the operator is in compliance with the provisions  
19 of section seventy-two of this article. Applications for  
20 extension of such certificates of approval not submitted  
21 within the time required shall be processed as an applica-  
22 tion to open or reopen a mine and shall be accompanied  
23 by a fee of ten dollars.

24 (c) Certificates of approval issued pursuant to this sec-  
25 tion shall not be transferable.

26 (d) The provisions of this section shall be printed on  
27 the reverse side of every certificate issued hereunder.

28 (e) On or after July 1, 1971, no mine shall be opened or  
29 reopened unless a surface disturbed reclamation bond in  
30 the amount of five hundred dollars per acre is submitted  
31 to the department of mines for the removal of unused  
32 surface structures and the sealing of abandoned mine  
33 openings. The district mine inspector shall be contacted  
34 for a preinspection of the area proposed for underground  
35 mining prior to the issuance of any new opening ap-  
36 proval. The above-mentioned bond shall go into a sep-  
37 arate fund and must be submitted separate, when appli-  
38 cation is made for the issuance of a deep mine permit.

**§22-2-64. Sealing; permanently closed or abandoned mines.**

1 (a) After July 1, 1971, when any coal mine is worked  
2 out or indefinitely closed, such mine openings shall be  
3 properly sealed within ninety days after the mine is  
4 abandoned.

5 (b) Mines temporarily inactive for less than ninety  
6 days shall be adequately fenced with conspicuous signs  
7 prohibiting the possible entrance of unauthorized persons.

8 (c) Shaft openings shall be effectively capped or filled.  
9 Filling shall be for the entire depth of the shaft. Caps  
10 shall consist of a six inch thick concrete cap or other  
11 equivalent means approved by the director of the depart-  
12 ment of mines.

13 (d) Caps shall be equipped with a vent pipe at least  
14 two inches in diameter extending for a distance of at  
15 least fifteen feet above the surface shaft.

**§22-2-65. Mining close to abandoned workings.**

1 Any operator working up to an abandoned coal mine  
2 may be permitted to work to his property line, if ap-  
3 proved by the director of the department of mines, but  
4 in such cases precaution must be taken as provided in  
5 this article.

**§22-2-66. Explosion or accident; notice; investigation by department of mines.**

1 Whenever, by reason of any explosion or other accident  
2 in or about any coal mine or the machinery connected  
3 therewith, loss of life, or serious personal injury shall  
4 occur, it shall be the duty of the superintendent of the  
5 mine, and in his absence, the mine foreman in charge of  
6 the mine, to give immediate notice to the director of the  
7 department of mines and the inspector of the district,  
8 stating the particulars of such accident. If anyone is  
9 killed, the inspector shall immediately go to the scene  
10 of such accident and make such recommendations and  
11 render such assistance as he may deem necessary for the  
12 future safety of the men, and investigate the cause of  
13 such explosion or accident and make a record thereof  
14 which he shall preserve with the other records in his  
15 office, the cost of such records to be paid by the depart-

16 ment of mines, and a copy shall be furnished to the oper-  
17 ator and other interested parties. To enable him to make  
18 such investigation, he shall have the power to compel the  
19 attendance of witnesses and to administer oaths or affir-  
20 mations. The director of the department of mines shall  
21 have the right to appear and testify and to offer any  
22 testimony that may be relevant to the question and to  
23 cross-examine witnesses.

**§22-2-67. Written report of accident.**

1 Whenever any accident occurs in or about any coal  
2 mine to any employee or person connected with the min-  
3 ing operation, resulting in personal injury or death, the  
4 operator shall, within twenty-four hours, report the same  
5 in writing to the director of the department of mines and  
6 to the district mine inspector of the district in which the  
7 accident occurs, giving full details thereof upon forms  
8 furnished by the department of mines.

**§22-2-68. Preservation of evidence following accident or disaster.**

1 Following a mine accident resulting in the death of  
2 one or more persons and following any mine disaster,  
3 the evidence surrounding such occurrence shall not be  
4 disturbed after recovery of bodies or injured persons  
5 until an investigation by the department of mines has  
6 been completed.

**§22-2-69. Fire in and about mine; notification of director and district mine inspector.**

1 The operator or mine foreman, upon the discovery of  
2 fire in or about a mine, shall immediately notify the di-  
3 rector of the department of mines and the district mine  
4 inspector in whose district the mine is located.

**§22-2-70. Shafts and slopes.**

1 (a) When mine examiner to be employed; qualifica-  
2 tions.

3 During the sinking of a shaft or the driving of a slope  
4 to a coal bed or while engaged in underground construc-  
5 tion work, or relating thereto, the operator shall assign

6 a mine examiner to such project areas. Such mine exam-  
7 iner shall have a certificate of competency valid only for  
8 the type of work stipulated thereon and issued to him by  
9 the department of mines after he has passed an examina-  
10 tion given by the department of mines. He shall, at the  
11 time he takes the examination, have a minimum of five  
12 years' experience in shaft sinking, slope driving and  
13 underground construction; moreover, he shall be able to  
14 detect methane with a flame safety lamp and have a  
15 thorough knowledge of the ventilation of shafts, slopes,  
16 and mines, and the machinery connected therewith, and  
17 finally, he shall be a person of good moral character with  
18 temperate habits.

19 (b) Mine examiner or certified person acting as such;  
20 duties generally; records open for inspection.

21 In all shafts and slopes within three hours immediately  
22 preceding the beginning of a work shift and before any  
23 workmen in such shift, other than those who may be  
24 designated to make the examinations, enter the under-  
25 ground areas of such shafts or slopes, a certified foreman  
26 or mine examiner, designated by the operator of such  
27 shaft or slope to do so, shall make an examination of such  
28 areas. Each person designated to make such examinations  
29 shall make tests with a permissible flame safety lamp for  
30 accumulations of methane and oxygen deficiency, and  
31 examine sides of shafts and ribs and roof of all slopes.  
32 Should he find a condition which he considers dangerous  
33 to persons, he shall place a conspicuous danger sign at  
34 all entrances to such places. He shall record the results  
35 of his examination with ink or indelible pencil in a book  
36 prescribed by the director of the department of mines,  
37 kept at a place on the surface designated by mine man-  
38 agement. All records as prescribed herein shall be open  
39 for inspection by interested persons.

40 (c) Approvals and permits.

41 An approval shall be obtained from the department of  
42 mines before work is started. A permit shall be obtained  
43 from the department of mines (1) to stop fan when men  
44 are in shafts or slopes; (2) to use electrical machinery in  
45 shafts or slopes; (3) to use electric lights in shafts or

46 slopes; (4) to use welders, torches and like equipment in  
47 shafts or slopes; (5) to hoist more than four men at one  
48 time in buckets or cars; (6) to shoot more than fifteen  
49 shots in one series.

50 (d) Records.

51 The foreman in charge on each shift shall keep a daily  
52 report of conditions and practices. The foreman in charge  
53 on each shift shall read and countersign the reports of  
54 the previous shift. Unsatisfactory conditions and prac-  
55 tices reported shall be repeated on daily reports until  
56 corrected. Hoists, buckets, cars, ropes and appliances  
57 thereto shall be examined by a qualified person before  
58 the start of each shift and a written record kept. Deaths  
59 from accidents or previous injuries shall be reported  
60 immediately by wire to the office of the director of the  
61 department of mines and to the district mine inspector  
62 or the inspector-at-large. A written report of all injuries  
63 and deaths shall be mailed to the department of mines  
64 and district mine inspector promptly. Immediate notice  
65 shall be given the office of the director of the department  
66 of mines, the district mine inspector and the inspector-  
67 at-large in the event of an ignition of gas, or serious acci-  
68 dent to men or equipment. All permits and approvals  
69 must be available for inspection by all interested per-  
70 sons.

71 (e) General.

72 The foreman on shift shall have at least five years' ex-  
73 perience in shafts or slopes. New employees shall be  
74 instructed in the dangers and rules incident to their  
75 work. Conspicuous bulletin boards and warning signs  
76 shall be maintained. Unauthorized persons shall not be  
77 permitted around shafts or slopes. First-aid material shall  
78 be maintained at the operation as required by section  
79 fifty-nine of this article. The scene of a fatal acci-  
80 dent shall be left unchanged until an investigation is  
81 made by all interested persons. All employees and others  
82 around the operation shall wear hard-toe shoes and hard-  
83 top hats. Goggles or other eye protection shall be worn  
84 when cutting, welding, or striking where particles may  
85 fly. Gears, belts, and revolving parts of machinery shall

86 be properly guarded. Hand tools shall be in good con-  
 87 dition. Sides of shafts, ribs and roof of all slopes shall be  
 88 closely observed for loose and dangerous conditions.  
 89 Loose brows, ribs and top in slopes shall be taken down  
 90 or supported; loose ribs in shafts shall be scaled. Men  
 91 shall be hoisted and lowered under power in shafts and  
 92 slopes. All hoists must have two positive breaking de-  
 93 vices. At least three wraps of rope shall remain on the  
 94 hoist drum at all times. Wire ropes shall not be less than  
 95 three-fourths inches in diameter, and of a design to pre-  
 96 vent excessive spinning or turning when hoisting.

97 When heavy materials are hoisted, a large rope shall  
 98 be used if necessary. A hoisting engineer shall be in  
 99 constant attendance while men are in shaft. Head frames  
 100 shall be constructed substantially. Noise from machinery  
 101 shall not interfere with signals. The standard signal code,  
 102 whistle or bell shall be used for hoisting:

103 One signal .....Hoist

104 One signal .....Stop

105 Two signals .....Lower

106 Three signals .....Man cage

107 One signal from hoisting engineer.....Men board cage

108 Hoist signals shall be posted in front of the hoisting  
 109 engineer. The shaft opening shall be enclosed by a fence  
 110 five feet high. Buckets shall not be loaded within six  
 111 inches of the top rim. Buckets shall have a positive lock  
 112 on the handle or bale to prevent bucket from crumpling  
 113 while being hoisted. Positive coupling devices shall be  
 114 used on buckets or cars (hooks with safety catches or  
 115 threaded clevis). Emergency devices for escape shall  
 116 be provided while shafts are under construction. Men  
 117 shall not ride on or work from rims of buckets. Buckets  
 118 or cars shall not be lowered without a signal from work-  
 119 ing area. Only sober and competent engineers shall be  
 120 permitted to operate hoists. No intoxicating liquors or  
 121 intoxicated persons shall be permitted in or around any  
 122 shaft, slope or machinery. Lattice type platforms shall  
 123 be used.

124 (f) Explosives.



125 Explosives and blasting caps being taken into or re-  
126 moved from the operation shall be transported and kept  
127 in approved nonconducting receptacles (unopened car-  
128 tons or cases are permissible). Explosives shall not be  
129 primed until ready to be inserted into holes. Handling of  
130 explosives and loading of holes shall be under the strict  
131 supervision of a qualified person or shotfirer. No more  
132 explosives or caps than are required to shoot one round  
133 shall be taken into shafts. Adobe, mudcapped or uncon-  
134 fined shots shall not be fired. Holes shall be stemmed  
135 tightly and full to the mouth. Blasting caps shall be  
136 inserted in line with the explosive. Leg wires of blasting  
137 caps and buss wires shall be kept shunted until connected.  
138 Shooting cables shall be shunted at firing devices and  
139 before connecting to leg wires. Only approved shooting  
140 devices shall be used. Shots shall be fired promptly after  
141 the round of holes are charged. Warnings shall be given  
142 before shots are fired by shouting "Fire" three times  
143 slowly after those notified have withdrawn. The blasting  
144 circuit shall be wired in series or parallel series. All  
145 shooting circuits shall be tested with a galvanometer by  
146 a qualified person before shooting. A careful examination  
147 for misfires shall be made after each shot. Persons shall  
148 not return to the face until smoke and dust have cleared  
149 away. The shooting cable shall be adequately insulated  
150 and have a substantial covering; be connected by the  
151 person firing the shot; and be kept away from power  
152 circuits. Misfires shall be removed by firing separate  
153 holes or by washing; shall not be drilled out; and shall  
154 be removed under supervision of a foreman or qualified  
155 person. Separate magazines for the storage of explosives  
156 and detonators shall be located not less than three hun-  
157 dred feet from openings or other structures. Magazines  
158 for the storage of explosives and detonators shall be  
159 separated at least fifty feet. Magazines shall be located  
160 behind barricades. The outside of magazines shall be con-  
161 structed of incombustible material. Rubbish and com-  
162 bustible material shall not be permitted to accumulate  
163 around or in magazine. Warning signs, to be seen in all  
164 directions, shall be posted near magazines.

165 (g) Electrical.

166 Power cables installed in slopes shall be placed in con-  
167 duit away from the belt as far as possible. Surface trans-  
168 formers shall be elevated at least eight feet from the  
169 ground or enclosed by a fence six feet high, grounded if  
170 metal; shall be properly grounded; shall be installed so  
171 that they will not present a fire hazard; and shall be  
172 guarded by sufficient danger signs.

173 Electric equipment shall be in good condition, clean  
174 and orderly; shall be equipped with guards around mov-  
175 ing parts; and shall be grounded with effective frame  
176 grounds on motors and control boxes.

177 All electric wires shall be installed and supported on  
178 insulators. All electric equipment shall be protected by  
179 dual element fuse or circuit breakers.

180 (h) Ventilation.

181 Ventilating fans shall be offset from portal at least  
182 fifteen feet; shall be installed so that the ventilating cur-  
183 rent is not contaminated by dust, smoke or gases; shall  
184 be effectively frame grounded; and shall be provided with  
185 fire extinguishers.

186 All shafts and slopes shall be ventilated adequately  
187 and continuously with fresh air. Air tubing shall deliver  
188 not less than nine thousand feet per minute at the work-  
189 ing area or as much more as the inspector may require.

190 (i) Gases.

191 A foreman shall be in attendance at all times in shafts  
192 and slopes who has passed an examination given by the  
193 department of mines as to his competency in the use of  
194 flame safety lamps.

195 An examination shall be made before and after shooting  
196 by the foreman on shift. The foreman shall have no  
197 superior in the performance of his duties. A lighted  
198 flame safety lamp or other approved detector shall be  
199 carried at all times by the foreman when in the working  
200 area and weekly gas analysis made. In all shafts and  
201 slopes within three hours immediately preceding the be-  
202 ginning of a work shift and before any workmen in such  
203 shift, other than those who may be designated to make  
204 the examinations, enter the underground areas of such  
205 shafts or slopes, a certified mine foreman or mine exam-

206 iner designated by the operator of such shaft or slope to  
207 do so, shall make an examination of such area. Evidence  
208 of official examination shall be left at the face by marking  
209 date and initials.

210 Gases shall be removed under the supervision of the  
211 foreman in charge. Smoking shall not be permitted in-  
212 side of shafts or slopes.

213 (j) Drilling.

214 Dust allaying or dust collecting devices shall be used  
215 while drilling.

216 (k) Lights to be used in shafts.

217 Only approved electric cap lights shall be used in  
218 shafts. Other lights shall be of explosive-proof type.  
219 Lights shall be suspended in shafts by cable or chain  
220 other than the power conductor. In slopes lights must be  
221 substantially installed. Power cables shall be of an ap-  
222 proved type. Power cables shall not be taut from shaft  
223 collar to light. Power cables shall be in good condition  
224 and free of improper splices. Lights shall be suspended  
225 not less than twenty feet above where men are working.  
226 Lights shall be removed from shaft and power cut off  
227 when shooting. In slopes lights must be removed a safe  
228 distance when shots are fired. Lights shall not be replaced  
229 in shafts or slopes until examination has been made for  
230 gas by the mine examiner and found clear. Front of light  
231 shall be protected by a substantial metal-type guard.  
232 Lights shall be protected from falling objects from above  
233 by a metal hood. The lighting circuit shall be properly  
234 fused. Electric lights shall not be used in gaseous atmos-  
235 pheres. A lighted flame safety lamp or approved detector  
236 shall be kept for use at the face while men are at work.

## GENERAL PROVISIONS

### §22-2-71. Reopening old or abandoned mines.

1 No person, without first giving to the director of the  
2 department of natural resources ten days' written notice  
3 thereof, shall reopen for any purposes any old or aban-  
4 doned mine wherein water or mine seepage has collected

5 or become impounded or exists in such manner or quan-  
6 tity that upon the opening of such mine, such water or  
7 seepage may drain into any stream or watercourse. Such  
8 notice shall state clearly the name or names of the owner  
9 or owners of the mine proposed to be opened, its exact  
10 location, and the time of the proposed opening thereof.

11 Upon receipt of such notice, the director of the de-  
12 partment of natural resources shall have his representa-  
13 tive present at the mine at the time designated in the  
14 notice for such opening, who shall have full supervision  
15 of the work of opening such mine with full authority to  
16 direct the work in such manner as to him seems proper  
17 and necessary to prevent the flow of mine water or seep-  
18 age from such mine in such manner or quantity as will  
19 kill or be harmful to the fish in any stream or water-  
20 course into which such mine water seepage may flow  
21 directly or indirectly.

**§22-2-72. Monthly report by operator of mine.**

1 The operator of every coal mine shall, on or before  
2 the end of each calendar month, file with the director a  
3 report covering the preceding calendar month on forms  
4 furnished by the director. Such reports shall state the  
5 number of accidents which have occurred, the number  
6 of persons employed, the days worked and the actual  
7 tonnage of coal mined.

**§22-2-73. Examinations to determine compliance with permits.**

1 Whenever permits are issued by the department of  
2 mines, frequent examinations shall be made by the mine  
3 inspector during the tenure of the permit to determine  
4 that the requirements and limitations of the permit are  
5 complied with.

**§22-2-74. Provisions of article severable.**

1 The various provisions of this article shall be con-  
2 strued as separable and severable, and should any of  
3 the provisions, sentences, clauses, or parts thereof be  
4 construed or held unconstitutional or for any reason be  
5 invalid, the remaining provisions of this article shall not  
6 be thereby affected.

# CHAPTER 90

(House Bill No. 913—By Mr. Laulis)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of coal miners, certificate of competency and qualification required of miners, apprentices, identification, and employment of apprentices.

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

That section one, article six, 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 6. CERTIFICATION OF COAL MINERS.

### §22-6-1. Certificate of competency and qualification required of miners; apprentices; identification; employment of apprentices.

1 Except as hereinafter provided no person shall be em-  
2 ployed or work as a coal miner in any mine in this  
3 state, without first having obtained a certificate of com-  
4 petency and qualification.

5 Any miner holding a certificate may have one person  
6 working with him, and under his direction, as an ap-  
7 prentice, and any foreman, assistant foreman or mine  
8 examiner may have not more than five persons working  
9 with him and under his immediate supervision and direc-  
10 tion, as apprentices, for the purpose of learning and  
11 being instructed in the duties and calling of mining.

12 Apprentice miners shall wear red hats which will  
13 identify them as being noncertified.

14 On and after the effective date of this section, no person  
15 shall be employed as an apprentice miner for a period  
16 in excess of eight months, except in the event of illness

17 or injury, time extensions shall be permitted as estab-  
 18 lished by the director of the department of mines.

19 For the purposes of this article the term "coal miner"  
 20 or "miner" shall mean all underground workers in  
 21 bituminous coal mines, except as hereinafter provided.

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## CHAPTER 91

(House Bill No. 1031—By Mr. Speaker, Mr. Boiarsky,  
 and Mr. Seibert)

[Passed March 12, 1971; in effect April 1, 1971. 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 the application for certificate of title and tax for privilege of certification of title.

*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 to read as follows:

### **ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.**

#### **§17A-3-4. Application for certificate of title; tax for privilege of certification of title.**

1 Certificates of registration of any vehicle or registration  
 2 plates therefor, whether original issues or duplicates,  
 3 shall not be issued or furnished by the department of  
 4 motor vehicles or any other officer charged with such  
 5 duty, unless the applicant therefor already has received,  
 6 or shall at the same time make application for and be  
 7 granted, an official certificate of title of such vehicle.  
 8 Such application shall be upon a blank form to be  
 9 furnished by the department of motor vehicles and shall  
 10 contain a full description of the vehicle, which descrip-  
 11 tion shall contain the manufacturer's serial or identifica-  
 12 tion number or other number as determined by the

13 commissioner and any distinguishing marks, together  
14 with a statement of the applicant's title and of any liens  
15 or encumbrances upon such vehicle, the names and  
16 addresses of the holders of such liens and such other  
17 information as the department of motor vehicles may  
18 require. The application shall be signed and sworn to  
19 by the applicant. A tax is hereby imposed upon the  
20 privilege of effecting the certification of title of each  
21 vehicle in the amount equal to five percent of the value  
22 of said motor vehicle at the time of such certification.  
23 If the vehicle is new, the actual purchase price or con-  
24 sideration to the purchaser thereof shall be the value of  
25 said vehicle; if the vehicle is a used or secondhand  
26 vehicle, the present market value at time of transfer or  
27 purchase shall be deemed the value thereof for the  
28 purpose of this section: *Provided*, That so much of the  
29 purchase price or consideration as is represented by the  
30 exchange of other vehicles on which the tax herein  
31 imposed has been paid by the purchaser shall be de-  
32 ducted from the total actual price or consideration paid  
33 for said vehicle, whether the same be new or secondhand;  
34 if the vehicle be acquired through gift, or by any manner  
35 whatsoever, unless specifically exempted in this section,  
36 the present market value of the vehicle at the time of  
37 the gift or transfer shall be deemed the value thereof  
38 for the purposes of this section. No certificate of title for  
39 any vehicle shall be issued to any applicant unless such  
40 applicant shall have paid to the department of motor  
41 vehicles the tax imposed by this section which shall be  
42 five percent of the true and actual value of said vehicle  
43 whether the vehicle be acquired through purchase, by  
44 gift, or by any other manner whatsoever except gifts  
45 between husband and wife or between parents and  
46 children: *Provided*, That husband or wife, or parents  
47 or children previously have paid said tax on the vehicle  
48 so transferred to the state of West Virginia. The tax im-  
49 posed by this section shall not apply to vehicles to be  
50 registered as Class H vehicles or Class S vehicles, as  
51 defined in section one, article ten of this chapter, which  
52 are used or to be used in interstate commerce, nor shall  
53 the tax imposed by this section apply to titling of

54 vehicles by a registered dealer of this state for resale  
55 only, nor shall the tax imposed by this section apply  
56 to titling of vehicles by this state or any political sub-  
57 division thereof, or by any volunteer fire department  
58 organized and incorporated under the laws of the state  
59 of West Virginia for protection of life or property. The  
60 total amount of revenue collected by reason of this tax  
61 shall be paid into the state road fund and expended by  
62 the state road commissioner for matching federal aid  
63 funds allocated for West Virginia. In addition to said  
64 tax, there shall be a charge of two dollars for each origi-  
65 nal certificate of title or duplicate certificate of title so  
66 issued: *Provided, however,* That this state or any politi-  
67 cal subdivision thereof, or any such volunteer fire depart-  
68 ment, shall be exempted from payment of such charge.

69 Such certificate shall be good for the life of the vehicle,  
70 so long as the same is owned or held by the original  
71 holder of such certificate, and need not be renewed an-  
72 nually, or any other time, except as herein provided.

73 If, by will or direct inheritance, a person becomes the  
74 owner of a motor vehicle and the tax herein imposed  
75 previously has been paid, to the department of motor  
76 vehicles on that vehicle, he shall not be required to pay  
77 such tax.

78 A person who has paid the tax imposed by this section  
79 shall not be required to pay the tax a second time for  
80 the same motor vehicle, but he shall be required to pay  
81 a charge of two dollars for the certificate of retitle of that  
82 motor vehicle, except that such tax shall be paid by such  
83 person when the title to such vehicle has been transferred  
84 either in this or another state from such person to another  
85 person and transferred back to such person.

86 Notwithstanding any provisions of this code to the  
87 contrary, the owners of trailers, semitrailers and other  
88 vehicles not subject to the certificate of title tax prior  
89 to the enactment of this chapter shall be subject to the  
90 privilege tax imposed by this section: *Provided, how-  
91 ever,* That mobile homes, house trailers, modular homes  
92 and similar nonmotive propelled vehicles susceptible  
93 of being moved upon the highways but primarily de-  
94 signed for habitation and occupancy, rather than for



95 transporting persons or property, shall not be subject to  
96 the tax imposed by this section, but shall be taxable  
97 under the provisions of articles fifteen and fifteen-a of  
98 chapter eleven of this code.

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## CHAPTER 92

(Senate Bill No. 95—By Mr. Barnett)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact sections one and two, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to automobile title certificates; liens; information required to be placed on the certificate.

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

That sections one and two, article four-a, 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 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.**

§17A-4A-1. Certificate to show liens or encumbrances.

§17A-4A-2. Liens and encumbrances subsequently created.

§17A-4A-1. Certificate to show liens or encumbrances.

1 The department upon receiving an application for a  
2 certificate of title to a vehicle, trailer, semitrailer or pole  
3 trailer, for which a certificate of title is required under  
4 article three of this chapter, all of which are hereinafter  
5 in this article referred to as vehicles, showing liens or  
6 encumbrances upon such vehicle, shall, upon issuing to  
7 the owner thereof a certificate of title therefor, show  
8 upon the face of the certificate of title all liens or en-  
9 cumbrances disclosed by such application. All such liens  
10 or encumbrances shall be shown in the order of their

11 priority being according to the information contained in  
12 such application. When such an application shows liens  
13 and encumbrances, such information as evidence of the  
14 lien in connection therewith as the department may  
15 deem necessary shall also be furnished. Such information  
16 shall include the name and address of the lienholder, the  
17 nature and kind of his lien, the date thereof, and the  
18 amount thereby secured. However, only the name and  
19 address of the lienholder will be endorsed on the title  
20 certificate. Upon issuing the certificate, the department  
21 shall thereupon send or deliver it to the holder of the  
22 first lien.

**§17A-4A-2. Liens and encumbrances subsequently created.**

1 Liens or encumbrances placed on vehicles by the  
2 voluntary act of the owner (including a registered dealer  
3 holding title by assignment entered upon a certificate of  
4 title) after the original issue of title to be properly re-  
5 corded must be shown on the certificate of title. In such  
6 cases, the owner or lienholder shall file application with  
7 the department on a blank furnished for that purpose,  
8 setting forth the lien or liens and such information and  
9 evidence of the lien in connection therewith as the de-  
10 partment may deem necessary. Such information shall  
11 include the name and address of the lienholder, the  
12 nature and kind of his lien, the date thereof, and the  
13 amount thereby secured. However, only the name and  
14 address of the lienholder shall be endorsed on the title  
15 certificate with the endorsement of the fact of such lien  
16 as hereinafter provided. The department, if satisfied that  
17 it is proper that the same be recorded, and upon surrender  
18 of the certificate of title covering the vehicle, shall  
19 thereupon issue a new certificate of title, showing the  
20 liens or encumbrances in the order of their filing being  
21 according to the date, hour and minute of receipt by the  
22 department of the application for same. For the purpose  
23 of recording a subsequent lien on a certificate of title,  
24 the subsequent lienor shall make a written request upon  
25 the lienor in possession of the certificate of title, accom-  
26 panied by proof of the existence of his subsequent lien,  
27 stating his need to have possession of the certificate of

28 title for the purpose of having his lien recorded thereon  
29 by the department of motor vehicles. Thereupon, the  
30 lienor in possession of the certificate shall within a rea-  
31 sonable time, not to exceed ten days from the receipt of  
32 said written request, deliver the certificate of title to  
33 the requesting subsequent lienor.

34 Upon delivery of the certificate of title, the subsequent  
35 lienor shall immediately forward it and his own appli-  
36 cation to the department of motor vehicles for filing his  
37 lien and recording the same on the certificate of title.  
38 Upon issuing the new certificate, the department shall  
39 thereupon send or deliver it to the holder of the first lien.

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## CHAPTER 93

(House Bill No. 1197—By Mrs. Smirl and Mr. White, of Cabell)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions; and to further amend said article by adding thereto a new section, designated section ten-a, relating to special plates for manufacturers and transporters, fee.

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

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

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.**

§17A-6-1. Definitions.

§17A-6-10a. Special plates for manufacturers and transporters; fee.

§17A-6-1. Definitions.

- 1 (a) Unless the context in which used clearly requires
- 2 a different meaning, as used in this article:

3 (1) "New motor vehicle dealer" means every person  
4 (other than his agents and employees, if any, while acting  
5 within the scope of their authority or employment), en-  
6 gaged in, or who holds himself out to the public to be  
7 engaged in, the business in this state of selling new motor  
8 vehicles or new and used motor vehicles, of a type re-  
9 quired to be registered under the provisions of this  
10 chapter, except, for the purposes of this article only,  
11 motorcycles.

12 (2) "Used motor vehicle dealer" means every per-  
13 son (other than his agents and employees, if any, while  
14 acting within the scope of their authority or employ-  
15 ment), engaged in, or holds himself out to the public  
16 to be engaged in, the business in this state of selling  
17 used motor vehicles of a type required to be registered  
18 under the provisions of this chapter, except, for the pur-  
19 poses of this article only, motorcycles.

20 (3) "House trailer dealer" means every person (other  
21 than his agents and employees, if any, while acting within  
22 the scope of their authority or employment), engaged  
23 in, or who holds himself out to the public to be engaged  
24 in, the business in this state of selling new and/or used  
25 house trailers, or new and/or used house trailers and  
26 trailers.

27 (4) "Trailer dealer" means every person (other than  
28 his agents and employees, if any, while acting within the  
29 scope of their authority or employment), engaged in, or  
30 who holds himself out to the public to be engaged in, the  
31 business in this state of selling new and/or used trailers.

32 (5) "Motorcycle dealer" means every person (other  
33 than his agents and employees, if any, while acting within  
34 the scope of their authority or employment), engaged  
35 in, or who holds himself out to the public to be engaged,  
36 in, the business in this state of selling new and/or used  
37 motorcycles.

38 (6) "Used parts dealer" means every person (other  
39 than his agents and employees, if any, while acting within  
40 the scope of their authority or employment), engaged in,  
41 or who holds himself out to the public to be engaged in,  
42 the business in this state of selling any used appliance,  
43 accessory, member, portion or other part of any vehicle.

44 (7) "Wrecker or dismantler" means every person  
45 (other than his agents and employees, if any, while  
46 acting within the scope of their authority or employ-  
47 ment), engaged in, or who holds himself out to the  
48 public to be engaged in, the business in this state of  
49 dealing in wrecked or damaged motor vehicles or motor  
50 vehicle parts for the purpose of selling the parts thereof  
51 or scrap therefrom.

52 (8) "New motor vehicles" means all motor vehicles,  
53 except motorcycles and used motor vehicles, of a type  
54 required to be registered under the provisions of this  
55 chapter.

56 (9) "Used motor vehicles" means all motor vehicles,  
57 except motorcycles, of a type required to be registered  
58 under the provisions of this chapter which have been  
59 sold and operated, or which have been registered or  
60 titled, in this or any other state or jurisdiction.

61 (10) "House trailers" means all trailers designed or  
62 intended for human occupancy and commonly referred  
63 to as mobile homes or house trailers, but shall not in-  
64 clude camping, vacation and travel trailers.

65 (11) "Trailers" means all types of trailers other  
66 than house trailers, and shall include, but not be lim-  
67 ited to, pole trailers and semitrailers.

68 (12) "Sales instrument" means any document re-  
69 sulting from the sale of a vehicle, which shall include,  
70 but not be limited to, a bill of sale, invoice, conditional  
71 sales contract, chattel mortgage, chattel trust deed, se-  
72 curity agreement or similar document.

73 (13) "Sell," "sale" or "selling" shall, in addition to  
74 the ordinary definitions of such terms, include offering  
75 for sale, soliciting sales of, negotiating for the sale of,  
76 displaying for sale, or advertising for sale, any vehicle,  
77 whether at retail, wholesale or at auction. "Selling"  
78 shall, in addition to the ordinary definition of that  
79 term, also include buying and exchanging.

80 (14) "Applicant" means any person making appli-  
81 cation for an original or renewal license certificate  
82 under the provisions of this article.

83 (15) "Licensee" means any person holding any  
84 license certificate issued under the provisions of this  
85 article.

86 (16) "Predecessor" means the former owner or  
87 owners or operator or operators of any new motor  
88 vehicle dealer business or used motor vehicle dealer  
89 business.

90 (17) "Established place of business" shall, in the  
91 case of a new motor vehicle dealer, mean a permanent  
92 location, not a temporary stand or other temporary  
93 quarters, owned or leased by the licensee or applicant  
94 and actually occupied or to be occupied by him, as  
95 the case may be, which is or is to be used exclusively  
96 for the purpose of selling new motor vehicles or new  
97 and used motor vehicles, which shall have space under  
98 roof for the display of at least one new motor vehicle  
99 and facilities and space therewith for the servicing  
100 and repair of at least one motor vehicle, which ser-  
101 vicing and repair facilities and space shall be adequate  
102 and suitable to carry out servicing and to make repairs  
103 necessary to keep and carry out all representations,  
104 warranties and agreements made or to be made by such  
105 dealer with respect to motor vehicles sold by him,  
106 which shall be easily accessible to the public, which  
107 shall conform to all applicable laws of the state of  
108 West Virginia and the ordinances of the municipality  
109 in which it is located, if any, which shall display  
110 thereon at least one permanent sign, clearly visible  
111 from the principal public street or highway nearest  
112 said location and clearly stating the business which  
113 is or shall be conducted thereat, and which shall have  
114 adequate facilities to keep, maintain and preserve rec-  
115 ords, papers and documents necessary to carry on such  
116 business and to make the same available to inspection  
117 by the commissioner at all reasonable times: *Provided,*  
118 *however,* That the requirement of exclusive use shall  
119 be met even though (i) some new and any used motor  
120 vehicles sold or to be sold by such dealer or sold or  
121 are to be sold at a different location or locations not  
122 meeting the definition of an established place of busi-  
123 ness of a new motor vehicle dealer, if each such location

124 is or is to be served by other facilities and space of  
125 such dealer for the servicing and repair of at least  
126 one motor vehicle, adequate and suitable as aforesaid,  
127 and each such location used for the sale of some new  
128 and any used motor vehicles otherwise meets the defi-  
129 nition of an established place of business of a used  
130 motor vehicle dealer; (ii) house trailers, trailers  
131 and/or motorcycles are sold or are to be sold thereat,  
132 if, subject to the provisions of section five of this  
133 article, a separate license certificate is obtained for  
134 each such type of vehicle business, which license cer-  
135 tificate remains unexpired, unsuspended and unrevoked;  
136 (iii) farm machinery is sold thereat; and (iv) acces-  
137 sory, gasoline and oil, or storage departments are main-  
138 tained thereat, if such departments are operated for  
139 the purpose of furthering and assisting in the licensed  
140 business or businesses.

141 (18) "Farm machinery" means all machines and  
142 tools used in the production, harvesting or care of farm  
143 products.

144 (19) "Established place of business" shall, in the case  
145 of a used motor vehicle dealer, mean a permanent lo-  
146 cation, not a temporary stand or other temporary quar-  
147 ters, owned or leased by the licensee or applicant and  
148 actually occupied or to be occupied by him, as the  
149 case may be, which is or is to be used exclusively for  
150 the purpose of selling used motor vehicles, which  
151 shall have facilities and space therewith for the ser-  
152 vicing and repair of at least one motor vehicle, which  
153 servicing and repair facilities and space shall be ade-  
154 quate and suitable to carry out servicing and to make  
155 repairs necessary to keep and carry out all represen-  
156 tations, warranties and agreements made or to be made  
157 by such dealer with respect to used motor vehicles  
158 sold by him, which shall be easily accessible to the  
159 public, shall conform to all applicable laws of the  
160 state of West Virginia, and the ordinances of the mu-  
161 nicipality in which it is located, if any, which shall  
162 display thereon at least one permanent sign, clearly  
163 visible from the principal public street or highway  
164 nearest said location and clearly stating the business

165 which is or shall be conducted thereat, and which shall  
166 have adequate facilities to keep, maintain and pre-  
167 serve records, papers and documents necessary to carry  
168 on such business and to make the same available to  
169 inspection by the commissioner at all reasonable times:  
170 *Provided*, That if a used motor vehicle dealer has en-  
171 tered into a written agreement or agreements with a  
172 person or persons owning or operating a servicing and  
173 repair facility or facilities adequate and suitable as  
174 aforesaid, the effect of which agreement or agreements  
175 is to provide such servicing and repair services and  
176 space in like manner as if said servicing and repair  
177 facilities and space were located in or on said dealer's  
178 place of business, then, so long as such an agreement  
179 or agreements are in effect, it shall not be necessary  
180 for such dealer to maintain such servicing and repair  
181 facilities and space at his place of business in order  
182 for such place of business to be an established place  
183 of business as herein defined: *Provided further*, That  
184 the requirement of exclusive use shall be met even  
185 though (i) house trailers, trailers and/or motorcycles  
186 are sold or are to be sold thereat, if, subject to the  
187 provisions of section five of this article, a separate  
188 license certificate is obtained for each such type of  
189 vehicle business, which license certificate remains un-  
190 expired, unsuspended and unrevoked; (ii) farm ma-  
191 chinery is sold thereat; and (iii) accessory, gasoline  
192 and oil, or storage departments are maintained thereat,  
193 if such departments are operated for the purpose of  
194 furthering and assisting in the licensed business or busi-  
195 nesses.

196 (20) "Established place of business" shall, in the  
197 case of a house trailer dealer, trailer dealer, motorcycle  
198 dealer, used parts dealer and wrecker or dismantler,  
199 mean a permanent location, not a temporary stand or  
200 other temporary quarters, owned or leased by the licen-  
201 see or applicant and actually occupied or to be oc-  
202 cupied by him, as the case may be, which shall be  
203 easily accessible to the public, which shall conform  
204 to all applicable laws of the state of West Virginia and  
205 the ordinances of the municipality in which it is lo-



206 cated, if any, which shall display thereon at least one  
207 permanent sign, clearly visible from the principal pub-  
208 lic street or highway nearest said location and clearly  
209 stating the business which is or shall be conducted  
210 thereat, and which shall have adequate facilities to keep,  
211 maintain and preserve records, papers and documents  
212 necessary to carry on such business and to make the  
213 same available to inspection by the commissioner at  
214 all reasonable times.

215 (21) "Manufacturer" means every person engaged  
216 in the business of reconstructing, assembling, or reas-  
217 sembling vehicles with a special type body required by  
218 the purchaser if said vehicle is subject to the title and  
219 registration provision of the code.

220 (22) "Transporter" means every person engaged in  
221 the business of transporting vehicles to or from a manu-  
222 facturing, assembling or distributing plant to dealers,  
223 or sales agents of a manufacturer, or purchasers.

224 (b) Under no circumstances whatever shall the  
225 terms "new motor vehicle dealer," "used motor vehicle  
226 dealer," "house trailer dealer," "trailer dealer," "motor-  
227 cycle dealer," "used parts dealer" or "wrecker or dis-  
228 mantler" be construed or applied under this article in  
229 such a way as to include a banking institution, insur-  
230 ance company, finance company, or other lending or  
231 financial institution, or other person, the state or any  
232 agency or political subdivision thereof, or any municipi-  
233 pality, who or which owns or shall come in possession  
234 or ownership of, or acquire contract rights, or security  
235 interests in or to, any vehicle or vehicles or any part  
236 thereof and shall sell such vehicle or vehicles or any  
237 part thereof for purposes other than engaging in and  
238 holding himself or itself out to the public to be en-  
239 gaged in the business of selling vehicles or any part  
240 thereof.

241 (c) It is recognized that throughout this code the  
242 term "trailer" or "trailers" is used to include, among  
243 other types of trailers, house trailers. It is also recog-  
244 nized that throughout this code the term "trailer" or  
245 "trailers" is seldom used to include semitrailers or pole  
246 trailers. However, for the purposes of this article only,

247 the term "trailers" shall have the meaning ascribed  
248 to it in subsection (a) of this section.

**§17A-6-10a. Special plates for manufacturers and transporters;  
fee.**

1 (1) Notwithstanding any of the other provisions of this  
2 article, a manufacturer or transporter may operate or  
3 move a vehicle upon the highways of this state solely for  
4 purposes of transporting and/or testing the same with-  
5 out first registering each such vehicle upon condition  
6 that any such vehicle display thereon, in a manner pre-  
7 scribed by the commissioner, a special plate or plates  
8 issued to such manufacturer or transporter as provided  
9 in this section.

10 (2) Any manufacturer or transporter may make ap-  
11 plication to the commissioner upon a form prescribed by  
12 him for a certificate containing a general distinguishing  
13 number and for a special plate or plates. The applicant  
14 shall also submit proof of his status as a bona fide manu-  
15 facturer or transporter as may be required by the com-  
16 missioner.

17 (3) The commissioner, upon approving any such ap-  
18 plication, shall issue to the applicant a certificate con-  
19 taining the applicant's name and address and the general  
20 distinguishing number assigned to the applicant. The  
21 commissioner shall also issue a special plate, or special  
22 plates, as applied for, which shall have displayed thereon  
23 the general distinguishing number assigned to the ap-  
24 plicant. Each plate shall also contain a number or symbol  
25 identifying the same from every other plate or plates  
26 bearing the same general distinguishing number.

27 (4) The annual fee for a license certificate for a  
28 manufacturer or transporter and one special plate  
29 shall be one hundred dollars. Additional special plates  
30 shall be twenty-five dollars each.

31 (5) Every manufacturer or transporter shall keep  
32 a written record of the vehicle upon which such special  
33 plates are used, the time during which each is used on  
34 a particular vehicle, and the location to which the  
35 vehicle was delivered, which record shall be open to in-

36 spection by any police officer or employee of the de-  
37 partment.

38 (6) The provisions of this section shall not apply to  
39 work or service vehicles owned by a manufacturer or  
40 transporter.

41 (7) Said manufacturer or transporter shall be re-  
42 quired to furnish a certificate of insurance in the amount  
43 of ten thousand dollars because of bodily injury to or  
44 death to any one person in any one accident, twenty  
45 thousand dollars because of bodily injury or death to two  
46 or more persons in any one accident, and five thousand  
47 dollars because of injury to or destruction of property of  
48 others in any one accident.

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## CHAPTER 94

(House Bill No. 807—By Mr. Burke)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section five, article two; section five, article nine; and section twenty-six, article fifteen, all of chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorized emergency vehicles, operation of vehicles and streetcars on approach of authorized emergency vehicles and equipment on authorized emergency vehicles.

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

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

**Article**

2. Obedience To and Effect Of Traffic Laws.

9. Right-of-way.

15. Equipment.

**ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.****§17C-2-5. Authorized emergency vehicles.**

1 (a) The driver of an authorized emergency vehicle,  
2 when responding to an emergency call or when in the  
3 pursuit of an actual or suspected violator of the law or  
4 when responding to but not upon returning from a fire  
5 alarm, may exercise the privileges set forth in this sec-  
6 tion, but subject to the conditions herein stated.

7 (b) The driver of an authorized emergency vehicle  
8 may:

9 (1) Park or stand, irrespective of the provisions of  
10 this chapter;

11 (2) Proceed past a red or stop signal or stop sign,  
12 but only after slowing down as may be necessary for  
13 safe operation;

14 (3) Exceed the speed limits so long as he does not  
15 endanger life or property;

16 (4) Disregard regulations governing direction of  
17 movement of turning in specified directions.

18 (c) The exemptions herein granted to an authorized  
19 emergency vehicle shall apply only when the driver of  
20 any said vehicle while in motion sounds audible signal  
21 by bell, siren, or exhaust whistle as may be reasonably  
22 necessary, and when the vehicle is equipped with at least  
23 one lighted flashing lamp as authorized by section twenty-  
24 six, article fifteen of this chapter which is visible under  
25 normal atmospheric conditions from a distance of five  
26 hundred feet to the front of such vehicle, except that an  
27 authorized emergency vehicle operated as a police vehicle  
28 need not be equipped with or display a warning light  
29 visible from in front of the vehicle.

30 (d) The foregoing provisions shall not relieve the  
31 driver of an authorized emergency vehicle from the duty  
32 to drive with due regard for the safety of all persons, nor  
33 shall such provisions protect the driver from the conse-  
34 quences of his reckless disregard for the safety of others.

**ARTICLE 9. RIGHT-OF-WAY.****§17C-9-5. Operation of vehicles and streetcars on approach of authorized emergency vehicles.**

1 (a) Upon the immediate approach of an authorized  
2 emergency vehicle equipped with at least one flashing  
3 lighted lamp of a color authorized by section twenty-six,  
4 article fifteen of this chapter, which is visible under  
5 normal atmospheric conditions from a distance of five  
6 hundred feet to the front of such vehicle other than a  
7 police vehicle when operated as an authorized emer-  
8 gency vehicle, and when the driver is giving audible  
9 signal by siren, exhaust whistle, or bell:

10 (1) The driver of every other vehicle shall yield the  
11 right-of-way and shall immediately drive to a position  
12 parallel to, and as close as possible to, the right-hand  
13 edge or curb of the roadway clear of any intersection  
14 and shall stop and remain in such position until the  
15 authorized emergency vehicle has passed, except when  
16 otherwise directed by a police officer.

17 (2) Upon the approach of an authorized emergency  
18 vehicle, as above stated, the motorman of every street-  
19 car shall immediately stop such car clear of any inter-  
20 section and keep it in such position until the authorized  
21 emergency vehicle has passed, except when otherwise  
22 directed by a police officer.

23 (b) This section shall not operate to relieve the  
24 driver of an authorized emergency vehicle from the  
25 duty to drive with due regard for the safety of all persons  
26 using the highway.

**ARTICLE 15. EQUIPMENT.****§17C-15-26. Special restrictions on lamps.**

1 (a) Any lighted lamp or illuminating device upon a  
2 motor vehicle other than head lamps, spot lamps,  
3 auxiliary lamps, or flashing front-direction signals which  
4 projects a beam of light of an intensity greater than  
5 three hundred candlepower shall be so directed that no  
6 part of the beam will strike the level of the roadway  
7 on which the vehicle stands at a distance of more than  
8 seventy-five feet from the vehicle.

9 (b) No person shall drive or move any vehicle or  
10 equipment upon any highway with any lamp or device  
11 thereon displaying other than a white or amber light  
12 visible from directly in front of the center thereof except  
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing  
15 lights are prohibited on motor vehicles, except on an  
16 authorized emergency vehicle, school bus, snow removal  
17 equipment, or on any vehicle as a means for indicating  
18 right or left turn, on any vehicle as a means of indicat-  
19 ing the same is disabled or otherwise stopped for an emer-  
20 gency.

21 (d) Notwithstanding any other provisions of this  
22 chapter, the following color of flashing warning lights are  
23 restricted for the use of the type of vehicle designated:

24 (1) Blue flashing warning lights are restricted to  
25 police vehicles, except as authorized by section twenty-  
26 seven of this article.

27 (2) Red flashing warning lights are restricted to am-  
28 bulances, fire-fighting vehicles and school buses, except  
29 as authorized by sections nineteen and twenty-seven of  
30 this article.

31 (3) All other emergency vehicles authorized by this  
32 chapter and by section twenty-seven of this article shall  
33 be restricted to amber or yellow flashing warning lights.

34 It shall be unlawful for flashing warning lights of an  
35 unauthorized color to be installed or used on a vehicle  
36 other than as specified in this section, except that a  
37 police vehicle may be equipped with either or both  
38 blue or red warning lights.

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## CHAPTER 95

(Senate Bill No. 54—By Mr. Barnett and Mr. Knapp)

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[Passed February 24, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to repeal section three, article fourteen, chapter  
seventeen-c of the code of West Virginia, one thousand

nine hundred thirty-one, as amended; and to amend article fifteen, chapter seventeen-c of said code by adding thereto a new section, designated section forty-four, relating to requirements for protective helmets, eye protection devices, handlebars and grips, seats and footrests, number of motorcycle riders; powers and duties of a board created to establish standards and specifications for protective helmets and eye protection devices; and powers and duties of the commissioner of motor vehicles in regulating sale of protective helmets and eye protection devices.

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

That section three, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter seventeen-c of said code be amended by adding thereto a new section, designated section forty-four, to read as follows:

**ARTICLE 15. EQUIPMENT.**

**§17C-15-44. Safety equipment and requirements for motorcyclists and motorcycles.**

1 (a) No person shall operate or be a passenger on any  
2 motorcycle unless he is wearing securely fastened on  
3 his head by either a neck or chin strap a protective  
4 helmet designed to deflect blows, resist penetration and  
5 spread impact forces. Any helmet worn by a motorcycle  
6 operator or motorcycle passenger shall meet the perform-  
7 ance specifications established by the United States of  
8 America Standards Institute, Specifications for Protec-  
9 tive Headgear for Vehicle Users, Standard Z 90.1-1966.

10 Helmets worn by motorcycle operators and motorcycle  
11 passengers shall be coated with a reflectorized substance,  
12 or have attached thereto a reflectorized material, on both  
13 sides and the back thereof, with a minimum of ten square  
14 inches of coated substance or attached material in each  
15 of the three locations.

16 (b) No person shall operate or be a passenger on any  
17 motorcycle unless he is wearing safety, shatter resistant  
18 eyeglasses (excluding contact lenses), or eyegoggles or  
19 face shield that complies with the performance specifica-  
20 tions established by the United States of America

21 Standards Institute, Specifications for Head, Eye and  
22 Respiratory Protection Z 2.1-1959. In addition, if any  
23 motorcycle be equipped with a windshield or windscreen,  
24 the windshield or windscreen shall be constructed of  
25 safety, shatter resistant material that complies with the  
26 performance specifications established by the United  
27 States of America Standards Institute, Safety Glazing  
28 Materials for Glazing Motor Vehicles Operated on Land  
29 Highways, Standard Z 26.1-1966.

30 (c) No person shall operate a motorcycle on which  
31 the handlebars or grips are more than fifteen inches  
32 higher than the uppermost part of the operator's seat  
33 when the seat is not depressed in any manner.

34 (d) A person operating a motorcycle shall ride in a  
35 seated position facing forward and only upon a permanent  
36 operator's seat attached to the motorcycle. No operator  
37 shall carry any other person nor shall any other person  
38 ride on a motorcycle unless the motorcycle is designed  
39 to carry more than one person, in which event a passenger  
40 may ride behind the operator upon the permanent oper-  
41 ator's seat if it is designed for two persons, or upon  
42 another seat firmly attached to the motorcycle to the  
43 rear of the operator's seat and equipped with footrests  
44 designed and located for use by the passenger or in a  
45 sidecar firmly attached to the motorcycle. No more than  
46 two persons, the motorcycle operator and one passenger,  
47 shall ride the same motorcycle at the same time. No  
48 person shall ride sidesaddle on a motorcycle seat.

49 (e) Every motorcycle shall be equipped with a rear-  
50 view mirror affixed to the motorcycle handlebars and  
51 adjusted so that the motorcycle operator shall have a  
52 clear view of the road and condition of traffic behind  
53 him for a distance of at least two hundred feet.

54 (f) There is hereby created a three-member board  
55 which shall be known as the motorcycle safety standards  
56 and specifications board. The board shall be comprised  
57 of the superintendent of public safety, the commissioner  
58 of motor vehicles and the executive director of the West  
59 Virginia safety council or a person each may designate  
60 from his own agency.



61 Within thirty days after the effective date of this sec-  
62 tion, the board shall meet and elect one of its members  
63 chairman. The board shall meet thereafter at least twice  
64 in each calendar year at a place the board shall determine.  
65 The board may meet oftener if it deems it necessary to  
66 perform its functions.

67 The board is hereby authorized to issue regulations  
68 establishing standards and specifications for the protec-  
69 tive helmet and eye protection devices as provided for in  
70 subsections (a) and (b) of this section. Not later than  
71 thirty days after its first meeting, the board shall establish  
72 these standards and specifications. The board shall peri-  
73 odically review the standards and specifications and  
74 change them as necessary to comply with this section.  
75 The board shall cause all standards and specifications it  
76 establishes to be published throughout the state for pub-  
77 lic knowledge and shall make them available to the  
78 commissioner of motor vehicles.

79 (g) The commissioner of motor vehicles is hereby  
80 authorized and shall, in accordance with the standards  
81 and specifications established by the motorcycle safety  
82 standards and specifications board, approve or disapprove  
83 types and makes of motorcycle protective helmets and  
84 eye protection devices offered for sale, purchased or used  
85 by any person.

86 The commissioner of motor vehicles is hereby autho-  
87 rized and shall approve or disapprove any type and make  
88 of protective helmet and eye protection device within  
89 fifteen days after submission to him for approval.

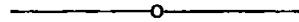
90 The commissioner of motor vehicles is hereby autho-  
91 rized to establish the procedure which shall be followed  
92 when any type and make of protective helmet and eye  
93 protection device is submitted to him for approval.

94 The commissioner of motor vehicles, upon approving  
95 any type and make of protective helmet or eye protection  
96 device, shall issue to the applicant a certificate of ap-  
97 proval.

98 The commissioner of motor vehicles shall publish  
99 throughout the state for public knowledge lists of all  
100 types and makes of protective helmets and eye protection

101 devices that have been approved for use. All law-enforce-  
102 ment agencies within the state shall be mailed a copy  
103 of these lists.

104 When the commissioner of motor vehicles has reason  
105 to believe a type or make of motorcycle protective helmet  
106 or eye protection device is being sold commercially that  
107 does not comply with the requirements of this section,  
108 he shall, after giving thirty days' previous notice to the  
109 seller, conduct a hearing upon the question of compliance  
110 of the particular safety device. After the hearing, the  
111 commissioner shall determine whether the device meets  
112 the standards and specifications established by the motor-  
113 cycle safety standards and specifications board. If it does  
114 not, the commissioner shall give notice of that fact to  
115 the seller and the seller shall not sell the device until it  
116 is changed or modified to comply with the standards and  
117 specifications established by the board and is approved by  
118 the commissioner. The commissioner of motor vehicles  
119 shall publish the fact that the particular safety device  
120 is not approved for use. If the device so disapproved by  
121 the commissioner of motor vehicles is one previously  
122 approved but which has fallen below the standards and  
123 specifications established by the board, he shall suspend  
124 or revoke the approval issued, and he may require that  
125 the seller replace with an approved device any dis-  
126 approved device sold after the notification to the seller  
127 that the device does not meet the proper standards and  
128 specifications.



## CHAPTER 96

(House Bill No. 1054—By Mr. Reed)



[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pilot cars accompanying mobile homes on highways.

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

That section eleven, article seventeen, 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 17. SIZE, WEIGHT AND LOAD.**

**§17C-17-11. Permits for excess size and weight.**

1 (a) The commissioner of highways may, in his dis-  
2 cretion, upon application in writing and good cause being  
3 shown therefor issue a special permit in writing autho-  
4 rizing, (1) the applicant, in crossing any highway of this  
5 state, to operate or move a vehicle or combination of  
6 vehicles of a size or weight or load exceeding the max-  
7 imum specified in this chapter or otherwise not in con-  
8 formity with the provisions of this chapter, whether such  
9 operation be continuous or not, provided such applicant  
10 shall agree to compensate the commissioner of highways  
11 for all damages or expenses incurred in connection with  
12 such crossing; and (2) the applicant to operate or move  
13 a vehicle or combination of vehicles of a size or weight  
14 of vehicles or load exceeding the maximum specified  
15 in this chapter or otherwise not in conformity with the  
16 provisions of this chapter, except that a permit shall not  
17 be issued for continuous operation of a vehicle not in  
18 conformity with the provisions of this article relating  
19 to weight limitations.

20 (b) The application for any such permit shall speci-  
21 fically describe the vehicle or vehicles and load to be  
22 operated or moved along or across such highway and the  
23 particular highway or crossing of the highway for which  
24 permit to operate is requested, and whether such permit  
25 is requested for a single trip or for a continuous oper-  
26 ation.

27 (c) The commissioner of highways is authorized to  
28 issue or withhold such permit at his discretion; or, if such  
29 permit is issued, to limit the number of trips, or to estab-  
30 lish seasonal or other time limitations within which the  
31 vehicles described may be operated on or across the high-  
32 ways indicated, or otherwise to limit or prescribe con-  
33 ditions of operation of such vehicle or vehicles, when  
34 necessary to assure against undue damage to the road

35 foundations, surface, or structures, and may require such  
36 undertaking, bond or other security as may be deemed  
37 necessary to compensate for any injury to any roadway  
38 structure.

39 (d) Every such permit shall be carried in the vehicle  
40 or combination of vehicles to which it refers and shall  
41 be open to inspection by any police officer or authorized  
42 agent of the commissioner of highways granting such  
43 permit, and no person shall violate any of the terms or  
44 conditions of such special permit.

45 Notwithstanding any other provision of this section to  
46 the contrary there shall be no requirement that a pilot  
47 car follow behind a mobile home being transported over  
48 the interstate highway system within this state.

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## CHAPTER 97

(Senate Bill No. 239—By Mr. Barnett)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section sixteen, article four,  
chapter seventeen-d of the code of West Virginia, one  
thousand nine hundred thirty-one, as amended, relating to  
proof of financial responsibility following an automobile  
accident.

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

That section sixteen, article four, 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 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.**

#### **§17D-4-16. Money or securities as proof.**

1 (a) Proof of financial responsibility may be evidenced  
2 by the certificate of the state treasurer that the person

3 named therein has deposited with him twenty thou-  
4 sand dollars in cash, or securities such as may legally be  
5 purchased by savings banks or for trust funds of a market  
6 value of twenty thousand dollars. The state treasurer  
7 shall not accept any such deposit and issue a certificate  
8 therefor and the commissioner shall not accept such  
9 certificate unless accompanied by evidence that there  
10 are no unsatisfied judgments of any character against  
11 the depositor in the county where the depositor resides.

12 (b) Such deposit shall be held by the state treasurer  
13 to satisfy, in accordance with the provisions of this  
14 chapter, any execution on a judgment issued against such  
15 person making the deposit, for damages, including dam-  
16 ages for care and loss of services, because of bodily in-  
17 jury to or death of any person, or for damages because  
18 of injury to or destruction of property, including the  
19 loss of use thereof, resulting from the ownership, mainte-  
20 nance, use or operation of a motor vehicle, trailer or  
21 semitrailer after such deposit was made.

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## CHAPTER 98

(Com. Sub. for Senate Bill No. 410—Originating in the Senate  
Committee on Finance)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to the taxation of purchasers and consumers of public utility services or tangible personal property by municipalities and collection of such tax, providing new taxing authority, limited to two percent of gross revenue.

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

That article thirteen, 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 five-a, to read as follows:

**ARTICLE 13. TAXATION AND FINANCE.**

**§8-13-5a. Public utilities tax.**

1 Every municipality shall have plenary power and au-  
2 thority to levy and collect an excise tax on the privilege  
3 of purchasing, using or consuming, within the corporate  
4 limits of such municipality, public utility services and  
5 tangible personal property from public utilities subject to  
6 the jurisdiction of the public service commission of West  
7 Virginia. Such tax shall be computed on the basis of an  
8 amount not to exceed two percent of the gross amount  
9 of each periodic statement rendered such purchasers or  
10 consumers by such public utilities: *Provided, however,*  
11 That sales of tangible personal property such as appliances  
12 or the like, as distinguished from the public service sup-  
13 plied, shall not be included in the gross amount subject  
14 to the measure of this tax. Such purchasers or consumers  
15 shall pay to such public utilities the amount of the tax  
16 levied pursuant to this section which shall be added to  
17 and constitute a part of the cost of the service or property  
18 so purchased or consumed and shall be collectible as  
19 such by said public utilities who shall account to the  
20 municipality levying same for all tax paid by such pur-  
21 chasers or consumers pursuant to the provisions of any  
22 ordinance imposing such tax.

23 Any ordinance imposing such tax shall require the col-  
24 lection thereof uniformly from all purchasers and con-  
25 sumers of all such services and property within the cor-  
26 porate limits of such municipality and contain rea-  
27 sonable rules and regulations governing the collection  
28 thereof by the utilities and the method of its payment  
29 and accounting to the municipality: *Provided,* That such  
30 tax shall not be effective until the municipality gives  
31 sixty days' written notice by certified mail to any utility  
32 doing business therein of the effective date of the  
33 ordinance. Any required separation of gross income shall  
34 occur in said ordinance whenever necessary to comply  
35 with state or federal law: *Provided,* That the tax autho-  
36 rized by this section shall not be levied upon charges for

37 telephone services which are paid by the insertion of coins  
38 into coin-operated telephones, and specific charges for  
39 telephone calls to points outside the taxing municipality.  
40 Notwithstanding any other provisions of the law to  
41 the contrary contained in the code of West Virginia,  
42 one thousand nine hundred thirty-one, as amended, the  
43 provisions of this section are in addition to all other  
44 taxing authority heretofore granted municipalities.

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## CHAPTER 99

(Senate Bill No. 234—By Mr. Poffenbarger)

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[Passed March 1, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section thirteen, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article sixteen of said chapter eight by adding thereto a new section, designated section four-a; and to amend and reenact sections eight and seventeen of said article sixteen, relating to the rendering of essential or special municipal services and charges therefor and the jurisdiction of the public service commission with respect thereto; relating to municipal public works and revenue bond financing thereof; setting forth certain legislative findings with respect to motor vehicle parking facilities, the development of commerce and business and the availability of property for charitable use; authorizing any municipality to lease as lessor space in or on a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to lease as lessor or sell space over a municipally owned motor vehicle parking facility for any business, commercial or charitable use; authorizing any municipality to erect or construct any pedestrian viaduct, ramp, bridge or other pedestrian facility leading to and from a municipally owned motor vehicle parking facility and relating to payment therefor when connected to a pri-

vately owned building or other structure; relating to property taxation in connection with the foregoing; relating to the right of eminent domain for municipal public works generally and specifically in connection with motor vehicle parking facilities and business, commercial or charitable uses in connection therewith; relating to sinking funds, the sinking fund commission and the purchase of outstanding bonds, all in connection with municipal public works; and authorizing the transfer of the net revenues from any municipal public works to the general fund or any special fund of the municipality and the expenditure thereof for any purpose for which such general or special fund may be expended.

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

That section thirteen, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article sixteen of said chapter eight be amended by adding thereto a new section, designated section four-a; and that sections eight and seventeen of said article sixteen be amended and reenacted, all to read as follows:

**Article**

**13. Taxation and Finance.**

**16. Municipal Public Works; Revenue Bond Financing.**

**ARTICLE 13. TAXATION AND FINANCE.**

**§8-13-13. Special charges for municipal services.**

1 Notwithstanding any charter provisions to the con-  
2 trary, every municipality which furnishes any essential  
3 or special municipal service, including, but not limited  
4 to, police and fire protection, parking facilities on the  
5 streets or otherwise, parks and recreational facilities,  
6 street cleaning, street lighting, street maintenance and  
7 improvement, sewerage and sewage disposal, and the  
8 collection and disposal of garbage, refuse, waste, ashes,  
9 trash and any other similar matter, shall have plenary  
10 power and authority to provide by ordinance for the  
11 installation, continuance, maintenance or improvement  
12 of such service, to make reasonable regulations with  
13 respect thereto, and to impose by ordinance upon the



14 users of such service reasonable rates, fees and charges  
15 to be collected in the manner specified in the ordinance:  
16 *Provided*, That any sewerage and sewage disposal ser-  
17 vice and any service incident to the collection and disposal  
18 of garbage, refuse, waste, ashes, trash and any other  
19 similar matter shall be subject to the provisions of chap-  
20 ter twenty-four of this code. The municipality shall  
21 not, however, have a lien on any property as security  
22 for payments due under such ordinance. Notwithstand-  
23 ing the provisions of section four, article eleven of this  
24 chapter, any ordinance enacted or substantially amended  
25 under the provisions of this section shall be published  
26 as a Class II legal advertisement in compliance with  
27 the provisions of article three, chapter fifty-nine of this  
28 code, and the publication area for such publication shall  
29 be such municipality. In the event thirty percent of the  
30 qualified voters of the municipality by petition duly  
31 signed by them in their own handwriting and filed with  
32 the recorder of the municipality within fifteen days after  
33 the expiration of such publication protest against such  
34 ordinance as enacted or amended, the ordinance shall  
35 not become effective until it shall be ratified by a ma-  
36 jority of the legal votes cast thereon by the qualified  
37 voters of such municipality at a regular municipal elec-  
38 tion or special municipal election, as the governing body  
39 shall direct. Voting thereon shall not take place until  
40 after notice of such submission shall have been given  
41 by publication as above provided for the publication  
42 of the ordinance after it is adopted or substantially  
43 amended. The powers and authority hereby granted to  
44 municipalities and to the governing bodies thereof are  
45 in addition and supplemental to the powers and author-  
46 ity named in any charters thereof. Notwithstanding any  
47 other provisions of this section, in the event rates, fees  
48 and charges herein provided for shall be imposed by the  
49 governing body of any municipality for the purpose of  
50 replacing and in amounts approximately sufficient to  
51 replace in its general fund such amounts as shall be  
52 appropriated to be paid out of ad valorem taxes upon  
53 property within the municipality pursuant to an election  
54 duly called and held under the constitution and laws

55 of the state to authorize the issuance and sale of general  
56 obligation bonds of the municipality for public improve-  
57 ment purposes, in the call for which election it shall  
58 be stated that the governing body of the municipality  
59 proposes to impose rates, fees and charges in specified  
60 amounts under this section for the use of one or more  
61 of the services above specified, which shall be related  
62 to the public improvement proposed to be made with  
63 the proceeds of the bonds, no notice, publication of  
64 notice, or referendum or election or other condition or  
65 prerequisite to the imposition of such rates, fees and  
66 charges shall be required or necessary other than the  
67 legal requirements for issuance and sale of such general  
68 obligation bonds.

**ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND  
FINANCING.**

§8-16-4a. Additional special provisions as to motor vehicle parking facilities.

§8-16-8. Right of eminent domain.

§8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

**§8-16-4a. Additional special provisions as to motor vehicle parking facilities.**

1 (a) The Legislature hereby finds that the greatly in-  
2 creased use by the public of motor vehicles of all kinds  
3 has caused serious traffic congestion on the streets of  
4 many municipalities in this state; that the lack of ade-  
5 quate planning and supervision of the location of park-  
6 ing facilities, the parking of motor vehicles of all kinds  
7 and the lack of adequate parking facilities for motor  
8 vehicles of all kinds substantially impede the free cir-  
9 culation of traffic in, through and from many munici-  
10 palities in this state, impede the rapid and effective fight-  
11 ing of fires and disposition of police officers therein, con-  
12 tribute to the location and relocation of commercial and  
13 business enterprises outside of urban areas and retard  
14 the development of commerce and business within many  
15 municipalities in this state, thereby giving rise to urban  
16 blight and adversely affecting or threatening to ad-  
17 versely affect the tax base of such municipalities; that  
18 such parking crisis can be reduced by such municipalities

19 providing adequate motor vehicle parking facilities stra-  
20 tegically located there; that providing properly located  
21 terminal space for motor vehicles is a public responsi-  
22 bility; that fostering the development of commerce and  
23 business within municipalities, with the increased tax  
24 revenues resulting therefrom, is a public purpose; that  
25 fostering the availability of property for charitable use  
26 is a public purpose; that the closer the proximity be-  
27 tween municipally owned motor vehicle parking facili-  
28 ties and commercial and business establishments the  
29 greater the development of commerce and business and  
30 the greater the level of revenue produced by such motor  
31 vehicle parking facilities; that the erection or construc-  
32 tion of pedestrian viaducts, ramps, bridges, tunnels or  
33 other pedestrian facilities leading to and from motor  
34 vehicle parking facilities so as to facilitate the move-  
35 ment of pedestrians to and from such motor vehicle  
36 parking facilities fosters the development of commerce  
37 and business and increases the level of revenue pro-  
38 duced by such motor vehicle parking facilities; that the  
39 leasing, particularly on a long-term basis, and the selling  
40 of space for commercial or business use in connection  
41 with a municipally owned motor vehicle parking facility  
42 will aid the development of commerce and business, in-  
43 crease the level of revenue produced by such motor vehicle  
44 parking facility and maintain and increase the tax base  
45 of such municipalities; that in many instances the au-  
46 thority for the leasing of space as provided for in this  
47 section would assist in financing the construction, re-  
48 construction, establishment, acquisition, improvement,  
49 renovation, extension, enlargement, increase, equipment  
50 or repair (including replacements) of any such motor  
51 vehicle parking facility; that the enactment of this sec-  
52 tion is for the general welfare of the public and is a  
53 public necessity; and that the means and measures au-  
54 thorized in this section are, as a matter of public policy,  
55 for the public purposes of such municipalities. This sec-  
56 tion is enacted in view of these findings and shall be  
57 liberally construed in the light thereof.

58 (b) The governing body or bodies, in its or their dis-  
59 cretion, may provide by ordinance or ordinances:

60 (1) For the leasing by the board as lessor of space in  
61 or on a municipal public works which is a motor vehicle  
62 parking facility for any business, commercial or chari-  
63 table use to such person, for such fair and adequate  
64 consideration, for such period or periods of time and  
65 upon such other terms and conditions as such body or  
66 bodies or the board may agree to. In connection with  
67 the leasing of any such space, the board may agree to  
68 provide in or on such motor vehicle parking facility  
69 such structures, accommodations or improvements as  
70 may be necessary for such business, commercial or  
71 charitable use or such space may be leased upon con-  
72 dition that the lessee shall provide the same in or on  
73 the space so leased.

74 (2) For the leasing by the board as lessor or the sell-  
75 ing of air space over a municipal public works which  
76 is a motor vehicle parking facility for any business, com-  
77 mercial or charitable use to such person, for such fair  
78 and adequate consideration, for such period or periods  
79 of time in the case of a lease and upon such other terms  
80 and conditions as such body or bodies or the board may  
81 agree to. Any lease or deed of sale of such air space  
82 may contain provisions (i) authorizing the use of such  
83 areas of the underlying motor vehicle parking facility  
84 as are essential for ingress and egress to and from such  
85 air space, (ii) relating to the support of any building  
86 or other structure to be erected in such air space, and  
87 (iii) relating to the connection of essential public or  
88 private utilities to any building or other structure in  
89 such air space.

90 (3) For the erection or construction by the board of  
91 any pedestrian viaduct, ramp, bridge, tunnel or other  
92 pedestrian facility leading to and from a municipal public  
93 works which is a motor vehicle parking facility; and any  
94 such pedestrian viaduct, ramp, bridge, tunnel or other  
95 pedestrian facility shall, for all purposes of this article,  
96 be considered to be a part of a municipal public works  
97 which is a motor vehicle parking facility with like effect  
98 as if the term "municipal public works" were expressly  
99 defined in section one of this article to include pedestrian

100 viaducts, ramps, bridges, tunnels or other pedestrian  
101 facilities: *Provided*, That any cost incurred by any  
102 municipality or municipalities in erecting or constructing  
103 any such pedestrian viaduct, ramp, bridge, tunnel or  
104 other pedestrian facility which connects a municipi-  
105 pal public works which is a motor vehicle parking  
106 facility with a privately owned building or buildings or  
107 other privately owned structure or structures shall be  
108 paid for by the owner or owners of such building or  
109 buildings or such other structure or structures.

110 Any such lease may be privately negotiated without  
111 any public notice or advertising, and any such sale may  
112 be a public sale pursuant to the provisions of section  
113 eighteen, article twelve of this chapter or such sale may  
114 be privately negotiated, notwithstanding the provisions  
115 of said section eighteen.

116 (c) The proceeds received from any lease, sale or  
117 payment as provided in this section shall be deemed  
118 revenue of the works and used as provided in section  
119 seventeen of this article.

120 (d) Notwithstanding the fact that any motor vehicle  
121 parking facility subject to the provisions of this article  
122 is municipally owned and the fact that a lease or sale  
123 under the provisions of subdivision (1) or subdivision  
124 (2), subsection (b) of this section is for a public pur-  
125 pose as declared in subsection (a) of this section, any  
126 leasehold interest under said subdivision (1), and any  
127 building, structure, accommodation or improvement erect-  
128 ed, made or operated in any air space leased or sold  
129 under said subdivision (2) shall be subject to all property  
130 taxes, which shall be assessed and imposed against the  
131 lessee or grantee, as the case may be, unless the use of  
132 such leasehold interest, building, structure, accommoda-  
133 tion or improvement is otherwise exempt from property  
134 taxation under the provisions of section nine, article  
135 three, chapter eleven of this code.

#### §8-16-8. Right of eminent domain.

1 Every such municipality shall have plenary power and  
2 authority to condemn any such municipal public works

3 to be acquired, and any land, rights, easements, rights-of-  
4 way, franchises and other property, real or personal,  
5 deemed necessary, appropriate, useful or convenient for,  
6 and incidental to, the construction, reconstruction or  
7 establishment of any such works and space for business,  
8 commercial or charitable use in connection therewith,  
9 or for the improvement, renovation, extension, enlarge-  
10 ment, increase or equipment thereof or thereto, and in  
11 connection therewith shall have and may exercise all the  
12 rights, power, authority and privileges of eminent domain  
13 granted to municipalities under the laws relating thereto.  
14 Title to property shall be taken in the name of the  
15 municipality or jointly in the names of the participating  
16 municipalities. Proceedings for such appropriation of  
17 property shall be under and pursuant to chapter fifty-four  
18 of this code: *Provided*, That any such municipality shall  
19 be under no obligation to accept and pay for any property  
20 condemned, and shall in no event pay for any property  
21 condemned or purchased, except from funds provided  
22 under the authority of this article; and in any proceedings  
23 to condemn, such orders may be made as may be just to  
24 any such municipality and to the owners of the property  
25 to be condemned; and an understanding or other security  
26 may be required securing such owners against any loss  
27 or damage which may be sustained by reason of the  
28 failure of any such municipality to accept and pay for the  
29 property, but such undertaking or security shall impose  
30 no liability upon any such municipality, except such as  
31 may be paid from the funds provided under the au-  
32 thority of this article.

33 In the event of acquisition by purchase, the board may  
34 obtain and exercise an option from the owners of said  
35 property for the purchase thereof, and may enter into a  
36 contract for the purchase thereof, and such purchase may  
37 be made upon such terms and conditions, and in such  
38 manner as the board may deem proper: *Provided, how-*  
39 *ever*, That the exercise of such option, or the contract for  
40 such purchase, or such purchase shall in no event create  
41 any obligation of any such municipality, or create any  
42 debt, liability or claim, except such as may be discharged

43 or paid from the funds provided under the authority of  
44 this article.

45 In the event of the acquisition of any works already  
46 constructed by purchase or condemnation, the board at  
47 or before the time of the adoption of any ordinance de-  
48 scribed in section seven hereof, shall cause to be deter-  
49 mined what reconstruction, improvement, renovation,  
50 extension, enlargement, increase, equipment or repair  
51 (including replacements) will be necessary, in order that  
52 such works and space for business, commercial or chari-  
53 table use in connection therewith, if any, may be effec-  
54 tive for their purpose, and an estimate of the cost thereof  
55 shall be included in the estimate of the cost required by  
56 section seven hereof, and the same shall be made upon  
57 the acquisition of the works and as a part of the cost  
58 thereof: *Provided further*, That no municipality or mu-  
59 nicipalities shall, under the authority conferred by this  
60 article, condemn any existing privately owned works  
61 (other than motor vehicle parking facilities) in operation  
62 at the date of the condemnation.

**§8-16-17. Sinking fund; sinking fund commission; transfer of  
funds; purchase of outstanding bonds.**

1 Before the issuance of any such bonds, the governing  
2 body or bodies shall, by ordinance or ordinances, provide  
3 for a sinking fund for the payment of the bonds and the  
4 interest thereon, and the payment of the charges of bank-  
5 ing institutions or trust companies for making payment of  
6 such bonds and interest, out of the net revenues of said  
7 works, and shall set aside and pledge a sufficient amount  
8 of the net revenues of the works hereby defined to mean  
9 the revenues of the works remaining after the payment  
10 of the reasonable expenses of repair (including replace-  
11 ments), maintenance and operation, such amount to be  
12 paid by the board into the sinking fund at intervals, to  
13 be determined by ordinance or ordinances adopted prior  
14 to the issuance of the bonds, for (a) the interest upon  
15 such bonds as such interest shall fall due; (b) the neces-  
16 sary fiscal agency charges for paying bonds and interest;  
17 (c) the payment of the bonds as they fall due, or if all  
18 bonds mature at one time, the proper maintenance of a

19 sinking fund sufficient for the payment thereof at such  
20 time; and (d) a margin for safety and for the payment  
21 of premium upon bonds retired by call or purchase as  
22 herein provided, which margin, together with unused  
23 surplus of such margin carried forward from the pre-  
24 ceding year, shall equal ten percent of all other amounts  
25 so required to be paid into the sinking fund. Such re-  
26 quired payments shall constitute a first charge upon all  
27 the net revenues of the works. Prior to the issuance of  
28 the bonds, the board may, by ordinance or ordinances, be  
29 given the right to use or direct the trustee or the state  
30 sinking fund commission to use such sinking fund, or  
31 any part thereof, in the purchase of any of the outstand-  
32 ing bonds payable therefrom, at the market prices there-  
33 of, but not exceeding the price, if any, at which the  
34 same shall in the same year be payable or redeemable,  
35 and all bonds redeemed or purchased shall forthwith be  
36 cancelled, and shall not again be issued. After the pay-  
37 ments into the sinking fund as herein required and after  
38 reserving an amount deemed by the board sufficient  
39 for repair (including replacements), maintenance and  
40 operation for an ensuing period of not less than twelve  
41 months and for depreciation, the board may at any time  
42 in its discretion transfer all or any part of the balance  
43 of the net revenues into the sinking fund or into a fund  
44 for improvement, renovation, extension, enlargement, in-  
45 crease or equipment for or to the works, or the governing  
46 body or bodies may, notwithstanding the provisions of  
47 section twenty, article thirteen of this chapter, transfer  
48 all or any part of the balance of the net revenues to the  
49 general or any special fund of the municipality or mu-  
50 nicipalities and use such revenues for any purpose for  
51 which such general or special fund may be expended.

52 All amounts for the sinking fund and interest, as and  
53 when set apart for the payment of same, shall be remitted  
54 to the state sinking fund commission at such periods as  
55 shall be designated in the ordinance or ordinances, but  
56 in any event at least thirty days previous to the time  
57 interest or principal payments become due, to be retained  
58 and paid out by said commission consistent with the pro-  
59 visions of this article and the ordinance or ordinances



60 pursuant to which such bonds have been issued. The  
61 state sinking fund commission is hereby authorized to  
62 act as fiscal agent for the administration of such sinking  
63 fund under any ordinance or ordinances passed or adopted  
64 pursuant to the provisions of this article and shall invest  
65 all sinking funds as provided by general law.

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## CHAPTER 100

(House Bill No. 830—By Mr. Jones, of Monongalia, and Mr. Dinsmore)

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[Passed February 27, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, authorizing municipalities to appoint special parking lot or parking building police officers; specifying their duties, power and authority; relating to their uniforms, badges or other signs of authority; specifying that such special police officers shall serve at the will and pleasure of the appointing authority and not come within the civil service provisions of said article fourteen or the policemen's pension and relief fund provisions of article twenty-two of said chapter; authorizing such municipalities to require such special police officers to give bond; and providing a method for the payment of such special police officers.

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

That article fourteen, 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 five-a, to read as follows:

**ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE**

**AND PARKING LOT OR PARKING BUILDING  
POLICE OFFICERS; CIVIL SERVICE FOR CER-  
TAIN POLICE DEPARTMENTS.**

**PART IV. SPECIAL SCHOOL ZONE AND PARKING LOT OR  
PARKING BUILDING POLICE OFFICERS.**

**§8-14-5a. Special parking lot or parking building police  
officers.**

1 Every municipality shall have plenary power and au-  
2 thority to provide by ordinance for the appointment of  
3 special parking lot or parking building police officers,  
4 whose sole duties shall be to patrol, and to enforce munic-  
5 ipal ordinances upon or within, designated parking lots  
6 and parking buildings either owned by, or leased to, or  
7 under the control of, and operated by, the municipality  
8 or any board, commission or authority created by the  
9 municipality. Notwithstanding the provisions of section  
10 twelve, article twelve of this chapter, such special park-  
11 ing lot or parking building police officers may be assigned  
12 to police a parking facility established, maintained and  
13 operated pursuant to the provisions of said section twelve.  
14 In the performance of such duties, such special parking  
15 lot or parking building police officers shall be vested with  
16 the power to make arrests, issue summonses, sign com-  
17 plaints and request the issuance of capiases. Such special  
18 parking lot or parking building police officers shall be in  
19 uniform, shall display a badge or other sign of authority,  
20 shall serve at the will and pleasure of the appointing  
21 authority, and shall not come within the civil service pro-  
22 visions of this article or the policemen's pension and relief  
23 fund provisions of article twenty-two of this chapter.  
24 The governing body of the municipality may require such  
25 special parking lot or parking building police officers to  
26 give bond, payable to the municipality, in its corporate  
27 name, with such sureties and in such penalty as the gov-  
28 erning body may see fit, conditioned for the faithful per-  
29 formance of their duties. The cost of providing such  
30 special parking lot or parking building police officers may  
31 be paid from revenues derived from the parking lot or  
32 parking building to which they are assigned.

## CHAPTER 101

(House Bill No. 558—By Mr. Colombo)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dissolution of volunteer fire companies.

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

That section six, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-6. Dissolution of volunteer fire company.**

1 Whenever the governing body shall ascertain that such  
2 company has failed, for three months successively, to  
3 consist of twenty effective members, or shall ascertain  
4 that it has failed for a like period of time to have and  
5 keep in good, serviceable condition an engine, hose or  
6 other proper equipment, such governing body shall de-  
7 clare such failure and by order dissolve the company.

8 Whenever a company is dissolved, the order of dis-  
9 solution shall be recorded in the office of the clerk of the  
10 county court of the county wherein such municipality or  
11 the major portion of the territory thereof is located.

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## CHAPTER 102

(House Bill No. 686—By Mr. Kopp and Mr. Kopelman)

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[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article fifteen, chapter eight of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to hours of duty for firemen in a paid fire department.

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

That section ten, article fifteen, 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 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-10. Hours of duty for firemen in a paid fire department.**

1 On and after the effective date of this section, the mem-  
 2 bers of a paid fire department, without any reduction in  
 3 their total annual compensation as such members, shall  
 4 not be required to remain on duty in excess of one hun-  
 5 dred twelve hours during any fourteen consecutive days'  
 6 period. The members of any such paid fire department  
 7 shall, by a majority vote, determine the schedule of hours  
 8 to be worked in any twenty-four-hour period: *Provided,*  
 9 That the members of any paid fire department shall not  
 10 remain on duty for more than twenty-four consecutive  
 11 hours except in case of an emergency requiring the  
 12 service of more than one half of the department. The  
 13 chief executive officer of the department is hereby em-  
 14 powered, authorized and directed to make the necessary  
 15 assignments as provided in this section.

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## CHAPTER 103

(House Bill No. 1102—By Mr. Halbritter and Mr. Jones, of Monongalia)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article sixteen; section five, article nineteen; and section four, article twenty, all of chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the ordinances of municipalities with respect to municipal public works, waterworks systems and combined waterworks and sewerage systems; providing that

an abstract of any such ordinance and not the ordinance itself must be published; relating to the notice to be published with any abstract; and relating to filing of certified copy of ordinance for review by interested persons.

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

That section seven, article sixteen; section five, article nineteen; and section four, article twenty, all of 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**

**16. Municipal Public Works; Revenue Bond Financing.**

**19. Municipal Waterworks Systems.**

**20. Combined Waterworks and Sewerage Systems.**

**ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.**

**§8-16-7. Ordinance for construction, etc., of works.**

1 Before any municipality or municipalities shall, under the  
2 provisions of this article, construct, reconstruct, establish,  
3 acquire, improve, renovate, extend, enlarge, increase, equip  
4 or repair (including replacements) any municipal public  
5 works, the governing body, or the governing body of  
6 each participating municipality, shall enact an ordinance  
7 or ordinances, which shall (a) set forth a brief and gen-  
8 eral description of the works, including a reference to the  
9 preliminary report or plans and specifications which shall  
10 theretofore have been prepared; (b) set forth the esti-  
11 mated cost thereof; (c) order the construction, recon-  
12 struction, establishment, acquisition, improvement, ren-  
13 ovation, extension, enlargement, increase, equipment  
14 or repair (including replacements) of such works; (d)  
15 direct that municipal revenue bonds be issued pursuant to  
16 this article, in such amount as may be found necessary  
17 to pay the cost of the works; and (e) contain such other  
18 provisions as may be necessary or proper in the premises.  
19 When two or more municipalities take joint action under  
20 the provisions of this article, a certified copy of each  
21 such ordinance shall be filed in the office of the clerk of  
22 the county court of the county or counties in which

23 the municipalities are located and in the office of the  
24 state tax commissioner, and when any such municipality  
25 is located in more than one county, the filing for that  
26 municipality shall be in the office of the clerk of the  
27 county court in which the major portion of the territory  
28 of such municipality is located. Before any such ordinance  
29 shall become effective, an abstract of the ordinance,  
30 determined by the governing body or each governing  
31 body, as the case may be, to contain sufficient informa-  
32 tion as to give notice of the contents of such ordinance,  
33 together with the following described notice, shall be  
34 published as a Class II legal advertisement in compliance  
35 with the provisions of article three, chapter fifty-nine  
36 of this code, and the publication area for such publica-  
37 tion shall be such municipality or each such municipality,  
38 as the case may be. The notice to be published with  
39 said abstract of the ordinance shall specify a date, time  
40 and place for a public hearing, the date being not less  
41 than ten days after the first publication of said abstract  
42 and notice at which time and place all parties and in-  
43 terests may appear before the governing body of the  
44 municipality or each such municipality and may be heard  
45 as to whether or not said ordinance shall be put into  
46 effect, and said notice shall also identify the office in  
47 which a certified copy of such ordinance shall be on  
48 file for review by interested persons during the office  
49 hours of such office. At such hearing all objections and  
50 suggestions shall be heard and the governing body or  
51 each such governing body shall take such action as it  
52 or they shall deem proper in the premises: *Provided,*  
53 That if at any such hearing written protest is filed by  
54 thirty percent or more of the freeholders of the munici-  
55 pality for which the hearing is held, then the governing  
56 body of said municipality shall not take further action  
57 unless four fifths of the members of said governing body  
58 assent thereto: *Provided, however,* That in case writ-  
59 ten protest is filed by thirty percent or more of the free-  
60 holders as herein provided, any such governing body  
61 shall have authority to appoint a committee to consist  
62 of one proponent, one opponent, and the third to be  
63 selected by these two, to determine whether or not thirty

64 percent of the freeholders have in fact protested and said  
65 committee shall report its findings to any such govern-  
66 ing body.

**ARTICLE 19. MUNICIPAL WATERWORKS SYSTEMS.**

**§8-19-5. Publication of abstract of ordinance and notice;  
hearing.**

1 After the ordinance for any project under this article  
2 has been adopted, an abstract of the ordinance, deter-  
3 mined by the governing body to contain sufficient in-  
4 formation as to give notice of the contents of such  
5 ordinance, together with the following described notice,  
6 shall be published as a Class II legal advertisement in  
7 compliance with the provisions of article three, chap-  
8 ter fifty-nine of this code, and the publication area  
9 for such publication shall be such municipality. The  
10 notice to be published with said abstract of the ordi-  
11 nance shall state that said ordinance has been adopted,  
12 that the municipality contemplates the issuance of the  
13 bonds described in the ordinance, that any person interest-  
14 ed may appear before the governing body, upon a certain  
15 date which shall not be less than ten days subsequent to  
16 the date of the last publication of such abstract and  
17 notice, and present protests, and that a certified copy  
18 of the ordinance is on file with the governing body  
19 for review by interested parties during the office hours  
20 of the governing body. At such hearing all protests  
21 and suggestions shall be heard and the governing body  
22 shall take such action as it shall deem proper in the  
23 premises: *Provided*, That if at such hearing written  
24 protest is filed by thirty percent or more of the free-  
25 holders of the municipality, then the governing body  
26 of said municipality shall not take further action unless  
27 four fifths of the qualified members of said governing  
28 body assent thereto.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.**

**§8-20-4. Publication of abstract of ordinance and notice;  
hearing.**

1 After the ordinance for any project under the pro-  
2 visions of this article has been adopted, an abstract

3 of the ordinance, determined by the governing body  
4 to contain sufficient information as to give notice of  
5 the contents of such ordinance, together with the follow-  
6 ing described notice, shall be published as a Class II  
7 legal advertisement in compliance with the provisions  
8 of article three, chapter fifty-nine of this code, and the  
9 publication area for such publication shall be such  
10 municipality. The notice to be published with said  
11 abstract of the ordinance shall state that said ordinance  
12 has been adopted, that the municipality contemplates  
13 the issuance of the bonds described in the ordinance,  
14 that any person interested may appear before the govern-  
15 ing body, upon a certain date which shall not be less  
16 than ten days subsequent to the date of the last pub-  
17 lication of such abstract and notice, and present pro-  
18 tests, and that a certified copy of the ordinance is on  
19 file with the governing body for review by interested  
20 parties during the office hours of the governing body.  
21 At such hearing all protests and suggestions shall be  
22 heard and the governing body shall take such action  
23 as it shall deem proper in the premises: *Provided*, That  
24 if at such hearing written protest is filed by thirty  
25 percent or more of the freeholders of the municipality,  
26 then the governing body of said municipality shall not  
27 take further action unless four fifths of the qualified  
28 members of said governing body assent thereto.

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## CHAPTER 104

(House Bill No. 828—By Mr. Grewe and Mr. Fantasia)

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[Passed February 25, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact sections nineteen, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal policemen's pension and relief funds and municipal firemen's pension and relief funds generally; re-



lating to the contributions thereto by municipalities, policemen and firemen and the amount thereof; relating to levies in connection therewith; and relating to the computation and amount of disability, retirement and death benefits payable from such funds.

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

That sections nineteen, twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-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 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

§8-22-24. Disability pensions; temporary disability payments.

§8-22-25. Retirement pensions.

§8-22-26. Death benefits.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

**§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.**

1 In every municipality in which there shall be a police-  
2 men's pension and relief fund or a firemen's pension  
3 and relief fund, or both, the same shall be maintained  
4 as follows: The governing body of the municipality  
5 shall levy annually and in the manner provided by law  
6 for other municipal levies, and include within the maxi-  
7 mum levy or levies permitted by law, and if necessary  
8 in excess of any charter provision, a tax at such rate  
9 as will, after crediting (a) all interest, if any, to be re-  
10 ceived in such year from the investments of the respec-  
11 tive boards, (b) the amount of the contributions received  
12 during such year from the members of the respective paid  
13 police department or paid fire department, and (c) in  
14 the case of the policemen's pension and relief fund, the  
15 arrest fee of one dollar as provided for in section twenty  
16 of this article, provide funds equal to the sum of (1) the

17 full amount of estimated expenditures of the boards  
18 of trustees of the respective funds, and (2) an addi-  
19 tional amount equal to ten percent of such estimated  
20 expenditures, said ten percent amount to be taken, ac-  
21 cumulated and invested, if possible, as surplus reserve:  
22 *Provided*, That in no event shall such levy for each of  
23 the respective boards of trustees be less than one cent  
24 nor more than eight cents on each one hundred dollars  
25 of all real and personal property as listed for taxation  
26 in such municipality.

27 The levies authorized under the provisions of this  
28 section, or any part of them, may by the governing body  
29 be laid in addition to all other municipal levies, and  
30 to that extent, beyond the limit of levy imposed by  
31 the charter of such municipality; and such levies shall  
32 supersede and if necessary exclude levies for other pur-  
33 poses if such priority or exclusion is necessary under  
34 limitations upon taxes or tax levies imposed by law.

35 Such public corporations are authorized to take by  
36 gift, grant, devise or bequest, any money or real or  
37 personal property, upon such terms as to the invest-  
38 ment and expenditure thereof as may be fixed by the  
39 grantor or determined by said trustees.

40 In addition to all other sums provided for pensions  
41 in this section, it shall be the duty of every municipality  
42 in which any such fund or funds have been or shall be  
43 established to assess and collect from each member of  
44 the paid police department or paid fire department or  
45 both each month, the sum of six percent of the actual  
46 salary or compensation of such member; and the amount  
47 so collected shall become a regular part of the police-  
48 men's pension and relief fund, if collected from a police-  
49 man, and of the firemen's pension and relief fund, if col-  
50 lected from a fireman.

51 Any member of a paid police or fire department who  
52 is removed or discharged or who before retirement on  
53 any retirement pension or disability pension severs his  
54 connection with said department, provided he has served  
55 two full years or more, whether or not consecutive, shall,  
56 upon request, be refunded all pension and relief fund  
57 deductions made from his salary or compensation, but

58 without interest. In the event such refund is made  
59 and such member subsequently reenters the department  
60 no credit shall be allowed him for any former service,  
61 unless any such member of a paid police or fire de-  
62 partment repays to the pension and relief fund all sums  
63 refunded to him within one year from the date he  
64 reenters the department with interest at the rate of six  
65 percent per annum: *Provided, however,* That any mem-  
66 ber who, on or before June three, one thousand nine  
67 hundred fifty-five, reentered the paid police or fire de-  
68 partment shall be allowed credit for any former service  
69 in the same department reentered if he within one year  
70 from said June three, one thousand nine hundred fifty-  
71 five, repaid all sums withdrawn or refunded to him  
72 with interest at the rate of six percent per annum, but  
73 in no case shall interest be charged for more than three  
74 years. Any probationary member of a paid police or  
75 fire department who is not given an absolute appoint-  
76 ment at the end of his probationary period shall, upon  
77 request, be refunded all pension and relief fund deduc-  
78 tions made from his salary or compensation, but with-  
79 out interest.

**§8-22-24. Disability pensions; temporary disability payments.**

1 (a) If any member of any such paid police or fire  
2 department of any such municipality shall become and  
3 be found upon examination by a majority of a board  
4 of medical examiners, which board shall consist of not  
5 less than three physicians appointed by the board of  
6 trustees, to have become so physically or mentally per-  
7 manently disabled by reason of service rendered in  
8 the performance of his duties in such department, as  
9 to render necessary his retirement from all service in  
10 such department, or if any member who has been such  
11 a member of either of such departments for a period  
12 of not less than five consecutive years preceding his dis-  
13 ability become and be found upon such an examination  
14 to have become so physically or mentally permanently  
15 disabled, from any reason other than as specified above  
16 in this section, as to render necessary his retirement  
17 from all service in such department, such board of trus-  
18 tees shall retire such permanently disabled members

19 from all service in such department; and said board of  
20 trustees of such pension and relief fund shall authorize  
21 the payment to each such permanently disabled mem-  
22 ber monthly from the pension and relief fund a disability  
23 pension, the amount thereof to be determined as speci-  
24 fied in subsection (f) of this section.

25 (b) If any member of any such department shall  
26 at any time be injured or become sick, regardless of the  
27 cause therefor, so as to render such member temporarily  
28 disabled, he shall be paid, during such disability for  
29 not exceeding twenty-six weeks, from said pension and  
30 relief fund temporary disability payments, the amount  
31 thereof to be determined as specified in said subsection  
32 (f) for the determination of payments under a disability  
33 pension.

34 (c) No member shall be eligible for any disability  
35 pension or any temporary disability payments unless  
36 such member shall have presented himself for an ex-  
37 amination at the time of his appointment to the depart-  
38 ment and his condition was then approved by a majority  
39 of a board of medical examiners appointed as aforesaid  
40 by such pension board: *Provided*, That this provision  
41 shall not apply to any individual who became a member  
42 of either of said departments on or before March eight,  
43 one thousand nine hundred thirty-five. Any such pen-  
44 sion board may, if it so elects, designate as a member  
45 or members of its board of medical examiners any physi-  
46 cian or physicians appointed by the policemen's civil  
47 service commission or firemen's civil service commission  
48 of such municipality to conduct medical examinations  
49 on behalf of any such commission under the provisions  
50 of article fourteen or article fifteen of this chapter, as  
51 the case may be.

52 (d) Any member who has been heretofore, or shall  
53 hereafter be, allowed a disability pension or temporary  
54 disability payments under the provisions of sections  
55 sixteen through twenty-eight of this article may be  
56 required by such board to be reexamined at any time  
57 and if he is then not disabled as aforesaid he shall be  
58 ordered by the mayor of the municipality to return to  
59 duty in his former position in the paid police or fire

60 department, as the case may be, and his disability pension  
61 or temporary disability payments shall be discontinued:  
62 *Provided, however,* That this provision shall not apply  
63 to any member until such member can and shall be re-  
64 stored to his former position in such department.

65 (e) All medical examinations conducted under the  
66 provisions of this section shall be ordered by the pen-  
67 sion board.

68 (f) The monthly sum to be paid to each permanently  
69 disabled member of a paid police or fire department  
70 entitled thereto shall be equal to sixty percent of the  
71 monthly salary or compensation being received by such  
72 member, at the time he is so disabled, or the sum of  
73 two hundred dollars per month, whichever shall be  
74 greater.

#### §8-22-25. Retirement pensions.

1 (a) Any member of a paid police or fire depart-  
2 ment who is entitled to a retirement pension hereunder,  
3 and who has been in the honorable service of such de-  
4 partment for twenty years, may, upon written applica-  
5 tion to the board of trustees, be retired from all ser-  
6 vice in such department without medical examination  
7 or disability; and on such retirement the board of trus-  
8 tees shall authorize the payment of annual retirement  
9 pension benefits commencing upon his retirement or  
10 upon his attaining the age of fifty years, whichever is  
11 later, payable in twelve monthly installments for each  
12 year of the remainder of his life, in an amount equal  
13 to sixty percent of such member's average annual sal-  
14 ary or compensation received during the five fiscal years,  
15 not necessarily consecutive, in which such member re-  
16 ceived his highest salary or compensation while a mem-  
17 ber of the department, or an amount of two hundred  
18 dollars per month, whichever shall be greater.

19 (b) Any member of any such department who  
20 is entitled to a retirement pension under the provisions  
21 of subsection (a) of this section and who has been  
22 in the honorable service of such department for more  
23 than twenty years at the time of his retirement, as  
24 herein provided, shall, in addition to the sixty percent

25 authorized in said subsection (a), receive one additional  
26 percent, to be added to the sixty percent, per each year  
27 served in excess of said twenty years, up to a maximum  
28 of five additional percent.

29 (c) Any member of any such department whose  
30 service has been interrupted by duty with the armed  
31 forces of the United States as provided in section  
32 twenty-seven of this article, shall be eligible for retire-  
33 ment pension benefits immediately upon retirement,  
34 regardless of his age, if he shall otherwise be eligible  
35 for such retirement pension benefits.

36 (d) Any member of a paid police or fire de-  
37 partment shall be retired at the age of sixty-five years in  
38 the manner provided in this subsection. When a mem-  
39 ber of the paid police or fire department shall have  
40 reached the age of sixty-five years, the said board of  
41 trustees shall notify the mayor of this fact, within  
42 thirty days of such member's sixty-fifth birthday; and  
43 the mayor shall cause such sixty-five-year-old member of  
44 the paid police or fire department to be retired within a  
45 period of not more than thirty additional days. Upon  
46 retirement under the provisions of this subsection (d),  
47 such member, whether he has been employed in said  
48 department for twenty years or not, shall receive re-  
49 tirement pension benefits payable in twelve monthly  
50 installments for each year of the remainder of his life,  
51 in an amount equal to sixty percent of such member's  
52 average annual salary or compensation received dur-  
53 ing the five fiscal years, not necessarily consecutive, in  
54 which such member received his highest salary or com-  
55 pensation while a member of the department, or an  
56 amount of two hundred dollars per month, whichever  
57 shall be greater, and if such member has been employed  
58 in said department for more than twenty years, the  
59 provisions of subsection (b) of this section shall apply.

60 (e) It shall be the duty of each member of a  
61 paid police or fire department at the time a fund is here-  
62 after established to furnish the necessary proof of his  
63 date of birth to the said board of trustees, as specified  
64 in section twenty-three of this article, within a reason-  
65 able length of time, said length of time to be determined

66 by the said board of trustees; and then the board of  
67 trustees and the mayor shall proceed to act in the man-  
68 ner provided in subsection (d) of this section and shall  
69 cause all members of the paid police or fire department  
70 who are over the age of sixty-five years to be retired  
71 in not less than sixty days from the date the fund is  
72 established. Upon retirement under the provisions of  
73 this subsection (e), such member, whether he has been  
74 employed in said department for twenty years or not,  
75 shall receive retirement pension benefits payable in  
76 twelve monthly installments for each year of the re-  
77 mainder of his life, in an amount equal to sixty percent  
78 of such member's average annual salary or compensa-  
79 tion received during the five fiscal years, not necessarily  
80 consecutive, in which such member received his highest  
81 salary or compensation while a member of the depart-  
82 ment, or an amount of two hundred dollars per month,  
83 whichever shall be greater, and if such member has  
84 been employed in said department for more than twenty  
85 years, the provisions of subsection (b) of this section  
86 shall apply.

**§8-22-26. Death benefits.**

- 1 (a) In case:
- 2 (1) Any member of a paid police or fire department
- 3 who has been in continuous service for more than five
- 4 years shall die, from any cause other than as specified
- 5 in subsection (b) of this section twenty-six, before re-
- 6 tirement on a disability pension under the provisions of
- 7 section twenty-four of this article or a retirement pen-
- 8 sion under the provisions of subsection (a) or both sub-
- 9 sections (a) and (b) of section twenty-five of this article,
- 10 leaving in either case surviving a dependent spouse, or
- 11 any dependent child or children under the age of eighteen
- 12 years, or dependent father or mother or both, or any
- 13 dependent brothers or sisters or both under the age of
- 14 eighteen years; or
- 15 (2) Any former member of any such department
- 16 who is on a disability pension under the provisions of
- 17 said section twenty-four, or has attained the age of fifty
- 18 years and is receiving or is entitled to receive retire-

19 ment pension benefits under the provisions of subsection  
20 (a) or both subsections (a) and (b) of section twenty-  
21 five of this article, shall die, from any cause other than  
22 as specified in subsection (b) of this section twenty-six,  
23 leaving in either case surviving a dependent spouse to  
24 whom the marriage took place prior to the date of such  
25 member's retirement on a disability pension or a retire-  
26 ment pension, or any dependent child or children under  
27 the age of eighteen years who were born prior to or  
28 within ten months after the date of such member's re-  
29 tirement on a disability pension or a retirement pension,  
30 or dependent father or mother or both, or any dependent  
31 brothers or sisters or both under the age of eighteen  
32 years; or

33 (3) Any former member of any such department  
34 who has retired under the provisions of subsection (a) or  
35 both subsections (a) and (b) of section twenty-five of  
36 this article, shall die before attaining the age of fifty years,  
37 from any cause other than as specified in subsection (b)  
38 of this section twenty-six, leaving surviving a dependent  
39 spouse, or any dependent child or children under the  
40 age of eighteen years, or dependent father or mother or  
41 both, or any dependent brothers or sisters or both under  
42 the age of eighteen years; then in any of the cases set  
43 forth above in (1), (2) and (3), the board of trustees  
44 of such pension and relief fund shall, immediately follow-  
45 ing the death of such member, pay to or for each of  
46 such entitled surviving dependents the following pen-  
47 sion benefits, viz.: To such dependent spouse, until death  
48 or remarriage, a sum per month equal to thirty percent  
49 of such member's average monthly salary or compensation  
50 received during the five fiscal years, not necessarily  
51 consecutive, in which such member received his highest  
52 salary or compensation while a member of the department,  
53 hereinafter for convenience referred to in this section  
54 as "monthly average," or an amount of one hundred dol-  
55 lars per month, whichever shall be greater; to each such  
56 dependent child a sum per month equal to ten percent of  
57 such monthly average, or the sum of thirty dollars per  
58 month for each such child, whichever shall be greater,  
59 until such child shall attain the age of eighteen years



60 or marry, whichever first occurs; to each such dependent  
61 orphaned child a sum per month equal to fifteen percent  
62 of such monthly average, or the sum of forty-five dollars  
63 per month for each such child, whichever shall be greater,  
64 until such child shall attain the age of eighteen years  
65 or marry, whichever first occurs; to each such depen-  
66 dent father or mother a sum per month for each  
67 equal to ten percent of such monthly average, or the  
68 sum of thirty dollars per month for each such father  
69 and mother, whichever shall be greater; to each such  
70 dependent brother or sister the sum of five dollars  
71 per month until such individual shall attain the age  
72 of eighteen years or marry, whichever first occurs, but  
73 in no event shall the aggregate amount paid to such  
74 brothers and sisters exceed thirty dollars per month;  
75 but if at any time, because of the number of dependents,  
76 all such dependents cannot be paid in full as herein  
77 provided, then each dependent shall receive his pro rata  
78 share of such payments: *Provided*, That in no case shall  
79 the payments to the surviving spouse and children be cut  
80 below sixty-five percent of the total amount to be paid  
81 to all dependents.

82 (b) The dependent spouse, child or children, or  
83 dependent father or mother, or dependent brothers or  
84 sisters, of any such member who shall die by reason of  
85 service rendered in the performance of such member's  
86 duties shall, regardless of the length of such member's  
87 service and irrespective of whether such member was  
88 or was not entitled to receive or was or was not receiv-  
89 ing a disability pension or temporary disability payments  
90 at the time of his death, receive the death benefits pro-  
91 vided for in subsection (a) of this section, and if such  
92 member had less than five years' service at the time of  
93 his death, the monthly average shall be computed on the  
94 basis of the actual number of years of service.

95 (c) The provisions of this section shall not be con-  
96 strued as creating or establishing any contractual or  
97 vested rights in favor of any individual who may be or  
98 become qualified as a beneficiary of the death benefits  
99 herein authorized to be made, all the provisions hereof  
100 and benefits provided for hereunder being expressly sub-

101 ject to such subsequent legislative enactments as may  
102 provide for any change, modification or elimination of  
103 the beneficiaries or benefits specified herein.

**§8-22-27. General provisions concerning disability pensions,  
retirement pensions and death benefits.**

1 (a) In determining the years of service of a  
2 member in a paid police or fire department for the pur-  
3 pose of ascertaining certain disability pension benefits,  
4 all retirement pension benefits and certain death benefits,  
5 the following provisions shall be applicable:

6 (1) Absence from the service because of sick-  
7 ness or injury shall not be construed as time out of ser-  
8 vice; and

9 (2) Any member of any paid police or fire de-  
10 partment covered by the provisions of sections sixteen  
11 through twenty-eight of this article who has been re-  
12 quired to or shall at any future time be required to  
13 enter the armed forces of the United States by conscrip-  
14 tion, by reason of being a member of some reserve  
15 unit of the armed forces or a member of the West Vir-  
16 ginia national guard or air national guard, or who en-  
17 lists in one of the armed forces of the United States  
18 during hostilities, and who upon receipt of an honor-  
19 able discharge from such armed forces presents him-  
20 self for resumption of duty to his appointing municipal  
21 official within six months from his date of discharge,  
22 and is accepted by the pension board's board of medical  
23 examiners as being mentally and physically capable of  
24 performing his required duties as a member of such  
25 paid police or fire department, shall be given credit for  
26 continuous service in said paid police or fire department,  
27 and his rights shall be governed as herein provided. No  
28 member of a paid police or fire department shall be re-  
29 quired to pay the monthly assessment as now required  
30 by law, during his period of service in the armed forces  
31 of the United States.

32 (b) As to any former member of a paid police  
33 or fire department receiving disability pension benefits  
34 or retirement pension benefits from a policemen's or fire-  
35 men's pension and relief fund, on the effective date of this

36 article [July 1, 1969], the following provisions shall  
37 govern and control the amount of such pension benefits:

38 (1) A former member who on June thirtieth,  
39 one thousand nine hundred sixty-two, was receiving dis-  
40 ability pension benefits or retirement pension benefits  
41 from a policemen's or firemen's pension and relief fund,  
42 shall continue to receive pension benefits but on and after  
43 July one, one thousand nine hundred seventy-one, such  
44 pension benefits shall be in the amount of two hundred  
45 dollars per month; and

46 (2) A former member who became entitled to  
47 disability pension benefits or retirement pension benefits  
48 on or after July one, one thousand nine hundred sixty-  
49 two, shall continue to receive pension benefits but on and  
50 after July one, one thousand nine hundred seventy-one,  
51 shall receive the disability pension benefits or retirement  
52 pension benefits provided for in section twenty-four or  
53 section twenty-five of this article, as the case may be.

54 (c) As to any dependent spouse, child or children,  
55 or dependent father or mother, or dependent brothers or  
56 sisters, of any former member of a paid police or fire de-  
57 partment, receiving any death benefits from a policemen's  
58 pension and relief fund or firemen's pension and relief  
59 fund, on the effective date of this article, the following  
60 provisions shall govern and control the amount of such  
61 death benefits:

62 (1) A dependent spouse, child or children, or  
63 dependent father or mother, or dependent brothers or  
64 sisters, of any former member, who on June thirty, one  
65 thousand nine hundred sixty-two, was receiving any  
66 death benefits from a policemen's pension and relief  
67 fund or firemen's pension and relief fund, shall continue  
68 to receive death benefits but on and after July one, one  
69 thousand nine hundred seventy-one, such death benefits  
70 shall be in the following amounts: To a dependent spouse,  
71 until death or remarriage, the sum of one hundred dollars  
72 per month; to each dependent child the sum of thirty dol-  
73 lars per month, until such child shall attain the age of  
74 eighteen years or marry, whichever first occurs; to each  
75 dependent orphaned child the sum of forty-five dollars  
76 per month, until such child shall attain the age of eighteen

77 years or marry, whichever first occurs; to each dependent  
78 father and mother the sum of thirty dollars per month  
79 for each; to each dependent brother or sister the sum of  
80 five dollars per month, until such individual shall attain  
81 the age of eighteen years or marry, whichever first occurs,  
82 but in no event shall the aggregate amount paid to such  
83 brothers and sisters exceed thirty dollars per month; but  
84 if at any time, because of the number of dependents, all  
85 such dependents cannot be paid in full as herein pro-  
86 vided, then each dependent shall receive his pro rata  
87 share of such payments: *Provided*, That in no case shall  
88 the payments to the surviving spouse and children be  
89 cut below sixty-five percent of the total amount to be paid  
90 to all dependents;

91 (2) A dependent spouse, child or children, or  
92 dependent father or mother, or dependent brothers or  
93 sisters, of any former member, who became eligible for  
94 death benefits on or after July one, one thousand nine  
95 hundred sixty-two, shall continue to receive death bene-  
96 fits but on and after July one, one thousand nine hundred  
97 seventy-one, shall receive the death benefits provided  
98 for in section twenty-six of this article.

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## CHAPTER 105

(House Bill No. 1015—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

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[Passed March 9, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend article twenty-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 fifty-a, relating to municipal corporations, planning and zoning, and the adoption of the standards of federal department of housing and urban development.

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

That article twenty-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 fifty-a, to read as follows:

**ARTICLE 24. INTERGOVERNMENTAL RELATIONS—URBAN AND RURAL PLANNING AND ZONING.**

**PART XIII-A. ADOPTION OF STANDARDS OF FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.**

**§8-24-50a. Standards of federal department of housing and urban development for factory-built housing, components, etc., adopted.**

1 Notwithstanding any existing provisions of law, mu-  
2 nicipal or county ordinance, or local building code, but  
3 excluding any such provisions relating to zoning or land  
4 use control, the standards for factory-built housing,  
5 housing prototypes, subsystems, materials and components  
6 certified as acceptable by the federal department of hous-  
7 ing and urban development are hereby deemed acceptable  
8 and approved for use in housing construction in this state.  
9 A certificate from the state director of the federal housing  
10 administration of the department of housing and urban  
11 development shall constitute prima facie evidence that  
12 the products or materials listed therein are acceptable  
13 and such certificates shall be furnished by the building  
14 contractor to any local building inspector or other local  
15 housing authority upon request.

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## CHAPTER 106

(Com. Sub. for House Bill No. 847—Originating in the House  
Committee on the Judiciary)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections five, fourteen and twenty, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections. designated sections twenty-six and twenty-seven, relating to urban mass transportation

authorities; authorizing participating governments to contribute moneys or property to such authorities; relating to the number of votes participating governments shall have in the affairs of such authorities; authorizing other counties and municipalities within and without this state to join such authorities; relating to the revenue bonds to be issued by such authorities; providing an exemption from taxation; relating to dissolution of such authorities and the disposition of their assets after payment of debts; and relating to workmen's compensation for employees of such authorities.

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

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

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN  
MASS TRANSPORTATION SYSTEMS.**

**PART II. ORGANIZATION AND FUNCTION OF  
AUTHORITIES AND BOARDS.**

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

**PART VI. DEVELOPMENT OF SYSTEM;  
FINANCING THEREOF.**

§8-27-14. Bonds generally.

§8-27-20. Exemption from taxation.

**PART XI. DISSOLUTION OF AUTHORITY;  
WORKMEN'S COMPENSATION.**

§8-27-26. Dissolution of authority; disposition of assets after payment of debts.

§8-27-27. Employees to be covered by workmen's compensation.

**PART II. ORGANIZATION AND FUNCTION OF  
AUTHORITIES AND BOARDS.**

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

1 The management and control of any authority, its  
2 operations, business and affairs shall be lodged in a board  
3 of not less than five nor more than fifteen individuals  
4 who shall be known as members of the board and who  
5 shall be appointed for terms of three years each by the  
6 governing bodies of the participating governments.  
7 Prior to making the initial appointments to the board,  
8 the governing bodies of the participating governments  
9 shall agree to make such initial appointments so that  
10 approximately one third of the total number of the mem-  
11 bers to be so appointed shall be appointed for a term of  
12 one year, approximately one third of such total number  
13 of the members shall be appointed for a term of two  
14 years and approximately one third of such total num-  
15 ber of the members shall be appointed for a term of  
16 three years. As the term of each such initial appointee  
17 expires, the successor to fill the vacancy created by such  
18 expired term shall be appointed for a term of three years.  
19 The number of members representing each participating  
20 government shall be as agreed upon from time to time  
21 by the governing bodies of the said participating govern-  
22 ments. When a participating government is represented  
23 by more than one member on the board of an authority,  
24 such members shall be entitled to cast the votes of that  
25 participating government in such manner as that partici-  
26 pating government may direct in the order or ordinance  
27 appointing its members.

28 Each participating government shall have one vote for  
29 each five hundred dollars it has contributed to the au-  
30 thority in the form of moneys or property. When prop-  
31 erty is contributed, the contributing participating gov-  
32 ernment and the authority shall agree in writing at the  
33 time the contribution is made as to the fair market value  
34 of such property, which valuation shall determine the  
35 number of votes to be allocated to the participating  
36 government on the basis thereof. For the fiscal year  
37 during which any authority is formed, the number of  
38 votes to which any participating government shall be  
39 entitled shall be determined as of the time of formation  
40 of the authority and shall govern until the end of that

41 fiscal year, even though additional moneys or property  
42 are contributed during that fiscal year. Thereafter, the  
43 number of votes shall be determined at the end of each  
44 fiscal year and such determination shall govern for the  
45 ensuing fiscal year, even though additional moneys or  
46 property are contributed during that fiscal year. Subse-  
47 quent to its formation, any authority may permit any  
48 municipality or county within or without this state to  
49 participate in the affairs of the authority, to appoint  
50 members of the authority in the same manner, and to  
51 have such vote or votes beginning as of the next ensuing  
52 fiscal year, as prescribed by law with respect to the orig-  
53 inal participating municipalities or counties or any com-  
54 bination thereof.

55 Any individual who is a resident of, or member of the  
56 governing body, of, any participating government is  
57 eligible to serve as a member of the board. The govern-  
58 ing body of each participating government shall inform  
59 the authority of its appointments or reappointments to  
60 the board by delivering to the authority a certified copy  
61 of the ordinance or order making the appointment or  
62 reappointment. If any member of the board dies, resigns  
63 or for any other reason ceases to be a member of the  
64 board, the governing body of the participating govern-  
65 ment which such member represented shall appoint an-  
66 other individual to fill the unexpired portion of the  
67 term of such member.

#### PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.

##### §8-27-14. Bonds generally.

1 The authority is hereby empowered and authorized to  
2 provide by resolution, from time to time, for the issuance  
3 of revenue bonds of the authority for the purpose of  
4 paying all or any part of the cost of acquiring, con-  
5 structing or improving a system or systems, or any part  
6 thereof, or the facilities and equipment therefor, as the  
7 case may be, or for any other purpose or project autho-  
8 rized by the provisions of this article. The purposes for  
9 which revenue bonds may be issued may include the pay-  
10 ment of all costs and estimated costs incidental to or con-



11 nected with the accomplishment of such purpose or project  
12 including, without limitation, engineering, inspection and  
13 legal fees, the fees of fiscal agents and financial con-  
14 sultants and other fees, bond and other reserve funds,  
15 working capital, bond interest estimated to accrue during  
16 the construction period and for a period not to exceed  
17 two years thereafter, and expenses of all proceedings for  
18 the authorization, issuance and sale of the bonds.

19 The bonds of each issue shall be dated and shall bear in-  
20 terest at such rate or rates as are approved by the author-  
21 ity, payable semiannually, and shall mature at such time  
22 or times not exceeding forty years from their date or dates  
23 as may be determined by the authority, and may be made  
24 redeemable before maturity, at the option of the au-  
25 thority, at such price or prices and under such terms  
26 and conditions as may be fixed by the authority prior  
27 to the issuance of the bonds. The authority shall deter-  
28 mine the form of the bonds, including any interest  
29 coupons to be attached thereto, and shall fix the denomi-  
30 nation or denominations of the bonds and the place or  
31 places of payment of the principal and interest, which  
32 may be at any banking institution or trust company  
33 within or without the state. The bonds shall be signed  
34 by the president of the authority or shall bear his fac-  
35 simile signature, and the official seal of the authority,  
36 or a facsimile thereof, shall be impressed or imprinted  
37 thereupon and attested by the secretary of the authority,  
38 and any coupons attached to the bonds shall bear the  
39 facsimile signature of the president of the authority.  
40 All such signatures, countersignatures and seal may be  
41 printed, lithographed or mechanically reproduced, except  
42 that one of such signatures or countersignatures on the  
43 bonds shall be manually affixed, unless the resolution au-  
44 thORIZING the issuance of such bonds shall otherwise pro-  
45 vide. If any officer whose signature or countersignature  
46 or a facsimile of whose signature or countersignature  
47 appears on bonds or coupons ceases to be such officer be-  
48 fore the delivery of the bonds, his signature shall be as  
49 effective as if he had remained in office until such de-  
50 livery. The bonds may be issued in coupon or in regis-  
51 tered form, or both, as each authority may determine

52 and provision may be made for the registration of any  
53 coupon bonds as to principal alone, and also as to both  
54 principal and interest, for the reconversion into coupon  
55 bonds of any bonds registered as to both principal and  
56 interest, and for the interchange of registered and coupon  
57 bonds. Notwithstanding the form or tenor thereof, and  
58 in the absence of any express recital on the face thereof  
59 that the bond is nonnegotiable, all such bonds shall be,  
60 and shall be treated as, negotiable instruments for all  
61 purposes except when registered in the name of a regis-  
62 tered owner.

63 The authority may exchange its bonds, in whole or in  
64 part, for any system or systems, or any parts thereof,  
65 or facilities and equipment therefor, or may sell its bonds,  
66 in whole or in part, in such manner either at public or  
67 private sale and for such price as it may determine will  
68 best effect the purposes of this article and be for the best  
69 interest of the authority: *Provided*, That if the bonds  
70 be issued the minimum price for which they may be ex-  
71 changed or at which they may be sold shall be such that  
72 the interest cost to the authority of the proceeds of the  
73 bonds shall not exceed the interest rate per annum there-  
74 on computed to maturity according to the standard table  
75 of bond values.

76 Prior to the preparation of definitive bonds, the author-  
77 ity may, under like restrictions, issue interim receipts or  
78 temporary bonds with or without coupons, exchangeable  
79 for definitive bonds when such bonds shall have been  
80 executed and are available for delivery. The authority  
81 may also provide for the replacement of any bonds which  
82 shall become mutilated or shall be destroyed or lost.

83 The authority is hereby empowered and authorized  
84 to provide by resolution, from time to time, for the is-  
85 suance, sale or exchange of revenue refunding bonds of  
86 such authority for the purpose of refunding any bonds  
87 then outstanding which shall have been issued under the  
88 provisions of this article, including the payment of any  
89 redemption premium thereon, and any interest accrued  
90 or to accrue to the date of redemption of such bonds,  
91 and the payment of all expenses incidental thereto. The

92 authority is further empowered and authorized to pro-  
93 vide by resolution, from time to time, for the issuance,  
94 sale or exchange of revenue bonds of such authority for  
95 the combined purpose of refunding any bonds then out-  
96 standing, as herein provided, and paying all or any part of  
97 the cost of any additional project or projects. All provi-  
98 sions of this article applicable to the issuance of revenue  
99 bonds are applicable to the issuance of refunding bonds  
100 and to the sale or exchange thereof.

**§8-27-20. Exemption from taxation.**

1 It is hereby found, determined and declared that the  
2 creation of any authority and the carrying out of its  
3 purposes is in all respects for the benefit of the people  
4 of this state in general, and of the participating govern-  
5 ments in particular, and is a public purpose; and that  
6 the authority will be performing an essential govern-  
7 mental function in the exercise of the powers conferred  
8 upon it by the provisions of this article. Accordingly,  
9 each authority and, without limitation, its revenues,  
10 properties, operations and activities shall be exempt from  
11 the payment of any taxes or fees to the state or any  
12 of its political subdivisions or to any officer or employee  
13 of the state or any of its political subdivisions, except  
14 the special assessment provided for in section six, arti-  
15 cle six, chapter twenty-four-a of this code. Property,  
16 real and personal, owned by or leased and used exclu-  
17 sively by each authority shall be public property and  
18 therefore exempt from taxation in accordance with  
19 section nine, article three, chapter eleven of this code.  
20 The revenue bonds and other evidences of indebtedness  
21 issued pursuant to the provisions of this article, and the  
22 interest thereon, shall be exempt from taxation, except  
23 inheritance and transfer taxes.

**PART XI. DISSOLUTION OF AUTHORITY; WORKMEN'S  
COMPENSATION.**

**§8-27-26. Dissolution of authority; disposition of assets after  
payment of debts.**

1 In the event full and adequate provision is made for  
2 the payment of all of the debts of an authority, the

3 participating municipalities or counties or any combina-  
4 tion thereof which have contributed at least sixty per-  
5 cent of the total value of all moneys and property (the  
6 value of which property is determined as specified in  
7 section five of this article) contributed to the authority  
8 by the participating municipalities and counties may  
9 by resolution provide for the dissolution of the authority  
10 and for (1) the conveyance of the real and tangible  
11 personal property contributed to it to those participating  
12 municipalities and counties which contributed the same,  
13 (2) equitable distribution among the contributing mu-  
14 nicipalities and counties of any real and tangible personal  
15 property purchased or condemned by the authority or  
16 of the proceeds of sale thereof, or the fair value thereof,  
17 and (3) the equitable distribution of all moneys on hand  
18 to the participating municipalities and counties in direct  
19 proportion to the contribution of moneys by them.

**§8-27-27. Employees to be covered by workmen's compensa-  
tion.**

1 All eligible employees of any authority shall be deemed  
2 to be within the workmen's compensation statute of this  
3 state and premiums on their compensation shall be paid  
4 by the authority as required by law.

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## CHAPTER 107

(Com. Sub. for Senate Bill No. 86—Originating in the Senate  
Committee on the Judiciary)

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[Passed March 2, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing counties and municipalities to make appropriations to certain non-stock, nonprofit corporations for public purposes, subject to certain specified limitations.

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

That section one, article thirty-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 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS FOR PUBLIC PURPOSES.**

**PART I. MUSEUMS; CULTURAL CENTERS, ETC.**

**§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.**

1 (a) The Legislature hereby finds that the support of  
2 nonstock, nonprofit corporations dedicated to making  
3 available to the general public museums, facilities or  
4 cultural centers for the appreciation, advancement or  
5 enjoyment of art, crafts, music, dance, drama, nature,  
6 science or other educational and cultural activities is for  
7 the general welfare of the public and is a public purpose.  
8 This section is enacted in view of this finding and shall be  
9 liberally construed in the light thereof.

10 (b) When a nonstock, nonprofit corporation, chartered  
11 under the laws of this state, (1) is organized for the  
12 construction, maintenance or operation of museums,  
13 facilities or cultural centers for the appreciation, advance-  
14 ment or enjoyment of art, crafts, music, dance, drama,  
15 nature, science or other educational and cultural activities  
16 and provides in its charter that its buildings or facilities,  
17 or a designated portion thereof, shall be devoted to the  
18 use by the public for all purposes set forth in such charter  
19 without regard to race, religion, national origin or eco-  
20 nomic circumstance, and free from charge except such  
21 as is necessary to provide the means to keep the buildings,  
22 facilities and grounds in proper condition and repair,  
23 and to pay the cost of insurance, care, management,  
24 operations, teaching and attendants, so that the general  
25 public may have the benefit of such establishment for  
26 the uses set forth in such corporation's charter at as  
27 little expense as possible, (2) provides in its charter that  
28 no member trustee, or member of the board of directors

29 (by whatever name the same may be called), of the cor-  
30 poration shall receive any compensation, gain or profit  
31 from such corporation, and (3) is operated in compliance  
32 with such charter provisions as aforesaid, then, notwith-  
33 standing any statutory or municipal charter provisions  
34 to the contrary, any municipality in which such nonstock,  
35 nonprofit corporation is operating or which is or will be  
36 served by such nonstock, nonprofit corporation, if any,  
37 and the county court of any county in which such non-  
38 stock, nonprofit corporation is operating or which is or  
39 will be served by such nonstock, nonprofit corporation,  
40 may appropriate funds subject to the provisions and limi-  
41 tations set forth in subsections (c) and (d) of this section,  
42 to such nonstock, nonprofit corporation, for such public  
43 purposes.

44 In every such case, the governing body of any such  
45 municipality or any such county court and such corpora-  
46 tion may agree for the appointment of additional mem-  
47 bers to the board of directors of such corporation by such  
48 governing body or county court, either as regular mem-  
49 bers or in an ex officio capacity.

50 (c) No funds appropriated by a municipality or county  
51 court under the authority of this section shall be dis-  
52 bursed by any such nonstock, nonprofit corporation  
53 unless and until the expenditure thereof has been ap-  
54 proved by the governing body of such municipality or  
55 any such county court, as the case may be, which made  
56 such appropriation, and such corporation shall upon  
57 demand at any time make a full and complete accounting  
58 of all such funds to such governing body or county court,  
59 as the case may be, and shall in every event without de-  
60 mand make to such governing body or county court an  
61 annual accounting thereof.

62 (d) Under no circumstances whatever shall any action  
63 taken by any municipality or county court under the  
64 authority of this section give rise to or create any in-  
65 debtedness on the part of the municipality, the governing  
66 body of such municipality, the county, such county court,  
67 any member of such governing body or the county court  
68 or any municipal or county official or employee.

## CHAPTER 108

(Senate Bill No. 20—By Mr. Hubbard)

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[Passed February 25, 1971; in effect ninety days from passage. Approved by the Governor.]

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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 and deleting certain birds from the unprotected status.

*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. WILDLIFE RESOURCES.

#### §20-2-5. Unlawful methods of hunting and fishing.

- 1 Except as authorized by the director, it shall be un-
- 2 lawful at any time for any person to:
- 3 (1) Shoot at or to shoot any wild bird or animal unless
- 4 it is plainly visible to him;
- 5 (2) Dig out, cut out, or smoke out, or in any manner
- 6 take or attempt to take any live wild animal or wild bird
- 7 out of its den or place of refuge, except as may be autho-
- 8 rized by regulations promulgated by the director or by
- 9 law;
- 10 (3) (a) Make use of, or take advantage of, any artifi-
- 11 cial light in hunting for, locating, taking, trapping, or
- 12 killing any wild bird or wild animal; or (b) make use of,
- 13 or take advantage of, any artificial light in hunting for,
- 14 taking, attracting, trapping, or killing any wild bird or
- 15 wild animal, or to attempt to do so, while having in his
- 16 possession or subject to his control any firearm, whether
- 17 cased or uncased, or other implement or device suitable
- 18 for taking, killing, trapping, skinning, or dressing such
- 19 wild bird or animal. Any person violating the provisions
- 20 of division (b) of this subdivision three shall be guilty

21 of a misdemeanor, and, upon conviction thereof, shall  
22 for each offense be fined not less than one hundred dollars  
23 nor more than five hundred dollars and shall be im-  
24 prisoned for not less than ten days nor more than one  
25 hundred days: *Provided*, That it shall not be unlawful  
26 to hunt or take raccoon, opossum or skunk by the use of  
27 artificial lights;

28 (4) Hunt for, take, kill, wound or shoot at wild animals  
29 or wild birds from an airplane, or other airborne con-  
30 veyance, an automobile, or other land conveyance, or  
31 from a motor-driven water conveyance, except as may  
32 be authorized by regulations promulgated by the director;

33 (5) Take any beaver or muskrat by any means other  
34 than by trap;

35 (6) Catch, capture, take or kill by seine, net, bait, trap  
36 or snare or like device of any kind, any wild turkey,  
37 ruffed grouse, pheasant or quail;

38 (7) Destroy or attempt to destroy needlessly or will-  
39 fully the nest or eggs of any wild bird or have in his  
40 possession such nest or eggs unless authorized to do so  
41 under regulations or under a permit by the director;

42 (8) Except as provided in section six of this article,  
43 carry an uncased or loaded gun in any of the woods of  
44 this state except during the open firearms hunting season  
45 for game animals and nonmigratory game birds within  
46 any county of the state, unless he has in his possession  
47 a permit in writing issued to him by the director: *Pro-*  
48 *vided*, That this section shall not prohibit hunting or  
49 taking of unprotected species of wild animals and wild  
50 birds and migratory game birds, during the open season,  
51 in the open fields, open water and open marshes of the  
52 state;

53 (9) Except as provided in section six of this article,  
54 carry an uncased or loaded gun after the hour of five  
55 o'clock antemeridian on Sunday in any woods or on any  
56 highway, railroad right-of-way, public road, field or  
57 stream of this state, except at a regularly used rifle, pistol,  
58 skeet, target or trap shooting ground or range and nothing  
59 contained in section eighteen, article eight, chapter sixty-  
60 one of this code shall prohibit the use of a gun by a



61 licensed hunter before the hour of five o'clock antemeridi-  
62 dian on Sunday;

63 (10) Have in his possession a loaded firearm or a  
64 firearm from the magazine of which all shells and car-  
65 tridges have not been removed, in or on any vehicle or  
66 conveyance, or its attachments, within the state, except  
67 as may otherwise be provided by law or regulation. Ex-  
68 cept as hereinafter provided, between five o'clock post-  
69 meridian of one day and seven o'clock antemeridian,  
70 eastern standard time of the day following, any unloaded  
71 firearm, being lawfully carried in accordance with the  
72 foregoing provisions, shall be so carried only when in a  
73 case or taken apart and securely wrapped. During the  
74 period from July first to September thirtieth, inclusive,  
75 of each year, the foregoing requirements relative to carry-  
76 ing certain unloaded firearms shall be permissible only  
77 from eight-thirty o'clock postmeridian to five o'clock ante-  
78 meridian, eastern standard time;

79 (11) Hunt, catch, take, kill, trap, injure or pursue with  
80 firearms or other implement by which wildlife may be  
81 taken after the hour of five o'clock antemeridian on Sun-  
82 day any wild animals or wild birds: *Provided*, That traps  
83 previously and legally set may be tended after the hour  
84 of five o'clock antemeridian on Sunday, if the person so  
85 doing shall not have firearms or long bow of any descrip-  
86 tion in his possession;

87 (12) Hunt with firearms or long bow while under the  
88 influence of intoxicating liquor;

89 (13) Possess a ferret;

90 (14) Buy raw furs, pelts or skins of fur-bearing  
91 animals unless licensed to do so;

92 (15) Have in his possession or about his premises,  
93 without the written permission of the director, any hunt-  
94 ing or fishing paraphernalia which cannot be used law-  
95 fully in this state for hunting or fishing, and any con-  
96 servation officer shall remove and destroy such hunting  
97 and fishing paraphernalia, whenever found in this state,  
98 and the person or persons claiming ownership shall have  
99 no recourse at law against such confiscation and destruc-  
100 tion;

101 (16) Catch, take, kill, or attempt to catch, take or kill  
102 any fish at any time by any means other than by rod,  
103 line, and hooks with natural or artificial lures unless  
104 otherwise authorized by law or regulation issued by the  
105 director: *Provided*, That snaring of any species of suckers,  
106 carp, fallfish and creek chubs shall at all times be lawful;

107 (17) Employ or hire, or induce or persuade, by the use  
108 of money or other things of value, or by any means,  
109 any person to hunt, take, catch or kill, any wild animal  
110 or wild bird except those species on which there is no  
111 closed season, or to fish for, catch, take or kill any fish,  
112 amphibian or aquatic life which is protected by the pro-  
113 visions of this chapter or regulations of the director, or  
114 the sale of which is prohibited;

115 (18) Hunt, catch, take, kill, capture, pursue, transport,  
116 possess or use any migratory game or nongame birds  
117 included in the terms of conventions between the United  
118 States and Great Britain and between the United States  
119 and United Mexican States for the protection of migra-  
120 tory birds and game mammals concluded, respectively,  
121 August sixteen, one thousand nine hundred sixteen, and  
122 February seven, one thousand nine hundred thirty-six,  
123 except during the time and in the manner and numbers  
124 prescribed by the Federal Migratory Bird Treaty Act  
125 and regulations made thereunder;

126 (19) Kill, take, catch, or have in his possession living  
127 or dead, any wild bird, other than a game bird; or expose  
128 for sale, or transport within or without the state any  
129 such bird, except as aforesaid. No part of the plumage,  
130 skin or body of any protected bird shall be sold or had  
131 in possession for sale, except mounted or stuffed plumage,  
132 skin, bodies or heads of such birds legally taken and  
133 stuffed or mounted, irrespective of whether such bird  
134 was captured within or without this state, except the  
135 English or European sparrow (*Passer domesticus*), star-  
136 ling (*Sturnus vulgaris*), crow (*Corvus brachyrhynchos*)  
137 and cowbird (*Molothrus ater*), which shall not be pro-  
138 tected and the killing thereof at any time is lawful;

139 (20) Use dynamite or any like explosive or poisonous  
140 mixture placed in any waters of the state for the purpose

141 of killing or taking fish. Any person violating the pro-  
142 visions of this subdivision shall be guilty of a felony, and,  
143 upon conviction thereof, shall be fined not more than  
144 five hundred dollars or imprisoned for not less than six  
145 months nor more than three years, or both fined and  
146 imprisoned;

147 (21) Have a bow and gun, or have a gun and any arrow  
148 or arrows, in the fields or woods at the same time;

149 (22) Have a crossbow in the woods or fields or use a  
150 crossbow to hunt for, take or attempt to take any wild-  
151 life;

152 (23) Take or attempt to take turkey, bear, elk or deer  
153 with any arrow unless the same is equipped with a point  
154 having at least two sharp cutting edges measuring in  
155 excess of three fourths of an inch wide;

156 (24) Take or attempt to take any wildlife with an  
157 arrow having an explosive head or shaft, a poisoned  
158 arrow, or an arrow which would affect wildlife by any  
159 chemical action;

160 (25) Shoot an arrow across any public highway or  
161 from aircraft, motor-driven watercraft, motor vehicle or  
162 other land conveyance;

163 (26) Permit any dog owned by him or under his  
164 control to chase, pursue or follow upon the track of any  
165 game animal or game bird, either day or night, between  
166 the first day of May and the fifteenth day of August next  
167 following: *Provided*, That dogs may be trained on game  
168 animals and game birds, except deer and wild turkeys, and  
169 field trials may be held or conducted on the grounds or  
170 lands of the owner or by his bona fide tenant or tenants  
171 or upon the grounds or lands of another person with his  
172 written permission or on public lands, at any time:  
173 *Provided, however*, That the person training said dogs  
174 does not have firearms or other implements in his posses-  
175 sion during the closed season on such game animals and  
176 game birds, whereby game animals or game birds could  
177 be taken or killed;

178 (27) Conduct or participate in a field trial, water race  
179 or wild hunt hereafter referred to as trial: *Provided*,  
180 That any person, group of persons, club or organization

181 may hold such trial at any time of the year upon obtain-  
 182 ing such permit as is provided for in section fifty-six of  
 183 this article. The person responsible for obtaining said  
 184 permit shall prepare and keep an accurate record of the  
 185 names and addresses of all persons participating in said  
 186 trial, and make same readily available for inspection by  
 187 any conservation officer upon request; and

188 (28) Except as provided in section four of this article,  
 189 hunt, catch, take, kill or attempt to hunt, catch, take or  
 190 kill any wild animal, wild bird or wild fowl except during  
 191 the open season established by regulation of the director  
 192 as authorized by subdivision six, section seven, article  
 193 one of this chapter.

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## CHAPTER 109

(House Bill No. 730—By Mr. Seibert)

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[Passed March 3, 1971; in effect ninety days from passage. Approved by the  
 Governor.]

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AN ACT to amend section thirteen, article two, chapter twenty  
 of the code of West Virginia, one thousand nine hundred  
 thirty-one, as amended, relating to the importation and  
 liberation of wildlife.

*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. WILDLIFE RESOURCES.**

**§20-2-13. Importation of wildlife; certification and inspection  
 of imported wildlife.**

1 No person shall transport into or have in his possession  
 2 within this state any live wildlife or viable eggs thereof  
 3 from without the state, except as authorized by an im-  
 4 portation permit issued by the director: *Provided*, That  
 5 the director shall not be authorized to issue a permit  
 6 to any person to transport into this state any foxes,  
 7 either red (*Vulpes fulva*) or gray (*Urocyon cinereo-*  
 8 *argenteus*), fishers (*Martes pennanti*), or coyotes (*Canis*

9 latrans). The director may issue at his discretion such  
10 permit as he is authorized to issue, fix the terms thereof  
11 and revoke it at his pleasure: *Provided*, That the director  
12 is hereby authorized to issue permits for the importation  
13 of foxes, either red (*Vulpes fulva*) or gray (*Urocyon*  
14 *cinereoargenteus*) to duly organized clubs having twenty-  
15 five or more members in the counties of Boone, Cabell,  
16 Kanawha, McDowell, Wayne and Wyoming.

17 Importers of fish or viable eggs of the family sal-  
18 mondiae (trout, char, salmon) shall furnish a statement  
19 from a recognized fish pathologist certifying the source  
20 to be free of whirling disease, infectious pancreatic ne-  
21 crosis, viral hemorrhagic septicemia or other diseases  
22 which may threaten fish stocks within the state.

23 Importers of other wildlife species shall furnish dis-  
24 ease free certification from pathologists, or veterinarians,  
25 as the director deems necessary to protect native popu-  
26 lations.

27 All imported wildlife shall be subject to inspection by  
28 authorized agents of the department and such inspec-  
29 tions may include biological examinations and the re-  
30 moval of a reasonable sample of fish or eggs for such  
31 purposes.

32 Any person violating any of the provisions of this section  
33 concerning foxes, fishers and coyotes shall be guilty of  
34 a misdemeanor, and, upon conviction thereof, shall for  
35 each offense be fined not less than one hundred nor more  
36 than three hundred dollars, or confined in jail not less  
37 than ten nor more than one hundred days, or be both  
38 fined and imprisoned within the limitations aforesaid.

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## CHAPTER 110

(Com. Sub. for House Bill No. 1009—Originating in the House  
Committee on Finance)

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[Passed March 13, 1971; in effect January 1, 1972. Approved by the Governor.]

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AN ACT to repeal section forty-two, article two, chapter  
twenty of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend and reenact sections thirty-four, thirty-nine, forty, forty-a, forty-four-a and forty-six of said article, all relating to hunting, trapping and fishing licenses; license fees; disposition of license fees.

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

That section forty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections thirty-four, thirty-nine, forty, forty-a, forty-four-a and forty-six of said article be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

§20-2-39. Class A resident statewide hunting and trapping license.

§20-2-40. Class B resident statewide fishing license.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

§20-2-44a. Class I national forest hunting, trapping and fishing license.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license.

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

1 All persons in this state who receive money for licenses  
2 and permits required by this chapter shall, on the first  
3 day of each month, pay over to the director all moneys  
4 so collected by them during the preceding month. Such  
5 payment shall be accompanied by a report showing, in  
6 the case of license money, the name of the county, the  
7 class of license sold, the names and addresses of the  
8 persons paying the same, the date of the receipt thereof,  
9 the signature of the person receiving and remitting such  
10 funds, and such other information as the director may  
11 deem necessary.

12 Except where other provisions of this chapter spe-  
13 cifically require and direct payment of any such moneys  
14 into designated funds for specific uses and purposes, all  
15 moneys so received by the director hereunder shall be  
16 by him promptly paid into the state treasury and shall  
17 be credited to the department of natural resources and  
18 shall be further credited to and kept in a separate fund  
19 designated "license fund—wildlife resources" which shall

20 be used and paid out, upon order of the director solely  
21 for law enforcement and for purposes directly relating  
22 to the conservation, protection, propagation and distribu-  
23 tion of wildlife in this state pursuant to the provisions  
24 of this chapter.

25 No funds from the "license fund—wildlife resources"  
26 shall be expended for recreational facilities or activities  
27 that are used by or for the benefit of the general public,  
28 rather than purchasers of hunting and fishing licenses.

29 Of the annual license fund income, the director shall  
30 retain ten percent for capital improvements and land  
31 purchases benefiting state wildlife, forty percent shall  
32 be budgeted to the wildlife resources division, forty  
33 percent to law enforcement and ten percent apportioned  
34 by the director within provisions of this section. Any  
35 unexpended moneys for capital improvements and land  
36 purchases shall be carried forward.

**§20-2-39. Class A resident statewide hunting and trapping license.**

1 A Class A license shall be a resident statewide hunting  
2 and trapping license and shall entitle the licensee to  
3 hunt and trap all legal species of game in all counties  
4 of the state, except as prohibited by rules or regulations  
5 of the director. It shall be issued only to citizens of the  
6 United States who are residents of this state. The fee  
7 therefor shall be five dollars.

**§20-2-40. Class B resident statewide fishing license.**

1 A Class B license shall be a resident statewide fishing  
2 license and shall entitle the licensee to fish for all legal  
3 fish in all counties of the state, except as prohibited  
4 by rules or regulations of the director. It shall be issued  
5 only to citizens of the United States, and unnaturalized  
6 persons possessing the permit mentioned in section  
7 twenty-nine of this article, who are residents of this  
8 state. The fee therefor shall be five dollars.

**§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.**

1 A Class AB combination license shall be a resident  
2 statewide hunting, trapping and fishing license and shall

3 entitle the licensee to hunt and trap for all legal species  
4 of game, and fish for all legal species of fish and frogs  
5 in all counties of the state, except as prohibited by rules  
6 or regulations of the director. It shall be issued only to  
7 citizens of the United States who are residents of this  
8 state. The fee therefor shall be eight dollars.

**§20-2-44a. Class I national forest hunting, trapping and fishing license.**

1 A Class I license shall be a national forest hunting,  
2 trapping and fishing license. It shall entitle the licensee,  
3 when within national forest land in West Virginia, to  
4 hunt legal species in season; to trap all fur-bearing ani-  
5 mals in season; and to fish in the waters therein. The li-  
6 cense shall be issued only to a nonresident holding a Class  
7 E, Class L, Class F or Class K license, or to a resident  
8 holding a Class A, Class B or Class AB license. The fee  
9 therefor shall be one dollar.

**§20-2-46. Class L nonresident statewide bow and arrow hunt-  
ing and fishing license.**

1 A Class L license shall be a nonresident bow and arrow  
2 hunting and fishing license and shall entitle the licensee to  
3 employ a long bow and arrow in taking game, fish and  
4 frogs in all counties of the state. It shall be issued only  
5 to citizens of the United States who are not residents  
6 of this state. The fee therefor shall be fifteen dollars.

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## CHAPTER 111

(Senate Bill No. 232—By Mr. Carrigan)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section fifteen, article five-a,  
chapter twenty of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to sub-  
poenas in appeal hearings before water resources board.



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

That section fifteen, article five-a, 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 5A. WATER POLLUTION CONTROL ACT.**

**§20-5A-15. Appeal to water resources board.**

1 (a) Any person adversely affected by an order made  
2 and entered by the chief in accordance with the pro-  
3 visions of this article, or aggrieved by failure or refusal  
4 of the chief to act within the time required by section  
5 seven of this article on an application for a permit or  
6 aggrieved by the terms and conditions of a permit granted  
7 under the provisions of this article, may appeal to the  
8 water resources board for an order vacating or modify-  
9 ing such order, or for such order, action or terms and  
10 conditions as the chief should have entered, taken or  
11 imposed. The person so appealing shall be known as  
12 the appellant and the chief shall be known as the ap-  
13 pellee. If the chief denies a permit because of any dis-  
14 approval of a permit application by one or more of  
15 the public officers required to review such application  
16 under the provisions of subsection (b), section seven of  
17 this article, such public officers shall be joined as a co-  
18 appellee or coappellees with the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice  
20 of appeal, on the form prescribed by the board for such  
21 purpose, with the board within thirty days after date  
22 upon which the appellant received the copy of such order  
23 or received such permit, as the case may be. The filing  
24 of the notice of appeal shall not stay or suspend the  
25 execution of the order appealed from. If it appears to  
26 the director or the board that an unjust hardship to the  
27 appellant will result from the execution of the chief's  
28 order pending determination of the appeal, the director  
29 or the board may grant a suspension of such order and  
30 fix its terms. The notice of appeal shall set forth the order  
31 or terms and conditions complained of and the grounds  
32 upon which the appeal is based. A copy of the notice

33 of appeal shall be filed by the board with the chief within  
34 three days after the notice of appeal is filed with the board.

35 (c) Within seven days after receipt of his copy of the  
36 notice of appeal, the chief shall prepare and certify to  
37 the board a complete record of the proceedings out of  
38 which the appeal arises including all documents and  
39 correspondence in the chief's file relating to the matter  
40 in question. With the consent of the board and upon such  
41 terms and conditions as the board may prescribe, any  
42 persons affected by any such activity or by such alleged  
43 pollution may by petition intervene as a party appellant  
44 or appellee. The board shall hear the appeal de novo,  
45 and evidence may be offered on behalf of the appellant  
46 and appellee, and, with the consent of the board, by any  
47 intervenors.

48 (d) All of the pertinent provisions of article five, chap-  
49 ter twenty-nine-a of this code shall apply to and govern  
50 the hearing on appeal authorized by this section and  
51 the administrative procedures in connection with and  
52 following such hearing, with like effect as if the pro-  
53 visions of said article five were set forth in extenso in this  
54 section, with the following modifications or exceptions:

55 (1) Unless the board directs otherwise, the appeal hear-  
56 ing shall be held in the city of Charleston, Kanawha  
57 county, West Virginia; and

58 (2) In accordance with the provisions of section one,  
59 article five of said chapter twenty-nine-a, all of the testi-  
60 mony at any such hearing shall be recorded by steno-  
61 graphic notes and characters or by mechanical means.  
62 Such reported testimony shall in every appeal hearing  
63 under this article be transcribed.

64 (e) Any such appeal hearing shall be conducted by a  
65 quorum of the board, but the parties may by stipulation  
66 agree to take evidence before a hearing examiner em-  
67 ployed by the board. For the purpose of conducting such  
68 appeal hearing, any member of the board and the chair-  
69 man thereof shall have the power and authority to issue  
70 subpoenas and subpoenas duces tecum in the name of the  
71 board, in accordance with the provisions of section one,  
72 article five, chapter twenty-nine-a of this code. All sub-

73 poenas and subpoenas duces tecum shall be issued and  
74 served within the time and for the fees and shall be  
75 enforced, as specified in section one, article five of said  
76 chapter twenty-nine-a, and all of the said section one  
77 provisions dealing with subpoenas and subpoenas duces  
78 tecum shall apply to subpoenas and subpoenas duces  
79 tecum issued for the purpose of an appeal hearing  
80 hereunder.

81 (f) Any such hearing shall be held within twenty  
82 days after the date upon which the board received the  
83 timely notice of appeal, unless there is a postponement  
84 or continuance. The board may postpone or continue  
85 any hearing upon its own motion, or upon application  
86 of the appellant, the appellee or any intervenors for  
87 good cause shown. The chief shall be represented at  
88 any such hearing by the attorney general or his assis-  
89 tants. At any such hearing the appellant and any inter-  
90 venor may represent himself or be represented by an  
91 attorney at law admitted to practice before any circuit  
92 court of this state.

93 (g) After such hearing and consideration of all of the  
94 testimony, evidence and record in the case, the board  
95 shall make and enter an order affirming, modifying or  
96 vacating the order of the chief, or shall make and enter  
97 such order as the chief should have entered, or shall  
98 make and enter an order approving or modifying the  
99 terms and conditions of any permit issued. In deter-  
100 mining its course of action, the board shall take into  
101 consideration not only the factors which the chief was  
102 authorized to consider in making his order and in fix-  
103 ing the terms and conditions of any permit, but also  
104 the economic feasibility of treating and/or controlling  
105 the sewage, industrial wastes or other wastes involved.

106 (h) Such order shall be accompanied by findings of  
107 fact and conclusions of law as specified in section three,  
108 article five, chapter twenty-nine-a of this code, and a  
109 copy of such order and accompanying findings and con-  
110 clusions shall be served upon the appellant, and any inter-  
111 venors, and their attorneys of record, if any, and upon  
112 the appellee in person or by registered or certified mail.

113 (i) The board shall also cause a notice to be served  
114 with the copy of such order, which notice shall advise  
115 the appellant, the appellee and any intervenors of their  
116 right to judicial review, in accordance with the pro-  
117 visions of section sixteen of this article. The order of  
118 the board shall be final unless vacated or modified upon  
119 judicial review thereof in accordance with the provisions  
120 of section sixteen of this article.

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## CHAPTER 112

(Com. Sub. for Senate Bill No. 193—Originating in the Senate  
Committee on Natural Resources)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to surface mining and reclamation; definitions of terms, duties of surface-mining reclamation inspectors; reclamation commission, its duties, functions and compensation; prospecting permit, bond and postponement of reclamation; surface mine permits required, applications, issuance and renewal of permits, fees and use of proceeds; preplanning plans; alternative plans; time affecting plans; limitations; mandamus; blasting restriction, formula, filing preplan, penalties and warning; requirements regarding surface-mined areas where benches result; requirements regarding surface-mined areas where benches do not result; obligations of the operator; cessation of operation by inspector; completion of planting, inspection and evaluation; performance bonds; special reclamation tax and offenses, penalties, prosecutions, treble dam-

ages and injunctive relief; providing that commencing on the effective date of this act and ending two years thereafter, no new permits, including prospecting permits, shall be issued under the provisions of article six of this chapter, for the surface mining of coal in any county in which no surface mining existed during calendar year one thousand nine hundred seventy, under lawful permit.

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

That sections two, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen and thirty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted; that said article be further amended by adding thereto four new sections, designated sections nine-a, eleven-a, thirteen-a and fourteen-a; and that said chapter be further amended by adding thereto a new article, designated article six-a, all to read as follows:

#### **Article**

#### **6. Surface Mining and Reclamation.**

#### **6A. Limitations on Surface mining.**

#### **ARTICLE 6. SURFACE MINING AND RECLAMATION.**

- §20-6-2. Definitions.
- §20-6-5. Duties of surface-mining reclamation inspectors.
- §20-6-6. Reclamation commission; duties, functions and compensation.
- §20-6-7. Prospecting permit; bond; postponement of reclamation.
- §20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.
- §20-6-9. Preplans.
- §20-6-9a. Installation of drainage system.
- §20-6-10. Alternative plans; time.
- §20-6-11. Limitations; mandamus.
- §20-6-11a. Blasting restriction; formula; filing preplan; penalties; notice.
- §20-6-13. Requirements regarding surface-mined areas where benches result.
- §20-6-13a. Requirements regarding surface-mined areas where benches do not result.
- §20-6-14. Obligations of the operator.
- §20-6-14a. Cessation of operation by inspector.
- §20-6-15. Completion of planting; inspection and evaluation.
- §20-6-16. Performance bonds.
- §20-6-17. Special reclamation tax.
- §20-6-30. Offenses; penalties; prosecutions; treble damages; injunctive relief.

#### **§20-6-2. Definitions.**

- 1 Unless the context in which used clearly requires a
- 2 different meaning as used in this article:

3 (a) "Adequate treatment" shall mean treatment of  
4 water by physical, chemical or other approved meth-  
5 ods in a manner that will cause the analyzed PH level  
6 of the treated water to be 5.5 or more and analyzed con-  
7 tent of iron of the treated water to be ten milligrams  
8 per liter or less or approved treatment which will not  
9 lower the water quality standards established for the  
10 river, stream or drainway into which such water is  
11 released.

12 (b) "Breakthrough" shall mean the release of water  
13 which has been trapped or impounded underground, or  
14 the release of air into any underground cavity, pocket  
15 or area.

16 (c) "Director" shall mean the director of natural re-  
17 sources or his authorized agents.

18 (d) "Disturbed land" or "land disturbed" shall mean  
19 (1) the area from which the overburden has been re-  
20 moved in surface-mining operations, (2) the area cov-  
21 ered by the spoil, and (3) any areas used in surface-min-  
22 ing operations which by virtue of their use are sus-  
23 ceptible to excessive erosion including all lands disturbed  
24 by the construction or improvement of haulageways,  
25 roads or trails.

26 (e) "Minerals" shall mean coal, clay, flagstone, gravel,  
27 limestone, manganese, sand, sandstone, shale, iron ore  
28 and any other metal or metallurgical ore.

29 (f) "Mulch" shall mean any natural or plant residue,  
30 organic or inorganic material, applied to the surface of  
31 the earth to retain moisture and curtail or limit soil  
32 erosion.

33 (g) "Multiple bench" or "multiple seam" shall mean  
34 a form of surface mining in which two or more benches  
35 are produced, one above the other, in order to allow the  
36 removal of minerals from superjacent seams.

37 (h) "Operator" shall mean any individual, partner-  
38 ship, firm, association, trust or corporation who or which  
39 is granted a permit to engage in any activity covered  
40 by this article.

41 (i) "Permit area" shall mean the area of land indi-  
42 cated on the approved map submitted by the operator  
43 with the reclamation plan as specified in section nine of  
44 this article showing the exact location of end strip mark-  
45 ers, permit markers and monument.

46 (j) "Person" shall mean any individual, partnership,  
47 firm, association, trust or corporation.

48 (k) "Surface mine" shall mean all areas surface mined  
49 or being surface mined, as well as adjacent areas ancil-  
50 lary to the operation, together with preparation and  
51 processing plants, storage areas and haulageways, roads  
52 or trails: *Provided*, That mines subject to the provisions  
53 of articles one, two, four, five and seven, chapter twenty-  
54 two of said code, are not "surface mines" within this  
55 definition.

56 (l) "Surface mining" shall mean all activity for the  
57 recovery of minerals, except those activities subject to  
58 the provisions of articles one, two, four, five and seven,  
59 chapter twenty-two of the code of West Virginia, one  
60 thousand nine hundred thirty-one, as amended, and sub-  
61 ject to such exception, shall include any and all plants  
62 and equipment used in processing said minerals: *Pro-*  
63 *vided, however*, That the bonding and reclamation pro-  
64 visions of this chapter shall not apply to surface mining  
65 of limestone, sandstone and sand, and that the surface  
66 mining of limestone, sandstone and sand shall be subject  
67 to separate rules and regulations to be promulgated by  
68 the commission.

69 (m) "Surface of a regraded bench" shall mean the top  
70 portion or part of any regraded area.

#### §20-6-5. Duties of surface-mining reclamation inspectors.

1 The surface-mining reclamation inspectors shall make  
2 all necessary surveys and inspections of surface-mining  
3 operations, shall administer and enforce all surface-mining  
4 laws, rules and regulations, and shall perform such other  
5 duties and services as may be prescribed by the director.  
6 Such inspectors shall give particular attention to all con-  
7 ditions of each permit to insure complete compliance  
8 therewith. The director shall cause inspections to be

9 made of each active surface-mining operation in this  
10 state by a surface-mining reclamation inspector at least  
11 once every fifteen days. Said inspector shall note all vio-  
12 lations of law thereat and immediately report such vio-  
13 lations to the director in writing, furnishing at the same  
14 time a copy of such report to the operator concerned and  
15 to the prosecuting attorney of the county wherein the  
16 operation lies.

**§20-6-6. Reclamation commission; duties, functions and compensation.**

1 There is hereby created and established in the de-  
2 partment of natural resources a reclamation commission  
3 which shall be composed of the director of natural re-  
4 sources, serving as chairman, the chief of the division of  
5 reclamation, the chief of the water resources division and  
6 the director of the department of mines. The members of  
7 the commission shall receive no compensation for their  
8 services on the commission, but shall be reimbursed for ex-  
9 penses necessarily incurred in performing their functions.  
10 The commission shall meet upon the call of any member.  
11 The director shall request the attorney general to appoint  
12 one or more assistant attorneys general who shall perform  
13 such duties as may be required by the director. The at-  
14 torney general, in pursuance of such request, may select  
15 and appoint one or more assistant attorneys general, to  
16 serve at the will and pleasure of the attorney general,  
17 and such assistant or assistants, shall be paid out of any  
18 funds made available for that purpose by the Legislature  
19 to the department of natural resources.

20 The commission shall have authority to:

21 (a) Promulgate reasonable rules and regulations, in  
22 accordance with the provisions of chapter twenty-nine-a  
23 of this code, to implement the provisions of this article;

24 (b) Make investigations or inspections necessary to in-  
25 sure complete compliance with the provisions of this ar-  
26 ticle;

27 (c) Conduct hearings under provisions of this article  
28 or rules and regulations adopted by the commission and  
29 for the purpose of any investigation or hearing, hereun-



30 der, the commission or any member thereof may ad-  
31 minister oaths or affirmations, subpoena witnesses, com-  
32 pel their attendance, take evidence and require produc-  
33 tion of any books, papers, correspondence, memoranda,  
34 agreements, or other documents or records relevant or  
35 material to the inquiry;

36 (d) Order, through the director, the suspension or  
37 revocation of any permit for failure to comply with any  
38 of the provisions of this article or any rules and regula-  
39 tions adopted pursuant thereto;

40 (e) Order, through the director, a cease and desist  
41 order of any operation that is started without a permit  
42 as required by law;

43 (f) Appoint such advisory committees as may be of  
44 assistance to the commission in the development of pro-  
45 grams and policies: *Provided*, That such advisory com-  
46 mittees shall, in each instance, include members repre-  
47 sentative of the general public; and

48 (g) Review orders and decisions of the director.

**§20-6-7. Prospecting permit; bond; postponement of reclama-  
tion.**

1 It shall hereafter be unlawful for any person to use  
2 excavating equipment in an area not covered by a sur-  
3 face mine permit for the purpose of removing the over-  
4 burden to determine the location, quantity or quality  
5 of a natural coal deposit, making feasibility studies or  
6 for any other purpose without having first obtained from  
7 the department of natural resources a permit therefor  
8 as provided in this section. Application for a prospect-  
9 ing permit shall be made in writing on forms prescribed  
10 by the director and shall be signed and verified by the  
11 applicant. The application shall be accompanied by:  
12 (1) A fee of three hundred dollars; (2) a United States  
13 geological survey topographic map showing by proper  
14 markings the crop line and the name, where known, of  
15 the seam or seams to be prospected; (3) a reclamation  
16 plan for the proposed disturbed areas as required for  
17 holders of surface-mining permits in section nine of this  
18 article; and (4) a bond, or cash or collateral securities or  
19 certificates of the same type, form and amount and in

20 the same manner as provided in section sixteen of this  
21 article in the amount of five hundred dollars per acre  
22 or fraction thereof for the total estimated disturbed acre-  
23 age. If such bond is used, it shall be payable to the state  
24 of West Virginia and conditioned that the operator shall  
25 faithfully perform the requirements of this article as  
26 they relate to reclamation of the disturbed acreage. The  
27 prospecting permit and the bond accompanying said per-  
28 mit shall be released by the director in the same manner  
29 as surface-mining permits and bonds are released. In the  
30 event the holder of a prospecting permit desires to mine  
31 the area covered by the prospecting permit, the director  
32 shall permit such holder to convert the prospecting per-  
33 mit to a surface-mining permit, providing the holder of  
34 said permit shall comply with the provisions of this  
35 article as they relate to surface-mining permits: *Provided,*  
36 That the prospecting permit fee shall be a credit toward  
37 the surface-mining permit fee if the area covered by the  
38 prospecting permit is converted to a surface-mining per-  
39 mit.

40 In the event the holder of a prospecting permit desires  
41 to surface mine the area covered by the prospecting per-  
42 mit, and has fulfilled all the remaining requirements of  
43 a surface-mining permit, the director may permit the  
44 postponement of the reclamation of the acreage pros-  
45 pected if that acreage is incorporated into the complete  
46 reclamation plan submitted with application for a surface-  
47 mining permit within a period of three months following  
48 completion of each separate excavation under the pros-  
49 pecting permit. Any excavation carried out under a pros-  
50 pecting permit and not incorporated into the complete  
51 reclamation plan shall be reclaimed within a period of  
52 three months: *Provided,* That nothing herein shall pre-  
53 vent a landowner from obtaining coal from his own  
54 property for use in his own household if the same is not  
55 produced on a commercial basis.

**§20-6-8. Permit required; applications; issuance and renewals;  
fees and use of proceeds.**

1 It shall hereafter be unlawful for any person to en-  
2 gage in surface mining without having first obtained from

3 the department of natural resources a permit therefor  
4 as provided in this section. Application for a surface-  
5 mining permit shall be made in writing on forms pre-  
6 scribed by the director of natural resources, and shall  
7 be signed and verified by the applicant. The application,  
8 in addition to such other information as may be rea-  
9 sonably required by the director, shall contain the fol-  
10 lowing information: (1) The common name and geo-  
11 logic title, where applicable, of the mineral or minerals  
12 to be extracted; (2) maps and plans as provided in sec-  
13 tion nine hereof; (3) the owner or owners of the surface  
14 of the land to be mined; (4) the owner or owners of  
15 the mineral to be mined; (5) the source of the opera-  
16 tor's legal right to enter and conduct operations on the  
17 land to be covered by the permit; (6) a reasonable es-  
18 timate of the number of acres of land that will be dis-  
19 turbed by mining on the area to be covered by the  
20 permit; (7) the permanent and temporary post-office  
21 addresses of the applicant and of the owners of the  
22 surface and the mineral; (8) whether any surface-min-  
23 ing permits are now held and the numbers thereof;  
24 (9) the names and post-office addresses of every officer,  
25 partner, director (or person performing a similar func-  
26 tion), applicant, together with all persons, if any, own-  
27 ing of record or beneficially (alone or with associates),  
28 if known, ten percent or more of any class of stock  
29 of the applicant: *Provided*, That if such list be so large  
30 as to cause undue inconvenience, the director may waive  
31 the requirements that such list be made a part of such  
32 application, except the names and current addresses of  
33 every officer, partner, director and applicant must ac-  
34 company such application; (10) if known, whether ap-  
35 plicant, any subsidiary or affiliate or any person con-  
36 trolled by or under common control with applicant, or  
37 any person required to be identified by item (9) above,  
38 has ever had a surface or strip-mining permit issued  
39 under the laws of this state revoked or has ever had a  
40 surface-mining bond, or security deposited in lieu of  
41 bond, forfeited; and (11) names and addresses of the  
42 reputed owner or owners of all surface area within five  
43 hundred feet of any part of proposed disturbed land,

44 which such owners shall be notified by registered or  
45 certified mail of such application and such owners shall  
46 be given ten days within which to file written objections  
47 thereto, if any, with the director. There shall be attached  
48 to the application a true copy of an original policy of  
49 insurance issued by an insurance company authorized  
50 to do business in this state covering all surface-mining  
51 operations of the applicant in this state and affording  
52 personal injury protection in an amount not less than  
53 one hundred thousand dollars and property damage, in-  
54 cluding blasting damage, protection in an amount of  
55 not less than three hundred thousand dollars.

56 The director shall upon receipt of the application for  
57 a permit, cause to be published, as a Class III legal ad-  
58 vertisement in accordance with the provisions of article  
59 three, chapter fifty-nine of this code, a notice of the  
60 application for the permit. Such notice shall contain in  
61 abbreviated form the information required by this sec-  
62 tion, together with the director's statement that written  
63 protests to such application will be received by him until  
64 a specified date, which date shall be at least thirty days  
65 after the first publication of the notice.

66 The publication area of the notices required by this  
67 section shall be the county or counties in which the pro-  
68 posed permit area is located. The cost of all publications  
69 required by this section shall be borne by the applicant.

70 Upon the filing of an application in proper form, ac-  
71 companied by the fees and bond required by this article  
72 and said true copy of the policy of insurance, and after  
73 consideration of the merits of the application and written  
74 protests, if any, the director may issue the permit applied  
75 for if the applicant has complied with all of the provi-  
76 sions of this article. If the director finds that the applicant  
77 is or has been affiliated with or managed or controlled  
78 by, or is or has been under the common control of, other  
79 than as an employee, a person who or which has had  
80 a surface or strip-mining permit revoked or bond or  
81 other security forfeited for failure to reclaim lands as  
82 required by the laws of this state, he shall not issue a  
83 permit to the applicant: *Provided, however,* That no

84 surface-mining permit shall be refused because of any  
85 past revocation of a permit and forfeiture of a bond  
86 or other security if such revocation and forfeiture oc-  
87 curred before July one, one thousand nine hundred sev-  
88 enty-one, and if, after such revocation and forfeiture, the  
89 operator whose permit has been revoked and bond for-  
90 feited shall have paid into the surface-mining reclamation  
91 fund the full amount of the bond so forfeited, and any  
92 additional sum of money determined by the director to  
93 be adequate to reclaim the land covered by such forfeited  
94 bond: *Provided, further,* That in no event shall such  
95 additional sum be less than sixty dollars per acre.

96 The permit shall be valid for one year from its date  
97 of issue. Upon verified application, containing such in-  
98 formation as the director may reasonably require, ac-  
99 companied by such fees and bond as are required by  
100 this article, and a true copy of the policy of insurance  
101 as aforesaid, the director shall from year to year renew  
102 the permit, if the operation is in compliance with the  
103 provisions of this article.

104 The registration fee for permits for surface mining,  
105 whether by open cut, auger method or by highwall  
106 mechanical mining or modification thereof, shall be five  
107 hundred dollars. The annual renewal fee for permits for  
108 surface mining shall be one hundred dollars payable on  
109 the anniversary date of said permit upon renewal.

110 The permit of any operator who fails to pay any fees  
111 provided for in this article shall be revoked.

112 An operator who has been issued a surface-mining  
113 permit may use any of the usual methods of mining,  
114 including the auger method or highwall mechanical  
115 mining or any combination of mining methods defined  
116 as "surface mining" in section two of this article, unless  
117 otherwise provided by law. Any modifications of these  
118 methods shall also be under the director's jurisdiction.

119 All registration and renewal fees for prospecting and  
120 surface mining shall be collected by the director and  
121 shall be deposited with the treasurer of the state of  
122 West Virginia to the credit of the surface reclamation  
123 fund.

**§20-6-9. Preplans.**

1 Under the provisions of this article, and rules and regu-  
2 lations adopted by the commission, the operator shall pre-  
3 pare a complete reclamation and mining plan for the  
4 area of land to be disturbed. Said reclamation and min-  
5 ing plan shall include a proposed method of operation  
6 prepared by a registered professional engineer or a per-  
7 son approved by the director for grading, backfilling, soil  
8 preparation, mining and planting and such other pro-  
9 posals as may be necessary to develop the complete rec-  
10 lamation and mining plan contemplated by this article.  
11 In developing this complete reclamation and mining plan  
12 all reasonable measures shall be taken to eliminate dam-  
13 ages to members of the public, their real and personal  
14 property, public roads, streams and all other public prop-  
15 erty from soil erosion, rolling stones and overburden,  
16 water pollution and hazards dangerous to life and prop-  
17 erty. The plan shall be submitted to the director and  
18 the director shall notify the applicant by certified mail  
19 within thirty days after receipt of the plan and  
20 complete application if it is or is not acceptable. If the  
21 plan is not acceptable, the director shall set forth the  
22 reasons why the plan is not acceptable and he may pro-  
23 pose modifications, delete areas or reject the entire plan.  
24 Should the applicant disagree with the decision of the  
25 director, he may, by written notice, request a hearing  
26 before the commission. The commission shall hold such  
27 hearing within thirty days after receipt of this notice.  
28 When a hearing is held by the commission, it shall noti-  
29 fy the applicant of its decision by certified mail within  
30 twenty days after the hearing. Any person aggrieved  
31 by a final order of the commission made after the hear-  
32 ing or without a hearing may appeal to the reclamation  
33 board of review.

34 The application for a permit shall be accompanied by  
35 two copies of an enlarged United States geological sur-  
36 vey topographic map meeting the requirements of the  
37 subdivisions below. Aerial photographs of the area  
38 shall be acceptable if the plan for reclamation can  
39 be shown to the satisfaction of the director. The maps  
40 shall:

41 (a) Be prepared and certified by or under the super-  
42 vision of a registered professional civil engineer, or a  
43 registered professional mining engineer, or a registered  
44 land surveyor, who shall submit to the director a cer-  
45 tificate of registration as a qualified engineer or land  
46 surveyor;

47 (b) Identify the area to correspond with the appli-  
48 cation;

49 (c) Show probable limits of adjacent deep-mining op-  
50 erations, probable limits of adjacent inactive or mined-  
51 out deep-mined areas and the boundaries of surface prop-  
52 erties and names of surface and mineral owners of the  
53 surface area within five hundred feet of any part of the  
54 proposed disturbed area;

55 (d) Be of such scale as may be prescribed by the direc-  
56 tor;

57 (e) Show the names and locations of all streams,  
58 creeks or other bodies of public water, roads, buildings,  
59 cemeteries, active, abandoned or plugged oil and gas  
60 wells, and utility lines on the area of land to be disturbed  
61 and within five hundred feet of such area;

62 (f) Show by appropriate markings the boundaries of  
63 the area of land to be disturbed, the crop line of the seam  
64 or deposit of coal to be mined, and the total number of  
65 acres involved in the area of land to be disturbed;

66 (g) Show the date on which the map was prepared,  
67 the north point and the quadrangle sketch and exact lo-  
68 cation of the operation;

69 (h) Show the drainage plan on and away from the  
70 area of land to be disturbed. Such plan shall indicate the  
71 directional flow of water, constructed drainways, natural  
72 waterways used for drainage, and the streams or tribu-  
73 taries receiving or to receive this discharge. Upon re-  
74 ceipt of such drainage plan, the director shall furnish to  
75 the chief of the division of water resources a copy of all  
76 information required by this subdivision, as well as the  
77 names and locations of all streams, creeks or other bodies  
78 of public water within five hundred feet of the area to  
79 be disturbed;

80 (i) Show the presence of any acid-producing materials  
81 which when present in the overburden, may cause spoil  
82 with a PH factor below 3.5, preventing effective revegeta-  
83 tion. The presence of such materials, wherever occurring in  
84 significant quantity, shall be indicated on the map, filed with  
85 application for permit. The operator shall also indicate the  
86 manner in which acid-bearing spoil will be suitably prepared  
87 for revegetation and stabilization, whether by application  
88 of mulch or suitable soil material to the surface or by some  
89 other type of treatment, subject to approval of the director.

90 The certification of the maps shall read as follows:  
91 "I, the undersigned, hereby certify that this map is cor-  
92 rect, and shows to the best of my knowledge and belief  
93 all the information required by the surface-mining laws  
94 of this state." The certification shall be signed and no-  
95 tarized. The director may reject any map as incomplete  
96 if its accuracy is not so attested.

97 In addition to the information and maps required above,  
98 each application for a permit shall be accompanied by  
99 a detailed reclamation plan as required by this article.

100 A monument as prescribed by the department of nat-  
101 ural resources shall be placed in an approved location  
102 near the operation. If the operations under a single per-  
103 mit are not geographically continuous, the operator shall  
104 locate additional monuments and submit additional maps  
105 before mining other areas.

106 Upon an order of the director, the operator shall, with-  
107 in thirty days after service of a copy of said order upon  
108 said operator by certified United States mail, furnish to  
109 the department of natural resources three copies of a  
110 progress map prepared by or under the supervision of  
111 a registered professional civil engineer or registered pro-  
112 fessional mining engineer, or by a registered land sur-  
113 veyor, showing the area disturbed by operations to the  
114 date of such map. Such progress map shall contain in-  
115 formation identical to that required for both the proposed  
116 and final maps, required by this article, and shall show  
117 in detail completed reclamation work, as required by  
118 the director. Such progress map shall include a geologic  
119 survey sketch showing the location of the operation, shall



120 be properly referenced to a permanent landmark, and  
121 shall be within such reasonable degree of accuracy as  
122 may be prescribed by the director. If no land has been  
123 disturbed by operations during the preceding year, the  
124 operator shall notify the director of this fact. A final  
125 map shall be submitted within sixty days after com-  
126 pletion of mining operations. Failure to submit maps or  
127 aerial photographs or notices at specified times shall  
128 cause the permit in question to be suspended.

**§20-6-9a. Installation of drainage system.**

1 Prior to the beginning of surface-mining operations,  
2 the operator shall complete and shall thereafter main-  
3 tain a drainage system including any necessary settling  
4 ponds in accordance with the rules and regulations as  
5 established by the commission.

**§20-6-10. Alternative plans; time.**

1 An operator may propose alternative plans not calling  
2 for backfilling where a water impoundment is desired, if  
3 such restoration will be consistent with the purpose of this  
4 article. Such plans shall be submitted to the director,  
5 and if such plans are approved by the director and  
6 complied with within such time limits as may be deter-  
7 mined by him as being reasonable for carrying out such  
8 plans, the backfilling requirements of this article may  
9 be modified.

10 By regulations of the commission, time limits shall be  
11 established requiring backfilling, grading and planting  
12 to be kept current. All backfilling and grading shall be  
13 completed before equipment necessary for such back-  
14 filling and grading is moved from the operation.

15 If the operator or other person desires to conduct deep  
16 mining upon the premises or use a deep-mine opening for  
17 haulageways or other lawful purposes, the operator may  
18 designate locations to be used for such purposes at  
19 which places it will not be necessary to backfill as here-  
20 in provided for until such deep mining or other use is  
21 completed, during which time the bond on file for that  
22 portion of the operation shall not be released. Such loca-

23 tions shall be described and designated on the map re-  
24 quired by the provisions of section nine of this article.

25 Suitable soil material shall be used to cover the sur-  
26 face of the regraded and backfilled area of operation  
27 in an amount sufficient to support vegetation.

28 When the backfilling and grading have been com-  
29 pleted and approved by the director, the director shall  
30 release that portion of the bond which was filed and  
31 designated to cover the backfilling and grading require-  
32 ments of this article, the remaining portion of the bond  
33 in an amount equal to two hundred fifty dollars per acre,  
34 but not less than a total amount of five thousand dollars  
35 being retained by the treasurer until such time as the  
36 planting and revegetation is done according to law and  
37 is approved by the director, at which time the director  
38 shall release the remainder of the bond.

39 All fill and cut slopes shall be seeded during the first  
40 planting or seeding season after the construction of a  
41 haulageway to the area. Upon abandonment of a haulage-  
42 way, the haulageway shall be seeded and every effort  
43 made to prevent its erosion by means of culverts, water-  
44 bars or other devices required by the director. In proper  
45 season, all fill and cut slopes of the operation and haulage-  
46 ways shall be seeded and planted in a manner as pre-  
47 scribed by the director, as soil tests indicate soil suitability  
48 and in accordance with accepted agricultural and re-  
49 forestation practices.

50 In any such area where surface mining is being conduct-  
51 ed, mulch shall be required on all disturbed areas where  
52 the remaining slope exceeds twenty degrees from horizon-  
53 tal as shown on the preplan map filed with the director as  
54 required by the provisions of section nine of this article.

55 After the operation has been backfilled, graded and  
56 approved by the director, the operator shall prepare or  
57 cause to be prepared a final planting plan for the planting  
58 of trees, shrubs, vines, grasses or legumes upon the area  
59 of the land affected in order to provide a suitable vegeta-  
60 tive cover. The seed or plant mixtures, quantities, method  
61 of planting, type and amount of lime, fertilizer, mulch,

62 and any other measures necessary to provide a suitable  
63 vegetative cover shall be defined by the rules and regu-  
64 lations of the commission. Such rules and regulations shall  
65 be promulgated under the provisions of article three,  
66 chapter twenty-nine-a of this code.

67 The planting called for by the final planting plan shall  
68 be carried out in a manner so as to establish a satisfactory  
69 cover of trees, shrubs, grasses, legumes or vines upon  
70 the disturbed area covered by the planting plan within  
71 a reasonable period of time. Such planting shall be done  
72 by the operator or such operator may contract in writing  
73 with the soil conservation district for the district in  
74 which the operation covered by such permit is located  
75 or with a private contractor approved by the director to  
76 have such planting done by such district or private con-  
77 tractor. The director shall not release the operator's bond  
78 until all haulageways, roads and trails within the permit  
79 area have been abandoned according to the provisions  
80 of this article and the rules and regulations promulgated  
81 thereunder or such operator or any other person has  
82 secured a permit to deep mine such area as required by  
83 chapter twenty-two of the code of West Virginia, one  
84 thousand nine hundred thirty-one, as amended.

85 The purpose of this section is to require restoration  
86 of land disturbed by surface mining to a desirable pur-  
87 pose and use. The director may, in the exercise of his  
88 sound discretion when not in conflict with such purpose,  
89 modify such requirements to bring about a more desir-  
90 able land use, including, but not limited to, industrial  
91 sites, sanitary landfills, recreational areas, building sites:  
92 *Provided*, That the person or agency making such  
93 modifications will execute contracts, post bond or other-  
94 wise insure full compliance with the provisions of this  
95 section in the event such modified program is not car-  
96 ried to completion within a reasonable length of time.

**§20-6-11. Limitations; mandamus.**

1 The Legislature finds that there are certain areas in  
2 the state of West Virginia which are impossible to reclaim  
3 either by natural growth or by technological activity

4 and that if surface mining is conducted in these certain  
5 areas such operations may naturally cause stream pollu-  
6 tion, landslides, the accumulation of stagnant water,  
7 flooding, the destruction of land for agricultural purposes,  
8 the destruction of aesthetic values, the destruction of  
9 recreational areas and the future use of the area and  
10 surrounding areas, thereby destroying or impairing the  
11 health and property rights of others, and in general creat-  
12 ing hazards dangerous to life and property so as to con-  
13 stitute an imminent and inordinate peril to the welfare  
14 of the state, and that such areas shall not be mined by  
15 the surface-mining process.

16 Therefore, authority is hereby vested in the director  
17 to delete certain areas from all surface-mining operations.

18 No application for a permit shall be approved by the  
19 director if there is found on the basis of the information  
20 set forth in the application or from information available  
21 to the director and made available to the applicant that  
22 the requirements of this article or rules and regulations  
23 hereafter adopted will not be observed or that there is  
24 not probable cause to believe that the proposed method  
25 of operation, backfilling, grading or reclamation of the  
26 affected area can be carried out consistent with the pur-  
27 pose of this article.

28 If the director finds that the overburden on any part  
29 of the area of land described in the application for a  
30 permit is such that experience in the state of West Vir-  
31 ginia with a similar type of operation upon land with  
32 similar overburden shows that one or more of the follow-  
33 ing conditions cannot feasibly be prevented: (1) Substan-  
34 tial deposition of sediment in stream beds, (2) landslides  
35 or (3) acid-water pollution, the director may delete such  
36 part of the land described in the application upon which  
37 such overburden exists.

38 If the director finds that the operation will constitute  
39 a hazard to a dwelling house, public building, school,  
40 church, cemetery, commercial or institutional building,  
41 public road, stream, lake or other public property, then he  
42 shall delete such areas from the permit application be-  
43 fore it can be approved.

44 The director shall not give approval to surface mine  
45 any area which is within one hundred feet of any public  
46 road, stream, lake or other public property, and shall not  
47 approve the application for a permit where the surface-  
48 mining operation will adversely affect a state, national or  
49 interstate park unless adequate screening and other mea-  
50 sures approved by the commission are to be utilized and  
51 the permit application so provides: *Provided*, That the  
52 one-hundred-foot restriction aforesaid shall not include  
53 ways used for ingress and egress to and from the minerals  
54 as herein defined and the transportation of the removed  
55 minerals, nor shall it apply to the dredging and removal of  
56 minerals from the streams or watercourses of this state.

57 Whenever the director finds that ongoing surface-  
58 mining operations are causing or are likely to cause any  
59 of the conditions set forth in the first paragraph of this  
60 section, he may order immediate cessation of such opera-  
61 tions and he shall take such other action or make such  
62 changes in the permit as he may deem necessary to avoid  
63 said described conditions.

64 The failure of the director to discharge the mandatory  
65 duty imposed on him by this section shall be subject to  
66 a writ of mandamus, in any court of competent jurisdic-  
67 tion by any private citizen affected thereby.

**§20-6-11a. Blasting restriction; formula; filing preplan; pen-  
alties; notice.**

1 Where blasting of overburden is necessary, such blast-  
2 ing shall be done in accordance with established princi-  
3 ples for preventing vibration damage to residences, build-  
4 ings, and communities. Such blasting shall be consid-  
5 ered in compliance with provisions of this article if the  
6 following measures are followed:

7 (1) The weight in pounds of explosive charge deto-  
8 nated at any one time shall conform with the following  
9 scaled distance formula:  $W = (D / 50)^2$ . Where W equals  
10 weight in pounds of explosives detonated at any one  
11 instant time, then D equals distance in feet from nearest  
12 point of blast to nearest residence, building, or structure,  
13 other than operation facilities of the mine: *Provided*,

14 That explosive charges shall be considered to be deto-  
15 nated at one time if their detonation occurs within eight  
16 milliseconds or less of each other.

17 (2) Where blast sizes would exceed the limits under sub-  
18 division (1) of this section, blasts shall be detonated by the  
19 use of delay detonators (either electric or nonelectric)  
20 to provide detonation times separated by nine millisec-  
21 onds or more for each section of the blast complying  
22 with the scaled distance of the formula.

23 (3) A plan of each operation's methods for compliance  
24 with this section (blast delay design) for typical blasts  
25 which shall be adhered to in all blasting at each  
26 operation, shall be submitted to the department of  
27 natural resources with the application for a permit.  
28 It shall be accepted if it meets the scaled distance  
29 formula established in subdivision (1) of this sec-  
30 tion.

31 (4) Records of each blast shall be kept in a log to  
32 be maintained for at least three years, which will show  
33 for each blast other than secondary (boulder breaking)  
34 blasts the following information:

- 35 (a) Date and time of blast,
- 36 (b) Number of holes,
- 37 (c) Typical explosive weight per delay period,
- 38 (d) Total explosives in blast at any one time,
- 39 (e) Number of delays used,
- 40 (f) Weather conditions, and
- 41 (g) Signature of operator employee in charge of the  
42 blast.

43 (5) Where inspection by the department of nat-  
44 ural resources establishes that the scaled distance  
45 formula and the approved preplan are not being  
46 adhered to, the following penalties shall be im-  
47 posed:

- 48 (a) For the first offense in any one permit year under  
49 this section, the permit holder shall be assessed not less  
50 than five hundred dollars nor more than one thousand  
51 dollars;

52 (b) For the second offense in any one permit year  
53 under this section, the permit holder shall be assessed  
54 not less than one thousand dollars nor more than five  
55 thousand dollars;

56 (c) For the third offense in any one permit year under  
57 this section or for the failure to pay any assessment here-  
58 inabove set forth within a reasonable time established  
59 by the director, the permit shall be revoked.

60 All such assessments as set forth in this section shall  
61 be assessed by the director, collected by him and de-  
62 posited with the treasurer of the state of West Virginia,  
63 to the credit of the special reclamation fund.

64 The director shall promulgate rules and regulations  
65 which shall provide for a warning of impending blasting  
66 to the owners, residents or other persons who may be  
67 present on property adjacent to the blasting area. Such  
68 warning shall be by means approved by the director.

**§20-6-13. Requirements regarding surface-mined areas where benches result.**

1 On lands where the mining operation necessitates, re-  
2 quires or produces benches, the bench width of the first  
3 cut made shall not exceed the limits specified in the  
4 table of maximum bench widths provided in this section.  
5 In the event that more than one bench results from the  
6 removal of minerals on a single slope, the limits specified  
7 in the table of maximum bench width provided in this  
8 section, shall apply equally to every such bench: *Provided,*  
9 That the coal seams are more than one hundred and fifty  
10 vertical feet apart. In multiple seam mining when  
11 the interval between coal seams is less than one hundred  
12 and fifty vertical feet, all overburden will be retained on  
13 the bench immediately below the seams being mined.

14 The operator shall show on the map, filed with the ap-  
15 plication for a permit, the percent of slope of original  
16 surface within each two-hundred-foot interval along the  
17 contour of the operation, the first measurement to be  
18 taken at the starting point of the operation. The flagged  
19 field measurement shall be made from the estimated  
20 crop line or proposed coal seam down slope to the esti-

21 mated toe of the outer spoil. All reasonable measures  
 22 shall be taken so as not to overload the fill bench during  
 23 the first cut. No overburden material in excess of the  
 24 first cut shall be placed over the fill bench. With the  
 25 exception of haulageways and auger-mining operations,  
 26 trees and brush shall be removed from the upper one  
 27 half of all fill sections prior to excavation, and no trees  
 28 or brush removed from the cut section shall be placed  
 29 therein or thereon.

**MAXIMUM BENCH WIDTHS ALLOWED RELATED TO  
 SLOPE OF ORIGINAL SURFACE**

	<b>Percent (degree) of slope of original surface</b>	<b>Maximum bench width allowed in feet</b>
30	27% (15°)	250
31	36% (20°)	150
32	46% (25°)	120
33	58% (30°)	100
34	65% (33°)	60

35 Above 65% (33°) No fill material beyond cut section.

36 No fill bench shall be produced on slopes of more than  
 37 sixty-five percent, except for construction of haulage-  
 38 ways, and such haulageways shall not exceed thirty-five  
 39 feet in width, with very scattered forty-five-foot passing  
 40 areas permitted.

41 Lateral drainage ditches connecting to natural or con-  
 42 structed waterways shall be constructed to control water  
 43 runoff and prevent erosion whenever required by the  
 44 director. There shall be no depressions that will accumu-  
 45 late water except those the director may specify and  
 46 approve. The depth and width of natural drainage ditches  
 47 and any other diversion ditches may vary depending on  
 48 the length and degree of slope.

49 If the highwall is composed of materials of sufficient  
 50 hardness to ordinarily require blasting to displace, where  
 51 there is insufficient soil available to provide a suitable  
 52 vegetative cover on the reduced highwall, or where the  
 53 reduction of the highwall will result in excessive damage  
 54 to undisturbed vegetated lands above the highwall, such  
 55 highwall shall be backfilled with soil available from the



56 operation. In no instance shall the backfilling be less  
57 than four feet above the seam of coal being worked, and  
58 subject to the discretion of the director, no greater than  
59 sixty percent from the horizontal. The highwall shall not  
60 exceed thirty feet in vertical rise from the surface of the  
61 regraded bench.

62 Suitable access to the lands above the highwall for at  
63 least a four-wheel drive vehicle shall be provided. The  
64 number and location of access roads shall be subject to  
65 the approval of the director and shall be contained in the  
66 final reclamation plan; however, in no case may access  
67 roads be spaced further apart than one-half mile.

68 The table portion of the restored area shall be a terrace  
69 with a slope toward the reduced highwall that will direct  
70 surface water toward the highwall in a manner to pre-  
71 vent water from flowing over the outer slope of the  
72 disturbed area. The restored area shall have a minimum  
73 depth of fill sufficient to cover all acid-producing material,  
74 all toxic material and all material which constitutes a fire  
75 hazard. Such fill shall also be sufficient to support vegeta-  
76 tion, as may be prescribed by the director. Additional  
77 restoration work may be required by the director accord-  
78 ing to rules and regulations promulgated by the commis-  
79 sion. In addition to the requirements specified in this  
80 section, the operator's method of operation on slopes may  
81 be further regulated and controlled according to rules  
82 and regulations adopted by the commission.

**§20-6-13a. Requirements regarding surface-mined areas where  
benches do not result.**

1 On lands where the mining operation does not produce  
2 a bench, complete backfilling shall be required, not to  
3 exceed the approximate original contour of the land. Such  
4 backfilling shall eliminate all highwalls and spoil peaks.  
5 Whenever directed by the director, the operator shall  
6 construct, in the final grading, such diversion ditches or  
7 terraces as will control the water runoff. Additional  
8 restoration work may be required by the director, ac-  
9 cording to rules and regulations adopted by the com-  
10 mission.

**§20-6-14. Obligations of the operator.**

1 In addition to the method of operation, grading, back-  
2 filling and reclamation requirements of this article and  
3 rules and regulations adopted pursuant thereto, the oper-  
4 ator shall be required to perform the following:

5 (1) Cover the face of the coal and the disturbed area  
6 with material suitable to support vegetative cover and of  
7 such thickness as may be prescribed by the director, or  
8 with a permanent water impoundment.

9 (2) Bury under adequate fill to be determined by  
10 the director, all roof coal, pyritic shale and materials  
11 determined by the director to be acid-producing mater-  
12 ials, toxic material or materials constituting a fire hazard.

13 (3) Seal off, as directed by rules and regulations, any  
14 breakthrough of acid water caused by the operator.

15 Any breakthrough caused by the operator during the  
16 course of his operations shall be sealed immediately and  
17 reported immediately to the director. If the breakthrough  
18 is one that allows air to enter a mine, the seal shall  
19 either prevent any air from entering the mine by way of  
20 the breakthrough, or prevent any air from entering the  
21 breakthrough while allowing the water to flow from the  
22 breakthrough. If the breakthrough is one that allows  
23 acid water to escape, the seal shall prevent the acid  
24 water from flowing. Seals shall be constructed of stone,  
25 brick, block, earth or similar impervious materials which  
26 are acid resistant. Any cement or concrete employed in  
27 the construction of these seals shall also be of an acid  
28 resistant, impervious type.

29 (4) Impound, drain or treat all runoff water so as to  
30 reduce soil erosion, damage to agricultural lands and  
31 pollution of streams and other waters.

32 Any sizeable quantity of storm water accumulating in  
33 depressions in the area of operations or any breakthrough  
34 of water caused by the operator during the course of his  
35 operations shall be sampled immediately and analyzed  
36 for PH, total acidity and total iron content. Such analysis  
37 shall be made by a competent water analyst or chemist.  
38 The original and at least one copy of such analysis shall  
39 be retained by the operator, one copy submitted to the

40 director and one copy to the chief of the water resources  
41 division.

42 In the case of storm water accumulations or any break-  
43 through of water, adequate treatment shall be undertaken  
44 by the operator so as to prevent pollution occurring from  
45 the release of such water into the natural drainway or  
46 stream. Treatment may include check-dams, settling ponds  
47 and chemical or physical treatment. In the case of a break-  
48 through of water, where it is possible, the water released  
49 shall be impounded immediately. All water so impounded  
50 shall receive adequate treatment by the operator before  
51 it is released into the natural drainway or stream.

52 Storm water or water which escapes, including that  
53 which escapes after construction of the seals, and is  
54 polluted as defined in this code, or as defined in the rules  
55 and regulations promulgated under this code, shall be  
56 subject to the requirements of article five-a of this  
57 chapter.

58 (5) Remove or bury all metal, lumber, equipment and  
59 other refuse resulting from the operation. No operator  
60 shall throw, dump or pile; or permit the throwing, dump-  
61 ing, piling or otherwise placing of any (1) overburden, (2)  
62 stones, (3) rocks, (4) coal, (5) particles of coal, (6) earth,  
63 (7) soil, (8) dirt, (9) debris, (10) trees, (11) wood, (12)  
64 logs or (13) other materials or substances of any kind or  
65 nature beyond or outside the area of land which is under  
66 permit and for which bond has been posted; nor shall  
67 any operator place any of the foregoing listed materials  
68 in such a way that normal erosion or slides brought about  
69 by natural physical causes will permit the same to go  
70 beyond or outside the area of land which is under permit  
71 and for which bond has been posted.

#### §20-6-14a. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article, a  
2 surface-mining reclamation inspector shall have the au-  
3 thority to order the immediate cessation of any operation  
4 where (1) any of the requirements of this article or the  
5 rules and regulations promulgated pursuant thereto or  
6 the orders of the director or the commission have not been

7 complied with or (2) the public welfare or safety calls  
8 for the immediate cessation of the operation. Such ces-  
9 sation of operation shall continue until corrective steps  
10 have been started by the operator to the satisfaction of  
11 the surface-mining reclamation inspector. Any operator  
12 who believes he is aggrieved by the actions of the surface-  
13 mining reclamation inspector may immediately appeal  
14 to the director, setting forth reasons why the operation  
15 should not be halted. The director shall determine when  
16 and if the operation may continue.

**§20-6-15. Completion of planting; inspection and evaluation.**

1 When the planting of an area has been completed, the  
2 operator shall file or cause to be filed a planting report with  
3 the director on a form to be prescribed and furnished  
4 by the director, providing the following information: (1)  
5 Identification of the operation; (2) the type of planting  
6 or seeding, including mixtures and amounts; (3) the date  
7 of planting or seeding; (4) the area of land planted; and  
8 (5) such other relevant information as the director may  
9 require. All planting reports shall be certified by the  
10 operator, or by the party with whom the operator con-  
11 tracted for such planting, as aforesaid.

**§20-6-16. Performance bonds.**

1 Each operator who shall make application for a per-  
2 mit under section eight of this article shall, at the time  
3 such permit is requested, furnish bond, on a form to be  
4 prescribed and furnished by the director, payable to the  
5 state of West Virginia and conditioned that the operator  
6 shall faithfully perform all of the requirements of this  
7 article. The amount of the bond shall be not less than  
8 six hundred dollars for each acre or fraction thereof  
9 of the land to be disturbed: *Provided*, That the di-  
10 rector shall have the discretion to determine the  
11 amount per acre of the bond that shall be required  
12 before a permit is issued, such amount to be based  
13 upon the estimated reclamation costs per acre, not to  
14 exceed a maximum of one thousand dollars per acre  
15 or fraction thereof. The minimum amount of bond  
16 furnished shall be ten thousand dollars. Such bond

17 shall be executed by the operator and a corporate surety  
18 licensed to do business in the state of West Virginia:  
19 *Provided, however,* That in lieu of corporate surety,  
20 the operator may elect to deposit with the director  
21 cash, or collateral securities or certificates as fol-  
22 lows: Bonds of the United States or its possessions,  
23 of the federal land banks, or of the home owners'  
24 loan corporation; full faith and credit general obliga-  
25 tion bonds of the state of West Virginia, or other states,  
26 and of any county, district or municipality of the  
27 state of West Virginia or other states; or certificates of  
28 deposit in a bank in this state, which certificates shall be  
29 in favor of the commission. The cash deposit or market  
30 value of such securities or certificates shall be equal to  
31 or greater than the sum of the bond. The director shall,  
32 upon receipt of any such deposit of cash, securities or  
33 certificates, immediately place the same with the trea-  
34 surer of the state of West Virginia whose duty it shall be  
35 to receive and hold the same in the name of the state  
36 in trust for the purpose for which such deposit is made.  
37 The operator making the deposit shall be entitled from  
38 time to time to receive from the state treasurer, upon  
39 the written order of the director, the whole or any por-  
40 tion of any cash, securities or certificates so deposited,  
41 upon depositing with him in lieu thereof, cash or other  
42 securities or certificates of the classes herein specified  
43 having value equal to or greater than the sum of the  
44 bond.

45 It shall be unlawful for the owner or owners of surface  
46 rights or the owner or owners of mineral rights to in-  
47 terfere with the operator in the discharge of his obliga-  
48 tion to the state for the reclamation of lands disturbed  
49 by him. If the owner or owners of the surface rights  
50 or the owner or owners of the mineral rights desire an-  
51 other operator or other operators to conduct mining oper-  
52 ations on lands disturbed by the operator furnishing  
53 bond hereunder, it shall be the duty of said owner or  
54 owners to require the other operator or operators to  
55 secure the necessary mining permit and furnish suitable  
56 bond as herein provided. The director may then release  
57 an equivalent amount of the bond of the operator origi-

58 inally furnishing bond on the disturbed area. The direc-  
59 tor shall determine the amount of bond per acre required  
60 for other mining operations within the limitations of  
61 this section: *Provided, however,* That the minimum bond  
62 for this type of operation shall be one thousand dollars.  
63 The director shall take into consideration the character  
64 and nature of the overburden, the future use of the land  
65 and all costs of backfilling, grading and adequate reclama-  
66 tion, including planting, and shall determine the total  
67 bond required for other mining operations.

68 The director shall not release that portion of any bond  
69 filed by any operator which is designated to assure faith-  
70 ful performance of, and compliance with, the backfilling  
71 and regrading requirements of the reclamation plan un-  
72 til all acid-bearing or acid-producing spoil within the  
73 permit area has received adequate treatment as specified  
74 in section ten of this article.

**§20-6-17. Special reclamation tax.**

1 In addition to the fees required by the provisions of  
2 section eight of this article, every applicant for a permit  
3 to surface mine coal shall, before such permit may be  
4 issued, pay to the director a special reclamation tax of  
5 sixty dollars for each acre of land to be disturbed in the  
6 mining operation, with the exception of exempted road-  
7 ways, storage areas and processing plants. The director  
8 shall in due course determine whether the special recla-  
9 mation tax for each acre of land disturbed has been paid  
10 by such operator. In the event that all such taxes have not  
11 been paid, said operator shall pay such taxes, as above set  
12 forth. In the event that said operator shall have paid  
13 taxes for more acres than were actually disturbed, the  
14 director shall certify such overpayment to the treasurer  
15 who shall refund out of the special reclamation fund such  
16 overpayment.

17 The director shall deposit with the treasurer of the  
18 state of West Virginia, to the credit of the special reclama-  
19 tion fund, all special reclamation taxes collected.

20 The special reclamation fund shall be administered  
21 by the director. The director shall cause to be pre-  
22 pared plans for the reclamation and rehabilitation of

23 lands which are unreclaimed and for which bond either  
24 has not been posted or is uncollectible and shall pre-  
25 pare specifications for reclamation of such lands. The  
26 director, as funds become available in the special rec-  
27 lamation fund, shall reclaim and rehabilitate such lands  
28 in accordance with such plans and specifications, and  
29 in so doing the director shall comply with the pro-  
30 visions of article three, chapter five-a of this code in  
31 obtaining supplies, materials, equipment and contractual  
32 services deemed necessary by the director for the pur-  
33 poses of reclamation and rehabilitation of said lands:  
34 *Provided*, That during the first year after the effective  
35 date of this act, twenty-five percent of the special  
36 reclamation taxes collected may be used by the director  
37 to pay inspectors, provide necessary equipment, conduct  
38 research and conduct inspection of permit areas and sur-  
39 face-mined areas: *Provided, however*, That during the first  
40 year a maximum of four hundred fifty thousand dollars  
41 from the special reclamation taxes collected shall be made  
42 available for the director's use as provided above: *Pro-*  
43 *vided further*, That during the second year after the  
44 effective date of this act and each year thereafter,  
45 fifteen percent of the special reclamation taxes collected  
46 may be used by the director for the same purposes: *And*  
47 *provided further*, That a portion of the special reclama-  
48 tion taxes allocated for the director's use may be used  
49 by the director to provide a subsistence allowance not  
50 to exceed one hundred fifty dollars per month to each  
51 inspector.

52 Some of the special reclamation taxes collected may  
53 be made available for the purchase of orphaned surface-  
54 mined lands, for the reclamation thereof, and for the  
55 engineering, administrative and research costs necessary  
56 to said reclamation, providing federal funds on a match-  
57 ing basis are made available for the purpose of reclaiming  
58 said orphaned surface-mined lands.

59 The director shall make an annual report to the gov-  
60 ernor and to the Legislature setting forth the number of  
61 acres reclaimed and rehabilitated through the use, in  
62 whole or in part, of the special reclamation fund provided  
63 for herein. Such report shall identify each such reclama-

64 tion project, state the number of acres reclaimed thereby,  
65 show the county wherein located, and furnish a detailed  
66 accounting of expenditures from the special reclama-  
67 tion fund.

**§20-6-30. Offenses; penalties; prosecutions; treble damages; injunctive relief.**

1 (a) Any person who shall conduct any surface-mining  
2 operation, or any part thereof, without a permit or with-  
3 out having furnished the required bond, or who shall  
4 carry on such operation or be a party thereto on land  
5 not covered by a permit, or who shall falsely represent  
6 any material fact in an application for a permit or in  
7 an application for the renewal of a permit, or who wil-  
8 fully violates any provision of this article, shall be guilty  
9 of a misdemeanor, and, upon conviction thereof, shall  
10 be punished by a fine of not less than one hundred nor  
11 more than one thousand dollars or by imprisonment  
12 not exceeding six months, or by both. Any person who  
13 deliberately violates any provision of this article or con-  
14 ducts surface-mining operations without a permit shall  
15 be guilty of a misdemeanor, and, upon conviction there-  
16 of, shall be punished by a fine of not less than one  
17 thousand nor more than ten thousand dollars or by im-  
18 prisonment not exceeding six months, or by both. Each  
19 day of violation constitutes a separate offense. It shall  
20 be the duty of the director to institute prosecutions for  
21 violations of the provisions hereof. Any person convicted  
22 under the provisions of this section shall, in addition to  
23 any fine imposed, pay to the director for deposit in the  
24 surface-mining reclamation fund an amount sufficient to  
25 reclaim the area with respect to which such conviction  
26 relates. The director shall institute any suit or other  
27 legal action necessary for the effective administration of  
28 the provisions of this article.

29 (b) In addition to and notwithstanding any other penal-  
30 ties provided by law, any operator who directly causes  
31 damage to the property of others as a result of surface  
32 mining shall be liable to them, in an amount not in excess  
33 of three times the provable amount of such damage, if  
34 and only if such damage occurs before or within one



35 year after such operator has completed all reclamation  
36 work with respect to the land on which such surface min-  
37 ing was carried out and all bonds of such operator with re-  
38 spect to such reclamation work are released. Such dam-  
39 ages shall be recoverable in an action at law in any court  
40 of competent jurisdiction. The director shall require, in  
41 addition to any other bonds and insurance required by  
42 other provisions of this article, that any person engaged  
43 in the business of surface mining shall file with the  
44 director a certificate of insurance, or other security in  
45 an amount of not less than ten thousand dollars, to  
46 cover possible damage to property for which a recovery  
47 may be sought under the provisions of this subsection.

48 (c) Upon application by the director, the attorney  
49 general, or the prosecuting attorney of the county in  
50 which the major portion of the permit area is located,  
51 any court of competent jurisdiction may by injunction  
52 compel compliance with and enjoin violations of the pro-  
53 visions of this article. The court or the judge thereof  
54 in vacation may issue a preliminary injunction in any  
55 case pending a decision on the merits of any application  
56 filed.

57 An application for an injunction under the provisions  
58 of this section may be filed and injunctive relief granted  
59 notwithstanding that all of the administrative remedies  
60 provided for in this article have not been pursued or  
61 invoked against the person or persons against whom such  
62 relief is sought and notwithstanding that the person or  
63 persons against whom such relief is sought have not been  
64 prosecuted or convicted under the provisions of this  
65 article.

66 The judgment of the circuit court upon any applica-  
67 tion filed under the provisions of this article shall be  
68 final unless reversed, vacated or modified on appeal to  
69 the supreme court of appeals. Any such appeal shall be  
70 sought in the manner provided by law for appeals from  
71 circuit courts in other civil cases, except that the petition  
72 seeking such review must be filed with said supreme  
73 court of appeals within thirty days from the date of entry  
74 of the judgment of the circuit court.

**ARTICLE 6A. LIMITATIONS ON SURFACE MINING.****§20-6A-1. Limitation on the issuance of new permits for surface mining.**

1 Commencing on the effective date of this section, and  
 2 ending two years from such date, no new permits, includ-  
 3 ing prospecting permits, shall be issued under the provi-  
 4 sions of article six of this chapter for the surface mining  
 5 of coal in any county where no surface mining existed  
 6 under lawful permit during the calendar year one thou-  
 7 sand nine hundred seventy: *Provided, however,* That if  
 8 in any such county any application for a permit was  
 9 made prior to the first day of January, one thousand  
 10 nine hundred seventy-one, such application shall be  
 11 processed and granted or refused, according to the provi-  
 12 sions of this article as if this section had not been enacted.

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## CHAPTER 113

(House Bill No. 1004—By Mr. Goodwin and Mr. White, of Boone)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to chief conservation officer; conservation officers; special and emergency conservation officers.

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

That section one, 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; MOTORBOATING.**

**PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.**

**§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers.**

1 The department's law-enforcement policies, practices  
2 and program shall be under the immediate supervision  
3 and direction of the department law-enforcement officer  
4 selected by the director and designated as chief conserva-  
5 tion officer as provided in article one hereof.

6 Under the supervision of the director, the chief con-  
7 servation officer shall organize, develop and maintain  
8 law-enforcement practices, means and methods geared,  
9 timed and adjustable to seasonal, emergency and other  
10 needs and requirements of the department's compre-  
11 hensive natural resources program. All department per-  
12 sonnel detailed and assigned to law-enforcement duties  
13 and services hereunder shall be known and designated  
14 as conservation officers and shall be under the imme-  
15 diate supervision and direction of the chief conservation  
16 officer. All such conservation officers shall be trained,  
17 equipped and conditioned for duty and services wherever  
18 and whenever required by department law-enforcement  
19 needs.

20 The chief conservation officer, acting under super-  
21 vision of the director, is authorized to select and appoint  
22 emergency conservation officers for a limited period of  
23 time for effective enforcement of the provisions of this  
24 chapter when considered necessary because of emer-  
25 gency or other unusual circumstances. The emergency  
26 conservation officers shall be selected from qualified civil  
27 service personnel of the department, except in emer-  
28 gency situations and circumstances when the director  
29 may designate such officers, without regard to such re-  
30 quirements and qualifications, to meet law-enforcement  
31 needs. Emergency conservation officers shall exercise  
32 all powers and duties prescribed in section four of this  
33 article for full-time salaried conservation officers except  
34 the provisions of subdivision (8).

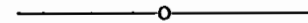
35 The chief conservation officer, acting under supervi-  
36 sion of the director, is also authorized to select and ap-  
37 point as special conservation officers any full-time civil  
38 service employee of the department who is assigned to,  
39 and has direct responsibility for management of an area  
40 owned, leased or under the control of the department  
41 and who has satisfactorily completed a course of train-

42 ing established and administered by the chief conser-  
43 vation officer, when such action is deemed necessary be-  
44 cause of law-enforcement needs. The powers and duties  
45 of a special conservation officer, appointed under this  
46 provision, shall be the same within his assigned area as  
47 prescribed for full-time salaried conservation officers.  
48 The jurisdiction of such persons appointed as a special  
49 conservation officer, under this provision, shall be limited  
50 to the department area or areas to which he is assigned,  
51 resides on and directly manages.

52 The chief conservation officer, acting under supervi-  
53 sion of the director, is also authorized to appoint as  
54 special conservation officers any full-time civil service  
55 forest fire control personnel who have satisfactorily com-  
56 pleted a course of training established and administered  
57 by the chief conservation officer. The jurisdiction of  
58 forest fire control personnel appointed as special con-  
59 servation officers shall be limited to the enforcement of  
60 the provisions of article three of this chapter.

61 The chief conservation officer, with the approval of  
62 the director, shall have the power and authority to re-  
63 voke any such appointment of an emergency conserva-  
64 tion officer or of a special conservation officer at any time.

65 Conservation officers shall be subject to seasonal or  
66 other assignment and detail to duty whenever and  
67 wherever required by the functions, services and needs  
68 of the department.



## CHAPTER 114

(Senate Bill No. 235—By Mr. Gainer)



[Passed March 5, 1971; in effect July 1, 1971. Approved by the Governor.]



AN ACT to amend and reenact section four, article seven, chap-  
ter twenty of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended, relating to natural re-  
sources, and the powers and duties of conservation officers.

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

That section four, 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; MOTORBOATING.**

**§20-7-4. Powers and duties of conservation officers.**

1 Conservation officers and all other persons authorized  
2 to enforce the provisions of this chapter shall be under  
3 the supervision and direction of the director in the per-  
4 formance of their duties as herein provided. The au-  
5 thority, powers and duties of the conservation officers  
6 shall be statewide and they shall have authority to:

7 (1) Arrest on sight, without warrant or other court  
8 process, any person or persons committing a criminal  
9 offense in violation of any of the laws of this state, in  
10 the presence of such officer, but no such arrest shall be  
11 made where any form of administrative procedure is pre-  
12 scribed by this chapter for the enforcement of any of the  
13 particular provisions contained herein;

14 (2) Carry such arms and weapons as may be pre-  
15 scribed by the director in the course and performance of  
16 their duties, upon giving the bond required by the pro-  
17 visions of section five, article seven, chapter sixty-one  
18 of this code, but no license or other authorization shall  
19 be required of such officers for this privilege;

20 (3) Search and examine, in the manner provided by  
21 law, any boat, vehicle, automobile, conveyance, express  
22 or railroad car, fish box, fish bucket or creel, game bag  
23 or game coat, or any other place in which hunting and  
24 fishing paraphernalia, wild animals, wild birds, fish,  
25 amphibians or other forms of aquatic life could be con-  
26 cealed, packed or conveyed whenever they have reason  
27 to believe that they would thereby secure or discover  
28 evidence of the violation of any provisions of this chapter;

29 (4) Execute and serve any search warrant, notice or  
30 any process of law issued under the authority of this  
31 chapter or any law relating to wildlife, forests, and all  
32 other natural resources, by a justice of the peace or any

33 court having jurisdiction thereof, or copies of orders made  
34 and entered by the chief of the division of water re-  
35 sources, or, without fee, any subpoena or subpoena duces  
36 tecum issued in accordance with the provisions of article  
37 five-a of this chapter, in the same manner, with the same  
38 authority, and with the same legal effect, as any constable  
39 or sheriff can serve or execute such warrant, notice or  
40 process;

41 (5) Require the operator of any motor vehicle or other  
42 conveyance on or about the public highways or road-  
43 ways, or in or near the fields and streams of this state,  
44 to stop for the purpose of allowing such officers to conduct  
45 game-kill surveys;

46 (6) Summon aid in making arrests or seizures or in  
47 executing any warrants, notices or processes, and they  
48 shall have the same rights and powers as sheriffs have in  
49 their respective counties in so doing;

50 (7) Enter private lands or waters within the state  
51 while engaged in the performance of their official duties  
52 hereunder: *Provided*, That in connection with all surveys,  
53 examinations, inspections, inquiries, investigations and  
54 studies needed in the gathering of facts concerning water  
55 resources and their use or the pollution thereof under  
56 article five or article five-a of this chapter, such conserva-  
57 tion officers and all other persons authorized to enforce  
58 the provisions of this chapter, shall act pursuant to and  
59 under the direction of the chief of the division of water  
60 resources or the state water resources board, and such  
61 officers and other persons shall be subject to the provi-  
62 sions of subsection (c), section five, article five, and  
63 subsection (d), section three, article five-a of this  
64 chapter;

65 (8) Arrest on sight, without warrant or other court  
66 process, subject to the limitations set forth in subdivision  
67 (1) of this section, any person or persons committing a  
68 criminal offense in violation of any law of this state in  
69 the presence of any such officer on any state-owned lands  
70 and waters and lands and waters under lease by the de-  
71 partment of natural resources and all national forest lands,  
72 waters and parks, and U. S. Corps of Army Engineers'

73 properties within the boundaries of the state of West Vir-  
74 ginia, and, in addition to any authority conferred in the  
75 other subdivisions of this section, execute all warrants of  
76 arrest on such state and national lands, waters and parks,  
77 and U. S. Corps of Army Engineers' properties, consistent  
78 with the provisions of article one, chapter sixty-two of  
79 this code; and  
80 (9) Do all things necessary to carry into effect the  
81 provisions of this chapter.

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## CHAPTER 115

(House Bill No. 571—By Mr. Harman)

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[Passed March 10, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section nine, article seven,  
chapter twenty of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to penalties  
for violation of nonresident hunting license.

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

That section nine, 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 PENAL-  
TIES; MOTORBOATING.**

**§20-7-9. Violations of chapter generally; penalties.**

1 Any person violating any of the provisions of this  
2 chapter, or rules and regulations promulgated under  
3 the provisions of this chapter, the punishment for which  
4 is not prescribed, shall be guilty of a misdemeanor, and,  
5 upon conviction thereof, shall for each offense be fined  
6 not less than twenty nor more than three hundred  
7 dollars, or confined in jail not less than ten nor more  
8 than one hundred days, or be both fined and imprisoned  
9 within the limitations aforesaid; and, in the case of a  
10 violation by a corporation, every officer or agent thereof

11 directing or engaging in such violation shall be guilty  
12 of a misdemeanor, and, upon conviction thereof, shall be  
13 subject to the same penalties and punishment as herein  
14 provided: *Provided, however,* That any person violating  
15 subdivision three, section five, article two of this chap-  
16 ter, shall be guilty of a misdemeanor, and, upon convic-  
17 tion thereof, shall be fined not less than one hundred  
18 dollars nor more than five hundred dollars and shall be  
19 imprisoned for not less than ten days nor more than one  
20 hundred days: *Provided further,* That any person vio-  
21 lating sections forty-three and forty-five, article two  
22 of this chapter shall be guilty of a misdemeanor, and,  
23 upon conviction thereof, shall be fined not less than fifty  
24 dollars nor more than three hundred dollars, or con-  
25 fined in jail not less than ten nor more than one hun-  
26 dred days, or both fined and imprisoned within the lim-  
27 itations aforesaid.

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## CHAPTER 116

(House Bill No. 1151—By Mr. Perry)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to authorize and empower the state of West Virginia to receive by gift or to acquire by purchase or agreement a certain tract or parcel of land owned by the Rumseyan Society, located in Shepherdstown, Jefferson county, commonly known as the "James Rumsey Park", to be used by the state of West Virginia through its Department of Natural Resources as a public park and recreation area, historical site and for other related purposes.

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

**JAMES RUMSEY PARK.**

§1. State authorized to receive by gift or acquire Rumseyan Society property and certain other land.



1 The state of West Virginia is hereby authorized and  
2 empowered to receive by gift a certain tract or parcel  
3 of land containing approximately two acres, owned by  
4 the Rumseyan Society, located in Shepherdstown, Jef-  
5 ferson county, commonly known as the "James Rum-  
6 sey Park", and also to receive by gift or to acquire by  
7 purchase or agreement a tract or parcel of land adja-  
8 cent to the said "James Rumsey Park," said additional  
9 tract or parcel of land being bound by the said park on  
10 the north, the Norfolk and Western railway to the east,  
11 Rocky street to the south, and Mill street to the west and  
12 consisting of approximately four and one-fourth acres,  
13 the total tract to be used by the state of West Virginia  
14 through its Department of Natural Resources as a public  
15 park and recreational area, historical site and for preser-  
16 vation of the James Rumsey Monument and for other  
17 related purposes.

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## CHAPTER 117

(House Bill No. 539—By Mr. Jones, of Roane)

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[Passed March 1, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section two, article two, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to service by publication.

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

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

### ARTICLE 2. NOTICES AND MOTIONS.

#### §56-2-2. Service by publication.

1 Any such notice to a person not residing in this state  
2 may be served by the publication thereof as a Class III  
3 legal advertisement in compliance with the provisions

4 of article three, chapter fifty-nine of this code, and the  
5 publication area for such publication shall be the county  
6 in which the suit or action is pending.

—————o—————

## CHAPTER 118

(House Bill No. 1182—By Mr. McKenzie and Mr. Scott)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy sheriffs and conservators of the peace; their duties and compensation.

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

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

### **ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.**

**§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.**

1 (a) (1) The clerk of the supreme court of appeals,  
2 or of any circuit, criminal, common pleas, intermediate  
3 or county court, or of any tribunal established by law  
4 in lieu thereof, may, with the consent of the court,  
5 or such tribunal, duly entered of record, appoint any  
6 person or persons his deputy or deputies.

7 (2) A sheriff, surveyor of lands, or assessor may,  
8 with the consent of the county court duly entered of  
9 record, appoint any person or persons his deputy or  
10 deputies.

11 (3) A sheriff, when in the opinion of the judge of  
12 the circuit court the public interest requires it, may,  
13 with the assent of said court, duly entered of record,

14 appoint any person or persons his deputy or depu-  
15 ties to perform any temporary service or duty.

16 (4) Each deputy so appointed shall take the same  
17 oath of office required of his principal, and may, dur-  
18 ing his continuance in office, perform and discharge  
19 any of the official duties of his principal, and any de-  
20 fault or misfeasance in office of the deputy shall con-  
21 stitute a breach of the conditions of the official bond of  
22 his principal.

23 (5) A sheriff in any county in which there are more  
24 than four deputies shall devote his full time to the  
25 performance of the services or duties required by law  
26 of such sheriff, and he shall not receive any compen-  
27 sation or reimbursement, directly or indirectly, from  
28 any person, firm or corporation for the performance  
29 of any private or public services or duties: *Provided*,  
30 That any such sheriff may retain or make any invest-  
31 ment and receive income therefrom, unless such in-  
32 vestment is otherwise prohibited by law or will im-  
33 pair his independence of judgment in the exercise of,  
34 or might reasonably tend to conflict with the proper  
35 discharge of, the services or duties of his office. A  
36 sheriff in any county in which there are four or fewer  
37 deputies, or a deputy sheriff in any county irrespec-  
38 tive of the number of deputies, need not devote his  
39 full time to the services or duties of his office as sheriff  
40 or his employment as deputy sheriff, as the case may  
41 be; but any such sheriff or deputy sheriff shall not  
42 engage in any business or transaction, accept other  
43 employment or make any investment which is other-  
44 wise prohibited by law or which will impair his in-  
45 dependence of judgment in the exercise of, or might  
46 reasonably tend to conflict with the proper discharge  
47 of, the services or duties of his office as sheriff or his  
48 employment as deputy sheriff, as the case may be. A  
49 sheriff and his deputies in any county, irrespective of  
50 the number of deputies, shall receive for the perfor-  
51 mance of their public services and duties no com-  
52 pensation or remuneration except such as may be reg-  
53 ularly provided and paid out of public funds to the

54 amount and in the manner provided by law. No sheriff  
55 or deputy sheriff in any county, irrespective of the  
56 number of deputies, may receive, directly or indirectly,  
57 any gift or donation from any person, firm or corpora-  
58 tion.

59 (6) Except as hereinafter expressly provided by sub-  
60 section (b) of this section no sheriff shall appoint or  
61 continue the appointment of any deputy contrary to  
62 the provisions hereof. Any sheriff or deputy sheriff  
63 who shall violate any of the provisions of this section  
64 shall be guilty of a misdemeanor, and, upon conviction  
65 thereof, shall be fined not less than five hundred nor  
66 more than five thousand dollars, or confined in jail  
67 not to exceed one year, or both, in the discretion of  
68 the court.

69 (7) Circuit courts shall have jurisdiction in equity  
70 and mandamus, and the supreme court of appeals shall  
71 have jurisdiction in mandamus, upon the filing of a  
72 petition by the prosecuting attorney, the attorney gen-  
73 eral, or any three or more citizens of the county, to  
74 require any sheriff and the county court to vacate  
75 the appointment of any deputy, the appointment of  
76 which is made or continued in violation of the pro-  
77 visions hereof. Any such proceeding may be instituted  
78 and prosecuted by the attorney general either in the  
79 circuit court of Kanawha county or in the county for  
80 which such appointment was made.

81 (b) (1) Any resident or group of residents of any  
82 unincorporated community, as hereinafter defined, may  
83 petition the sheriff for the appointment of a local con-  
84 servator of the peace and such sheriff, when in his  
85 opinion the public interests require it, may with the  
86 assent of said county court and the judge of the circuit  
87 court duly entered of record, either in term or vacation  
88 of any such court, appoint any person or persons a local  
89 conservator or conservators of the peace to perform  
90 the duties of a conservator of the peace outside of  
91 any incorporated city, town or village. No person shall  
92 be appointed such local conservator of the peace who  
93 has not been a bona fide resident and taxpayer of the

94 county for at least one year prior to his appointment.  
95 Such local conservator of the peace during his con-  
96 tinuance in office, may perform and discharge any  
97 of the official duties of the sheriff, subject neverthe-  
98 less to the provisions of this section. No local con-  
99 servator so appointed shall be subject to the direction  
100 or control of any person other than his principal and  
101 he shall not perform any services or duties, either  
102 private or public, except the duties required by law  
103 of conservators of the peace pursuant to the provisions  
104 hereof, for any person, firm, or corporation. No such  
105 local conservator shall be entitled to collect or receive  
106 any fees provided by law to be paid to the sheriff  
107 or to a deputy sheriff, but all fees provided by law  
108 for the sheriff, when such duties and services are ren-  
109 dered by such local conservator, shall be paid to the  
110 sheriff as regular collections of the sheriff's office. The  
111 local conservator shall be paid for the public services  
112 performed by him a salary of not less than seventy-  
113 five dollars per month out of the county treasury from  
114 a fund to be paid into such treasury by a resident or  
115 the residents of the community for which he is ap-  
116 pointed, for the sole purpose of compensating such  
117 local conservator or conservators and no such local  
118 conservator shall receive any other compensation, di-  
119 rectly or indirectly, from any person, firm, or corpo-  
120 ration, for any private or public service, except the  
121 salary payable to him for his public services and duties  
122 and from such fund, except that he shall be entitled  
123 to witness and mileage fees when a witness in a court  
124 of record. Each local conservator so appointed shall  
125 take the same oath of office required of his principal  
126 and any default or misfeasance in the office of such  
127 local conservator shall constitute a breach of the  
128 conditions of the official bond of his principal.

129 (2) When the sheriff shall have been petitioned for  
130 the appointment of a local conservator and has de-  
131 termined that the appointment is proper, he shall select  
132 the person whom he proposes to have appointed such  
133 conservator and shall notify the county court of the  
134 community for which such conservator is to be ap-

135 pointed and the name of the person proposed for such  
136 appointment. The county court shall thereupon cause  
137 notice that the sheriff has recommended the appoint-  
138 ment of the person named as conservator for the com-  
139 munity named to be published as a Class II legal ad-  
140 vertisement in compliance with the provisions of article  
141 three, chapter fifty-nine of this code, and the publi-  
142 cation area for such publication shall be the county.  
143 The notice shall designate a day not less than five days  
144 after the date of the last publication when the county  
145 court will act upon the petition and recommendation.  
146 Neither the county court nor the judge of the circuit  
147 court shall assent and approve the appointment of such  
148 local conservator until such publication has been made.  
149 The costs of the publication shall be paid by the per-  
150 son or persons petitioning for the appointment of the  
151 conservator.

152 No local conservator shall be appointed except it  
153 be made to appear to the satisfaction of the county  
154 court and the judge of the circuit court that because  
155 of the lack of sufficient funds, geographical location  
156 of the unincorporated community for which such con-  
157 servator is to be appointed, or other good reason, the  
158 sheriff and his regular deputies and the constables  
159 of the county are not sufficient to afford proper local  
160 policing of such community and that the person or  
161 persons moving for the appointment of such local con-  
162 servator have made satisfactory arrangements to com-  
163 pensate him for his services as such local conservator of  
164 the peace.

165 (3) Such local conservator of the peace shall have  
166 all the powers and duties of a regularly appointed  
167 deputy sheriff except that he shall not execute any  
168 civil process except such process as may be necessary  
169 to bring parties before the court in any action at law  
170 or suit in equity and subpoenas for witnesses within  
171 the unincorporated community for which he is appointed  
172 and within a distance of one mile outside the boun-  
173 daries thereof, except as hereinafter expressly pro-  
174 vided, but he shall not participate in any strike, un-  
175 employment boycott, or other industrial or labor dispute,

176 nor serve any court process of any character relating  
177 thereto. He shall act as such local conservator only  
178 in the unincorporated community for which he is ap-  
179 pointed, and within a distance of one mile from the  
180 boundaries thereof as fixed by the county court: *Pro-*  
181 *vided, however,* That the authority of one local con-  
182 servator shall not extend into any other unincorporated  
183 community for which another local conservator is ap-  
184 pointed and acting, except as otherwise expressly pro-  
185 vided by subdivision (6) of this subsection, except  
186 that in fresh pursuit he may effect arrests anywhere in  
187 the county. He may also exercise the powers of a  
188 regularly appointed deputy anywhere in the county  
189 when required to guard or assist in guarding a pay-  
190 roll, or any other property of value in transit to or  
191 from the unincorporated community for which he is  
192 appointed. Any person arrested by such local con-  
193 servator shall, with all convenient speed, be turned  
194 over to the sheriff, or one of his regular deputies,  
195 or to a regular constable of the county to be dealt  
196 with according to law, and his authority for that pur-  
197 pose shall be coextensive with the county.

198 (4) Any local conservator appointed to perform  
199 the duties of conservator of the peace shall be a public  
200 officer and the payment, or contribution to the pay-  
201 ment of compensation of such local conservator shall  
202 not constitute the person, firm or corporation making  
203 such payment or contribution the employer of such  
204 local conservator and no person, firm or corporation  
205 paying, or contributing to the payment of compensa-  
206 tion to such local conservator shall be answerable  
207 in law or in equity for any damages to person or prop-  
208 erty resulting from any official act of such local con-  
209 servator.

210 (5) No person appointed such local conservator shall  
211 thereby be entitled to carry weapons, but such local  
212 conservator may carry weapons when he shall be duly  
213 licensed and shall have given bond as provided by  
214 section two, article seven, chapter sixty-one of the  
215 code of West Virginia, one thousand nine hundred thirty-  
216 one.

217 (6) Not more than one local conservator of the peace  
218 shall be appointed, to perform the duties of conservator  
219 of the peace, for each two thousand five hundred in-  
220 habitants of the county as ascertained by the last reg-  
221 ular decennial census after deducting the number of  
222 inhabitants of the county residing in the incorporated  
223 cities, towns and villages in such county. Not more  
224 than one local conservator shall be appointed for any  
225 unincorporated community unless the population thereof  
226 exceed fifteen hundred people and in such case not  
227 more than two conservators shall be appointed for  
228 such community.

229 (7) The phrase "unincorporated community" within  
230 the meaning of this section shall mean any center of  
231 population wherein fifty or more persons reside within  
232 an area of not more than one square mile.

233 (8) The county court and the judge of the circuit  
234 court in approving the appointment of a local conser-  
235 vator shall enter of record an order making such ap-  
236 pointment and shall show therein the necessity for the  
237 appointment, the person or persons on whose motion  
238 the appointment is made, the arrangement for the  
239 payment of compensation to such local conservator, the  
240 unincorporated community or communities, for which  
241 the appointment is made, including the general boun-  
242 dary of each unincorporated community for which he  
243 is appointed.

244 (9) No local conservator shall act as an election  
245 official or remain in, about or near any voting place  
246 or place of political convention, further than is neces-  
247 sary for him to promptly cast his vote and retire from  
248 the voting place.

249 (10) Any local conservator violating any of the pro-  
250 visions of subdivisions (3) and (9) of this subsection  
251 shall be guilty of a misdemeanor, and, upon conviction  
252 thereof, shall be fined not less than fifty nor more  
253 than three hundred dollars, or be confined in the county  
254 jail not more than six months, or both, in the discre-  
255 tion of the court; and it shall be the duty of the sheriff  
256 and the county court to forthwith revoke his appoint-  
257 ment irrespective of any criminal prosecution. A pro-



258 ceeding in mandamus or injunction shall lie in the  
259 circuit court and a proceeding in mandamus shall lie  
260 in the supreme court of appeals at the instance of the  
261 prosecuting attorney, the attorney general, or of any  
262 three or more citizens of the community for which such  
263 conservator is appointed, to require the performance of  
264 such duty by the sheriff and the county court.

265 (11) Such local conservator shall serve during the  
266 joint will and pleasure of the sheriff and the county  
267 court and his appointment may be revoked by order  
268 entered of record by the county court either with or  
269 without the assignment of cause therefor.

270 A local conservator may be removed by the judge of  
271 the circuit court, either in term or vacation, for drunk-  
272 eness, gross immorality, incompetence, neglect of duty,  
273 or other good cause, upon the petition of three or more  
274 residents of the community for which he has been ap-  
275 pointed. The petition shall set forth the cause or causes  
276 for which such removal is asked and shall show that  
277 demand for removal has been made of the sheriff and  
278 the county court and that the sheriff and the county  
279 court have failed to remove the local conservator. At  
280 least three copies of the petition shall be filed, and upon  
281 the filing of the petition the judge shall fix a time and  
282 place for a hearing thereon, which time shall not be less  
283 than ten days after the filing of the petition, and shall  
284 cause a copy thereof to be served upon the sheriff and  
285 such local conservator at least ten days before the hear-  
286 ing thereon.

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## CHAPTER 119

(House Bill No. 1174—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Seibert)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section two-a, article seven,  
chapter six, of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to terms

of appointive state officers; appointment; qualifications; powers and salaries of such officers.

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

That section two-a, 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.**

**§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.**

1 Notwithstanding any other provision of this code to  
2 the contrary, on and after the effective date of this sec-  
3 tion each of the following named appointive state offi-  
4 cers shall be appointed by the governor, by and with  
5 the advice and consent of the Senate. Each of such  
6 appointive state officers shall serve at the will and  
7 pleasure of the governor and until the respective state  
8 officer's successors have been appointed and qualified.  
9 Each of such appointive state officers shall hereafter  
10 be subject to the existing qualifications for holding each  
11 such respective office and each shall have and is hereby  
12 granted all of the powers and authority and shall per-  
13 form all of the functions and services heretofore vested  
14 in and performed by virtue of existing law respecting  
15 each such office. The annual salary of each such named  
16 appointive state officer shall be as follows:

17 The commissioner of highways, thirty thousand dol-  
18 lars; director of mental health, twenty-two thousand  
19 five hundred dollars; commissioner of commerce, eighteen  
20 thousand five hundred dollars; tax commissioner, twenty  
21 thousand dollars; director of department of natural re-  
22 sources, eighteen thousand five hundred dollars; com-  
23 missioner of department of welfare, twenty-two thou-  
24 sand dollars; alcohol beverage control commissioner,  
25 sixteen thousand dollars; director of department of  
26 mines, twenty thousand dollars; commissioner of public  
27 institutions, sixteen thousand dollars; commissioner of  
28 employment security, twenty-two thousand dollars; com-  
29 missioner of labor, seventeen thousand dollars; director

30 of personnel civil service commission, seventeen thou-  
31 sand dollars; superintendent of department of public  
32 safety, sixteen thousand dollars; insurance commissioner,  
33 eighteen thousand dollars; commissioner of motor ve-  
34 hicles, sixteen thousand dollars; commissioner of bank-  
35 ing, eighteen thousand dollars; members of the board  
36 of probation and parole, twelve thousand dollars; non-  
37 intoxicating beer commissioner, twelve thousand dollars;  
38 state historian and archivist, twelve thousand dollars;  
39 adjutant general, twelve thousand dollars; director of  
40 civil and defense mobilization, twelve thousand dollars;  
41 director of veterans affairs, twelve thousand dollars;  
42 members of board of review of employment security,  
43 twelve thousand dollars; members of workmen's com-  
44 pensation appeal board, six thousand dollars; state work-  
45 men's compensation commissioner, twenty thousand  
46 dollars.

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## CHAPTER 120

(Senate Bill No. 188—By Mr. McCourt, Mr. President)

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[Passed March 10, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend article two, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the creation of park and recreation boards as public bodies corporate, providing for the dissolution of such boards, prescribing the powers and authority of such boards, requiring annual accounting, prohibiting the incurring of indebtedness and requiring bond covering officers and employees.

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

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

**ARTICLE 2. PUBLIC RECREATION AND PLAYGROUNDS.**

**§10-2-4a. Public corporation may be created; name; dissolution; powers; authority; annual accounting; debts prohibited; general powers; bonded officers or employees.**

1 Subject to the provisions of this section, and subject  
2 further to the terms and conditions of any agreement  
3 mentioned in section three of this article insofar as such  
4 terms and conditions are not contrary to the provisions  
5 of this section, any park and recreation board created  
6 by a governing body or bodies pursuant to this article  
7 shall be a public body corporate by the name of "The  
8 \_\_\_\_\_ Park and Recreation Board" by which name  
9 it may sue or be sued, contract and be contracted with,  
10 take and hold title to any property other than real  
11 property and operate and manage programs under this  
12 article upon real property owned or leased by the govern-  
13 ing body or bodies which create such board or by an-  
14 other public body corporate.

15 The board shall have a corporate seal and perpetual  
16 existence: *Provided*, That the board may be dissolved by  
17 the affirmative vote of at least sixty percent of the per-  
18 sons elected to the governing body or bodies and: *Pro-*  
19 *vided, however*, That a governing body may withdraw  
20 from any board created by agreement of two or more  
21 governing bodies upon the affirmative vote of at least  
22 sixty percent of the persons elected to such governing  
23 body.

24 Such dissolution or withdrawal shall be effective only  
25 upon June thirtieth of any year and any action to dis-  
26 solve or withdraw must be completed by city or county  
27 ordinance or board of education order not later than  
28 March thirty-first of such year. In the event of such  
29 dissolution or withdrawal the property of the board shall  
30 promptly be appraised by the assessor of the county in  
31 his reasonable discretion at current value and shall there-  
32 upon be apportioned among the parties in proportion to  
33 the contributions to the board after the effective date  
34 of this section from the general funds of each governing

35 body or by such other means as are agreed upon by all  
36 interested parties.

37 The board shall have the power and authority to adopt  
38 bylaws determining its name, providing for the selection  
39 and terms of its officers, personnel policy and other-  
40 wise governing the operation of the board, and the powers  
41 and duties of its officers, which bylaws shall not be  
42 effective until approved by resolution of every governing  
43 body or bodies.

44 The board shall have power and authority to receive  
45 any gift, federal grant, other grant, donation or bequest  
46 and to receive income and other funds, whether in cash  
47 or check, whether appropriated by governing body or  
48 bodies to the board or derived from programs under the  
49 direction and control of the board, to deposit, invest,  
50 manage and disburse, all such funds, income or receipts,  
51 including interest or income earned thereon or there-  
52 from, to obtain one or more insurance policies affording  
53 coverage to it, to the public and to the governing bodies  
54 for loss of or damage to the property and facilities and  
55 programs under its control and affording public and em-  
56 ployee liability coverage for the board and the governing  
57 body or bodies, their officers, agents and employees as  
58 the need therefor may arise.

59 The board shall annually at a time convenient to each  
60 governing body report to such body upon all receipts  
61 and disbursements of the board, the scope and location  
62 of its activities and such other information as such govern-  
63 ing body may by resolution request and shall at the  
64 same time present a proposed budget showing projected  
65 receipts and disbursements, describing the programs and  
66 their anticipated costs and giving such other information  
67 as any governing body shall by resolution request, which  
68 annual report shall be a public record.

69 Any governing body or bodies are hereby authorized to  
70 contribute funds to any board, to appropriate matching  
71 funds for a federal grant or other grant to such board  
72 and to join with such board in executing any neces-  
73 sary application or contract for such federal grant or  
74 other grant and to give such assurances and commitments

75 as may be necessary or convenient thereto: *Provided*  
76 *further*, That under no circumstances whatever shall any  
77 action under this section of a governing body or the  
78 board give rise to or create any indebtedness on the part  
79 of the governing body or board, except that the govern-  
80 ing body or bodies may separately or by joint agreement  
81 enter into such revenue bond financing agreements as  
82 have heretofore been lawful.

83 The board shall have power and authority to do any  
84 and all things necessary or convenient to carry out and  
85 effectuate the purposes and provisions of this section and  
86 shall furnish the governing body or bodies a blanket  
87 surety bond covering those individuals authorized by the  
88 board to sign checks in its behalf, in a penal sum of not  
89 less than twenty-five thousand dollars.

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## CHAPTER 121

(Com. Sub. for House Bill No. 839—Originating in the House  
Committee on the Judiciary)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section two, article two-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and two, article three of said chapter; and to further amend said chapter by adding thereto a new article, designated article three-a, all relating to the establishment of qualifications and certification of assistants to licensed physicians; definition of terms; and fees.

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

That section two, article two-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and two, article three of said chapter be amended and reenacted;

and that said chapter be further amended by adding thereto a new article, designated article three-a, all to read as follows:

**Article**

**2A. Medical Licensing Board.**

**3. Physicians and Surgeons.**

**3A. Assistants to Physicians.**

**ARTICLE 2A. MEDICAL LICENSING BOARD.**

**§30-2A-2. Powers and duties.**

1 The medical licensing board of West Virginia shall as-  
2 sume, carry on, and succeed to all the duties, rights,  
3 powers, obligations and liabilities heretofore belonging  
4 to, exercised by, or assumed by the public health council,  
5 with regard to the licensure of physicians and surgeons  
6 and podiatrists.

7 The medical licensing board shall examine all quali-  
8 fied applicants for license to practice medicine and sur-  
9 gery, and podiatry and it shall license all such applicants  
10 who are qualified under applicable statutes and who  
11 pass any examination that may be required by statute  
12 or by any legally adopted rule or regulation. The board  
13 shall also have authority to authorize medical corpora-  
14 tions in accordance with the provisions and subject to  
15 the limitations of article three of this chapter to prac-  
16 tice medicine and surgery through duly licensed physi-  
17 cians and surgeons.

18 The board shall have the power to make such exami-  
19 nation of all applicants appearing before it for any type  
20 of license as may be necessary to determine that the ap-  
21 plicant is qualified. The board shall also have the power  
22 to revoke or suspend any license or certificate of au-  
23 thorization issued by it, for cause, after having given  
24 the person whose license or medical corporation whose  
25 certificate of authorization is sought to be revoked or  
26 suspended, an opportunity to be heard in the manner  
27 provided by section eight, article one, chapter thirty of  
28 this code. It shall have the power to reinstate any license  
29 or certificate of authorization revoked or suspended  
30 by it.

31 The board is authorized and empowered to hold and  
32 conduct hearings and investigations on the issuance, sus-

33 pension, revocation or reinstatement of licenses or cer-  
34 tificates of authorization. The said board shall have the  
35 power to hire, fix the compensation of, and discharge  
36 such employees as are necessary for the performance of  
37 the powers and duties vested in the said board by law.

38 The board shall have the power to certify and establish  
39 standards for employment of assistants to licensed physi-  
40 cians and licensed podiatrists.

### ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-1. Evidence of qualification to practice and license required.

§30-3-2. Who deemed practitioner; limitations of article.

#### §30-3-1. Evidence of qualification to practice and license required.

1 Any person practicing or offering to practice medicine  
2 and surgery in this state, with the exception of an as-  
3 sistant to a licensed physician or licensed podiatrist, shall  
4 be required to submit evidence that he is qualified so  
5 to practice, and shall be licensed as hereinafter provided.

#### §30-3-2. Who deemed practitioner; limitations of article.

1 The term "practice medicine and surgery," as used in  
2 this article, shall be construed to mean the treatment of  
3 any human ailment or infirmity by any method. To  
4 open an office for such purpose or to announce to the  
5 public in any way a readiness to treat the sick or afflicted  
6 shall be deemed to engage in the practice of medicine  
7 and surgery within the meaning of this article: *Provided*,  
8 That the provisions of this article, with the exceptions  
9 of sections eight and ten, shall not apply to dentists,  
10 dental hygienists, nurses, optometrists, podiatrists, osteo-  
11 pathic physicians and surgeons, midwives, or chiroprac-  
12 tors, regularly licensed or registered as such under the  
13 provisions of this chapter applicable to such professions  
14 and occupations, in the practice of their respective pro-  
15 fessions and occupations; nor to assistants to physicians or  
16 podiatrists; nor to physicians or surgeons living in other  
17 states and duly qualified to practice medicine therein  
18 who shall be called in consultation into this state by a  
19 physician or surgeon legally entitled to practice medicine  
20 and surgery in this state; nor to commissioned officers



21 of the United States army, navy or marine hospital ser-  
22 vice when in the actual discharge of their duties as such;  
23 nor to the practice of the religious tenets of any church  
24 in the administration to the sick or suffering by mental  
25 or spiritual means, whether gratuitously or for compen-  
26 sation: *Provided, however,* That sanitary and public  
27 health laws shall be complied with: *Provided further,*  
28 That no practices shall be used which may be dangerous  
29 or detrimental to life or health and that no person shall  
30 be denied the benefits of accepted medical and surgical  
31 practices.

#### **ARTICLE 3A. ASSISTANTS TO PHYSICIANS.**

§30-3A-1. Definition; supervision; certification of assistant to ophthal-  
mologist not required or permitted.

§30-3A-2. Approval and certification by medical licensing board.

§30-3A-3. Fees.

§30-3A-4. Limitation on scope of dutise.

#### **§30-3A-1. Definition; supervision; certification of assistant to ophthalmologist not required or permitted.**

1 The term "assistant to a physician," as used in this  
2 chapter, shall mean a person employed in a physician's  
3 or podiatrist's office, licensed hospital or any licensed  
4 health care institution who performs selected medical  
5 tasks and functions in accordance with an approved job  
6 description, and who possesses the qualifications which  
7 have been established for the described job. The as-  
8 sistant to a physician shall be under the supervision of a  
9 permanently licensed physician or podiatrist in West Vir-  
10 ginia. Certification of an assistant to a physician prac-  
11 ticing the specialty of ophthalmology shall neither be  
12 required nor permitted under this article.

#### **§30-3A-2. Approval and certification by medical licensing board.**

1 Approval of a job description and establishment of  
2 qualifications for employment as an assistant to a physi-  
3 cian or podiatrist must be obtained from the medical  
4 licensing board. The medical licensing board shall certify  
5 each qualified applicant for employment as an assistant  
6 to a physician or podiatrist upon submission of a job  
7 description, and shall provide for annual renewal of cer-  
8 tification. The board shall have the power to revoke

9 or suspend any certification of an assistant to a physician  
10 or podiatrist, for cause, after having given the person an  
11 opportunity to be heard in the manner provided by sec-  
12 tions eight and nine, article one of this chapter.

**§30-3A-3. Fees.**

1 Each job description submitted by permanently licensed  
2 physician or physicians shall be accompanied by a fee  
3 of fifty dollars. A fee of five dollars shall be charged for  
4 each annual renewal of certification.

**§30-3A-4. Limitation on scope of duties.**

1 Assistants to physicians and podiatrists shall not sign  
2 prescriptions or perform any service which his employing  
3 physician or podiatrist is not qualified to perform.

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## CHAPTER 122

(Senate Bill No. 263—By Mr. Wallace)

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[Passed February 23, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section four, article three, chap-  
ter thirty of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to the  
practice of medicine and surgery in the state of West  
Virginia, the licensing of licensed practitioners of other  
states, examinations by the medical licensing board, and  
the licensing of foreign medical school graduates.

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

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

**ARTICLE 3. PHYSICIANS AND SURGEONS.**

**§30-3-4. Who permitted to practice medicine and surgery in  
this state; licensing of licensed practitioners from**

**other states; permits to practice in prescribed areas.**

1 The following persons and no others shall hereafter  
2 be permitted to practice medicine and surgery in this  
3 state: (a) All such persons as shall be legally entitled to  
4 practice medicine and surgery in this state including  
5 those persons holding temporary permits to practice  
6 in prescribed areas as of the effective date of this sec-  
7 tion [May 24, 1971]; (b) all such persons as shall be  
8 graduates of medical schools, as approved by the medical  
9 licensing board of West Virginia, and then only from  
10 such schools, when so approved, as required, as a condi-  
11 tion to entrance upon the study of medicine, at least  
12 two years of academic work of collegiate grade in a  
13 standard college of arts and sciences of equal rank  
14 with the college of arts and sciences of West Vir-  
15 ginia University, and who shall pass an examination  
16 before the medical licensing board and shall receive a  
17 certificate therefrom as hereinafter provided; and (c)  
18 all such persons as shall be graduates of foreign medical  
19 schools whose diplomas have been authenticated by the  
20 medical licensing board, and whose premedical education  
21 shall meet the requirements of subdivision (b) above,  
22 and who have become citizens of the United States or  
23 who have presented evidence of their declaration of  
24 intention and show progress toward becoming citizens  
25 of the United States, and who shall pass an examination  
26 before the medical licensing board and shall receive a  
27 certificate therefrom as hereinafter provided: *Provided*,  
28 That the said board, or a majority of them, may accept  
29 in lieu of an examination of applicants under sub-  
30 division (b) above, the certificate of the national board  
31 of medical examiners, or the certificate of license to  
32 practice medicine and surgery legally granted by the  
33 state board of registration or examination or licensing  
34 board of another state or territory, whose standard of  
35 qualification for the practice of medicine and surgery  
36 is equivalent to that of this state, and grant to such ap-  
37 plicant a certificate of license to practice medicine and  
38 surgery in this state, provided such state or territory

39 accords like privileges to licentiates of this state:  
40 *Provided, however,* That whenever in the judgment of  
41 the medical licensing board a condition exists in which  
42 medical service may be required, the said board is  
43 authorized to grant permits for the practice of medicine  
44 to qualified physicians in prescribed areas, and such per-  
45 mits shall be subject to revocation when the agreement,  
46 under which they were issued, has been violated. A fee  
47 of one hundred dollars shall accompany each application  
48 for licensure by examination or reciprocity, twenty-five  
49 dollars of which shall be retained by the board in the  
50 event an application is withdrawn or rejected. A fee of  
51 twenty-five dollars shall accompany each application for  
52 temporary licensure and a fee of ten dollars shall ac-  
53 company each application for an extension thereof.

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## CHAPTER 123

(House Bill No. 988—By Mr. Myles and Mr. Seibert)

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[Passed March 3, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications and licensure of persons who are not citizens of the United States of America to practice registered professional nursing in this state.

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

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

### **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

#### **§30-7-7. Qualifications and licensure of persons not citizens of United States.**

1 The board may, upon application, issue a license to  
2 practice registered professional nursing by endorsement

3 to any person who is not a citizen of the United States  
4 of America if such person (a) has been duly licensed as  
5 a registered professional nurse under the laws of an  
6 other state, territory or foreign country, and (b) shall,  
7 in any such state, territory or foreign country, have  
8 passed a written examination in the English language  
9 which, in the opinion of the board, is comparable in con-  
10 tent and scope to the type of written examination which  
11 is authorized in the second paragraph of section six of  
12 this article.

13 All other provisions of this article shall be applicable  
14 to any application for or license issued pursuant to this  
15 section.

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## CHAPTER 124

(House Bill No. 591—By Mr. Butcher)

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[Passed February 8, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section seven, article nineteen,  
chapter thirty of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to renewal  
of foresters' license and the fee therefor.

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

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

### **ARTICLE 19. FORESTERS.**

#### **§30-19-7. Expiration and renewal of license; fee.**

1 Licenses shall expire on the last day of the month of  
2 June following their issuance or renewal and shall be-  
3 come invalid on that date unless renewed. It shall be the  
4 duty of the secretary of the board to notify every person  
5 registered under this article, at his last registered ad-  
6 dress, of the date of the expiration of his license and the  
7 amount of the fee that shall be required for its renewal

8 for one year; such notice shall be mailed at least sixty  
9 days in advance of the date of the expiration of said  
10 license. The fee for the renewal of licenses shall be five  
11 dollars per year.

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## CHAPTER 125

(Com. Sub. for Senate Bill No. 198—Originating in the Senate  
Committee on the Judiciary)

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[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

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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-two, relating to the practice of landscape architecture; providing for the licensing of persons engaging in the practice of landscape architecture; providing a legislative finding, a declaration of public policy and definitions; creating the West Virginia state board of landscape architects; relating to the qualifications, terms, oath and expenses of members of said board; relating to the officers of said board; providing for meetings of said board; specifying the powers and duties of said board; relating to the receipt and disbursement of funds by said board; establishing qualifications for the issuance of a license or temporary permit for a landscape architect; providing exceptions; providing for applications for and the issuance of licenses and temporary permits, renewals thereof and fees in connection therewith; relating to the license and seal of a landscape architect; relating to partnerships and corporations and the practice of landscape architecture; relating to various exemptions from said article twenty-two; authorizing the board to suspend or revoke a license or temporary permit of a landscape architect and establishing the grounds therefor; authorizing said board to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings;

authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic stay or suspension of certain orders of the board pending such hearings; relating to the costs for such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the board; relating to issuance of new license after revocation of license; establishing criminal penalties; providing for injunctive relief; and providing a severability clause.

*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-two, to read as follows:

**ARTICLE 22. LANDSCAPE ARCHITECTS.**

- §30-22-1. Legislative findings and declaration of public policy.
- §30-22-2. Definitions.
- §30-22-3. License to practice landscape architecture required.
- §30-22-4. Creation of board of landscape architects; members, terms, meetings, officers, oath and expenses; general provisions.
- §30-22-5. Powers and duties of board; funds of board.
- §30-22-6. Qualifications of applicants; exceptions; applications; fee.
- §30-22-7. Issuance of license; renewal of license; renewal fee; duplicate license; display of license; seal.
- §30-22-8. Temporary permits.
- §30-22-9. Partnerships and corporations.
- §30-22-10. Exemptions from article.
- §30-22-11. Suspension or revocation of license or temporary permit.
- §30-22-12. Procedures for hearing.
- §30-22-13. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-22-14. Issuance of new license after revocation.
- §30-22-15. Penalties.
- §30-22-16. Actions to enjoin violations.
- §30-22-17. Severability.

**§30-22-1. Legislative findings and declaration of public policy.**

- 1 The Legislature of the state of West Virginia hereby
- 2 determines and finds that in the public interest persons
- 3 should not hold themselves out as landscape architects
- 4 in this state without the requisite experience and train-
- 5 ing and without adequate regulation and control. It is
- 6 therefore declared to be the public policy of this state
- 7 that the practice of landscape architecture affects the

8 general welfare and public interest of the state and its  
9 citizens; that persons without the necessary qualifica-  
10 tions, training and education should not hold themselves  
11 out to the public as landscape architects; and that the  
12 evils of such unauthorized and unqualified representations  
13 may be best prevented and the interest of the public  
14 best served by regulating and controlling such repre-  
15 sentations as provided in this article.

**§30-22-2. Definitions.**

1 (a) Unless the context in which used clearly requires  
2 a different meaning, as used in this article:

3 (1) "Applicant" means any person making application  
4 for an original or renewal license or a temporary permit  
5 under the provisions of this article.

6 (2) "Licensee" or "landscape architect" means any  
7 person holding a license or a temporary permit issued  
8 under the provisions of this article and hence licensed  
9 to practice landscape architecture in the state of West  
10 Virginia under the provisions of this article.

11 (3) "Board" means the West Virginia state board of  
12 landscape architects created in section four of this  
13 article.

14 (4) "Examination" means the examination in landscape  
15 architecture required by subdivision (5), subsection (a),  
16 section six of this article.

17 (5) "Landscape architecture" means the performance  
18 of professional services, including but not limited to  
19 consultations, research, planning, design or responsible  
20 supervision in connection with the development of land,  
21 where the dominant purpose of such professional services  
22 is the preservation, enhancement or determination of:

23 ( i ) Land uses;

24 ( ii ) Natural land features;

25 ( iii ) Ground cover and planting;

26 ( iv ) Naturalistic and aesthetic value;

27 ( v ) Settings and approaches to structures or other  
28 improvements;

29 ( vi ) Natural drainage; and



30 (vii) Consideration and determination of inherent  
31 problems of the land relating to erosion, wear and tear,  
32 blight or other hazard.

33 (b) The practice of landscape architecture shall in-  
34 clude the location and arrangement of such tangible  
35 objects and features as are incidental and necessary to  
36 the purposes outlined in the above definition of such  
37 term, but shall not include the design of structures or  
38 facilities with separate and self-contained purposes such  
39 as are ordinarily included in the practice of engineering  
40 or architecture; and shall not include the making of final  
41 land plats for official approval or recording: *Provided*,  
42 That nothing contained herein shall preclude a landscape  
43 architect from performing any of the services described  
44 in the foregoing provisions of this subsection in connec-  
45 tion with the settings, approaches or surroundings for  
46 buildings, structures or facilities.

**§30-22-3. License to practice landscape architecture required.**

1 On and after July one, one thousand nine hundred  
2 seventy-one, no person shall hold himself out to the public  
3 as a landscape architect unless and until he shall first  
4 obtain a license or temporary permit in accordance with  
5 the provisions of this article, which license or temporary  
6 permit remains unexpired, unsuspended and unrevoked.

**§30-22-4. Creation of board of landscape architects; members, terms, meetings, officers, oath and expenses; general provisions.**

1 (a) There is hereby created the West Virginia state  
2 board of landscape architects which shall be composed  
3 of three members appointed by the governor by and with  
4 the advice and consent of the Senate. Each member must  
5 be a resident of West Virginia and must be the holder of  
6 a license under the provisions of this article, or, in the  
7 case of the members first appointed, must be eligible for  
8 such a license.

9 (b) The members of the board shall be appointed for  
10 overlapping terms of three years each and until their  
11 respective successors have been appointed and have quali-  
12 fied, except for the original appointments. For the pur-

13 pose of original appointments, one member shall be ap-  
14 pointed for a term of three years and until his successor  
15 has been appointed and has qualified, one member shall  
16 be appointed for a term of two years and until his suc-  
17 cessor has been appointed and has qualified and one  
18 member shall be appointed for a term of one year and  
19 until his successor has been appointed and has qualified.  
20 Members may be reappointed for any number of terms.  
21 Before entering upon the performance of his duties, each  
22 member shall take and subscribe to the oath required by  
23 section five, article four of the constitution of this state.  
24 Vacancies shall be filled by appointment by the governor  
25 for the unexpired term of the member whose office shall  
26 be vacant and such appointment shall be made within  
27 sixty days of the occurrence of such vacancy. Any mem-  
28 ber may be removed by the governor in case of incom-  
29 petency, neglect of duty, gross immorality or malfeasance  
30 in office.

31 (c) The board shall elect from its membership a chair-  
32 man and secretary who shall serve at the will and plea-  
33 sure of the board. A majority of the members of the board  
34 shall constitute a quorum and meetings shall be held at  
35 the call of the chairman or upon the written request of  
36 two members at such time and place as designated in  
37 such call or request, and, in any event, the board shall  
38 meet at least once annually to conduct the examination  
39 hereinafter provided for and to transact such other busi-  
40 ness as may come before it. Members shall serve without  
41 compensation but may be reimbursed for all reasonable  
42 and necessary expenses actually incurred in the perform-  
43 ance of their duties, which expenses shall be paid in ac-  
44 cordance with the provisions of subsection (b), section  
45 five of this article.

**§30-22-5. Powers and duties of board; funds of board.**

1 (a) The board shall:

2 (1) Examine applicants and determine their eligi-  
3 bility for a license or temporary permit as a landscape  
4 architect;

5 (2) Prepare, conduct and grade an apt and proper  
6 written, oral or written and oral examination of appli-

7 cants for a license, to ascertain whether an applicant is  
8 qualified as to the theory and practice of landscape archi-  
9 tecture, and determine the satisfactory passing score on  
10 such examination;

11 (3) Promulgate reasonable rules and regulations im-  
12 plementing the provisions of this article and the powers  
13 and duties conferred upon the board hereby, all of which  
14 reasonable rules and regulations shall be promulgated in  
15 accordance with the provisions of article three, chapter  
16 twenty-nine-a of this code;

17 (4) Issue, renew, deny, suspend or revoke licenses  
18 and temporary permits of landscape architects in accord-  
19 ance with the provisions of this article and, in accord-  
20 ance with the administrative procedures hereinafter pro-  
21 vided, may review, affirm, reverse, vacate or modify  
22 its order with respect to any such denial, suspension or  
23 revocation;

24 (5) Investigate alleged violations of the provisions of  
25 this article, reasonable rules and regulations promulgated  
26 hereunder and orders and final decisions of the board  
27 and take appropriate disciplinary action against any  
28 licensee for the violation thereof or institute appropriate  
29 legal action for the enforcement of the provisions of this  
30 article, reasonable rules and regulations promulgated  
31 hereunder and orders and final decisions of the board or  
32 take such disciplinary action and institute such legal  
33 action;

34 (6) Obtain an office, secure such facilities and employ,  
35 direct, discharge and define the duties of full or part-  
36 time professional, clerical or other personnel to the extent  
37 necessary to effectuate the provisions of this article;

38 (7) Keep accurate and complete records of its pro-  
39 ceedings, certify the same as may be appropriate, and  
40 prepare, from time to time, a list showing the names and  
41 addresses of all licensees;

42 (8) Whenever it deems it appropriate, confer with the  
43 attorney general or his assistants in connection with all  
44 legal matters and questions; and

45 (9) Take such other action as may be reasonably neces-  
46 sary or appropriate to effectuate the provisions of this  
47 article.

48 (b) All moneys paid to the board shall be accepted by  
49 a person designated by the board and deposited by him  
50 with the treasurer of the state and credited to an account  
51 to be known as the "board of landscape architects fund."  
52 The reimbursement of all reasonable and necessary ex-  
53 penses actually incurred by the members of the board  
54 and all other costs and expenses incurred by the board in  
55 the administration of this article shall be paid from such  
56 fund, and no part of the state's general revenue fund  
57 shall be expended for this purpose.

**§30-22-6. Qualifications of applicants; exceptions; applica-  
tions; fee.**

1 (a) To be eligible for a license as a landscape archi-  
2 tect, the applicant must:

3 (1) Be at least twenty-one years of age;

4 (2) Be of good moral character;

5 (3) Not, within the next preceding twelve months,  
6 have had his application for a license or a certificate or  
7 for registration to engage in the practice of landscape  
8 architecture or as a landscape architect refused, sus-  
9 pended or revoked in any state of the United States;

10 (4) Either (i) be a holder of an undergraduate degree  
11 or graduate degree in landscape architecture from an  
12 accredited institution of higher learning, with adequate  
13 course study at such institution in landscape architecture,  
14 the adequacy of any such course study to be determined  
15 by the board; and when the degree held is an under-  
16 graduate degree, have had at least two years' experience  
17 subsequent to receiving said degree in the practice of  
18 landscape architecture under the supervision of a land-  
19 scape architect or a person having qualifications accept-  
20 able to the board and similar to the qualifications of a  
21 landscape architect, and, when the degree held is a grad-  
22 uate degree, have had at least one year's experience sub-  
23 sequent to receiving said graduate degree in the practice  
24 of landscape architecture under the supervision of a land-

25 scape architect or a person having qualifications accept-  
26 able to the board and similar to the qualifications of a  
27 landscape architect; or (ii) have had at least ten years'  
28 experience in the practice of landscape architecture, of  
29 a grade and character to qualify him to assume responsi-  
30 bility for the work involved in the practice of landscape  
31 architecture, at least six years of which shall have been  
32 under the supervision of a landscape architect or a person  
33 having qualifications acceptable to the board and similar  
34 to the qualifications of a landscape architect; and

35 (5) Have passed the examination prescribed by the  
36 board, which examination shall cover the theory and  
37 practice of landscape architecture.

38 (b) The following persons shall be eligible for a li-  
39 cense as a landscape architect without examination:

40 (1) Any person who was once licensed under the pro-  
41 visions of this article, who temporarily abandoned the  
42 practice of landscape architecture and did not renew his  
43 license, provided he satisfies the board that he remains  
44 qualified to engage in the practice of landscape archi-  
45 tecture; and

46 (2) Any person who holds a license or certificate or  
47 is registered to engage in the practice of landscape ar-  
48 chitecture issued by or effected in any other state, the  
49 requirements for which license, certificate or registration  
50 are found by the board to be at least as great as those  
51 provided in this article.

52 (c) Any person meeting the qualifications set forth  
53 in subdivisions (1), (2) and (3), subsection (a) of  
54 this section, who submits evidence satisfactory to the  
55 board that for at least one year prior to the effective  
56 date of this article he regularly engaged in the prac-  
57 tice of landscape architecture as a principal livelihood  
58 shall be entitled to be licensed under the provisions of  
59 this article, without meeting the qualifications set forth  
60 in subdivisions (4) and (5), subsection (a) of this sec-  
61 tion, if he files such application with the board within  
62 six months from and after the effective date of this  
63 article.

64 (d) Any applicant for any such license shall submit  
65 an application therefor at such time (subject to the time  
66 limitation set forth in subsection (c) of this section), in  
67 such manner, on such forms and containing such infor-  
68 mation as the board may from time to time by reason-  
69 able rule and regulation prescribe, and pay to the board  
70 a license fee of forty dollars, which fee shall be returned  
71 to the applicant if he is denied a license.

**§30-22-7. Issuance of license; renewal of license; renewal fee;  
duplicate license; display of license; seal.**

1 Whenever the board finds that an applicant meets all  
2 of the requirements of this article for a license as a land-  
3 scape architect, it shall forthwith issue to him such license;  
4 and otherwise the board shall deny the same. Licenses  
5 shall expire on June thirty of each year, but shall be  
6 renewable each year without examination upon appli-  
7 cation for renewal on a form prescribed by and filed  
8 with the board and payment to the board of an annual  
9 renewal fee in such amount as may be prescribed by  
10 the board not to exceed fifty dollars: *Provided*, That  
11 if application for renewal is filed with the board after  
12 June thirty of the year of expiration, an additional re-  
13 newal fee of fifteen dollars must accompany such appli-  
14 cation: *Provided, however*, That the board may deny an  
15 application for renewal for any reason which would  
16 justify the denial of an original application for a license.  
17 A duplicate license may be obtained upon the payment  
18 to the board of a fee of ten dollars. The board shall pre-  
19 scribe the form of licenses and each license shall be con-  
20 spicuously displayed by the licensee at his principal place  
21 of practice.

22 Every person licensed under the provisions of this  
23 article as a landscape architect shall have a seal, ap-  
24 proved by the board, which shall contain the name of  
25 the licensee and the words "Professional Landscape Archi-  
26 tect, State of West Virginia" and such other words or  
27 figures as the board may prescribe. All working drawings  
28 and specifications, prepared by such landscape architect or  
29 under the supervision of such landscape architect, shall

30 have such seal affixed thereto: *Provided further*, That  
31 nothing contained in this article shall be construed to  
32 permit the seal of a landscape architect to serve as a  
33 substitute for the seal of an architect, an engineer or a  
34 land surveyor whenever the seal of such architect, engi-  
35 neer or land surveyor is required by law.

**§30-22-8. Temporary permits.**

1 (a) Upon proper application the board may issue,  
2 without examination, a temporary permit as a landscape  
3 architect, pending examination, to an applicant who meets  
4 the qualifications of subdivisions (1), (2), (3) and (4),  
5 subsection (a), section six of this article, which tempo-  
6 rary permit shall expire thirty days after the board gives  
7 written notice of the results of the examination held  
8 next following the issuance of such temporary permit,  
9 and such permit may not be renewed nor another thereof  
10 issued to the same person.

11 (b) The fee for such temporary permit shall be fifteen  
12 dollars.

**§30-22-9. Partnerships and corporations.**

1 Nothing contained in this article shall be deemed to  
2 preclude a person licensed under the provisions of this  
3 article from forming a partnership or corporation with per-  
4 sons who are not so licensed if the name of the person so  
5 licensed shall appear as the landscape architect on all  
6 plans, drawings, specifications, reports or other instru-  
7 ments of service rendered or submitted by such partner-  
8 ship or corporation. In no case shall the other members  
9 of such partnership or the others having an interest in or  
10 connected with such corporation be designated or de-  
11 scribed as landscape architects. A landscape architect  
12 who forms a partnership or corporation with a person  
13 or persons who are not landscape architects shall notify  
14 the board in writing of such fact within thirty days  
15 thereof, giving the board such information as may be re-  
16 quired by the board. Upon dissolution of any such part-  
17 nership or corporation, the landscape architect shall notify  
18 the board thereof, in writing, within thirty days after  
19 such dissolution.

**§30-22-10. Exemptions from article.**

1 Nothing contained in this article shall under any cir-  
2 cumstances whatever be construed as in any way affecting  
3 the laws relating to the practice, licensing, certification  
4 or registration of architects, engineers, land surveyors and  
5 foresters.

6 An architect, engineer, land surveyor or forester  
7 licensed, certified or registered to practice his profession  
8 or occupation in West Virginia under the provisions of  
9 any law to regulate the practice of such profession or  
10 occupation is exempt from licensing under the provisions  
11 of this article, and nothing contained in this article shall  
12 under any circumstances whatever be construed as in  
13 any way precluding an architect, engineer or forester  
14 from performing any of the services included within the  
15 definition of the term landscape architecture in section  
16 two of this article when incidental to the performance  
17 of his normal practice as an architect, engineer or forester  
18 or as requiring any such person to be licensed under the  
19 provisions of this article.

20 Community, city or other municipal, urban and regional  
21 planners and urban designers shall not be required to be  
22 licensed under the provisions of this article.

23 Every agriculturist, horticulturist, landscape contractor,  
24 nurseryman, gardener, landscape gardener, garden or  
25 lawn caretaker, and grader or cultivator of land is exempt  
26 from licensing under the provisions of this article.

27 Nothing contained in this article shall under any cir-  
28 cumstances whatever be construed as in any way pre-  
29 cluding any person from making any landscape plans,  
30 drawings or specifications for any property owned, leased  
31 or rented by him or, without compensation therefor, for  
32 the property of any other person, or as requiring such  
33 person to be licensed under the provisions of this article.

34 None of the persons referred to in this section shall,  
35 however, use the title, "Landscape Architect," without  
36 obtaining a license under the provisions of this article.



**§30-22-11. Suspension or revocation of license or temporary permit.**

1 (a) The board may at any time upon its own motion,  
2 and shall upon the verified written complaint of any per-  
3 son filed with the board within two years from and after  
4 the act or omission complained of, conduct an investiga-  
5 tion to determine whether there are any grounds for the  
6 suspension or revocation of a license or temporary permit  
7 issued under the provisions of this article.

8 (b) The board shall suspend for a period not exceed-  
9 ing one year or revoke any license or shall suspend or  
10 revoke any temporary permit when it finds the holder  
11 thereof has:

12 (1) Obtained a license or temporary permit by means  
13 of fraud or deceit or false or forged evidence;

14 (2) Been incompetent, grossly negligent, or guilty of  
15 other malpractice as defined by the board by reasonable  
16 rules and regulations or has been guilty of any fraud or  
17 deceit as defined by the board by reasonable rules and  
18 regulations;

19 (3) Affixed his seal to any plans, drawings, specifica-  
20 tions, reports or other instruments of service which were  
21 not prepared by him or under his immediate and respon-  
22 sible supervision, or permitted his name to be used for  
23 the purpose of assisting any person to evade the provisions  
24 of this article; or

25 (4) Failed or refused to comply with the provisions  
26 of this article or any reasonable rule and regulation  
27 promulgated by the board hereunder or any order or final  
28 decision of the board.

29 (c) The board shall also suspend for a period not ex-  
30 ceeding one year or revoke any license or shall suspend  
31 or revoke any temporary permit if it finds the existence  
32 of any ground which would justify the denial of an appli-  
33 cation for such license or temporary permit if application  
34 were then being made for it.

**§30-22-12. Procedures for hearing.**

1 (a) Whenever the board shall deny an application for  
2 any original or renewal license or deny an application for

3 a temporary permit or shall suspend or revoke any  
4 license or temporary permit, it shall make and enter an  
5 order to that effect and serve a copy thereof on the ap-  
6 plicant or licensee, as the case may be, by certified mail,  
7 return receipt requested. Such order shall state the  
8 grounds for the action taken and shall require that any  
9 license or temporary permit suspended or revoked thereby  
10 shall be returned to the board by the holder within  
11 twenty days after receipt of said copy of said order.

12 (b) Any person adversely affected by any such order  
13 shall be entitled to a hearing thereon (as to all issues not  
14 excluded from the definition of a "contested case" as  
15 set forth in article one, chapter twenty-nine-a of this  
16 code) if, within twenty days after receipt of a copy there-  
17 of, he files with the board a written demand for such  
18 hearing. A demand for hearing shall operate automatical-  
19 ly to stay or suspend the execution of any order suspend-  
20 ing or revoking a license or temporary permit or deny-  
21 ing an application for a renewal license. The board may  
22 require the person demanding such hearing to give rea-  
23 sonable security for the costs thereof and if such person  
24 does not substantially prevail at such hearing such costs  
25 shall be assessed against him and may be collected by an  
26 action at law or other proper remedy.

27 (c) Upon receipt of a written demand for such hear-  
28 ing, the board shall set a time and place therefor not  
29 less than ten and not more than thirty days thereafter.  
30 Any scheduled hearing may be continued by the board  
31 upon its own motion or for good cause shown by the  
32 person demanding the hearing.

33 (d) All of the pertinent provisions of article five, chap-  
34 ter twenty-nine-a of this code shall apply to and govern  
35 the hearing and the administrative procedures in con-  
36 nection with and following such hearing, with like effect  
37 as if the provisions of said article five were set forth in  
38 this subsection.

39 (e) Any such hearing shall be conducted by a quorum  
40 of the board. For the purpose of conducting any such  
41 hearing any member of the board shall have the power  
42 and authority to issue subpoenas and subpoenas duces

43 tecum which shall be issued and served within the time,  
44 for the fees and shall be enforced, as specified in sec-  
45 tion one, article five of said chapter twenty-nine-a, and  
46 all of the said section one provisions dealing with sub-  
47 poenas and subpoenas duces tecum shall apply to sub-  
48 poenas and subpoenas duces tecum issued for the pur-  
49 pose of a hearing hereunder.

50 (f) At any such hearing the person who demanded the  
51 same may represent himself or be represented by an  
52 attorney at law admitted to practice before any circuit  
53 court of this state. Upon request by the board, it shall  
54 be represented at any such hearing by the attorney  
55 general or his assistants without additional compensation.

56 (g) After any such hearing and consideration of all  
57 of the testimony, evidence and record in the case, the  
58 board shall render its decision in writing. The written  
59 decision of the board shall be accompanied by findings  
60 of fact and conclusions of law as specified in section three,  
61 article five, chapter twenty-nine-a of this code, and a  
62 copy of such decision and accompanying findings and con-  
63 clusions shall be served by certified mail, return receipt  
64 requested, upon the person demanding such hearing, and  
65 his attorney of record, if any.

66 (h) The decision of the board shall be final unless re-  
67 versed, vacated or modified upon judicial review thereof  
68 in accordance with the provisions of section thirteen of  
69 this article.

**§30-22-13. Judicial review; appeal to supreme court of appeals;  
legal representation for board.**

1 Any person adversely affected by a decision of the board  
2 rendered after a hearing held in accordance with the  
3 provisions of section twelve of this article shall be en-  
4 titled to judicial review thereof. All of the pertinent pro-  
5 visions of section four, article five, chapter twenty-nine-a  
6 of this code shall apply to and govern such judicial re-  
7 view with like effect as if the provisions of said section  
8 four were set forth in this section.

9 The judgment of the circuit court shall be final unless  
10 reversed, vacated or modified on appeal to the supreme

11 court of appeals in accordance with the provisions of sec-  
12 tion one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal  
14 proceedings in any circuit court and the supreme court  
15 of appeals shall be provided by the attorney general or  
16 his assistants and in any circuit court by the prosecuting  
17 attorney of the county as well, all without additional  
18 compensation.

**§30-22-14. Issuance of new license after revocation.**

1 After revocation of a license to engage in the practice  
2 of landscape architecture, the board may not issue a new  
3 license to the person whose license was revoked, without  
4 an examination. Such person may file an application with  
5 the board for an examination and new license, and the  
6 board may, in its sole discretion, issue a new license to  
7 such person.

**§30-22-15. Penalties.**

1 Any person who violates any of the provisions of this  
2 article, any of the reasonable rules and regulations  
3 promulgated hereunder or any order or any final decision  
4 of the board shall be guilty of a misdemeanor, and, upon  
5 conviction thereof, shall be fined not less than one hun-  
6 dred and not more than five hundred dollars, or im-  
7 prisoned in the county jail not more than one year, or  
8 both fined and imprisoned.

**§30-22-16. Actions to enjoin violations.**

1 Whenever it appears to the board that any person has  
2 been or is violating or is about to violate any provision  
3 of this article, any reasonable rule and regulation promul-  
4 gated hereunder or any order or final decision of the  
5 board, the board may apply in the name of the state to  
6 the circuit court of the county in which the violation or  
7 violations or any part thereof has occurred, is occurring  
8 or is about to occur, or the judge thereof in vacation, for  
9 an injunction against such person and any other persons  
10 who have been, are or are about to be, involved in any  
11 practices, acts or omissions, so in violation, enjoining such  
12 person or persons from any such violation or violations.  
13 Such application may be made and prosecuted to conclu-  
14 sion whether or not any such violation or violations have

15 resulted or shall result in prosecution or conviction under  
16 the provisions of section fifteen of this article.

17 Upon application by the board, the circuit courts of  
18 this state may by mandatory or prohibitory injunction  
19 compel compliance with the provisions of this article, the  
20 reasonable rules and regulations promulgated hereunder  
21 and all orders and final decisions of the board. The court  
22 may issue a temporary injunction in any case pending  
23 a decision on the merits of any application filed.

24 The judgment of the circuit court upon any application  
25 permitted by the provisions of this section shall be final  
26 unless reversed, vacated or modified on appeal to the  
27 supreme court of appeals. Any such appeal shall be  
28 sought in the manner and within the time provided by  
29 law for appeals from circuit courts in other civil actions.

30 The board shall be represented in all such proceedings  
31 by the attorney general or his assistants and in such  
32 proceedings in the circuit court by the prosecuting at-  
33 torneys of the several counties as well, all without addi-  
34 tional compensation.

#### §30-22-17. Severability.

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held unconstitutional  
3 or invalid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of the article, and to  
5 this end the provisions of this article are declared to be  
6 severable.

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## CHAPTER 126

(House Bill No. 1129—By Mr. Neely)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact sections two and three, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public bond indebtedness, industrial development bond act and the financing of pollution abatement facilities.

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

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

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT BOND ACT.**

§13-2C-2. Legislative findings.

§13-2C-3. Definitions.

**§13-2C-2. Legislative findings.**

1 It is hereby determined and declared as a matter  
2 of legislative finding (a) that critical conditions of un-  
3 employment exist in many areas of this state; (b) that  
4 lack of employment and business opportunities have  
5 resulted in thousands of people leaving this state to  
6 find employment elsewhere, and this exodus has ad-  
7 versely affected the tax base of counties and municipali-  
8 ties 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;  
13 (d) that the present and prospective health, happiness,  
14 safety, right of gainful employment, and general wel-  
15 fare of the citizens of each of the counties and muni-  
16 cipalities of this state will be promoted by the establish-  
17 ment of industrial plants as herein provided; (e) that  
18 the means and measures herein authorized for the pro-  
19 motion of industrial plants are as a matter of public  
20 policy, for the public purpose of the several counties,  
21 municipalities and the state of West Virginia; and (f)  
22 that the abatement or control of pollution of the envi-  
23 ronment of the state is necessary to protect the health  
24 and welfare of the citizens of the state, to protect the  
25 natural resources of the state and to encourage the  
26 economic development of the state.

**§13-2C-3. Definitions.**

1 The following terms, whenever used in this article,  
2 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 pollution" shall mean any  
12 gaseous, liquid, or solid waste substances or adverse  
13 thermal effects or combinations thereof resulting from  
14 any process of industry, manufacturing, trade or busi-  
15 ness, or from the development, processing, or recovery  
16 of any natural resources which pollute the land, water  
17 or air of the state.

18 (e) The term "industrial plant" shall mean any site,  
19 structure, building, fixtures, machinery, equipment and  
20 related facilities including both real and personal prop-  
21 erty or any combination thereof which shall be suitable  
22 as a factory, mill, shop, processing, assembly, manufac-  
23 turing, fabricating plant, research and development  
24 facility or pollution abatement or control facility or  
25 facilities, including the reconstruction, modernization or  
26 modification of existing industrial plants, for the abate-  
27 ment or control of industrial pollution: *Provided*, That  
28 except to the extent provided above, the term indus-  
29 trial plant shall not include facilities designed for sale  
30 or distribution to the public of electricity, gas, water,  
31 telephone or other services commonly classified as "pub-  
32 lic utilities."

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## CHAPTER 127

(Com. Sub. for House Bill No. 647—Originating in the House  
Committee on the Judiciary)

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{Passed February 10, 1971; in effect from passage. Approved by the Governor.}

AN ACT to amend and reenact sections two, seventeen, twenty-  
two and twenty-nine, article ten, chapter five of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement act generally and particularly to those provisions of said act concerning or involving members or former members of the Legislature; redefining the term "final average salary" as used in said act; establishing procedures for determining average compensation of members or former members of the Legislature; and relating to the membership of the public employees retirement system, membership status thereunder, retirement annuities under said system, the increase of certain of said retirement annuities from time to time, the members' deposit fund of said system and the contributions to be made by members to said fund generally and particularly with respect to members of the Legislature.

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

That sections two, seventeen, twenty-two and twenty-nine, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

§5-10-2. Definitions.

§5-10-17. Retirement system membership.

§5-10-22. Retirement annuity.

§5-10-29. Members' deposit fund; members' contributions.

**§5-10-2. Definitions.**

1 The following words and phrases as used in this article,  
2 unless a different meaning is clearly indicated by the  
3 context, shall have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West  
6 Virginia public employees retirement system created  
7 and established by this article;

8 (3) "Board of trustees" or "board" means the board  
9 of trustees of the West Virginia public employees re-  
10 tirement system;

11 (4) "Political subdivision" means the state of West  
12 Virginia, a county, city or town in the state; a school  
13 corporation or corporate unit; any separate corporation  
14 or instrumentality established by one or more counties,



15 cities or towns, as permitted by law; any corporation  
16 or instrumentality supported in most part by counties,  
17 cities or towns; any public corporation charged by law  
18 with the performance of a governmental function and  
19 whose jurisdiction is coextensive with one or more  
20 counties, cities or towns, any agency or organization  
21 established by, or approved by the department of men-  
22 tal health for the provision of community health or  
23 mental retardation services, and which is supported in  
24 part by state, county or municipal funds;

25 (5) "Participating public employer" means the state  
26 of West Virginia, any board, commission, department,  
27 institution or spending unit, and shall include any  
28 agency created by rule of the supreme court of appeals  
29 having full-time employees, which for the purposes of  
30 this article shall be deemed a department of state gov-  
31 ernment; and any political subdivision in the state which  
32 has elected to cover its employees, as defined in this  
33 article, under the West Virginia public employees re-  
34 tirement system;

35 (6) "Employee" means any person who serves reg-  
36 ularly as an officer or employee, full time, on a salary  
37 basis, whose tenure is not restricted as to temporary or  
38 provisional appointment, in the service of, and whose  
39 compensation is payable in whole or in part by any  
40 political subdivision, or an officer or employee whose  
41 compensation is calculated on a daily basis and paid  
42 monthly or on completion of assignment, including  
43 technicians and other personnel employed by the West  
44 Virginia national guard whose compensation in whole  
45 or in part is paid by the federal government: *Provided*,  
46 That members of the state Legislature, the clerk of the  
47 House of Delegates, the clerk of the state Senate, mem-  
48 bers of the legislative body of any political subdivision  
49 and judges of the state court of claims shall be con-  
50 sidered to be employees, anything contained herein to  
51 the contrary notwithstanding. In any case of doubt as  
52 to who is an employee within the meaning of this ar-  
53 ticle the board of trustees shall decide the question;

54 (7) "Member" means any person who is included in  
55 the membership of the retirement system;

56 (8) "Retirant" means any member who retires with  
57 an annuity payable by the retirement system;

58 (9) "Beneficiary" means any person, except a re-  
59 tirant, who is entitled to, or will be entitled to, an an-  
60 nuity or other benefit payable by the retirement system;

61 (10) "Service" means personal service rendered to  
62 a participating public employer by an employee, as de-  
63 fined in this article, of a participating public employer;

64 (11) "Prior service" means service rendered prior to  
65 July one, one thousand nine hundred sixty-one, to the  
66 extent credited a member as provided in this article;

67 (12) "Contributing service" means service rendered  
68 by a member from and after the date of his entrance in  
69 the retirement system, to the extent credited him as  
70 provided in this article;

71 (13) "Credited service" means the sum of a mem-  
72 ber's prior service credit and contributing service credit  
73 standing to his credit as provided in this article;

74 (14) "Compensation" means the remuneration paid  
75 a member by a participating public employer for per-  
76 sonal services rendered by him to the participating  
77 public employer. In the event a member's remunera-  
78 tion is not all paid in money, his participating public  
79 employer shall fix the value of the portion of his re-  
80 muneration which is not paid in money;

81 (15) "Final average salary" means either (a) the  
82 average of the highest annual compensation received  
83 by a member (including a member of the Legislature  
84 who participates in the retirement system in the year  
85 one thousand nine hundred seventy-one or thereafter)  
86 during any period of three consecutive years of his  
87 credited service contained within his ten years of cred-  
88 ited service immediately preceding the date his em-  
89 ployment with a participating public employer last  
90 terminated, or (b) if he has less than five years of  
91 credited service, the average of the annual rate of com-  
92 pensation received by him during his total years of  
93 credited service; and in determining the annual com-  
94 pensation, under either (a) or (b) of this subdivision  
95 (15), of a member of the Legislature who participates

96 in the retirement system as a member of the Legisla-  
97 ture in the year one thousand nine hundred seventy-  
98 one or in any year thereafter, his actual legislative  
99 compensation (the total of all compensation paid under  
100 sections two, three, four and five, article two-a, chapter  
101 four of this code) in the year one thousand nine hun-  
102 dred seventy-one or in any year thereafter, plus any  
103 other compensation he receives in any such year from  
104 any other participating public employer including the  
105 state of West Virginia, without any multiple in excess  
106 of one times his actual legislative compensation as afore-  
107 said and other compensation, shall be used: *Provided*,  
108 That "final average salary" for any former member of  
109 the Legislature or for any member of the Legislature  
110 in the year one thousand nine hundred seventy-one  
111 who, in either event, was a member of the Legislature  
112 on November thirty, one thousand nine hundred sixty-  
113 eight, or November thirty, one thousand nine hundred  
114 sixty-nine, or November thirty, one thousand nine hun-  
115 dred seventy, or on November thirty in any one or  
116 more of said three years, and who participated in the  
117 retirement system as a member of the Legislature in  
118 any one or more of such years of one thousand nine  
119 hundred sixty-eight, one thousand nine hundred sixty-  
120 nine or one thousand nine hundred seventy, means (i)  
121 either [notwithstanding the provisions of this sub-  
122 division (15) preceding this proviso] one thousand five  
123 hundred dollars multiplied by eight, plus the highest  
124 other compensation such former member or member  
125 received in any one of said three years from any other  
126 participating public employer including the state of  
127 West Virginia, or (ii) "final average salary" determined  
128 in accordance with (a) or (b) of this subdivision (15),  
129 whichever computation shall produce the higher final  
130 average salary [and in determining the annual com-  
131 pensation under (ii) of this proviso, the legislative  
132 compensation of any such former member shall be com-  
133 puted on the basis of one thousand five hundred dollars  
134 multiplied by eight, and the legislative compensation  
135 of any such member shall be computed on the basis set  
136 forth in the provisions of this subdivision (15) im-

137 mediatey preceding this proviso or on the basis of one  
138 thousand five hundred dollars multiplied by eight, which-  
139 ever computation as to such member shall produce the  
140 higher annual compensation];

141 (16) "Accumulated contributions" means the sum of  
142 all amounts deducted from the compensations of a  
143 member and credited to his individual account in the  
144 members' deposit fund, together with regular interest  
145 thereon;

146 (17) "Regular interest" means such rate or rates  
147 of interest per annum, compounded annually, as the  
148 board of trustees shall from time to time adopt;

149 (18) "Annuity" means an annual amount payable  
150 by the retirement system throughout the life of a per-  
151 son. All annuities shall be paid in equal monthly in-  
152 stallments, using the upper cent for any fraction of a cent;

153 (19) "Annuity reserve" means the present value of  
154 all payments to be made to a retirant or beneficiary of  
155 a retirant on account of any annuity, computed upon  
156 the basis of such mortality and other tables of experience,  
157 and regular interest, as the board of trustees shall from  
158 time to time adopt;

159 (20) "Retirement" means a member's withdrawal  
160 from the employ of a participating public employer with  
161 an annuity payable by the retirement system;

162 (21) "Actuarial equivalent" means a benefit of equal  
163 value computed upon the basis of such mortality table  
164 and regular interest as the board of trustees shall from  
165 time to time adopt; and

166 (22) The masculine gender shall include the feminine  
167 gender, and words of the singular number with respect  
168 to persons shall include the plural number, and vice  
169 versa.

#### §5-10-17. Retirement system membership.

1 The membership of the retirement system shall con-  
2 sist of the following persons:

3 (a) All employees, as defined in section two of this  
4 article, who are in the employ of a political subdivision  
5 the day preceding the date it becomes a participating

6 public employer and who continue in the employ of the  
7 said participating public employer on or after the said  
8 date shall become members of the retirement system;  
9 and all persons who become employees of a participating  
10 public employer on or after the said date shall thereupon  
11 become members of the system; except as provided in  
12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall  
14 not include any person who is a member of, or who has  
15 been retired by, the state teachers' retirement system,  
16 the judges' retirement system, the retirement system of  
17 the department of public safety, or any municipal retire-  
18 ment system for either, or both, policemen or firemen;  
19 and the West Virginia department of employment se-  
20 curity, by the commissioner of such department, may  
21 elect whether its employees will accept coverage under  
22 this article or be covered under the authorization of a  
23 separate enactment: *Provided*, That such exclusions of  
24 membership shall not apply to any member of the state  
25 Legislature, the clerk of the House of Delegates, the  
26 clerk of the state Senate or to any member of the legis-  
27 lative body of any political subdivision provided he once  
28 becomes a contributing member of the retirement sys-  
29 tem.

30 (c) Any member of the state Legislature, the clerk  
31 of the House of Delegates, the clerk of the state Senate  
32 or any member of the legislative body of any other politi-  
33 cal subdivision shall become a member of the retirement  
34 system provided he notifies the retirement system in writ-  
35 ing of his intention to be a member of the system and  
36 files a membership enrollment form as the board of  
37 trustees shall prescribe, and each person, upon filing his  
38 written notice to participate in the retirement system,  
39 shall by said act authorize the clerk of the House of Dele-  
40 gates or the clerk of the state Senate or such person as  
41 the legislative body of any other political subdivision  
42 shall designate to deduct said member's contribution, as  
43 provided in subsection (b), section twenty-nine of this  
44 article, and after said deductions have been made from  
45 said member's compensation, such deductions shall be  
46 forwarded to the retirement system.

47 (d) Should any question arise regarding the mem-  
48 bership status of any employee, the board of trustees has  
49 the final power to decide the question.

**§5-10-22. Retirement annuity.**

1 Upon a member's retirement, as provided in this article,  
2 he shall receive a straight life annuity equal to one and  
3 five-tenths percent of his final average salary multiplied  
4 by the number of years, and fraction of a year, of his  
5 credited service in force at the time of his retirement:  
6 *Provided*, That after March one, one thousand nine hun-  
7 dred seventy, all members retired and all members  
8 retiring shall receive a straight life annuity equal to  
9 two percent of his final average salary multiplied by  
10 the number of years, and fraction of a year, of his  
11 credited service in force at the time of his retirement.  
12 In either event, upon his retirement he shall have the  
13 right to elect an option provided for in section twenty-  
14 four of this article. All annuity payments shall com-  
15 mence effective the first of the month following the  
16 month in which a member retires or a member dies  
17 leaving a beneficiary entitled to benefits and shall con-  
18 tinue to the end of the month in which said retirant  
19 or beneficiary dies, and said annuity payments shall not  
20 be prorated for any portion of a month in which a  
21 member retires or retirant or beneficiary dies.

22 The annuity of any member of the Legislature who  
23 participates in the retirement system as a member of  
24 the Legislature and who retires under this article or  
25 of any former member of the Legislature who has re-  
26 tired under this article (including any former member  
27 of the Legislature who has retired under this article  
28 and whose annuity was readjusted as of March one,  
29 one thousand nine hundred seventy, under the former  
30 provisions of this section) shall be increased from time  
31 to time during the period of his retirement when and  
32 if the legislative compensation paid under section two,  
33 article two-a, chapter four of this code to a member of  
34 the Legislature shall be increased to the point where  
35 a higher annuity would be payable to the retirant if  
36 he were retiring as of the effective date of the latest

37 increase in such legislative compensation, but on the  
38 basis of his years of credited service to the date of his  
39 actual retirement.

**§5-10-29. Members' deposit fund; members' contributions.**

1 (a) The members' deposit fund is hereby created.  
2 It shall be the fund in which shall be accumulated, at  
3 regular interest, the contributions deducted from the  
4 compensation of members, and from which refunds of  
5 accumulated contributions shall be paid and transfers  
6 made as provided in this section.

7 (b) The contributions of a member to the retirement  
8 system (including any member of the Legislature, ex-  
9 cept as otherwise provided in subsection (g) of this  
10 section) shall be a sum of not less than three and five-  
11 tenths percent of his annual compensations but not  
12 more than four and five-tenths percent of his annual  
13 compensations, as determined by the board of trustees.  
14 The said contributions shall be made notwithstanding  
15 that the minimum salary or wages provided by law for  
16 any member shall be thereby changed. Each member  
17 shall be deemed to consent and agree to the deductions  
18 made and provided for herein. Payment of a member's  
19 compensation less said deductions shall be a full and  
20 complete discharge and acquittance of all claims and  
21 demands whatsoever for services rendered by him to  
22 a participating public employer, except as to benefits  
23 provided by this article.

24 (c) The officer or officers responsible for making up  
25 the payrolls for payroll units of the state government  
26 and for each of the other participating public employers  
27 shall cause the contributions, provided for in subsec-  
28 tion (b) above, to be deducted from the compensations  
29 of each member in the employ of the participating public  
30 employer, on each and every payroll, for each and every  
31 payroll period, from the date the member enters the  
32 retirement system to the date his membership terminates.  
33 When deducted, each of said amounts shall be paid by  
34 the participating public employer to the retirement  
35 system; said payments to be made in such manner and  
36 form, and in such frequency, and shall be accompanied

37 by such supporting data, as the board of trustees shall  
38 from time to time prescribe. When paid to the retire-  
39 ment system, each of said amounts shall be credited  
40 to the members' deposit fund account of the member  
41 from whose compensations said contributions were de-  
42 ducted.

43 (d) In addition to the contributions deducted from  
44 the compensations of a member, as heretofore provided,  
45 a member shall deposit in the members' deposit fund,  
46 by a single contribution or by an increased rate of  
47 contribution as approved by the board of trustees, the  
48 amounts he may have withdrawn therefrom and not  
49 repaid thereto, together with regular interest from the  
50 date of withdrawal to the date of repayment. In no  
51 case shall a member be given credit for service rendered  
52 prior to the date he withdrew his contributions or ac-  
53 cumulated contributions, as the case may be, until he  
54 returns to the members' deposit fund all amounts due  
55 the said fund by him.

56 (e) Upon the retirement of a member, or if a sur-  
57 vivor annuity becomes payable on account of his death,  
58 in either event his accumulated contributions standing  
59 to his credit in the members' deposit fund shall be trans-  
60 ferred to the retirement reserve fund.

61 (f) In the event an employee's membership in the  
62 retirement system terminates and no annuity becomes  
63 or will become payable on his account, any accumulated  
64 contributions standing to his credit in the members'  
65 deposit fund, unclaimed by the said employee, or his  
66 legal representative, within three years from and after  
67 the date his membership terminated, shall be transferred  
68 to the income fund.

69 (g) Any member of the Legislature who is a member  
70 of the retirement system and with respect to whom  
71 the term "final average salary" includes a multiple of  
72 eight, pursuant to the provisions of subdivision (15),  
73 section two of this article, shall contribute to the retire-  
74 ment system on the basis of his legislative compensation  
75 the sum of five hundred forty dollars each year he par-  
76 ticipates in the retirement system as a member of the  
77 Legislature.



## CHAPTER 128

(Senate Bill No. 45—By Mr. Holliday and Mr. Sharpe)

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[Passed February 12, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one through eleven, inclusive, article one, chapter twenty-eight of said code, all relating to the commitment of youthful male offenders; forestry camps and other facilities for youthful offenders; lateral transfer of inmates and the authority of the state commissioner of public institutions.

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

That section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one through eleven, inclusive, article one, chapter twenty-eight of said code be amended and reenacted, all to read as follows:

**Chapter**

25. Commissioner of Public Institutions.

28. State Correctional and Penal Institutions.

**CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.**

**ARTICLE 4. FORESTRY CAMPS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.**

**§25-4-7. Physical and mental examination of offenders.**

1 Before the judge of any court of original jurisdiction  
2 or juvenile court can transfer a youthful offender to the  
3 custody of the commissioner of public institutions to  
4 be assigned to a forestry camp, such offender shall be  
5 given a complete medical examination by a doctor  
6 designated by the commissioner of public institutions,  
7 and the offender must be free of any communicable  
8 disease or other physical defects which would prohibit  
9 him from participating in the program of the forestry  
10 camp. In the event there is a question concerning the

11 mental status of an offender, he shall be given an exami-  
 12 nation by a competent psychiatrist designated by the  
 13 commissioner of public institutions to determine whether  
 14 he is fit to participate in the program of the forestry  
 15 camp.

16 Any offender who is found to have a communicable  
 17 disease, is feeble-minded, psychotic, mentally ill, or has  
 18 a history of homosexual activities, or arsonist tenden-  
 19 cies, shall not be eligible for assignment to a forestry  
 20 camp.

21 Nothing contained in this section shall prohibit the  
 22 free transfer of any male youth from one youth facility  
 23 to another youth facility in the manner provided in  
 24 article one, chapter twenty-eight of this code.

## CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

### ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

- §28-1-1. Care of youthful male offenders.
- §28-1-2. Commitment; age limits.
- §28-1-3. Commitment of boy convicted in state or federal court of crime punishable by imprisonment.
- §28-1-4. Conveyance of boys; expenses.
- §28-1-5. Rules and regulations.
- §28-1-6. Discharge or parole; arrest and return of paroled boys.
- §28-1-7. Transfer of boys to and from penitentiary.
- §28-1-8. Offenses relating to youth facilities; penalties; escape; arrest and return.
- §28-1-9. Payment by counties of cost of detention of boys—Reimbursement.
- §28-1-10. Same—Preparation of inmate lists for billing purposes; application of county funds in state treasury.
- §28-1-11. Same—Determination of payments due from counties; levy; compelling payment.

#### §28-1-1. Care of youthful male offenders.

1 The state commissioner of public institutions shall be  
 2 exclusively charged with the care, training and reforma-  
 3 tion of male youths of the state committed to his custody.  
 4 All state facilities and institutions for such purpose shall  
 5 be managed and controlled as prescribed in article one,  
 6 chapter twenty-five of this code.

#### §28-1-2. Commitment; age limits.

1 Any male youth between the ages of ten and eighteen  
 2 years shall be committed to the custody of the state  
 3 commissioner of public institutions:

4 (a) By any juvenile or domestic relations court of  
5 competent jurisdiction for any of the causes, and in the  
6 manner prescribed in article two, chapter forty-nine of  
7 the code of West Virginia, one thousand nine hundred  
8 thirty-one, as amended and reenacted by chapter one,  
9 acts of the Legislature of West Virginia, first extra-  
10 ordinary session, one thousand nine hundred thirty-six,  
11 pertaining to delinquent children.

12 (b) By any court of record of competent jurisdiction  
13 of this state or of the United States for the districts of  
14 West Virginia in the manner prescribed in the next  
15 succeeding section of this article: *Provided, however,* That  
16 any male youth who has been adjudged delinquent and  
17 placed on probation by a court of competent jurisdiction  
18 prior to his eighteenth birthday may be committed to the  
19 custody of the state commissioner of public institutions  
20 for any act or omission amounting to a violation of any  
21 condition of his probation which said act or omission  
22 occurred prior to the expiration of the period of his pro-  
23 bation and prior to the attainment of his twenty-first  
24 birthday.

25 But no youth shall be committed to such school as an  
26 inmate thereof, who is of unsound mind, or imbecilic, or  
27 idiotic, or epileptic, or afflicted with tuberculosis. Before  
28 committing a boy to the custody of the state commis-  
29 sioner of public institutions, the court committing him  
30 shall cause him to be examined by a full-time county  
31 health physician duly authorized to practice medicine  
32 in this state, or if there be no full-time county health  
33 physician, then by some physician duly authorized to  
34 practice medicine in this state designated by the juvenile  
35 court for that purpose, in order to ascertain whether such  
36 boy is sound in mind, or whether he is an imbecile, or an  
37 idiot, or afflicted with tuberculosis, epilepsy, syphilis,  
38 gonorrhea or any other infectious disease, and as to any  
39 other particulars deemed necessary by the juvenile court  
40 as may be prescribed in the rules and regulations of the  
41 state commissioner of public institutions.

42 In the event there is no full-time health officer in the  
43 county or if there be one and the county health depart-

44 ment is not adequately equipped or staffed to give the  
45 mental or physical examinations required in cases, in  
46 the opinion of the juvenile court, needing specialized  
47 diagnostic services, the juvenile court may order the child  
48 to receive such physical or mental examinations from a  
49 duly qualified physician designated by the juvenile court,  
50 and it shall be the duty of the county court and the  
51 county court shall pay for such examinations and services  
52 upon receipt of an itemized statement along with the  
53 written order and approval of the juvenile court. Such  
54 examination shall be made in private. The physician  
55 making such examination shall make out a statement  
56 respecting the particulars named in the form prescribed  
57 by the state health department and the state commis-  
58 sioner of public institutions, which certificate of the  
59 physician shall accompany the commitment. If it shall  
60 appear from such examination or otherwise that the boy  
61 is of unsound mind, or is imbecilic, or idiotic, or epileptic,  
62 or is afflicted with tuberculosis, epilepsy, syphilis, gonor-  
63 rhea or has any infectious disease, he shall not be com-  
64 mitted to the custody of the state commissioner of public  
65 institutions, except as hereinafter provided; and the state  
66 commissioner of public institutions shall not receive any  
67 boy into his custody unless the commitment is accom-  
68 panied by a certificate of health, signed by such physician,  
69 showing that he is not of unsound mind and is not an  
70 imbecile, or idiot, nor afflicted with tuberculosis, epilepsy,  
71 syphilis, gonorrhoea, or any other infectious disease. If,  
72 upon such examination, it shall appear that the boy is  
73 suffering with tuberculosis, or a venereal disease, in any  
74 stage, the judge committing such boy shall make an  
75 order committing him to the custody of the state com-  
76 missioner of public institutions, and shall make an addi-  
77 tional order directing that he first be transferred to one  
78 of the state hospitals for tuberculosis, in case he is found  
79 to have tuberculosis, and in case he is found to be infected  
80 with any venereal disease, then to the Fairmont emer-  
81 gency hospital or the Welch emergency hospital for  
82 observation, treatment and detention, pending such treat-  
83 ment until cured of such venereal disease or rendered  
84 completely noninfectious therefrom, after which time he

85 shall be transferred to the custody of the state com-  
86 missioner of public institutions and be kept as provided  
87 by law: *Provided, however,* That any such boy who is  
88 feeble-minded shall be sent to the Colin Anderson center,  
89 or if there is no room in the center, then to one of the  
90 state hospitals for the insane, and not to Fairmont emer-  
91 gency hospital or Welch emergency hospital. It shall  
92 be the duty of the superintendents of the hospitals at  
93 Fairmont and Welch to receive into said hospitals all  
94 boys who may be committed thereto as provided herein,  
95 and to detain, care for, and treat such boys until cured  
96 or rendered completely noninfectious, and as soon there-  
97 after as convenient arrange to transfer them to the  
98 custody of the state commissioner of public institutions,  
99 except as herein provided.

100 The said commissioner of public institutions shall pro-  
101 vide such suitable buildings or equipment at the said  
102 hospitals as may be necessary to carry out the provisions  
103 of this section including the expenses of transferring the  
104 boys and for their care and treatment at said hospitals.

105 It shall be the duty of the clerk of the committing  
106 court, upon the commitment of a boy who is infected  
107 with a venereal disease to the said hospitals, as provided  
108 herein, to notify the director of the bureau of venereal  
109 diseases of West Virginia of the fact, giving the name,  
110 age and address of the boy, and the disease from which  
111 he is suffering; and it shall be the duty of the superinten-  
112 dent of the hospital receiving such boy to notify the  
113 director when any boy is received and when he is trans-  
114 ferred to the custody of the state commissioner of public  
115 institutions.

116 In the case of boys found to be afflicted with venereal  
117 disease but who have been rendered noninfectious, but  
118 who have not by treatment as herein provided been  
119 completely cured, the further treatment of such boys  
120 shall be continued by a competent doctor at the facility  
121 wherein such boys are committed, following the direc-  
122 tions given by the superintendent of the Fairmont emer-  
123 gency hospital or the Welch emergency hospital; and the  
124 decision of the superintendent of Fairmont emergency

125 hospital or Welch emergency hospital that any boy is  
126 noninfectious and admissible to the custody of the state  
127 commissioner of public institutions may be questioned  
128 only by appeal to the state director of health of the state  
129 of West Virginia, who, in such a case, shall make due  
130 investigation and shall order such boy returned to the  
131 Fairmont emergency hospital or Welch emergency hos-  
132 pital for further treatment or order that such boy have  
133 his treatment continued at the facility to which he is  
134 committed by the state commissioner of public institu-  
135 tions; and in all such cases where treatment is given or  
136 continued at such facility, careful records shall be kept  
137 for each boy under treatment showing the dates of treat-  
138 ment and the progress of the case.

**§28-1-3. Commitment of boy convicted in state or federal court  
of crime punishable by imprisonment.**

1 Whenever any male youth under the age of eighteen  
2 years shall have been convicted in any court of record  
3 of this state of a felony, or of a misdemeanor punishable  
4 by imprisonment, the judge of such court, in his discre-  
5 tion, instead of sentencing such youth to be confined in  
6 the penitentiary or the county jail, may order him to be  
7 removed to and confined in the custody of the state com-  
8 missioner of public institutions, there to remain until he  
9 shall have attained the age of twenty-one years, unless  
10 sooner discharged or paroled by the state commissioner  
11 of public institutions. Any male youth, under eighteen  
12 years of age, convicted in any of the courts of the United  
13 States for the districts of West Virginia of any offense  
14 punishable by imprisonment, may also be received into  
15 the custody of the state commissioner of public institu-  
16 tions upon such regulations and terms as to his mainte-  
17 nance and support as may be prescribed by the state com-  
18 missioner of public institutions and assented to by the  
19 proper authorities of the United States.

20 The state commissioner of public institutions shall have  
21 the authority to receive any youthful offender com-  
22 manded to his custody into any facility under his control  
23 for the detention and rehabilitation of youthful offenders  
24 and may, from time to time as he deem proper, transfer

25 such youths from any such facility to any other such  
26 facility.

**§28-1-4. Conveyance of boys; expenses.**

1 As soon as practicable after a youth, on any account, is  
2 committed to the custody of the state commissioner of  
3 public institutions, the papers in the case shall be mailed  
4 to the superintendent of the receiving youth facility, and  
5 such youth shall remain in the custody of the court pro-  
6 nouncing such commitment until he be delivered to an  
7 officer of the receiving youth facility, who shall be sent  
8 without delay and duly authorized by the superintendent  
9 to conduct such youth by the most direct and convenient  
10 route to said facility; but no youth committed to any  
11 facility shall be lodged in any jail or lockup, if he be  
12 under the age of sixteen years. The superintendent of a  
13 facility shall, insofar as is consistent with the safe con-  
14 veyance of youths to the facility, cause as many youths  
15 as may be committed from the same or several counties  
16 to be conducted to the facility at the same time. The ex-  
17 pense incurred in conducting a youth to a youth facility,  
18 including transportation and other necessary traveling  
19 expenses of the youth and of his conductor, shall be paid  
20 by the county court out of the treasury of the county  
21 from which the youth was committed to the facility, and  
22 a written statement of such necessary expenditures, fully  
23 itemized and sworn to by the officer making such ex-  
24 penditures, and attested by the superintendent of the  
25 facility, when presented to any county court, shall be a  
26 bill against such court, to be paid to the receiving facility  
27 and credited to that fund of the facility from which  
28 the original expenditure was made; but when two or  
29 more youths shall be so conducted from more than one  
30 county, the necessary expenditure on the personal ac-  
31 count of the conductor shall be apportioned among the  
32 counties concerned in due proportion to the mileage  
33 traveled by the youths from their respective counties.

**§28-1-5. Rules and regulations.**

1 The state commissioner of public institutions shall have  
2 authority to make such rules and regulations for the

3 management and government of the facilities for youth-  
4 ful offenders under his control, and the instruction, dis-  
5 cipline, training, employment and disposition of the boys  
6 and their transportation to and from the various fa-  
7 cilities, not contrary to law, as the commissioner may  
8 deem proper.

**§28-1-6. Discharge or parole; arrest and return of paroled boys.**

1 The state commissioner of public institutions shall have  
2 authority, under such rules and regulations as the com-  
3 missioner may prescribe, to grant, on the recommen-  
4 dation of the superintendent, a discharge or parole to  
5 any inmate of any of the various facilities; but while  
6 such inmate is on parole, and until he is discharged  
7 according to law, he shall remain in the legal custody  
8 of the commissioner of public institutions and subject  
9 at any time to be returned to physical custody, if in the  
10 judgment of the commissioner the interests of such  
11 paroled inmate will best be served thereby. The written  
12 order of said commissioner, countersigned by the super-  
13 intendent, shall be sufficient warrant for any officer or  
14 person named therein to arrest and return to the facility  
15 the youth so paroled; and it shall be the duty of any  
16 such officer or person to arrest and return such youth  
17 to the facility. All actual expenses incurred in return-  
18 ing such youth to the facility shall be paid out of the  
19 funds appropriated for the maintenance of the facility.

**§28-1-7. Transfer of boys to and from penitentiary.**

1 In any case where a youth is committed to any youth  
2 facility for an offense punishable by confinement in the  
3 penitentiary, and it is found by the state commissioner  
4 of public institutions that the youth facility is unable  
5 to benefit such youth, and that his presence is a detri-  
6 ment or menace to other youths in the institution, or  
7 to the general good of the facility, he may be returned  
8 to the court by which he was committed to the facility,  
9 and such court shall thereupon pass such sentence upon  
10 him as to confinement in the penitentiary as may be  
11 proper in the premises, or as it might have passed had  
12 it not committed him as a youthful offender. The gov-



13 ernor shall have power, when, in the judgment of the  
14 warden of the penitentiary and of the superintendent  
15 of the facility, it is advisable, to remit the penalty of  
16 any offender under the age of eighteen years confined  
17 in the penitentiary to a commitment to a youth facility.

**§28-1-8. Offenses relating to youth facilities; penalties; escape; arrest and return.**

1 If any person shall entice or attempt to entice away  
2 from any youth facility any youth legally committed to  
3 the same, or shall aid or abet any youth to escape there-  
4 from, or shall harbor, conceal or aid or abet in harboring  
5 or concealing, any youth who shall have escaped there-  
6 from, or shall, without the permission of the superin-  
7 tendent, give or sell, or aid or abet any other person to  
8 give or sell, to any youth in the youth facility, whether  
9 on the premises of such institution or otherwise, any  
10 money, firearms, intoxicating drinks, tobacco, cigarettes,  
11 or other articles whatsoever, or shall in any way cause  
12 or influence, or attempt to cause or influence or aid or  
13 abet therein, any youth in the youth facility to violate  
14 any rule of the institution or to rebel against the gov-  
15 ernment of said facility in any particular, or shall receive  
16 by the hands of any such youth anything of value,  
17 whether belonging to the state or otherwise, such per-  
18 son shall be guilty of a misdemeanor, and, upon con-  
19 viction thereof, shall be fined not less than ten, nor more  
20 than one hundred dollars, or be confined not more than  
21 twelve months in the county jail, or, in the discretion  
22 of the court, both fined and imprisoned. The superin-  
23 tendent, or any of his assistants, or any one authorized  
24 in writing by him, or any sheriff, constable, policeman  
25 or other peace officer, shall have power, and it is hereby  
26 made his duty, to arrest any youth, when in his power  
27 to do so, who shall have escaped from said facility, and  
28 return him thereto.

**§28-1-9. Payment by counties of cost of detention of boys—  
Reimbursement.**

1 The county court of every county shall pay into the  
2 state treasury the sum of fifty dollars a year on account

3 of each youth from the county who shall be received  
4 into the custody of the state commissioner of public  
5 institutions on proper commitment. But in all cases of  
6 youths received into such custody, the parent, if of suf-  
7 ficient means, or the guardian, where the youth has suf-  
8 ficient estate, shall annually reimburse the county the  
9 amount paid into the state treasury, by virtue of this  
10 section, on account of such youth, and the county court  
11 of such county shall have the right to recover the same  
12 of such parent or guardian in any court of competent  
13 jurisdiction.

**§28-1-10. Same—Preparation of inmate lists for billing pur-  
poses; application of county funds in state treasury.**

1 The superintendent of each youth facility shall, before  
2 the tenth day of January in each year, prepare and certify  
3 to the auditor and the state commissioner of public in-  
4 stitutions each a list by counties of all such youths as  
5 are mentioned in the preceding section, who were kept  
6 in each facility during the preceding year or any part of  
7 it, showing as to each youth what part of the year he was  
8 so kept in the facility. On receiving such list the auditor  
9 shall charge to each county fifty dollars on account of  
10 each youth from such county who was kept in such  
11 facility during the preceding year, and a proportionate  
12 amount on account of each youth kept for any part of  
13 such year less than the whole. Any money in the treasury  
14 of the state to the credit of any such county, from what-  
15 ever source arising, and not appropriated to pay any  
16 other debt of the county to the state, shall be applied  
17 so far as necessary, to the payment of the sums so  
18 charged. If any sum in the treasury due the county  
19 shall not be sufficient to pay the whole amount so charged  
20 against it, such sum shall be applied as a credit on the  
21 amount charged, and the balance shall remain a charge  
22 against the county.

**§28-1-11. Same—Determination of payments due from coun-  
ties; levy; compelling payment.**

1 Within ten days after receiving such list the auditor  
2 shall certify to the county court of such county a list of

3 the youths from the county in such facility, stating the  
4 length of the term during the year each youth was in  
5 such facility, as shown by the list certified by the super-  
6 intendent, the amount due from the county on his ac-  
7 count, and the total amount due on account of all. He  
8 shall credit on such statement whatever amount has been  
9 applied as a payment thereon from any funds of the  
10 county in the treasury. Such statement shall be a receipt  
11 to the county for any amount so credited, and shall be  
12 a bill for any amount still appearing to be due from the  
13 county. Unless the bill shall have been paid by the ap-  
14 plication of funds of the county in the state treasury,  
15 the county court shall at its next levy term provide for  
16 the payment of the same, or such part as may not have  
17 been paid, and cause the amount to be paid into the state  
18 treasury. If the amount so due from any county be not  
19 paid in a reasonable time after such levy term, the auditor  
20 may, in the name of the state, apply to the circuit court  
21 of the county for a mandamus to require the county  
22 court to provide for and to pay for the same, or he may  
23 proceed in the name of the state by any other appropriate  
24 remedy to recover the same.

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## CHAPTER 129

(Com. Sub. for Senate Bill No. 379—Originating in the Senate  
Committee on Finance)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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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 the organization of companies and platoons of the department of public safety, the training of members and the salaries and bonds of members.

*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.**

**§15-2-3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.**

1 The superintendent shall create, appoint and equip a  
2 department of public safety, which shall, in addition to  
3 the personnel provided for in section two of this article,  
4 consist of four companies or platoons. They shall be  
5 designated as companies "A", "B", "C" and "D". Each  
6 company or platoon shall be composed of one captain,  
7 one lieutenant, one first sergeant, seven sergeants, not  
8 more than seventeen corporals and such number of  
9 troopers and troopers first class as the superintendent  
10 may decide best, but such number of troopers and troop-  
11 ers first class in any company or platoon shall not at  
12 any time be less than twenty-five.

13 The superintendent shall provide adequate facilities  
14 for the training of all members of the department and  
15 shall prescribe a basic training course for newly enlisted  
16 members. He shall also provide advanced or in-service  
17 training from time to time for all members of the de-  
18 partment. The superintendent shall hold training classes  
19 for other peace officers in the state without cost to such  
20 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 twelve  
25 thousand two hundred forty dollars; the major shall  
26 receive an annual salary of ten thousand nine hundred  
27 ninety-two dollars; captains shall each receive an annual  
28 salary of nine thousand eight hundred forty dollars; lieu-  
29 tenants shall each receive an annual salary of nine thou-  
30 sand two hundred eighty-eight dollars; the master ser-  
31 geants and first sergeants shall each receive an annual  
32 salary of eight thousand six hundred seventy-six dollars;

33 sergeants shall each receive an annual salary of eight  
34 thousand four hundred dollars; corporals shall each re-  
35 ceive an annual salary of eight thousand twenty-eight  
36 dollars; troopers first class shall receive an annual sal-  
37 ary of seven thousand seven hundred sixty-four dollars;  
38 and each newly enlisted trooper shall receive a salary  
39 of five hundred thirty-four dollars during the period of  
40 his basic training, and upon the satisfactory completion  
41 of such training and assignment to active duty each  
42 trooper shall receive, during the remainder of his first  
43 year's service, a salary of five hundred ninety-eight dol-  
44 lars monthly. During the second year of his service in  
45 the department each trooper shall receive an annual  
46 salary of seven thousand three hundred thirty-two dol-  
47 lars; during the third year of his service each trooper  
48 shall receive an annual salary of seven thousand four  
49 hundred eighty-eight dollars; and during the fourth and  
50 fifth years of his service and for each year thereafter  
51 each trooper shall receive an annual salary of seven  
52 thousand six hundred thirty-two dollars. Each member of  
53 the department entitled thereto by the provisions hereof  
54 shall receive an increase in salary over that hereinbefore  
55 set forth in this section, for grade and rank, based on length  
56 of service, including that heretofore and hereafter served,  
57 with the department, as follows: At the end of five years of  
58 service with the department, such member of the depart-  
59 ment shall receive a salary increase of three hundred dol-  
60 lars per year to be effective during his next three years of  
61 service and like increases at three-year intervals there-  
62 after, until a total of six such increases shall be received  
63 and such increases shall be cumulative.

64 In applying the foregoing salary schedule where salary  
65 increases are provided for length of service, members  
66 of the department in service at the time this article be-  
67 comes effective shall be given credit for prior service  
68 and shall be paid such salaries as the same length of  
69 service will entitle them to receive under the provisions  
70 hereof.

71 Each member of the department of public safety, ex-  
72 cept the superintendent and civilian employees, shall,

73 before entering upon the discharge of his duties, execute  
74 a bond with security in the sum of three thousand five  
75 hundred dollars payable to the state of West Virginia,  
76 conditioned for the faithful performance of his duties as  
77 such, and such bond shall be approved as to form by the  
78 attorney general, and as to sufficiency by the governor,  
79 and the same shall be filed with the secretary of state  
80 and preserved in his office.

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## CHAPTER 130

(House Bill No. 1014—By Mr. Sparacino)

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[Passed March 5, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section twenty-nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the criminal identification bureau of the department of public safety and providing penalties.

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

That section twenty-nine, 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.**

**§15-2-29. Criminal identification bureau; establishment; officer in charge; purpose; fingerprints, photographs, records and other information; reports; offenses and penalties.**

- 1 (a) The superintendent of the department of public
- 2 safety shall establish, equip and maintain at the depart-
- 3 mental headquarters a criminal identification bureau, for
- 4 the purpose of receiving and filing fingerprints, photo-
- 5 graphs, records and other information pertaining to
- 6 the investigation of crime and the apprehension of

7 criminals, as hereinafter provided. The superintendent  
8 shall appoint or designate a regularly enlisted member  
9 of the department as officer in charge of the criminal  
10 identification bureau and such officer shall be responsible  
11 to the superintendent for the affairs of the bureau. Mem-  
12 bers of the department assigned to the criminal identi-  
13 fication bureau shall carry out their duties and assign-  
14 ments in accordance with internal management rules and  
15 regulations pertaining thereto promulgated by the su-  
16 perintendent.

17 (b) The criminal identification bureau shall cooper-  
18 ate with identification bureaus of other states and of the  
19 United States to develop and carry on a complete inter-  
20 state, national and international system of criminal identi-  
21 fication.

22 (c) The criminal identification bureau may furnish  
23 fingerprints, photographs, records or other information  
24 to authorized law-enforcement and governmental agencies  
25 of the United States and its territories, of foreign coun-  
26 tries duly authorized to receive the same, of other states  
27 within the United States and of the state of West Vir-  
28 ginia upon proper request stating that the fingerprints,  
29 photographs, records or other information requested are  
30 necessary in the interest of and will be used solely in the  
31 administration of official duties and the criminal laws.

32 (d) The criminal identification bureau may furnish,  
33 with the approval of the superintendent, fingerprints,  
34 photographs, records or other information to any private  
35 or public agency, person, firm, association, corporation or  
36 other organization, other than a law-enforcement or gov-  
37 ernmental agency as to which the provisions of sub-  
38 section (c) of this section shall govern and control, but  
39 all requests under the provisions of this subsection (d)  
40 for such fingerprints, photographs, records or other in-  
41 formation must be accompanied by a written authoriza-  
42 tion signed and acknowledged by the person whose  
43 fingerprints, photographs, records or other information  
44 is to be released.

45 (e) The criminal identification bureau may furnish  
46 fingerprints, photographs, records and other information

47 of persons arrested or sought to be arrested in this state  
48 to the identification bureau of the United States govern-  
49 ment and to other states for the purpose of aiding law  
50 enforcement.

51 (f) Persons in charge of any penal or correctional  
52 institution including any city or county jail, in this  
53 state shall take, or cause to be taken, the fingerprints  
54 and description of all persons lawfully committed thereto  
55 or confined therein and furnish the same in duplicate  
56 to the criminal identification bureau, department of public  
57 safety. Such fingerprints shall be taken on forms ap-  
58 proved by the superintendent of the department of pub-  
59 lic safety. All such officials as herein named may, when  
60 possible to do so, furnish photographs to the criminal  
61 identification bureau of such persons so fingerprinted.

62 (g) Members of the department of public safety, and  
63 all other state law-enforcement officials, sheriffs, deputy  
64 sheriffs, constables, and each and every peace officer in  
65 this state, shall take or cause to be taken the fingerprints  
66 and description of all persons arrested or detained by  
67 them, charged with any crime or offense in this state,  
68 in which the penalty provided therefor is confinement  
69 in any penal or correctional institution, or of any per-  
70 son who they have reason to believe is a fugitive from  
71 justice or an habitual criminal, and furnish the same in  
72 duplicate to the criminal identification bureau, depart-  
73 ment of public safety, on forms approved by the super-  
74 intendent of said department of public safety. All such  
75 officials as herein named may, when possible to do so,  
76 furnish to the criminal identification bureau, photographs  
77 of such persons so fingerprinted. The arresting officer  
78 shall submit to the criminal identification bureau, in  
79 duplicate, a report of final disposition concerning any case  
80 held for court, or in any case in which the disposition  
81 thereof has not been previously furnished to said bureau  
82 (on the fingerprint record of the person arrested). Such  
83 report of final disposition shall be made on forms fur-  
84 nished or approved by the superintendent of the depart-  
85 ment of public safety.

86 (h) Any person who has been fingerprinted or photo-  
87 graphed in accordance with the provisions of this sec-



88 tion, who is acquitted of the charges upon which he or  
89 she was arrested, and who has no previous criminal  
90 record, may, upon the presentation of satisfactory proof  
91 to the superintendent of the department of public safety,  
92 have such fingerprints or photographs, or both, returned  
93 to them.

94 (i) All state, county and municipal law-enforcement  
95 agencies shall submit to the bureau uniform crime reports  
96 setting forth their activities in connection with law  
97 enforcement. It shall be the duty of the bureau to adopt  
98 and promulgate rules and regulations prescribing the  
99 form, general content, time and manner of submission  
100 of such uniform crime reports. Willful or repeated failure  
101 by any state, county or municipal law-enforcement official  
102 to submit the uniform crime reports required by this  
103 article shall constitute neglect of duty in public office.  
104 The bureau shall correlate the reports submitted to it  
105 and shall compile and submit to the governor and the  
106 Legislature semiannual reports based on such reports. A  
107 copy of such reports shall be furnished to all prosecuting  
108 attorneys and law-enforcement agencies.

109 (j) Neglect or refusal of any person mentioned in  
110 this section to make the report required herein, or to  
111 do or perform any act on his or her part to be done  
112 or performed in connection with the operation of this  
113 section, shall constitute a misdemeanor, and such per-  
114 son shall, upon conviction thereof, be punished by a  
115 fine of not less than twenty-five nor more than two hun-  
116 dred dollars, or by imprisonment in the county jail for  
117 a period of not exceeding sixty days, or both, in the  
118 discretion of the court. Such neglect shall constitute  
119 misfeasance in office and subject such person to removal  
120 from office. Any person who wilfully removes, destroys,  
121 or mutilates any of the fingerprints, photographs, records  
122 or other information of the department of public safety,  
123 shall be guilty of a misdemeanor, and such person shall,  
124 upon conviction thereof, be punished by a fine not ex-  
125 ceeding one hundred dollars, or by imprisonment in the  
126 county jail for a period of not exceeding six months, or  
127 by both, in the discretion of the court.

# CHAPTER 131

(House Bill No. 801—By Mr. Seibert)

[Passed March 9, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; to further amend said article two by adding thereto a new section, designated section thirteen; and to amend and reenact section six, article three of said chapter, all relating to the public service commission, compensation of commissioners, enforcement of federal acts and certain special fees and funds.

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

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

## Article

1. General Provisions.
2. Powers and Duties of Public Service Commission.
3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

### ARTICLE 1. GENERAL PROVISIONS.

§24-1-2. Composition; appointment, qualifications and disqualification of commissioners; removal from office; terms of office; vacancies; salaries.

§24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.

§24-1-2. **Composition; appointment, qualifications and disqualification of commissioners; removal from office; terms of office; vacancies; salaries.**

- 1 There shall be a public service commission of West
- 2 Virginia which by that name may sue and be sued. The

3 terms of members of the public service commission at the  
4 time this section becomes effective shall hereby be con-  
5 tinued. Such public service commission shall consist of  
6 three members who shall be appointed by the governor  
7 with the advice and consent of the Senate. The commis-  
8 sioners shall be citizens and residents of this state and at  
9 least one of them shall be duly licensed to practice law in  
10 West Virginia, of not less than ten years' actual experi-  
11 ence at the bar. No more than two of said commissioners  
12 shall be members of the same political party. The ap-  
13 pointment of a commissioner shall be for a period of  
14 six years, except that an appointment to fill a vacancy  
15 shall be for the unexpired term only. Each commissioner  
16 shall, before entering upon the duties of his office, take  
17 and subscribe to the oath provided by section five, ar-  
18 ticle four of the constitution, which oath shall be filed  
19 in the office of the secretary of state. The governor shall  
20 annually designate one of the commissioners as chairman  
21 who shall be the chief administrative officer of the com-  
22 mission. The governor may remove any commissioner  
23 only for incompetency, neglect of duty, gross immorality  
24 or malfeasance in office.

25 No person while in the employ of, or holding any  
26 official relation to, any public utility subject to the pro-  
27 visions of this chapter, or holding any stocks or bonds  
28 thereof, or who is pecuniarily interested therein, shall  
29 serve as a member of the commission or as an employee  
30 thereof. Nor shall any such commissioners be a candi-  
31 date for or hold public office, or be a member of any  
32 political committee, while acting as such commissioner;  
33 nor shall any commissioner or employee of said com-  
34 mission receive any pass, free transportation or other  
35 thing of value, either directly or indirectly, from any  
36 public utility subject to the provisions of this chapter.  
37 In case any of such commissioners shall become a candi-  
38 date for any public office or a member of any political  
39 committee, his office as commissioner shall be ipso facto  
40 vacated.

41 For the administration of this chapter each commis-  
42 sioner shall receive a salary of sixteen thousand dollars  
43 per annum to be paid in monthly installments from the

44 special fund collected from public utilities under the  
45 provisions of subsection (a), section six, article three of  
46 this chapter.

**§24-1-6. Office of commission; time and place of hearings;  
number of commissioners required for taking action.**

1 The general office of the commission shall be kept at  
2 the capitol of the state, and kept open on each working  
3 day between the hours of nine o'clock a.m. and five  
4 o'clock p.m., and in charge of the secretary or his deputy.  
5 Hearings and the taking of evidence may be had at  
6 such times and places and in such manner in each par-  
7 ticular case as the commission may designate.

8 The concurrent judgment of two of the commissioners,  
9 when in session as the commission, shall be deemed the  
10 action of the commission, and a vacancy in the commis-  
11 sion shall not affect the right or duty of the remaining  
12 commissioners to function as a commission.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COM-  
MISSION.**

§24-2-1. Jurisdiction of commission.

§24-2-13. Enforcement of federal acts.

**§24-2-1. Jurisdiction of commission.**

1 The jurisdiction of the commission shall extend to all  
2 public utilities in this state, and shall include any utility  
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by  
5 air, railroad, street railroad, motor or otherwise, by ex-  
6 press or otherwise, by land, water or air, whether wholly  
7 or partly by land, water or air; mass transit authorities;  
8 transportation of oil, gas or water by pipeline; transpor-  
9 tation of coal and its derivatives and all mixtures and  
10 combinations thereof with other substances by pipeline;  
11 sleeping car or parlor car services; transmission of mes-  
12 sages by telephone, telegraph or radio; generation and  
13 transmission of electrical energy by hydroelectric or  
14 other utilities for service to the public, whether directly  
15 or through a distributing utility; supplying water, gas or  
16 electricity, by municipalities or others; sewer systems  
17 servicing twenty-five or more persons or firms other than

18 the owner of the sewer systems; any public service dis-  
19 trict created under the provisions of article thirteen-a,  
20 chapter sixteen of this code; toll bridges, wharves, ferries;  
21 and any other public service.

**§24-2-13. Enforcement of federal acts.**

1 In addition to all other powers and duties conferred  
2 upon the public service commission herein, the commis-  
3 sion shall be charged with the duty of enforcing the  
4 provisions of the United States "Federal Railroad Safety  
5 Act" and the "Uniform Motor Carrier Identification Act"  
6 in this state under the federal requirements contained  
7 therein requiring state enforcement of such acts, insofar  
8 as the same are not repugnant to the laws of this state  
9 or contrary to the rules and regulations of the commis-  
10 sion.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES  
SUBJECT TO REGULATIONS OF COMMISSION.**

**§24-3-6. Special license fee; "public service commission fund".**

1 (a) All public utilities subject to the provisions of this  
2 chapter shall pay a special license fee in addition to  
3 those now required by law. The amount of such fees  
4 shall be fixed by the public service commission and  
5 levied by it 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 pro-  
9 duce a revenue of three hundred twenty thousand dol-  
10 lars per annum, which fees shall be paid on or before the  
11 twentieth day of January in each year. Such sum of  
12 three hundred twenty thousand dollars, together with  
13 that provided in subsection (b) hereof shall be paid  
14 into the state treasury and kept as a special fund, desig-  
15 nated "public service commission fund," to be appro-  
16 priated as provided by law for the purpose of paying  
17 the salaries of the commission, as fixed by this chapter,  
18 its expenses and salaries, compensations, costs and ex-  
19 penses of its employees.

20 (b) All public utilities subject to the provisions of  
21 this chapter shall pay a special license fee in addition

22 to any and all fees now required by law. The amount of  
23 such fees shall be fixed by the public service commis-  
24 sion and levied by it upon each of such public utilities,  
25 in the proportion which the total gross revenue derived  
26 from intrastate business done by each of such public  
27 utilities in the calendar year next preceding bears to  
28 the total gross revenue derived from intrastate business  
29 done in such year by all public utilities subject to regu-  
30 lation by the public service commission, so as to pro-  
31 duce a revenue of six hundred forty thousand dollars  
32 per annum, in addition to such fees as may be fixed by  
33 the public service commission under the provisions of  
34 subsection (a) hereof and which fees shall be paid on or  
35 before the first day of July in each year. Such sum of  
36 six hundred forty thousand dollars shall be paid into  
37 the state treasury and be kept, appropriated and used  
38 as provided in subsection (a) hereof.

39 (c) Any balance remaining in said fund at the end  
40 of any fiscal year shall not revert to the treasury but  
41 shall remain in said fund and may be appropriated and  
42 used as provided in subsection (a) hereof.

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## CHAPTER 132

(House Bill No. 756—By Mr. Seibert)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment, duties and compensation of the secretary and other employees of the public service commission and specifying that any commissioner or director of any division of the commission shall devote full time to the performance of his duties as such commissioner or employee during the regular working hours as set by the commission.

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

That section three, 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.**

**§24-1-3. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.**

1 The commission shall appoint a secretary and such  
2 other employees as may be necessary to carry out the  
3 provisions of this chapter and shall fix their respective  
4 salaries or compensations. It shall be the duty of the  
5 secretary to keep a full and true record of all proceed-  
6 ings, acts, orders and judgments of the commission, to  
7 issue all necessary process, returns and notices, to keep  
8 all books, maps, documents and papers ordered filed  
9 by the commission, and all orders made by the com-  
10 mission or approved and confirmed by it and ordered  
11 to be filed; and he shall be responsible to the commis-  
12 sion for the safe custody and preservation of all such  
13 documents in his office. He may administer oaths in all  
14 parts of the state, so far as the exercise of such power  
15 is properly incidental to the performance of his duty  
16 or that of the commission.

17 The commission may designate such of its employees  
18 as it deems necessary to hold hearings, held or required  
19 by this chapter, and to take evidence at such hearings,  
20 which employees are hereby empowered to subpoena  
21 witnesses, administer oaths, take testimony, require the  
22 production of documentary evidence and exercise such  
23 other powers and perform such other duties as may  
24 be delegated to them and required by the commission,  
25 in any proceeding or examination instituted or con-  
26 ducted by the commission under this chapter, at any  
27 designated place of hearing within the state.

28 Any commissioner or person employed by the com-  
29 mission as director of any division thereof shall devote  
30 full time to the performance of his duties as such com-  
31 missioner or employee during the regular working hours  
32 as set by the commission.

## CHAPTER 133

(House Bill No. 1006—By Mr. Myles)

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[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to motor carriers of passengers and property for hire; and regulation of uniform registration of authority and vehicles of interstate for hire carriers.

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

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

### **Article**

#### **1. Purposes, Definitions and Exemptions.**

#### **6A. Registration of Interstate Commerce Commission Authority and Identification of Vehicles to Be Operated Thereunder.**

### **ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.**

#### **§24A-1-2. Definitions.**

1 When used in this chapter: (a) The term "motor ve-  
2 hicle" means, and includes, any automobile, truck, tractor,  
3 truck-tractor, trailer, semitrailer, motorbus, taxicab, any  
4 self-propelling motor-driven motor vehicle, or any combi-  
5 nation thereof, used upon any public highway in this state  
6 for the purpose of transporting persons or property; (b)  
7 the term "public highway" means any public street, alley,  
8 road, or highway, or thoroughfare of any kind in this  
9 state used by the public; (c) the term "commission" means  
10 the public service commission of West Virginia; (d) the  
11 term "person" means and includes any individual, firm,  
12 copartnership, corporation, company, association, or joint-



13 stock association, and includes any trustee, receiver, as-  
14 signee or personal representative thereof; (e) the term  
15 "common carrier by motor vehicle" means any person  
16 who undertakes, whether directly or by lease or any  
17 other arrangement, to transport passengers or property,  
18 or any class or classes of property, for the general public  
19 over the highways of this state by motor vehicles for  
20 hire, whether over regular or irregular routes, includ-  
21 ing such motor vehicle operations of carriers by rail,  
22 water or air and of express or forwarding agencies, and  
23 leased or rented motor vehicles, with or without drivers;  
24 (f) the term "contract carrier by motor vehicle" means  
25 any person not included in subdivision (e) of this sec-  
26 tion, who under special and individual contracts or agree-  
27 ments, and whether directly or by lease or any other  
28 arrangement, transports passengers or property over the  
29 highways in this state by motor vehicles for hire; (g)  
30 the term "motor carrier" includes both a common car-  
31 rier by motor vehicle and a contract carrier by motor  
32 vehicle; (h) the term "exempt carrier" means any per-  
33 son operating a motor vehicle exempt from the provisions  
34 of this chapter under section three thereof; (i) the term  
35 "power unit" means any vehicle which contains within  
36 itself the engine, motor, or other source of power by  
37 which said vehicle is propelled; (j) the letters "I.C.C."  
38 mean the interstate commerce commission; (k) the words  
39 "driveaway operation" mean an operation in which any  
40 vehicle or vehicles, operated singly or in lawful com-  
41 binations, new or used, not owned by the transporting  
42 motor carrier, constitute the commodity being trans-  
43 ported; (l) the letters "NARUC" mean the national as-  
44 sociation of regulatory utility commissioners; (m) the  
45 term "operations within the borders of this state" means  
46 interstate or foreign operations to, from, within or tra-  
47 versing this state.

**ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE  
COMMISSION AUTHORITY AND IDENTIFICA-  
TION OF VEHICLES TO BE OPERATED THERE-  
UNDER.**

- §24A-6A-1. Filing of interstate commerce commission authority re-  
quired; exception.  
§24A-6A-2. Prior registration.  
§24A-6A-3. When registration of vehicles required.

- §24A-6A-4. Application for, issuance and use of identification stamps and cab cards; expiration of registration and identification.
- §24A-6A-5. Form and execution of application for identification stamp; fee; option of commission to issue stamp, card or combination thereof.
- §24A-6A-6. Form of identification stamp.
- §24A-6A-7. Form of cab card.
- §24A-6A-8. Use of cab cards in connection with vehicles not used in driveway operations.
- §24A-6A-9. Use of cab cards in driveway operations.
- §24A-6A-10. Inspection of cab cards.
- §24A-6A-11. Destruction or nullification of cab cards.
- §24A-6A-12. Alteration, loss, mutilation, etc., of cab cards.
- §24A-6A-13. Collection of state taxes and fees not affected.

**§24A-6A-1. Filing of interstate commerce commission authority required; exception.**

1 No motor carrier shall operate within the borders of  
 2 this state under authority issued by the interstate com-  
 3 merce commission (hereinafter referred to as I. C. C.)  
 4 unless and until it shall have filed with this commission  
 5 a copy of such authority. However, a motor carrier shall  
 6 only be required to file with this commission that por-  
 7 tion of its authority permitting operation within the bor-  
 8 ders of this state. A motor carrier shall not be required  
 9 to file with this commission an emergency or temporary  
 10 operating authority having a duration of thirty consecu-  
 11 tive days or less if such carrier has: (a) Registered its  
 12 other authority and identified its vehicles or driveway  
 13 operation under the provisions of this chapter, and (b)  
 14 furnished to this commission a telegram or other written  
 15 communication describing such emergency or temporary  
 16 operating authority and stating that operation thereunder  
 17 shall be in full accord with the requirements of this  
 18 chapter.

**§24A-6A-2. Prior registration.**

1 A motor carrier need not register under the provisions  
 2 of this article any authority issued by the I. C. C. per-  
 3 mitting operation within the borders of this state, when  
 4 the same was properly filed with the commission at the  
 5 time this article became effective.

**§24A-6A-3. When registration of vehicles required.**

1 No motor carrier subject to the provisions of section  
 2 one of this article shall operate any motor vehicle within  
 3 the borders of this state unless and until such vehicle,

4 other than one used in driveaway operation, shall have  
5 been registered with this commission in accordance with  
6 the provisions of this article.

**§24A-6A-4. Application for, issuance and use of identification stamps and cab cards; expiration of registration and identification.**

1 (a) On or before the thirty-first day of January of  
2 each calendar year, but not earlier than the preceding  
3 first day of November, such motor carrier shall apply  
4 to the commission for the issuance of an identification  
5 stamp or stamps for the registration and identification  
6 of the vehicle or vehicles which it intends to operate, or  
7 driveaway operations which it intends to conduct, within  
8 the borders of this state during the ensuing year. Such  
9 motor carrier may thereafter file one or more supple-  
10 mental applications for additional stamps if the need  
11 therefor arises or is anticipated.

12 (b) If the commission determines that the motor  
13 carrier has complied with all applicable provisions of this  
14 chapter, the commission shall issue to the motor carrier  
15 the number of identification stamps requested.

16 (c) An identification stamp issued under the provi-  
17 sions of this article shall be used for the purpose of reg-  
18 istering and identifying a vehicle or driveaway operation  
19 as being operated or conducted by a motor carrier under  
20 authority issued by the I. C. C., and shall not be used  
21 for the purpose of distinguishing between the vehicles  
22 operated by the same motor carrier. A motor carrier  
23 receiving an identification stamp under the provisions  
24 of this article shall not knowingly permit the use of same  
25 by any other person or organization.

26 (d) The commission shall require the motor carrier to  
27 accompany such application with a list identifying each  
28 vehicle (other than one to be used in driveaway opera-  
29 tions) which it intends to operate within the borders of  
30 this state during the ensuing year. The commission shall  
31 further require the motor carrier to keep such list cur-  
32 rent by filing with it an identification of each vehicle  
33 acquired for operation within the borders of this state  
34 and each vehicle whose operation is discontinued therein

35 after the filing of such list. The filing of an identification  
36 of such newly acquired or discontinued vehicle shall be  
37 made with the commission on or before the fifteenth day  
38 after the motor carrier initiates or discontinues operation  
39 of the vehicle within the borders of this state.

40 (e) On or before the thirty-first day of January of  
41 each calendar year, but not earlier than the preceding  
42 first day of November, such motor carrier shall apply to  
43 the national association of regulatory utility commissioners  
44 (hereinafter referred to as NARUC) for the issuance of  
45 a sufficient supply of uniform identification cab cards  
46 for use in connection with the registration and identifica-  
47 tion of the vehicle or vehicles which it intends to operate,  
48 or driveaway operations which it intends to conduct,  
49 within the borders of this state during the ensuing year.

50 (f) A motor carrier receiving a cab card under the  
51 provisions of this article shall not knowingly permit the  
52 use of same by any other person or organization. Prior  
53 to operating a vehicle, or conducting a driveaway opera-  
54 tion, within the borders of this state during the en-  
55 suing year, the motor carrier shall place one of such  
56 identification stamps on the back of a cab card in the  
57 square bearing the name of this state in such a manner  
58 that the same cannot be removed without defacing it.  
59 The motor carrier shall thereupon duly complete and  
60 execute the form or certificate printed on the front of the  
61 cab card so as to identify itself and such vehicle or drive-  
62 away operation.

63 (g) The registration and identification of a vehicle or  
64 driveaway operation under the provisions of this article  
65 and the identification stamp evidencing same and the  
66 cab card prepared therefor shall become void on the  
67 first day of February in the succeeding calendar year,  
68 unless such registration is terminated prior thereto.

**§24A-6A-5. Form and execution of application for identifica-  
tion stamp; fee; option of commission to issue  
stamp, card or combination thereof.**

1 The application for the issuance of such identification  
2 stamp or stamps shall be in the form prescribed by the  
3 commission. The application shall be duly completed and

4 executed by an official of the motor carrier, and shall  
5 be accompanied by a three dollar fee for the issuance of  
6 each identification stamp. However, the fee for each  
7 vehicle identification issued for the period beginning the  
8 first day of July, one thousand nine hundred seventy-one,  
9 and expiring the first day of February, one thousand  
10 nine hundred seventy-three, shall be five dollars. For  
11 the period beginning the first day of July, one thousand  
12 nine hundred seventy-one, and expiring the first day of  
13 February, one thousand nine hundred seventy-three, the  
14 commission shall have the option to issue either a vehicle  
15 identification stamp or a vehicle identification card as  
16 presently authorized under subdivision (a), section six,  
17 article six of this chapter or a combination of such stamp  
18 and such card.

**§24A-6A-6. Form of identification stamp.**

1 Any identification stamp issued under the provisions  
2 of this article by the commission shall bear its name or  
3 symbol and such other distinctive markings or informa-  
4 tion, if any, as the commission deems appropriate. The  
5 stamp shall be in the shape of a square and shall not  
6 exceed one inch in diameter.

**§24A-6A-7. Form of cab card.**

1 The cab card shall be in the form prescribed by the  
2 NARUC and the commission.

**§24A-6A-8. Use of cab cards in connection with vehicles not used in driveway operations.**

1 In the case of a vehicle not used in a driveway opera-  
2 tion, the cab card shall be maintained in the cab of such  
3 vehicle for which prepared whenever the vehicle is oper-  
4 ated under the authority of the carrier identified in the  
5 cab card. Such cab cards shall not be used for any vehicle  
6 except the vehicle for which it was originally prepared.  
7 A motor carrier shall not prepare two or more cab cards  
8 which are effective for the same vehicle at the same time.

**§24A-6A-9. Use of cab cards in driveway operations.**

1 In the case of a driveway operation, the cab card  
2 shall be maintained in the cab of the vehicle furnishing

3 the motive power for the driveaway operation whenever  
4 such an operation is conducted under the authority of  
5 the carrier identified in the cab card.

**§24A-6A-10. Inspection of cab cards.**

1 A cab card shall, upon demand, be presented by the  
2 driver to any authorized commission personnel for in-  
3 spection.

**§24A-6A-11. Destruction or nullification of cab cards.**

1 (a) Each motor carrier shall destroy a cab card im-  
2 mediately upon its expiration.

3 (b) If a motor carrier permanently discontinues the  
4 use of a vehicle for which a cab card has been prepared,  
5 it shall nullify the cab card at the time of such discon-  
6 tinuance.

**§24A-6A-12. Alteration, loss, mutilation, etc., of cab cards.**

1 (a) Any erasure, improper alteration or unauthorized  
2 use of a cab card shall render it void.

3 (b) If a cab card is lost, destroyed, mutilated or be-  
4 comes illegible, a new cab card may be prepared and new  
5 identification stamps may be issued therefor upon ap-  
6 plication by the motor carrier and upon payment of the  
7 same fee prescribed for the original issuance thereof.

**§24A-6A-13. Collection of state taxes and fees not affected.**

1 Nothing in this article shall be construed to affect the  
2 collection or method of collection of taxes or fees by this  
3 state from motor carriers for the operation of vehicles  
4 within the borders of this state.

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## CHAPTER 134

(House Bill No. 803—By Mr. Seibert)

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[Passed March 9, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section six, article six, chapter  
twenty-four-a of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to compensation of commissioners for administering this chapter.

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

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

**ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS  
SUBJECT TO REGULATION OF THE COMMISSION.**

**§24A-6-6. Special annual assessment against motor carriers  
for expenses of administering chapter; "public  
service commission motor carrier fund."**

1 In addition to the license fees, registration fees, or any  
2 other taxes required by law to be collected from motor  
3 carriers subject to this chapter, each such motor carrier  
4 shall be subject to, and shall pay to the public service  
5 commission, a special annual assessment for the purpose  
6 of paying the salaries, compensation, costs and expenses  
7 of administering and enforcing this chapter. All proceeds  
8 or funds derived from such assessment shall be paid into  
9 the state treasury and credited to a special fund desig-  
10 nated public service commission motor carrier fund, to  
11 be appropriated as provided by law for the purposes  
12 herein stated. Each member of the commission shall re-  
13 ceive a salary of five thousand five hundred dollars per  
14 annum as compensation for the administration of this  
15 chapter in addition to all other salary or compensation  
16 otherwise provided by law, to be paid in monthly install-  
17 ments from said fund. The special assessment against each  
18 motor carrier shall be apportioned upon the number and  
19 capacity of motor vehicles used by said carrier, computed  
20 as hereinafter provided.

21 (a) For each uniform identification card \$ 3.00

22 (b) Upon each power unit of such carriers of  
23 property, in accordance with its capacity as rated  
24 by its manufacturer, in addition to amount of sub-  
25 division (a):

26 Of one ton or less capacity ----- \$ 9.00  
27 Of over one to one and one-half tons capacity ----- 13.50  
28 Of over one and one-half tons to two tons capacity \_ 18.00

29	Of over two tons to three tons capacity _____	22.50
30	Of over three tons to four tons capacity _____	27.00
31	Of over four tons to five tons capacity _____	31.50
32	Of over five tons to six tons capacity _____	36.00
33	Of over six tons to seven tons capacity _____	40.50
34	Of over seven tons to eight tons capacity _____	45.00
35	Of over eight tons to nine tons capacity _____	49.50
36	Of over nine tons to ten tons capacity _____	54.00

37 Of over ten tons capacity, \$54.00 plus \$4.50 for each  
 38 additional ton of capacity in excess of ten tons.

39 (c) Upon each trailer and semitrailer of such  
 40 carriers of property, in accordance with its capacity  
 41 as rated by its manufacturer, in an amount of two  
 42 thirds of the amount provided for vehicles of its ca-  
 43 pacity in subdivision (b) of this section.

44 (d) Upon each power unit of such carriers of  
 45 passengers, in accordance with the seating capacity  
 46 thereof, in addition to amount in subdivision (a):

47	Of ten passengers or less _____	\$13.50
48	Of eleven to twenty passengers, inclusive _____	22.50
49	Of twenty-one to thirty passengers, inclusive _____	31.50
50	Of thirty-one to forty passengers, inclusive _____	45.00
51	Of over forty passengers _____	54.00

52 (e) The annual assessment of each motor carrier shall  
 53 be paid on or before the first day of July of each year.  
 54 Additional assessments shall be collected upon the plac-  
 55 ing in use of any additional motor vehicle: *Provided*, That  
 56 such additional assessments shall be subject to a reduc-  
 57 tion in the amounts shown in subdivisions (b), (c), and  
 58 (d) corresponding to the unexpired quarterly periods  
 59 of the fiscal year, but shall not in any event be less than  
 60 one fourth of such amount plus the sum of three dollars  
 61 provided in subdivision (a).

62 (f) Upon payment by any motor carrier of the as-  
 63 sessment provided for, the public service commission  
 64 shall advise the department of motor vehicles by notice  
 65 in writing that such assessment has been paid, where-  
 66 upon the department of motor vehicles may issue motor  
 67 vehicle license for the vehicles described in said notice.

68 (g) Prior to the beginning of any fiscal year the pub-  
 69 lic service commission, after taking into consideration



70 any unexpended balance in the motor carrier fund, the  
71 probable receipts to be received in the ensuing fiscal year,  
72 and the probable costs of administering and enforcing  
73 this chapter for the ensuing fiscal year, may fix the  
74 assessments provided for in this section for the ensuing  
75 fiscal year in amounts which, in the commission's judg-  
76 ment, will produce sufficient revenue to administer and  
77 enforce this chapter for said fiscal year: *Provided*, That  
78 in no event shall such assessments exceed the amounts  
79 set up in this section.

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## CHAPTER 135

(House Bill No. 802—By Mr. Seibert)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article five, chapter twenty-four-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to remove from the office of state auditor and place in the public service commission the duty to impose and collect the special license fees payable by certain gas pipeline companies.

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

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

**ARTICLE 5. EMPLOYEES OF COMMISSION; COMPENSATION TO COMMISSIONERS; FUNDING.**

**§24B-5-3. Funding; property and revenue license fees.**

1 (a) Every pipeline company shall pay a special license  
2 fee in addition to those now required by law. The amount  
3 of such fees shall be fixed by the public service commis-  
4 sion and levied by it upon each of such pipeline com-  
5 panies according to the number of three inch equiva-

6 lent pipeline miles included in its pipeline facilities,  
7 and shall be apportioned among such pipeline companies  
8 upon the basis of the pipeline companies' reports sub-  
9 mitted to the commission in such form as the commis-  
10 sion may prescribe, so as to produce a revenue of not  
11 more than ninety thousand dollars per annum, which  
12 fees shall be paid on or before the first day of July in  
13 each year.

14 (b) Such sums collected under section six, article  
15 four hereof and under subsection (a) of this section  
16 shall be paid into the state treasury and kept as a  
17 special fund, designated "public service commission gas  
18 pipeline safety fund," to be appropriated as provided  
19 by law for the purpose of paying the salaries of the  
20 commission, as fixed by this chapter, its expenses and  
21 salaries, compensation, costs and expenses of its em-  
22 ployees. Any balance in said fund at the end of any  
23 fiscal year shall not revert to the treasury, but shall  
24 remain in said fund and may be appropriated as provided  
25 in this subsection.

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## CHAPTER 136

(Senate Bill No. 236—By Mr. Poffenbarger)

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[Passed February 19, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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**AN ACT** to amend and reenact section eleven, article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to summary proceedings on petition for sale, lease or mortgage of the estate of minors, insane persons, or convicts.

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

That section eleven, article one, chapter thirty-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. LANDS OF INFANTS, INSANE PERSONS, OR CONVICTS, AND LANDS HELD IN TRUST.****§37-1-11. Summary proceedings for sale, lease or mortgage; petition; notice.**

1 In addition to the proceedings authorized by section  
2 two of this article, the guardian of any minor, or the  
3 committee of any insane person or convict, if he deem  
4 that the interests of his ward or insane person or convict  
5 will be promoted by a sale, lease or mortgage of, or trust  
6 deed upon, his estate, or of any estate in which he with  
7 others, infants or adults, is interested, whether the  
8 estate of the minor, or insane person or convict, or of  
9 any of the other persons interested, be absolute or limited,  
10 and whether there be or be not limited thereon any other  
11 estate, vested or contingent, may apply by petition, in a  
12 summary way, to the circuit court, or to the judge thereof  
13 in vacation, or to any court of concurrent jurisdiction  
14 with the circuit court, or to the judge thereof in vaca-  
15 tion, or to any juvenile court, or to the judge thereof in  
16 vacation, of the county in which the estate proposed to  
17 be sold, leased, or encumbered, or some part thereof may  
18 be, describing all the estate, real and personal, belonging  
19 to the minor, or insane person or convict and setting  
20 forth plainly all the facts calculated to show the pro-  
21 priety of the sale, lease, mortgage, or deed of trust. The  
22 petition shall be verified by the oath of the plaintiff, and  
23 all persons interested shall be made defendants, and ten  
24 days' notice shall be given to such defendants before such  
25 petition can be heard: *Provided*, That any notice or  
26 service required by this section to be made upon any  
27 infant under fourteen years of age shall be made by  
28 delivering a copy of such notice and petition to his guar-  
29 dian resident in this state; or, if there be no such guar-  
30 dian, then either to his father or mother if they be found.  
31 If there is no such guardian and if the father or mother  
32 cannot be found, service of such notice and petition shall  
33 be made upon a guardian ad litem appointed in the  
34 manner provided by law.

# CHAPTER 137

(House Bill No. 504—By Mr. Kopp and Mr. Buck)

[Passed February 15, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven 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 safety glazing materials; definitions; labeling required; requiring safety glazing materials in hazardous locations; nonliability of employees; violations and penalties; effective date and prior contracts.

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

That chapter forty-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 five, to read as follows:

## **ARTICLE 5. SAFETY GLAZING MATERIALS.**

§47-5-1. Definitions.

§47-5-2. Labeling required.

§47-5-3. Safety glazing materials required in hazardous locations.

§47-5-4. Nonliability of employees.

§47-5-5. Violations; penalties.

§47-5-6. Effective date; prior contracts.

### **§47-5-1. Definitions.**

1 For the purposes of this article:

2 (a) "Fabricator" means a person who fabricates,  
3 assembles, or glazes from component parts such struc-  
4 tures or products commonly known as sliding glass doors,  
5 entrance doors, adjacent fixed glazed panels, storm doors,  
6 shower doors, bathtub enclosures, panels to be fixed  
7 glazed, entrance doors, or other structures to be glazed,  
8 to be used or installed in hazardous locations.

9 (b) "Hazardous locations" shall mean those areas in  
10 residential, commercial, and public buildings where the  
11 use of other than safety glazing materials would consti-  
12 tute a hazard as the commissioner of the West Virginia  
13 department of labor may determine after notice and hear-  
14 ings as required by chapter twenty-nine-a of this code,  
15 and shall specifically include those installations, glazed  
16 or unglazed, known as sliding glass doors, frame or un-

17 framed glass doors, and adjacent fixed glazed panels which  
18 may be mistaken for a means of ingress or egress, storm  
19 doors, shower doors, and tub enclosures whether or not  
20 the glazing in such doors, panels, or enclosures is trans-  
21 parent.

22 (c) "Installer" means those persons or concerns who  
23 or which install glazing materials or build structures  
24 containing glazing materials, in hazardous locations.

25 (d) "Manufacturer" means a person who manufac-  
26 tures safety glazing material.

27 (e) "Safety glazing material" means any glazing ma-  
28 terial, such as tempered glass, laminated glass, wire glass  
29 or rigid plastic, which meets the test requirements of  
30 the American National Standards Institute Standard  
31 Z-97.1-1966 and such further requirements as may be  
32 adopted by the department of labor in compliance with  
33 chapter twenty-nine-a of the code of West Virginia and  
34 which are so constructed, treated or combined with other  
35 materials as to minimize the likelihood of cutting and  
36 piercing injuries resulting from human contact with  
37 glazing material.

#### §47-5-2. Labeling required.

1 (a) Each light of safety glazing material manufac-  
2 tured, distributed, imported or sold for use in hazardous  
3 locations or installed in a hazardous location within this  
4 state shall be permanently labeled by such means as  
5 etching, sandblasting or firing ceramic material on the  
6 safety glazing material. The label shall identify the  
7 labeler, whether manufacturer, fabricator or installer,  
8 the thickness and type of safety glazing material, and the  
9 fact that the material meets the test requirements of  
10 American National Standards Institute Standard Z-97.1-  
11 1966 and any further requirements as may be adopted  
12 by the department of labor. The label must be legible  
13 and visible after installation.

14 (b) Safety glazing labeling shall not be used on other  
15 than safety glazing materials.

#### §47-5-3. Safety glazing materials required in hazardous locations.

1 It shall be unlawful in this state to knowingly sell,

2 fabricate, assemble, glaze, install, consent or cause to be  
3 installed glazing materials other than safety glazing  
4 materials in, or for use in, any hazardous location: *Pro-*  
5 *vided, however,* That this shall not apply to the replace-  
6 ment of glazing materials in a residence constructed for  
7 occupancy of not more than two families, which residence  
8 is in existence on July first, one thousand nine hundred  
9 seventy-one.

**§47-5-4. Nonliability of employees.**

1 No liability under this article is created for workmen  
2 who are employees of a contractor, subcontractor or  
3 other employer responsible for compliance with this  
4 article.

**§47-5-5. Violations; penalties.**

1 Whoever violates any of the provisions of this article  
2 shall be guilty of a misdemeanor, and, upon conviction  
3 thereof, shall be fined not less than fifty dollars nor more  
4 than five hundred dollars, or imprisoned in the county  
5 jail not more than thirty days, or both fined and im-  
6 prisoned.

**§47-5-6. Effective date; prior contracts.**

1 This article shall take effect on the first day of July, one  
2 thousand nine hundred seventy-one. All contracts involv-  
3 ing glazing materials entered into prior to the effective  
4 date of this article shall not be affected by the provisions  
5 of this article even if performance of the contract occurs  
6 after the effective date.

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## CHAPTER 138

(Com. Sub. for House Bill No. 1038—Originating in the House  
Committee on the Judiciary)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend chapter forty-seven of the code of West  
Virginia, one thousand nine hundred thirty-one, as amend-  
ed, by adding thereto a new article, designated article

fifteen, relating to prohibition of pyramid promotional schemes in the regulation of trade; restraining prohibited acts; criminal offenses; penalties.

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

That chapter forty-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 fifteen, to read as follows:

**ARTICLE 15. PYRAMID PROMOTIONAL SCHEME**

§47-15-1. Definitions.

§47-15-2. Unlawful act.

§47-15-3. Contracts void and unenforceable.

§47-15-4. Restraining prohibited acts.

§47-15-5. Criminal penalties.

§47-15-6. Severability.

**§47-15-1. Definitions.**

1 (a) "Pyramid promotional scheme" shall mean the  
2 organization of any chain letter club, pyramid club, or  
3 other group organized or brought together under any  
4 plan or device whereby fees or dues or anything of  
5 material value to be paid or given by members thereof  
6 are to be paid or given to any other member thereof,  
7 which plan or device includes any provision for the in-  
8 crease in such membership through a chain process of  
9 any members securing other new members and thereby  
10 advancing themselves in the group to a position where  
11 such members in turn receive fees, dues or things of  
12 material value from other members.

13 (b) "Promote" or "promotion" shall mean the initia-  
14 tion, preparation, operation, advertisement, or the re-  
15 cruitment of any person or persons in the furtherance of  
16 any pyramid promotional scheme as defined in subsection  
17 (a) of this section.

**§47-15-2. Unlawful act.**

1 No person shall promote any pyramid promotional  
2 scheme, either personally or through an agent or agents.

**§47-15-3. Contracts void and unenforceable.**

1 All contracts and agreements entered into after the  
2 effective date of this article wherein the whole or any

3 part of the consideration of such contract or agreement  
4 is given in exchange for the right to participate in any  
5 pyramid promotional scheme are hereby declared to be  
6 against public policy and are hereby declared to be void  
7 and unenforceable.

**§47-15-4. Restraining prohibited acts.**

1 The prosecuting attorney of any county or the attorney  
2 general, or any person, may petition the circuit court  
3 to enjoin the continued operation of any pyramid pro-  
4 motional scheme as defined in this article. The procedure  
5 in any such suit shall be the same as the procedure in  
6 other suits for equitable relief, except that no bond shall  
7 be required upon the granting of either a temporary or  
8 permanent injunction therein, when such proceedings  
9 are initiated by a prosecuting attorney of any county or  
10 the attorney general.

**§47-15-5. Criminal penalties.**

1 Any person who shall violate the provisions of this  
2 article shall be guilty of a misdemeanor, and, upon con-  
3 viction thereof, shall be fined not less than three hundred  
4 nor more than one thousand dollars, or confined in jail  
5 for a period not to exceed six months, or both.

**§47-15-6. Severability.**

1 If any provision of this article is declared unconstitu-  
2 tional or the application thereof to any person or circum-  
3 stance is held invalid, the constitutionality of the re-  
4 mainder of the article and the applicability thereof to  
5 other persons and circumstances shall not be affected  
6 thereby.

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## CHAPTER 139

(House Bill No. 618—By Mr. Seibert and Mr. Dinsmore)

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[Passed February 26, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section twenty, article four,  
chapter seventeen of the code of West Virginia, one thou-



sand nine hundred thirty-one, as amended, relating to highway contractors' bonds.

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

That section twenty, article 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 4. STATE ROAD SYSTEM.**

**§17-4-20. Bidder's bond required; return or forfeiture of bond.**

1 In any case where a contract for work and materials  
2 shall be let as a result of competitive bidding, the suc-  
3 cessful bidder shall promptly and within twenty days  
4 after notice of award execute a formal contract to be  
5 approved as to its form, terms and conditions by the  
6 commissioner, and shall also execute and deliver to the  
7 commissioner a good and sufficient surety or collateral  
8 bond, payable to the state of West Virginia, to be ap-  
9 proved by the commissioner, in such amount as the com-  
10 missioner may require, but not to exceed the contract  
11 price, conditioned that such contractor shall well and  
12 truly perform his contract and shall pay in full to the  
13 persons entitled thereto for all material, gas, oil, repairs,  
14 supplies, tires, equipment, rental charges for equipment  
15 and charges for the use of equipment, and labor used by  
16 him in and about the performance of such contract, or  
17 which reasonably appeared, at the time of delivery or  
18 performance, would be substantially consumed in and  
19 about the performance of such contract. An action either  
20 at law or in equity, may be maintained upon such bond  
21 for breach thereof by any person for whose benefit the  
22 same was executed or by his assignee. The bidder who  
23 has the contract awarded to him and who fails within  
24 twenty days after notice of the award to execute the  
25 required contract and bond shall forfeit such check or  
26 bond, and the check or bond shall be taken and con-  
27 sidered as liquidated damages and not as a penalty for  
28 failure of such bidder to execute such contract and bond.  
29 Upon the execution of such contract and bond by the  
30 successful bidder his check or bond shall be returned to  
31 him. The checks or bonds of the unsuccessful bidders  
32 shall be returned to them promptly after the bids are

33 opened and the contract awarded to the successful bidder.  
34 A duplicate copy of such contract and bond shall be  
35 furnished by the commissioner of highways in loose-leaf  
36 form, to the clerk of the county court of the county in  
37 which such contract is to be performed and it shall be  
38 the duty of the clerk to bind and preserve the same in  
39 his office, and index the same in the name of the com-  
40 missioner and of the contractor.

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## CHAPTER 140

(House Bill No. 744—By Mr. Seibert)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, in an amount not exceeding ninety million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for redemption; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account

in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, 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.

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

**ISSUANCE AND SALE OF ROAD BONDS.**

- §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. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor; redemption of bonds.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

**§1. Road bonds; amount; when may issue.**

1 Bonds of the state of West Virginia, under authority  
 2 of the Roads Development Amendment of 1968, of the  
 3 par value not to exceed ninety million dollars during  
 4 the fiscal year ending June thirty, one thousand nine  
 5 hundred seventy-two, are hereby authorized to be issued  
 6 and sold for the sole purpose of raising funds for the  
 7 building and construction of free state roads and high-  
 8 ways as provided for by the constitution and the laws  
 9 enacted thereunder. Such bonds may be issued by the  
 10 governor in such amounts, in coupons or registered  
 11 form, in such denominations, at such time, bearing such  
 12 date or dates, as the governor may determine, based upon

13 an examination of the West Virginia department of high-  
14 ways' yearly program which justifies the issuance by the  
15 governor of said bonds, and shall become due and payable  
16 serially, annually or semiannually, in such amounts and  
17 mature in such years as the governor may determine:  
18 *Provided*, That such bonds shall mature within and not  
19 exceeding twenty-five years from their date: *Provided*  
20 *further*, That the governor shall not offer for sale more  
21 than thirty million dollars of bonds at any one time  
22 and, in the event said amount of bonds are sold, no  
23 other bonds shall be offered for sale until the expiration  
24 of ninety days from the date the bonds were first offered  
25 for sale.

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized  
2 to arrange for the transfer of registered bonds and for  
3 each such transfer a fee of fifty cents shall be charged  
4 by and paid to the state of West Virginia, to the credit  
5 of the state road sinking fund. Bonds taken in exchange  
6 shall be cancelled by the auditor and treasurer and be  
7 carefully preserved by the treasurer. The treasurer shall  
8 make provisions for registering "payable to bearer" bond  
9 and for each bond registered a fee of fifty cents shall  
10 likewise be charged by and paid to the state of West  
11 Virginia, to the credit of the state road sinking fund. All  
12 such bonds shall be payable at the office of the trea-  
13 surer of the state of West Virginia, or, at the option of the  
14 holder, at a bank in the city of New York to be design-  
15 nated by the governor, or, at the option of the holder  
16 at such other bank or banks, within or without the  
17 state, as may be designated or approved by the gov-  
18 ernor. The bonds shall bear interest, payable semi-  
19 annually, to bearer, at the office of the treasurer of the  
20 state of West Virginia, at the capitol of the state, or  
21 at the banks designated and approved by the governor,  
22 upon presentation and surrender of interest coupons,  
23 then due, in the case of coupon bonds. For the payment  
24 of interest on registered bonds, the treasurer of the  
25 state of West Virginia shall requisition a warrant from

26 the auditor of the state to be drawn on the state trea-  
27 surer, and shall mail such warrant to the registered  
28 owner at the address as shown by the record of regis-  
29 tration. Both the principal and interest of the bonds  
30 shall be payable in lawful money of the United States  
31 of America and the bonds shall be exempt from taxation  
32 by the state of West Virginia, or by any county, dis-  
33 trict or municipality thereof, which facts shall appear  
34 on the face of the bonds as part of the contract with the  
35 holder thereof.

### §3. Form of bond.

1 The bonds shall be executed on behalf of the state  
2 of West Virginia, by the manual or facsimile signature  
3 of the treasurer thereof, under the great seal of the  
4 state or a facsimile thereof, and countersigned by the  
5 manual or facsimile signature of the auditor of the state:  
6 *Provided*, That one of said signatures on said bonds shall  
7 be a manual signature and said bonds shall be in the  
8 following form or to the following effect, as nearly as  
9 may be, namely:

10                                   COUPON ROAD BOND  
11       (Or registered road bond, as the case may be)  
12                                   OF THE  
13                                   STATE OF WEST VIRGINIA  
14 \$..... No.....

15 The state of West Virginia, under and by virtue of au-  
16 thority of an amendment to the constitution, which was  
17 proposed by Senate Joint Resolution No. 2, adopted  
18 the eighth day of February, one thousand nine hundred  
19 sixty-eight, and was ratified by a vote of the people at  
20 the general election on the fifth day of November, one  
21 thousand nine hundred sixty-eight, which is hereby  
22 made a part hereof as fully as if set forth at length  
23 herein, acknowledges itself to be indebted to and hereby  
24 promises to pay to the bearer hereof (in case of a coupon  
25 bond) or to ..... or assigns (the  
26 owner of record, in case of registered bonds) on the  
27 ..... day of ....., 19....., in  
28 lawful money of the United States of America at the

29 office of the treasurer of the state of West Virginia at  
 30 the capitol of said state, or, at .....  
 31 bank in the city of New York, or, at .....  
 32 bank, at the option of the holder, the sum of .....  
 33 dollars, with interest thereon at ..... per  
 34 centum per annum from the date, payable semiannually  
 35 in like lawful money of the United States of America  
 36 at the treasurer's office or banks aforesaid, on the first  
 37 day of ..... and the first day of .....  
 38 of each year (and in the case of coupon bonds) according  
 39 to the tenor of the annexed coupons bearing the fac-  
 40 simile signature of the treasurer of the state of West  
 41 Virginia, upon surrender of such coupons. This bond  
 42 (in case of a coupon bond) may be exchanged for a  
 43 registered bond of like tenor upon application to the  
 44 treasurer of the state of West Virginia.

45 (Redemption provisions, if any, to be inserted here)

46 To secure the payment of the principal and interest of  
 47 this bond, the state of West Virginia covenants and  
 48 agrees with the holder as follows: (1) That this bond  
 49 shall constitute a direct and general obligation of the  
 50 state of West Virginia; (2) that the full faith and credit  
 51 of the state is pledged to secure the payment of the  
 52 principal and interest of this bond; (3) that an annual  
 53 state tax shall be collected in an amount sufficient to  
 54 pay as it may accrue the interest on this bond and the  
 55 principal thereof; and (4) that such tax shall be levied  
 56 in any year only to the extent that the moneys in the  
 57 state road fund irrevocably set aside and appropriated  
 58 for and applied to the payment of the interest on and  
 59 principal of this bond becoming due and payable in such  
 60 year are insufficient therefor.

61 This bond is hereby made exempt from any taxation  
 62 by the state of West Virginia, or by any county, dis-  
 63 trict, or municipal corporation thereof.

64 In testimony whereof, witness the manual or facsimile  
 65 signature of the treasurer of the state of West Virginia,  
 66 and the manual or facsimile countersignature of the  
 67 auditor of the state, hereto affixed according to law,  
 68 dated the ..... day of ....., one  
 69 thousand nine hundred ....., and

70 the seal of the state of West Virginia or a facsimile  
71 thereof.

72

73 \_\_\_\_\_  
73 Treasurer of the State of West Virginia

74 (SEAL)

75 Countersigned:

76

76 \_\_\_\_\_  
77 Auditor of the State of West Virginia

#### §4. Form of coupon.

1 The form of coupon shall be substantially as follows,  
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. \_\_\_\_\_ Coupon No. \_\_\_\_\_

5 On the first day of \_\_\_\_\_, 19\_\_\_\_,  
6 the state of West Virginia will pay to the bearer, in  
7 lawful money of the United States of America, at the  
8 office of the treasurer of the state, or, at \_\_\_\_\_  
9 bank in the city of New York, or, at \_\_\_\_\_,  
10 at the option of the holder, the sum of \_\_\_\_\_  
11 dollars, the same being semiannual interest on Road  
12 Bond No. \_\_\_\_\_.

13

13 \_\_\_\_\_  
14 Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall  
16 be by his facsimile signature and the coupons shall be  
17 numbered in the order of their maturity, from number  
18 one consecutively. The bonds and coupons may be signed,  
19 as provided in this act, by the present treasurer and  
20 auditor, or by any of their respective successors in office,  
21 and the bonds signed by the persons now in the office  
22 may be sold by the governor or his successor in office  
23 without being signed by the successor in office of the  
24 present treasurer or auditor.

#### §5. Listing by auditor.

1 All coupons and registered bonds issued under this  
2 act shall be separately listed by the auditor of the state  
3 in books provided for the purpose, in each case giving  
4 the date, number, character and amount of obligations  
5 issued, and in case of registered bonds, the name and

6 post-office address of the person, firm or corporation  
7 registered as the owner thereof.

**§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.**

1 Into the state road sinking fund there shall be paid  
2 all money from any and all appropriations made by the  
3 state from the state road fund for the purpose of paying  
4 the interest on such bonds or paying off and retiring  
5 the bonds, from transfer and registration fees as herein  
6 provided, and from any other source whatsoever which  
7 is made liable by law for the payment of the principal  
8 of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a  
10 separate account, under the designation aforesaid, and  
11 all moneys belonging to the fund shall be deposited in  
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the  
14 state first to the payment of the semiannual interest on  
15 such bonds as it shall become due as herein provided.  
16 The remainder of the fund shall be turned over by  
17 the state treasurer to the state sinking fund commission,  
18 whose duty it shall be to invest the same in obligations  
19 of the government of the United States, bonds of the  
20 state of West Virginia, or any political subdivision  
21 thereof: *Provided*, That bonds or other obligations so  
22 purchased by the state sinking fund commission shall  
23 mature so as to provide sufficient money to pay off all  
24 bonds herein provided to be issued as they become due;  
25 and the money so paid into the state road sinking fund  
26 under the provisions of this act shall be expended for  
27 the purpose of paying the interest and principal of the  
28 bonds hereby provided for as they severally become  
29 due and payable and for no other purpose except that  
30 the fund may be invested until needed, as herein pro-  
31 vided.

**§7. Covenants of state.**

1 The state of West Virginia covenants and agrees with  
2 the holders of the bonds issued pursuant hereto as fol-



3 lows: (1) That such bonds shall constitute a direct  
4 and general obligation of the state of West Virginia;  
5 (2) that the full faith and credit of the state is hereby  
6 pledged to secure the payment of the principal and in-  
7 terest of such bonds; (3) that an annual state tax shall  
8 be collected in an amount sufficient to pay as it may  
9 accrue the interest on such bonds and the principal  
10 thereof; and (4) that such tax shall be levied in any  
11 year only to the extent that the moneys in the state  
12 road fund irrevocably set aside and appropriated for  
13 and applied to the payment of the interest on and prin-  
14 cipal of said bonds becoming due and payable in such  
15 year are insufficient therefor.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized  
2 at such time or times as he may determine necessary to  
3 provide funds for the building and construction of free  
4 state roads and highways, as herein provided, upon the  
5 recommendation of the West Virginia commissioner of  
6 highways, and after reviewing the program of the West  
7 Virginia department of highways and subject to the limi-  
8 tations contained in this act. All sales shall be at not less  
9 than par and accrued interest. All interest coupons be-  
10 coming payable prior to the sale date shall be cancelled  
11 by the treasurer and rendered ineffective, before the  
12 delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund;  
expenditures.**

1 The proceeds of all sales of bonds herein authorized  
2 shall be paid into a separate and distinct account in the  
3 state road fund and shall be used and appropriated solely  
4 for the building and construction of free state roads  
5 and highways provided for by the state constitution and  
6 the laws enacted thereunder. Except for such sums  
7 necessary for current operating balances, such account  
8 shall be invested and reinvested in short-term obliga-  
9 tions of the United States treasury: *Provided*, That no  
10 such investment or reinvestment shall adversely affect  
11 the current operating balances of such account.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the  
2 bonds authorized by this act are produced or made shall  
3 be the property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

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

**§12. Interim certificates.**

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

**§13. State treasurer to be financial advisor; redemption of bonds.**

1 The state treasurer shall serve as financial advisor to  
2 the governor for the issuance and sale of such bonds. In  
3 addition to his other duties, the state treasurer may pro-  
4 vide in the bond resolution and on the face of the bonds  
5 that said bonds are subject to redemption prior to ma-  
6 turity, the redemption price, the redemption date, and  
7 the manner in which the bonds shall be redeemed.

**§14. Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal rep-  
2 resentative, shall serve as bond counsel and shall be  
3 responsible for the issuance of a final approving opinion  
4 regarding the legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses ap-  
2 proved by the attorney general, incurred in the execution  
3 of this act shall be paid out of state road fund on war-  
4 rants of the auditor of the state drawn on the state  
5 treasurer.

## CHAPTER 141

(House Bill No. 759—By Mr. Seibert)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Better Roads Amendment of 1964, in an amount not exceeding twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for redemption; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, 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.

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

**ISSUANCE AND SALE OF ROAD BONDS.**

- §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. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor; redemption of bonds.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

**§1. Road bonds; amount; when may issue.**

1 Bonds of the state of West Virginia, under authority  
 2 of the Better Roads Amendment of 1964, of the par  
 3 value not to exceed twenty million dollars during the  
 4 fiscal year ending June thirty, one thousand nine hun-  
 5 dred seventy-two, are hereby authorized to be issued  
 6 and sold for the sole purpose of raising funds for the  
 7 building and construction of state roads and high-  
 8 ways as provided for by the constitution and the laws  
 9 enacted thereunder. Such bonds may be issued by the  
 10 governor in such denominations, at such time, bearing  
 11 such date or dates as the governor may determine,  
 12 based upon an examination of the West Virginia  
 13 department of highways' yearly program which jus-  
 14 tifies the issuance by the governor of said bonds, and  
 15 shall become due and payable serially, annually  
 16 or semiannually, in such amounts and mature in  
 17 such years as the governor may determine: *Provided,*  
 18 That such bonds shall mature within and not exceed-  
 19 ing twenty-five years from their date.

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized  
 2 to arrange for the transfer of registered bonds and for

3 each such transfer a fee of fifty cents shall be charged  
4 by and paid to the state of West Virginia, to the credit  
5 of the state road sinking fund. Bonds taken in exchange  
6 shall be cancelled by the auditor and treasurer and be  
7 carefully preserved by the treasurer. The treasurer  
8 shall make provisions for registering "payable to bearer"  
9 bonds, and for each bond registered a fee of fifty cents,  
10 shall likewise be charged by and paid to the state of  
11 West Virginia, to the credit of the state road sinking  
12 fund. All such bonds shall be payable at the office of  
13 the treasurer of the state of West Virginia, or, at the  
14 option of the holder, at a bank in the city of New York  
15 to be designated by the governor, or, at the option  
16 of the holder at such other bank or banks, within or  
17 without the state, as may be designated or approved  
18 by the governor. The bonds shall bear interest, pay-  
19 able semiannually, to bearer, at the office of the treasurer  
20 of the state of West Virginia, at the capitol of the state,  
21 or at the banks designated and approved by the governor,  
22 upon presentation and surrender of interest coupons then  
23 due, in the case of coupon bonds. For the payment  
24 of interest on registered bonds, the treasurer of the  
25 state of West Virginia shall requisition a warrant from  
26 the auditor of the state to be drawn on the state trea-  
27 surer, and shall mail such warrant to the registered  
28 owner at the address as shown by the record of registra-  
29 tion. Both the principal and interest of the bonds shall  
30 be made payable in lawful money of the United States  
31 of America and the bonds shall be exempt from taxation  
32 by the state of West Virginia, or by any county, dis-  
33 trict, or municipality thereof, which facts shall appear  
34 on the face of the bonds as part of the contract with  
35 the holder thereof.

### §3. Form of bond.

1 The bonds shall be executed on behalf of the state of  
2 West Virginia, by the manual or facsimile signature of  
3 the treasurer thereof, under the great seal of the state or  
4 a facsimile thereof, and countersigned by the manual or  
5 facsimile signature of the auditor of the state: *Provided*,  
6 That one of said signatures on said bonds shall be a man-

7 ual signature and said bonds shall be in the following form  
8 or to the following effect, as nearly as may be, namely:

9

## COUPON ROAD BOND

10

(Or registered road bond, as the case may be)

11

OF THE

12

STATE OF WEST VIRGINIA

13

\$ \_\_\_\_\_

No. \_\_\_\_\_

14

The state of West Virginia, under and by virtue of  
15 authority of an amendment to the constitution, which  
16 was proposed by House Joint Resolution No. 10, adopted  
17 the seventh day of March, one thousand nine hundred  
18 sixty-three, and was ratified by a vote of the people  
19 at the general election on the third day of November,  
20 one thousand nine hundred sixty-four, which is here-  
21 by made a part hereof as fully as if set forth at length  
22 herein, acknowledges itself to be indebted to and hereby  
23 promises to pay to the bearer hereof (in case of a coupon  
24 bond) or to \_\_\_\_\_ or assigns (the owner  
25 of record, in case of registered bonds) on the \_\_\_\_\_ day  
26 of \_\_\_\_\_, 19\_\_\_\_, in lawful money of the  
27 United States of America at the office of the treasurer  
28 of the state of West Virginia at the capitol of said state,  
29 or, at \_\_\_\_\_ bank in the city of  
30 New York, or, at \_\_\_\_\_ bank, at the  
31 option of the holder, the sum of \_\_\_\_\_ dollars,  
32 with interest thereon at \_\_\_\_\_ per centum per annum  
33 from the date, payable semiannually in like lawful money  
34 of the United States of America at the treasurer's office  
35 or banks aforesaid, on the first day of \_\_\_\_\_ and  
36 the first day of \_\_\_\_\_ of each year (and in  
37 the case of coupon bonds) according to the tenor of  
38 the annexed coupons bearing the facsimile signature  
39 of the treasurer of the state of West Virginia, upon sur-  
40 render of such coupons. This bond (in case of a coupon  
41 bond) may be exchanged for a registered bond of like  
42 tenor upon application to the treasurer of the state of  
43 West Virginia.

44

(Redemption provisions, if any, to be inserted here)

45

To secure the payment of the principal and interest  
46 of this bond, the state of West Virginia covenants and

47 agrees with the holder as follows: (1) That this bond  
 48 shall constitute a direct and general obligation of the  
 49 state of West Virginia; (2) that the full faith and credit  
 50 of the state is pledged to secure the payment of the  
 51 principal and interest of this bond; (3) that an annual  
 52 state tax shall be collected in an amount sufficient to  
 53 pay as it may accrue the interest on this bond and the  
 54 principal thereof; and (4) that such tax shall be levied in  
 55 any year only to the extent that the moneys in the  
 56 state road fund irrevocably set aside and appropriated  
 57 for and applied to the payment of the interest on and  
 58 principal of this bond becoming due and payable in such  
 59 year are insufficient therefor.

60 This bond is hereby made exempt from any taxa-  
 61 tion by the state of West Virginia, or by any county,  
 62 district, or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile  
 64 signature of the treasurer of the state of West Virginia,  
 65 and the manual or facsimile countersignature of the  
 66 auditor of the state, hereto affixed according to law,  
 67 dated the \_\_\_\_\_ day of \_\_\_\_\_, one thousand  
 68 nine hundred \_\_\_\_\_, and the seal of the state of  
 69 West Virginia or a facsimile thereof.

70

\_\_\_\_\_  
 Treasurer of the State of West Virginia

72 (SEAL)

73 Countersigned:

74

\_\_\_\_\_  
 Auditor of the State of West Virginia

#### §4. Form of coupon.

1 The form of coupon shall be substantially as follows,  
 2 to wit:

3

STATE OF WEST VIRGINIA

4 Bond No. \_\_\_\_\_

Coupon No. \_\_\_\_\_

5 On the first day of \_\_\_\_\_, 19\_\_\_\_, the state  
 6 of West Virginia will pay to the bearer, in lawful money  
 7 of the United States of America, at the office of the  
 8 treasurer of the state, or, at \_\_\_\_\_ bank  
 9 in the city of New York, or, at \_\_\_\_\_, at the  
 10 option of the holder, the sum of \_\_\_\_\_

11 dollars, the same being semiannual interest on Road  
12 Bond No. \_\_\_\_\_.

13

14 \_\_\_\_\_  
Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall  
16 be by his facsimile signature and the coupons shall be  
17 numbered in the order of their maturity, from number  
18 one consecutively. The bonds and coupons may be  
19 signed, as provided in this act, by the present treasurer  
20 and auditor, or by any of their respective successors  
21 in office, and the bonds signed by the persons now in  
22 the office may be sold by the governor or his successor  
23 in office without being signed by the successor in office  
24 of the present treasurer or auditor.

**§5. Listing by auditor.**

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

**§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.**

1 Into the state road sinking fund there shall be paid  
2 all money from any and all appropriations made by  
3 the state from the state road fund for the purpose of  
4 paying the interest on such bonds or paying off and  
5 retiring the bonds, from transfer and registration fees  
6 as herein provided, and from any other source what-  
7 soever which is made liable by law for the payment  
8 of the principal of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a  
10 separate account, under the designation aforesaid, and  
11 all money belonging to the fund shall be deposited in  
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the  
14 state first to the payment of the semiannual interest  
15 on such bonds as it shall become due as herein pro-



16 vided. The remainder of the fund shall be turned over  
17 by the state treasurer to the state sinking fund com-  
18 mission, whose duty it shall be to invest the same in  
19 obligations of the government of the United States,  
20 bonds of the state of West Virginia, or any political  
21 subdivision thereof: *Provided*, That bonds or other obli-  
22 gations so purchased by the state sinking fund commis-  
23 sion shall mature so as to provide sufficient money to  
24 pay off all bonds herein provided to be issued as they  
25 become due; and the money so paid into the state road  
26 sinking fund under the provisions of this act shall be  
27 expended for the purpose of paying the interest and  
28 principal of the bonds hereby provided for as they  
29 severally become due and payable and for no other  
30 purpose except that the fund may be invested until  
31 needed, as herein provided.

**§7. Covenants of state.**

1 The state of West Virginia covenants and agrees with  
2 the holders of the bonds issued pursuant hereto as fol-  
3 lows: (1) That such bonds shall constitute a direct and  
4 general obligation of the state of West Virginia; (2) that  
5 the full faith and credit of the state is hereby pledged  
6 to secure the payment of the principal and interest  
7 of such bonds; (3) that an annual state tax shall be  
8 collected in an amount sufficient to pay as it may accrue  
9 the interest on such bonds and the principal thereof;  
10 and (4) that such tax shall be levied in any year only  
11 to the extent that the moneys in the state road fund  
12 irrevocably set aside and appropriated for and applied  
13 to the payment of the interest on and principal of said  
14 bonds becoming due and payable in such year are in-  
15 sufficient therefor.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized  
2 at such time or times as he may determine necessary  
3 to provide funds for the building and construction of  
4 state roads and highways, as herein provided, upon the  
5 recommendation of the West Virginia commissioner of  
6 highways, and after reviewing the program of the West

7 Virginia department of highways and subject to the limi-  
8 tations contained in this act. All sales shall be at not less  
9 than par and accrued interest. All interest coupons becom-  
10 ing payable prior to the sale date shall be cancelled  
11 by the treasurer and rendered ineffective, before the  
12 delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund;  
expenditures.**

1 The proceeds of all sales of bonds herein authorized  
2 shall be paid into a separate and distinct account in  
3 the state road fund and shall be used and appropri-  
4 ated solely for the building and construction of state  
5 roads and highways provided for by the state consti-  
6 tution and the laws enacted thereunder. Except for  
7 such sums necessary for current operating balances,  
8 such account shall be invested and reinvested in short-  
9 term obligations of the United States treasury: *Provided,*  
10 That no such investment or reinvestment shall adversely  
11 affect the current operating balances of such account.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the  
2 bonds authorized by this act are produced or made shall  
3 be the property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

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

**§12. Interim certificates.**

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

**§13. State treasurer to be financial advisor; redemption of  
bonds.**

1 The state treasurer shall serve as financial advisor to  
2 the governor for the issuance and sale of such bonds.

3 In addition to his other duties, the state treasurer may  
4 provide in the bond resolution and on the face of the  
5 bonds that said bonds are subject to redemption prior  
6 to maturity, the redemption price, the redemption date,  
7 and the manner in which the bonds shall be redeemed.

**§14. Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal  
2 representative, shall serve as bond counsel and shall be  
3 responsible for the issuance of a final approving opinion  
4 regarding the legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses ap-  
2 proved by the attorney general, incurred in the execu-  
3 tion of this act shall be paid out of state road fund on  
4 warrants of the auditor of the state drawn on the state  
5 treasurer.

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## CHAPTER 142

(Senate Bill No. 257—By Mr. Carrigan)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eleven, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to travel expenses, out-of-state travel rules and regulations, payment of dues or membership in organizations, recruitment expenses for the West Virginia board of regents, and moving expenses of employees of the West Virginia board of regents.

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

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

**ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.****§12-3-11. Travel expense; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia board of regents; moving expenses of employees of West Virginia board of regents.**

1 The governor shall promulgate rules and regulations  
2 concerning out-of-state travel by state officials and em-  
3 ployees, except those in the legislative and judicial  
4 branches of the state government and except for the at-  
5 torney general, auditor, secretary of state, treasurer and  
6 commissioner of agriculture and their employees. The  
7 Legislature, the supreme court of appeals and the at-  
8 torney general, auditor, secretary of state, treasurer and  
9 commissioner of agriculture shall promulgate rules and  
10 regulations concerning out-of-state travel for their re-  
11 spective branches and departments of state government.  
12 Copies of such rules and regulations shall be filed with  
13 the auditor, and the secretary of state. It shall be unlaw-  
14 ful for the auditor to issue a warrant in payment of  
15 any claim for out-of-state travel expenses incurred by  
16 a state officer or employee unless such claim meets all  
17 the requirements of the rules and regulations so filed.

18 Payment for dues or membership in annual or other  
19 voluntary organizations shall be made from the proper  
20 item or appropriation after an itemized schedule of  
21 such organizations, together with the amount of such  
22 dues or membership, has been submitted to the budget  
23 director and approved by the governor.

24 It shall be lawful for the West Virginia board of regents  
25 to authorize the payment of traveling expenses incurred  
26 by any person invited to visit the campus of any state  
27 institution of higher education or any other facility under  
28 control of the board to be interviewed concerning his  
29 possible employment by the board or agent thereof.

30 It shall be lawful for the West Virginia board of re-  
31 gents to authorize payment of: (1) All or part of the  
32 reasonable expense incurred by a person newly em-  
33 ployed by the board in moving his household furniture,  
34 effects and immediate family to his place of employment;

35 and (2) all or part of the reasonable expense incurred  
36 by an employee of the board in moving his household  
37 furniture, effects and immediate family as a result of  
38 a reassignment of the employee which is considered de-  
39 sirable, advantageous to and in the best interest of the  
40 state: *Provided*, That no part of the moving expenses  
41 of any one such employee shall be paid more frequently  
42 than once in twelve months.

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## CHAPTER 143

(Senate Bill No. 101—By Mr. McCourt, Mr. President, and Mr. Palumbo)

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[Passed February 24, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one and three, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to composition, terms of office, and compensation of state board of education.

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

That sections one and three, 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.**

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

§18-2-3. Meetings; compensation and expenses of members.

§18-2-1. **Creation; composition; appointment, qualifications, terms and removal of members; offices.**

1 There shall be a state board of education, to be known  
2 as the West Virginia board of education, which shall be  
3 a corporation and as such may contract and be contracted  
4 with, plead and be impleaded, sue and be sued, and have  
5 and use a common seal. The state board shall consist of  
6 eleven members, of whom one shall be the state superin-  
7 tendent of schools, ex officio, and one of whom shall be the

8 chancellor of the board of regents, ex officio, neither of  
9 whom shall be entitled to vote. The other nine members  
10 shall be citizens of the state, appointed by the governor, by  
11 and with the advice and consent of the Senate, for over-  
12 lapping terms of nine years, except that the original ap-  
13 pointments shall be for terms of one, two, three, four, five,  
14 six, seven, eight and nine years, respectively. Terms of of-  
15 fice shall begin on the fifth day of November of the appro-  
16 priate year and end on the fourth day of November of the ap-  
17 propriate year. At least two but not more than three mem-  
18 bers shall be appointed from each congressional district.

19 No more than five of the appointive members shall  
20 belong to the same political party, and no person shall be  
21 eligible for appointment to membership on the state  
22 board who is a member of any political party executive  
23 committee or holds any other public office or public em-  
24 ployment under the federal government or under the gov-  
25 ernment of this state or any of its political subdivisions,  
26 or who is an appointee or employee of the board. Mem-  
27 bers shall be eligible for reappointment. Any vacancy on  
28 the board shall be filled by the governor by appointment  
29 for the unexpired term.

30 Notwithstanding the provisions of section four, article  
31 six, chapter six of this code, no member of the state  
32 board may be removed from office by the governor except  
33 for official misconduct, incompetence, neglect of duty, or  
34 gross immorality and then only in the manner prescribed  
35 by law for the removal by the governor of state elective  
36 officers.

37 Before exercising any authority or performing any  
38 duties as a member of the state board, each member shall  
39 qualify as such by taking and subscribing to the oath  
40 of office prescribed by section five, article four of the  
41 constitution of West Virginia, the certificate whereof  
42 shall be filed with the secretary of state. A suitable office  
43 in the state department of education at the state capitol  
44 shall be provided for the use of the state board.

### **§18-2-3. Meetings; compensation and expenses of members.**

1 The state board shall hold at least six meetings in every  
2 year at such times and places as it may prescribe. It may

3 meet at such other times as may be necessary, such  
4 meetings to be held upon its own resolution or at the  
5 call of the president of the state board. The members of  
6 the state board, other than the ex officio members of the  
7 board, shall be paid fifty dollars per diem each day or any  
8 part thereof spent in the performance of their duties under  
9 this article, and shall be reimbursed for all reasonable and  
10 necessary expenses actually incurred incident to the per-  
11 formance of their duties. The state superintendent of  
12 schools and the chancellor of the board of regents shall be  
13 reimbursed for such expenses, but shall not receive a per  
14 diem allowance. Upon presentation of itemized sworn  
15 statements, the per diem and reimbursement payments  
16 shall be made from appropriations made by the Legis-  
17 lature to the state board.

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## CHAPTER 144

(Senate Bill No. 104—By Mr. McKown and Mr. Hubbard)

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[Passed February 24, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correspondence, business, occupational and trade schools inside and outside this state; requiring permits in connection therewith; providing certain exemptions from the permit requirements; providing that the West Virginia board of education may refuse the granting of such exemptions; providing for annual reports to the West Virginia board of education by correspondence, business, occupational and trade schools located in this state; providing that permits shall be valid for one year; providing for the issuance of permits upon the furnishing of a surety bond; providing for the revocation of a permit for the failure of a school to fulfill its contract with one or more students, or for viola-

tion or failure to comply with any provisions of law or with any regulations of the West Virginia board of education; providing that a permit is not approval or accreditation of course or school; prohibiting actions by any such school to recover for services where there was no valid permit; authorizing enforcement by attorney general or prosecuting attorney; and providing penalties.

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

That section ten, 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.**

**§18-2-10. Permits required for certain correspondence, business, occupational and trade schools; reports, issuance, renewal and revocation of permits; penalty and enforcement.**

1 Except for persons representing correspondence, occu-  
2 pational and trade schools that are members of nationally  
3 recognized accrediting associations approved by the West  
4 Virginia board of education, and for persons representing  
5 business schools that are members of the West Virginia  
6 association of business schools and are also members of  
7 the national association and council of business schools,  
8 it shall be unlawful for any person representing a corre-  
9 spondence, business, occupational or trade school inside  
10 or outside this state to solicit, sell or offer to sell courses  
11 of instruction to any resident of this state for considera-  
12 tion or remuneration unless he first obtains a permit from  
13 the West Virginia board of education in the manner and  
14 on the terms herein prescribed.

15 All schools whose representatives are exempted from  
16 the requirement of a permit under this section shall, be-  
17 fore recruiting any students in West Virginia, secure  
18 authorization from the state board of education. The board  
19 may refuse authorization to any such school, regardless of  
20 that school's membership in any accrediting association, if  
21 the board has reason to believe that the school engages in



22 practices which are inconsistent with this section or with  
23 rules and regulations issued pursuant thereto.

24 All correspondence, business, occupational and trade  
25 schools located in this state, including those schools  
26 whose representatives are not required to secure permits  
27 under this section, shall make annual reports to the state  
28 board of education, on forms furnished by the board, pro-  
29 viding such appropriate information as the board reason-  
30 ably may require.

31 The application for a permit shall be made on forms to  
32 be furnished by the board. The application shall be  
33 accompanied by a fee of five dollars and by a surety bond  
34 in the penal sum of one thousand dollars. Such bond may  
35 be continuous and shall be conditioned to provide in-  
36 demnification to any student suffering loss as a result of  
37 any fraud or misrepresentation used in procuring his  
38 enrollment. The bond may be given by the representative  
39 of a school or by the school itself as a blanket bond  
40 covering all of its representatives in the amount of one  
41 thousand dollars each. The surety on any such bond may  
42 cancel the same upon giving thirty days' notice in writing  
43 to the principal on said bond and to the state board of  
44 education and thereafter shall be relieved of liability for  
45 any breach of condition occurring after the effective date  
46 of said cancellation.

47 A permit shall be valid for one year from the date on  
48 which it is issued, and, upon application, accompanied by  
49 a fee of five dollars and the surety bond as herein re-  
50 quired, may be renewed if a continuous bond has not  
51 been furnished.

52 All fees collected for the issuance or renewal of such  
53 permits shall be deposited in the state treasury to the  
54 credit of the general school fund.

55 The state board of education may issue a permit to any  
56 school representative who shall furnish the surety bond  
57 required herein and who shall furnish proof satisfactory  
58 to the board that he is of good moral character and that  
59 the school he represents has a good reputation for honesty  
60 and integrity in prior education transactions.

61 A permit issued hereunder, upon fifteen days' notice  
62 and after a hearing if a hearing is requested by the permit  
63 holder, may be revoked by the board of education for  
64 fraud or misrepresentation in soliciting or enrolling  
65 students, for failure of the school to fulfill its contract  
66 with one or more students who are residents of West  
67 Virginia, or for violation of or failure to comply with any  
68 provision of this section or with any regulation of the  
69 state board of education.

70 The issuance of a permit pursuant to this section does  
71 not constitute approval or accreditation of any course  
72 or school. No school nor any representative of a school  
73 shall make any representation stating, inserting or imply-  
74 ing that a permit issued pursuant to this section con-  
75 stitutes approval or accreditation by the state of West  
76 Virginia, state board of education or any other depart-  
77 ment or agency of the state.

78 The state board of education is hereby authorized to  
79 adopt rules and regulations for the administration and  
80 enforcement of the provisions of this section, and to  
81 establish an advisory committee of not more than five  
82 owners or other representatives of privately owned cor-  
83 respondence, business, occupational and trade schools.

84 Any person violating any provision of this section shall  
85 be guilty of a misdemeanor, and, upon conviction thereof,  
86 shall be fined not more than two hundred dollars, or  
87 imprisoned in the county jail not more than sixty days,  
88 or both fined and imprisoned. No correspondence, busi-  
89 ness, occupational or trade school shall maintain an action  
90 in any court of this state to recover for services rendered  
91 pursuant to a contract solicited by the school's repre-  
92 sentative if the representative is required under this sec-  
93 tion to obtain a permit and did not hold a valid permit at  
94 the time the contract was signed by any of the parties  
95 thereto. The attorney general or any county prosecuting  
96 attorney, at the request of the state board of education or  
97 upon his own motion, may bring any appropriate action  
98 or proceeding in any court of competent jurisdiction for  
99 the enforcement of the provisions of this section relating  
100 to permits, bonds and sureties.

## CHAPTER 145

(House Bill No. 1073—By Mr. Lohr)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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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 the powers and authority of county boards of education.

*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. COUNTY BOARD OF EDUCATION.

#### §18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter  
2 and the rules and regulations of the state board, shall  
3 have authority:

4 (1) To control and manage all of the schools and  
5 school interests for all school activities and upon all  
6 school property, whether owned or leased by the county,  
7 including the authority to require that records be kept  
8 of all receipts and disbursements of all funds collected  
9 or received by any principal, teacher, student or other  
10 person in connection therewith, any programs, activities  
11 or other endeavors of any nature operated or carried  
12 on by or in the name of the school, or any organization  
13 or body directly connected with the school, to audit such  
14 records and to conserve such funds, which shall be  
15 deemed quasi-public moneys, including securing surety  
16 bonds by expenditure of board moneys;

17 (2) To establish schools, from preschool through high  
18 school, inclusive of vocational schools; and to establish  
19 schools and programs, or both, for post high school  
20 instruction, subject to approval of the state board of  
21 education;

22 (3) To close any school which is unnecessary and to  
23 assign the pupils thereof to other schools: *Provided*, That

24 such closing shall be officially acted upon and teachers  
25 and service personnel involved notified on or before the  
26 first Monday in May, in the same manner as provided  
27 in section four of this article, except in an emergency,  
28 subject to the approval of the state superintendent, or  
29 under subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average  
32 daily attendance falls below twenty pupils for two months  
33 in succession, and send the pupils to other schools in the  
34 district or to schools in adjoining districts. If the teachers  
35 in the schools so closed are not transferred or reassigned  
36 to other schools, they shall receive one month's salary;

37 (6) To provide at public expense adequate means of  
38 transportation for all children of school age who live  
39 more than two miles distant from school by the nearest  
40 available road and to provide at public expense and ac-  
41 cording to such regulations as the board may establish,  
42 adequate means of transportation for school children  
43 participating in board-approved curricular and extra-  
44 curricular activities; and provide in addition thereto,  
45 by rules and regulations and within the available reve-  
46 nues, transportation for those within two miles distance:  
47 *Provided*, That in all cases the buses or other transpor-  
48 tation facilities owned by the board of education shall  
49 be driven or operated only by drivers regularly employed  
50 by the board of education: *Provided, however*, That  
51 buses shall be used for extracurricular activities as herein  
52 provided only when the insurance provided for by this  
53 section shall have been effected;

54 (7) To provide at public expense for insurance against  
55 the negligence of the drivers of school buses, trucks or  
56 other vehicles operated by the board; and if the trans-  
57 portation of pupils be let out to contract, then the con-  
58 tract therefor shall provide that the contractor shall  
59 carry insurance against negligence in such an amount  
60 as the board shall specify;

61 (8) To employ and to provide in-service training for  
62 teacher aides, the training to be in accordance with rules  
63 and regulations of the state board;

64 (9) To establish and conduct a self-supporting dormi-  
65 tory for the accommodation of the pupils attending a  
66 high school or participating in a post high school program  
67 and of persons employed to teach therein;

68 (10) To employ legal counsel;

69 (11) The board shall be authorized to provide at  
70 public expense, adequate public liability insurance;

71 (12) No policy or contract of public liability insurance  
72 providing coverage for public liability shall be purchased  
73 as provided herein, unless it shall contain a provision or  
74 endorsement whereby the company issuing such policy  
75 waives, or agrees not to assert as a defense to any claim  
76 covered by the terms of such policy, the defense of  
77 governmental immunity. In any action against the board,  
78 its officers, agents or employees, in which there is in  
79 effect liability insurance coverage in an amount equal  
80 to or greater than the amount sued for, the attorney for  
81 such board, the attorney for such insurance carrier, or  
82 any other attorney who may appear on behalf of the  
83 board, its agents, officers or employees shall not set up  
84 the defense of governmental immunity in any such action.

85 "Quasi-public funds" as used herein are defined as any  
86 money received by any principal, teacher, student or  
87 other person for the benefit of the school system as a  
88 result of curricular or noncurricular activities.

89 The board of any district shall expend under such  
90 regulations as it establishes for each child an amount not  
91 to exceed the proportion of all school funds of the district  
92 that each child would be entitled to receive if all the  
93 funds were distributed equally among all the children of  
94 school age in the district upon a per capita basis.

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## CHAPTER 146

(Senate Bill No. 130—By Mr. McCourt, Mr. President, and Mr. Palumbo)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section fifteen, article five,

chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to ages of persons to whom schools open.

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

That section fifteen, 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. COUNTY BOARD OF EDUCATION.**

**§18-5-15. School term; employment term; instructional term; extension of terms; levies; ages of persons to whom schools are open.**

1 The board shall provide a school term for its schools  
2 which shall be comprised of (a) an employment term  
3 for teachers, and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less than  
5 ten months, a month to be defined as twenty employment  
6 days exclusive of Saturdays and Sundays: *Provided*, That  
7 the board may contract with all or part of the personnel  
8 for a longer term. The employment term shall be fixed  
9 within such beginning and closing dates as established by  
10 the state board: *Provided, however*, That the time be-  
11 tween the beginning and closing dates does not exceed  
12 forty-three weeks.

13 Within the employment term there shall be an instruc-  
14 tional term for pupils of not less than one hundred  
15 eighty nor more than one hundred eighty-five instruc-  
16 tional days. Instructional and noninstructional activities  
17 may be scheduled during the same employment day. The  
18 instructional term shall start not later than the fifth  
19 day of the employment term.

20 Noninstructional days in the employment term may be  
21 used for curriculum development, preparation for open-  
22 ing and closing of the instructional term, in-service and  
23 professional training of teachers, teacher-pupil-parent  
24 conferences, professional meetings and other related  
25 activities.

26 Where the employment term overlaps a teacher's parti-  
27 cipation in a summer institute or institution of higher  
28 learning for the purpose of professional growth, the  
29 teacher may substitute, with the approval of the county  
30 superintendent, such participation for not more than four  
31 of the noninstructional days of the employment term.

32 The board may extend the instructional term beyond  
33 one hundred eighty-five instructional days provided the  
34 employment term is extended an equal number of days.  
35 If the state revenues and regular levies, as provided by  
36 law, are insufficient to enable the board of education to  
37 provide for the school term, the board may at any general  
38 or special election, if petitioned by at least five percent of  
39 the qualified voters in the district, submit the question of  
40 additional levies to the voters. If at the election sixty  
41 percent of the qualified voters cast their ballots in favor  
42 of the additional levy, the board shall fix the term and  
43 lay a levy necessary to pay the cost of the additional  
44 term. The additional levy fixed by the election shall not  
45 continue longer than five years without submission to  
46 the voters. The additional rate shall not exceed by more  
47 than one hundred percent the maximum school rate pre-  
48 scribed by article eight, chapter eleven of the code, as  
49 amended.

50 The public schools shall be open for the full instruc-  
51 tional term to all persons who have attained the entrance  
52 age as stated in section five, article two and section  
53 eighteen, article five, chapter eighteen of this code:  
54 *Provided*, That persons over the age of twenty-one may  
55 enter only those programs or classes authorized by the  
56 state board of education and deemed appropriate by the  
57 county board of education conducting any such program  
58 or class: *And provided further*, That authorization for  
59 such programs or classes shall in no way serve to affect  
60 or eliminate programs or classes offered by county boards  
61 of education at the adult level for which fees are charged  
62 to support such programs or classes.

## CHAPTER 147

(Com. Sub. for Senate Bill No. 100—Originating in the Senate  
Committee on Education)

[Passed March 12, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of students between school districts.

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

That section sixteen-a, 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. COUNTY BOARD OF EDUCATION.

**§18-5-16a. Authorization to transfer pupils from one district to another; payment of tuition; and net enrollment.**

1 Whenever, in the opinion of the board of education  
2 of any county, the education and welfare of a pupil will  
3 be enhanced, the board of education of such county shall  
4 have the authority to transfer any such pupil or pupils  
5 on a part-time or full-time basis from one school district  
6 to another school district within the state: *Provided*, That  
7 the boards of education of both the transferor and the  
8 transferee districts agree to the same. Whenever a pupil  
9 is transferred from one school district to another dis-  
10 trict on a full-time or part-time basis, the board of edu-  
11 cation of the school district in which the pupil is a bona  
12 fide resident shall pay to the board of education of the  
13 school district to which the pupil is transferred a tuition  
14 that is agreed upon by both such boards. Tuition for each  
15 full-time pupil shall not exceed the difference between  
16 the state aid per pupil received by the county to which  
17 the pupil is transferred and the county cost per pupil in  
18 the county to which said pupil is transferred.

19 For purposes of net enrollment as defined in section  
20 two of article nine-a of this chapter: (1) Whenever a



21 pupil is transferred on a full-time basis from one school  
22 district to another district pursuant to the provisions of  
23 this section, the county to which the pupil is transferred  
24 shall include such pupil in its net enrollment; and (2)  
25 whenever a pupil is transferred on a part-time basis  
26 from one school district to another school district pur-  
27 suant to the provisions of this section, the county in  
28 which the student is a bona fide resident shall count the  
29 pupil in its net enrollment.

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## CHAPTER 148

(Com. Sub. for Senate Bill No. 343—Originating in the Senate  
Committee on Education)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section eighteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to early childhood education.

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

That section eighteen, 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. COUNTY BOARD OF EDUCATION.**

#### **§18-5-18. Early childhood education.**

1 County boards of education shall provide by the school  
2 year one thousand nine hundred seventy-three—seventy-  
3 four and continue thereafter early childhood education  
4 programs for all children who shall have attained the  
5 age of five prior to November first of the school year in  
6 which the pupil enters such early childhood education  
7 program and may establish early childhood education  
8 programs designed for children below the age of five.

9 Persons employed as early childhood education teach-  
10 ers, as distinguished from paraprofessional personnel,

11 shall be required to hold a certificate valid for teaching  
12 at the assigned level as prescribed by regulations estab-  
13 lished by the state board of education. The state board  
14 of education shall establish and prescribe guidelines and  
15 criteria setting forth the minimum requirements for all  
16 paraprofessional personnel employed in early childhood  
17 education programs established pursuant to the provi-  
18 sions of this section and no such paraprofessional per-  
19 sonnel shall be employed in any early childhood edu-  
20 cation program unless he meets such minimum require-  
21 ments.

22 The state board of education with the advice of the  
23 state superintendent of free schools shall establish and  
24 prescribe guidelines and criteria relating to the estab-  
25 lishment and operation of early childhood education pro-  
26 grams in accordance with the other provisions of this  
27 section. Guidelines and criteria so established and pre-  
28 scribed are also intended to serve for the establishment  
29 and operation of nonpublic early childhood education  
30 programs and shall be used for the evaluation and ap-  
31 proval of such programs, provided application for such  
32 evaluation and approval is made in writing to the state  
33 board by proper authorities in control of such programs.  
34 The state superintendent of free schools at intervals  
35 not to exceed two years shall publish a list of nonpublic  
36 early childhood education programs that have been ap-  
37 proved in accordance with the provisions of this section.

38 Pursuant to such guidelines and criteria, and only pur-  
39 suant to such guidelines and criteria, the county boards  
40 may establish programs taking early childhood educa-  
41 tion to the homes of the children involved, using edu-  
42 cational television, paraprofessional personnel in addition  
43 to and to supplement regularly certified teachers, mobile  
44 or permanent classrooms and other means developed to  
45 best carry early childhood education to the child in its  
46 home and enlist the aid and involvement of its parent  
47 or parents in presenting the program to the child;  
48 or may develop programs of a more formal kinder-  
49 garten type, in existing school buildings, or both, as  
50 such county board may determine, taking into con-

51 sideration the cost, the terrain, the existing available  
52 facilities, the distances each child may be required to  
53 travel, the time each child may be required to be away  
54 from home, the child's health, the involvement of par-  
55 ents and such other factors as each county board may find  
56 pertinent.

57 Funds for implementing the early childhood educa-  
58 tion programs during the fiscal year nineteen hundred  
59 seventy-two and thereafter shall be allocated to counties  
60 from a special appropriation to the state department of  
61 education from the general revenue fund: *Provided,*  
62 *however,* That except for expenditures from the general  
63 revenue funds for regional early childhood demonstration  
64 centers, in no event shall any state money from the  
65 general fund be expended under the provisions of this  
66 section unless federal funds are available for the purpose  
67 of this section.

68 Allocations to counties will be made on the basis of  
69 approved early childhood programs. The West Virginia  
70 board of education shall establish criteria and standards  
71 necessary to guide counties in developing approvable  
72 early childhood education programs and shall determine  
73 funding levels of said programs on local operating costs.

74 An additional appropriation shall be made to the state  
75 department of education from the general revenue fund  
76 to establish and operate during the fiscal year nineteen  
77 hundred seventy-two, regional early childhood education  
78 demonstration centers in educational regions three, four,  
79 five, six and seven, and thereafter in regions one through  
80 seven. Said funds shall be allocated to said regions for  
81 establishing and operating regional demonstration centers  
82 in accordance with criteria and standards established  
83 by the West Virginia board of education. Said regional  
84 centers shall be established to provide exemplary and  
85 innovative early childhood education programs, to pro-  
86 vide laboratory experiences for preservice and in-  
87 service education for professional personnel and staff  
88 development programs for training paraprofessional per-  
89 sonnel, to establish organizational and administrative  
90 machinery designed to promote cooperation between and  
91 among all agencies involved in the education and de-

92 velopment of young children, and to promote cooperation  
93 between counties in providing high cost supervisory, de-  
94 velopmental, research and evaluative services not cur-  
95 rently available to individual counties.

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## CHAPTER 149

(House Bill No. 1080—By Mr. Lohr)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of "refund interest" in relation to teachers retirement.

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

That section three, 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 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### **§18-7A-3. Definitions.**

1 "Teacher" shall include the following persons, if reg-  
2 ularly employed for at least half-time service: (a) Any  
3 person employed for instructional service in the public  
4 schools of West Virginia; (b) principals; (c) public  
5 school librarians; (d) superintendents of schools and as-  
6 sistant county superintendents of schools; (e) any county  
7 school attendance director holding a West Virginia  
8 teacher's certificate; (f) the executive secretary of the  
9 retirement board; (g) members of the research, exten-  
10 sion, administrative or library staffs of the public schools;  
11 (h) the state superintendent of schools, heads and as-  
12 sistant heads of the divisions under his supervision, or  
13 any other employee thereunder performing services of  
14 an educational nature; (i) employees of the state board

15 of education who are performing services of an educa-  
16 tional nature; (j) any person employed in a nonteaching  
17 capacity by the state board of education, the West Vir-  
18 ginia board of regents, any county board of education, the  
19 state department of education or the teachers retirement  
20 board, if such person was formerly employed as a teacher  
21 in the public schools; (k) all classroom teachers, prin-  
22 cipals and educational administrators in schools under the  
23 supervision of the state commissioner of public institu-  
24 tions; (l) employees of the state board of school finance  
25 if such person was formerly employed as a teacher in the  
26 public schools.

27 "Members of the administrative staff of the public  
28 school" shall include deans of instruction, deans of men,  
29 deans of women, and financial and administrative sec-  
30 retaries.

31 "Members of the extension staff" of the public schools  
32 shall include every agricultural agent, boys' and girls'  
33 club agent, and every member of the agricultural exten-  
34 sion staff whose work is not primarily stenographic,  
35 clerical or secretarial.

36 "Retirement system" shall mean the state teachers  
37 retirement system provided for in this article.

38 "Present teacher" shall mean any person who was a  
39 teacher within the twenty-seven years beginning July  
40 first, one thousand nine hundred thirty-four, and whose  
41 membership in the retirement system has been continuous.

42 "New entrant" shall mean a teacher who is not a pres-  
43 ent teacher.

44 "Present member" shall mean a present teacher who is  
45 a member of the retirement system.

46 "Total service" shall mean all service as a teacher while  
47 a member of the retirement system since last becoming  
48 a member and, in addition thereto, his credit for prior  
49 service, if any.

50 "Prior service" shall mean all service as a teacher com-  
51 pleted prior to July first, one thousand nine hundred  
52 forty-one, and all service of a present member who was  
53 employed as a teacher, and did not contribute to retire-  
54 ment account because he was legally ineligible for mem-  
55 bership during such service.

56 "Average final salary" shall mean the average annual  
57 salary earned as a teacher during the last fifteen years  
58 of prior service, including military service, as provided  
59 herein, or if prior service is less than fifteen years, the  
60 average annual salary for that period. If the records  
61 for determining each annual salary need cannot reason-  
62 ably be established by the retirement board, then the  
63 term shall mean the average annual salary of the teacher  
64 for years for which records are available.

65 "Accumulated contributions" shall mean all deposits  
66 and all deductions from the earnable compensation of a  
67 contributor minus the total of all supplemental fees de-  
68 ducted from his compensation.

69 "Regular interest" shall mean interest at three per-  
70 cent compounded annually, or a higher earnable rate if  
71 approved by the retirement board.

72 "Refund interest" shall mean interest compounded an-  
73 nually at a rate of three percent.

74 "Employer" shall mean the agency of and within the  
75 state which has employed or employs a member.

76 "Contributor" shall mean a member of the retirement  
77 system who has an account in the teachers accumulation  
78 fund.

79 "Beneficiary" shall mean the recipient of annuity pay-  
80 ments made under the retirement system.

81 "Refund beneficiary" shall mean the estate of a deceased  
82 contributor, or such person as he shall have nominated  
83 as beneficiary of his contributions by written designation  
84 duly executed and filed with the retirement board.

85 "Earnable compensation" shall mean the full compensa-  
86 tion actually received by members for service as teachers  
87 whether or not a part of such compensation is received  
88 from other funds, federal or otherwise, than those provided  
89 by the state or its subdivisions. Allowances from em-  
90 ployers for maintenance of members shall be deemed a  
91 part of earnable compensation of such members.

92 "Annuities" shall mean the annual retirement payments  
93 for life granted beneficiaries in accordance with this  
94 article.

95 "Member" shall mean a member of the retirement sys-  
96 tem.

97 "Public schools" shall mean all publicly supported  
98 schools, including normal schools, colleges, and universi-  
99 ties in this state.

100 "Deposit" shall mean a voluntary payment to his account  
101 by a member.

102 The masculine gender shall be construed so as to in-  
103 clude the feminine.

104 Age in excess of seventy years shall be deemed to be  
105 seventy years.

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## CHAPTER 150

(House Bill No. 649—By Mr. Speaker, Mr. Boiansky, and Mr. Lohr)

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[Passed March 6, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to repeal section thirteen-f, article two, and section five-c, article eleven; to amend article seven-a by adding thereto a new section, designated section fourteen-a; and to amend article twenty-three by adding thereto a new section, designated section four-a, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to options of certain members of the state teachers retirement system to elect between paying into the state teachers retirement system, a combination of that system and a supplemental retirement system, and a retirement plan other than the state teachers retirement system, and the consequences of such elections, and also, relating to supplemental and additional retirement plans for employees of the West Virginia board of regents.

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

That section thirteen-f, article two, and section five-c, article eleven be repealed; that article seven-a be amended by adding thereto a new section, designated section fourteen-a; and that

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

**Article**

**7A. State Teachers Retirement System.**

**23. Additional Powers, Duties and Responsibilities of Governing Boards of State Institutions of Higher Education.**

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-14a. Options of certain members to elect between state teachers retirement system, a combination of that system and a supplemental retirement system, and a retirement plan other than the state teachers retirement system.**

1 Notwithstanding any other provisions of this article to  
2 the contrary, any present member of the retirement  
3 system, or person who was a member on February twelve,  
4 one thousand nine hundred seventy, who, as an employee  
5 of the West Virginia board of regents was limited in  
6 the amount he could pay into the retirement system  
7 to two hundred sixteen dollars per year from July one,  
8 one thousand nine hundred sixty-three, to July one,  
9 one thousand nine hundred seventy, and to two hun-  
10 dred eighty-eight dollars from July one, one thousand  
11 nine hundred seventy, shall have the option, at any time  
12 within twelve months from the effective date hereof,  
13 to pay into the retirement system twice the amount of  
14 the difference between such limitations and the amount  
15 he would have paid therein had he been paying the  
16 full amount provided by law for members of the retire-  
17 ment system other than employees of the board of re-  
18 gents: *Provided*, That this additional payment into the  
19 retirement system by any such member who was em-  
20 ployed by the board of regents while he was under  
21 thirty years of age shall be reduced to once the amount  
22 of such difference so far as any salary he received from  
23 the board while under thirty years of age is concerned.

24 If such a member makes such election, he must there-  
25 after make contributions into the retirement system on  
26 his entire salary without limitation, unless later imposed



27 by law, and after such election is made the board of  
28 regents as his employer shall no longer make payments  
29 for such employee for the supplemental retirement plan  
30 authorized by section four-a, article twenty-three of this  
31 chapter, but the matching contributions made by the  
32 state or employer in his behalf for retirement plans shall  
33 be limited to those provided by sections fourteen and  
34 sixteen of this article.

35 Notwithstanding the provisions of subsection (a) of  
36 Plan B, section twenty-six of this article, or any other  
37 provision herein, any such member who exercises such  
38 option and makes the required additional payment will  
39 then be considered entitled to retirement, death, with-  
40 drawal and all other benefits under the retirement sys-  
41 tem to the same extent as if he had been paying into  
42 the retirement system the full amount provided by law  
43 for members of the system other than employees of the  
44 board of regents throughout the period of his member-  
45 ship in the retirement system.

46 Any such member who does not make such election  
47 shall have the options of retaining his present status  
48 under the retirement system and the supplemental retire-  
49 ment plan as provided by section four-a, article twenty-  
50 three of this chapter, or of ceasing to pay any portion  
51 of his salary into the retirement system and paying a  
52 percentage of his entire salary into a retirement plan es-  
53 tablished by the board of regents pursuant to the provi-  
54 sions of said section four-a, article twenty-three of this  
55 chapter. In the event he makes the latter election he  
56 shall, upon retirement, receive benefits under the retire-  
57 ment system as if he had retired at the date he ceased  
58 making payments into the system, except that between  
59 such time and the time of actual retirement regular inter-  
60 est shall be considered in computing such benefits.

61 A person employed by the West Virginia board of re-  
62 gents in the future shall have the option, as of the date  
63 of his employment, to elect whether he is to pay a per-  
64 centage of his entire salary into the state retirement  
65 system, or to pay a percentage of such salary into a  
66 retirement plan established by the board of regents pur-  
67 suant to the provisions of section four-a, article twenty-

68 three of this chapter, and shall receive benefits accord-  
69 ing to the retirement plan he selects.

70 Since persons employed by the former board of gover-  
71 nors of West Virginia University, and by the state board  
72 of education at institutions of higher education, on July  
73 one, one thousand nine hundred sixty-nine, became em-  
74 ployees of the West Virginia board of regents on that  
75 date, employment by such board of governors and the  
76 state board of education at institutions of higher educa-  
77 tion shall be deemed to have been employment by the  
78 board of regents for the purposes of this section.

**ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions.**

1 The governing boards shall have the authority to con-  
2 tract for a supplemental retirement plan for any or all  
3 of its employees to supplement the benefits such em-  
4 ployees will receive under the state teachers retirement  
5 system. The governing boards shall have the authority  
6 to make additional periodic deductions from the salary  
7 payments due such employees in the amount they are  
8 required to contribute for the supplemental retirement  
9 plan selected by the board. The additional deductions  
10 shall not exceed five percent of the salary of employees  
11 under thirty-five years of age, six percent of the salary  
12 of those thirty-five through forty-four years of age, and  
13 seven and one-half percent of the salary of those forty-  
14 five years of age and above, and shall not cover any  
15 portion of an employee's salary which is covered by the  
16 state teachers retirement system.

17 The governing boards shall also have the authority to  
18 contract for an additional retirement plan for any of its  
19 employees who elect to participate solely in such a  
20 retirement plan selected by the governing boards without  
21 participating in the state retirement system. The govern-  
22 ing boards shall have the authority to make periodic de-  
23 ductions from the salary payments due such employees

24 in the amount they are required to contribute to the  
25 additional plan, which deductions shall be the same per-  
26 centage of the participating employees' salaries as that  
27 deducted from the salaries of members of the state re-  
28 tirement system.

29 The board is further authorized, by way of additional  
30 compensation to such employees, to pay an amount equal  
31 to the contributions of such employees into either the  
32 supplemental or additional retirement plan from funds  
33 appropriated to it for personal services. Each participat-  
34 ing employee shall have a full and immediate vested  
35 interest in the retirement and death benefits accrued  
36 from all the moneys paid into such supplemental or addi-  
37 tional retirement plan for his benefit. Upon proper  
38 requisition of the board, the auditor shall periodically  
39 issue a warrant, payable as specified in the requisition,  
40 for the total contributions so withheld from the salaries  
41 of all participating employees and for the governing  
42 board's matching funds.

43 Notwithstanding any provisions contained in article  
44 seven-a and article twenty-three of this chapter, once a  
45 member has elected one of the options contained in section  
46 fourteen-a of article seven-a of this chapter and section  
47 four-a of article twenty-three of this chapter, he cannot  
48 thereafter change such election.

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## CHAPTER 151

(House Bill No. 648—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Lohr)

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[Passed March 12, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-six-e, all relating to computation of benefits under the state teachers retirement system.

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

That section 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; and that said article be further amended by adding thereto a new section, designated section twenty-six-e, all to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

§18-7A-26. Computation of annuities.

§18-7A-26e. Supplemental benefits to certain annuitants.

**§18-7A-26. Computation of annuities.**

1     Annuitants whose annuities were approved by the  
2     retirement board effective before July first, one thousand  
3     nine hundred seventy shall be paid the annuities which  
4     were approved by the retirement board, subject to the  
5     supplemental benefits authorized in this article.

6     Annuities approved by the board effective after June  
7     thirty, one thousand nine hundred seventy, shall be  
8     computed as provided herein.

9     Upon establishment of eligibility for a retirement al-  
10    lowance, a member shall be granted an annuity which  
11    shall be the sum of either Plan A or Plan B, whichever  
12    provides the larger annuity.

13    Plan A shall be computed as follows:

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

17    (b) The actuarial equivalent of the contributions of  
18    the employer up to the time of the member's retirement,  
19    which shall equal the sum in subdivision (a) of Plan  
20    A minus deposits with regular interest on such deposits;

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

25    (d) The actuarial equivalent of the amounts that would  
26    have accumulated under subdivisions (a) and (b) of  
27    Plan A, if the member had contributed to his individual  
28    account until he was fifty years old, at the annual rate  
29    of his past actual contributions, but this subdivision shall

30 apply only as additional income to members who qualify  
31 for disability retirement before they are 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 subdivisions (c) and (d) an amount equal  
36 to six dollars multiplied by his total service credit: *Pro-*  
37 *vided*, That the maximum allowance under this sub-  
38 division shall be one hundred ninety-two dollars:  
39 *Provided, however*, That this subdivision shall be effec-  
40 tive on and after July first, one thousand nine hundred  
41 fifty-seven;

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

44 For the purpose of subdivision (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) Two percent of the member's average salary mul-  
52 tiplied 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 five years contained within his last fifteen years  
56 of total service credit: *Provided*, That the highest annual  
57 salary used in this calculation for members employed by  
58 the West Virginia board of regents at institutions of  
59 higher education under its control, shall be four thou-  
60 sand eight hundred dollars;

61 (b) The actuarial equivalent of the deposits of the  
62 member in his individual account up to the time of his  
63 retirement, with regular interest.

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

67 Upon the death of an annuitant who qualified for an  
68 annuity as a surviving spouse or because of permanent

69 disability, the estate of the deceased or beneficiary desig-  
70 nated for such purpose, shall be paid the difference, if  
71 any, between the member's contributions with regular  
72 interest thereon, and the sum of the annuity payments.

73 All annuities shall be paid in twelve monthly payments.  
74 In computing such monthly payments, fractions of a  
75 cent shall be deemed a cent. Such monthly payments  
76 shall cease with the payment for the month within which  
77 the beneficiary dies, and shall begin with the payment  
78 for the month succeeding the month within which the  
79 annuitant became eligible under this article for the an-  
80 nuity granted; in no case, however, shall an annuitant  
81 receive more than four monthly payments which are  
82 retroactive after the board receives his application for  
83 annuity.

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

89 Any person who has attained the age of sixty-five and  
90 who has served at least twenty-five years as a teacher  
91 prior to July one, one thousand nine hundred forty-one,  
92 shall be eligible for prior service credit and for prior  
93 service pensions as prescribed in this section.

**§18-7A-26e. Supplemental benefits to certain annuitants.**

1 (a) An annuitant whose annuity was approved by  
2 the board effective after June thirty, one thousand nine  
3 hundred sixty-three, and before July one, one thousand  
4 nine hundred seventy, may receive, at his election, an  
5 annuity of two percent of his average final salary times  
6 his total service credit, plus deposits and tax sheltered  
7 annuities, but not including the supplemental benefits  
8 permitted pursuant to sections twenty-six-a, twenty-six-b,  
9 twenty-six-c and twenty-six-d of this article. Any addi-  
10 tional benefit conferred herein shall not be retroactive,  
11 but shall be paid beginning July one, one thousand nine  
12 hundred seventy-one, if the option to elect the above  
13 plan is exercised by the annuitant prior to May thirty-one,  
14 one thousand nine hundred seventy-one.

15 (b) An annuitant whose annuity was approved by the  
16 board effective before July one, one thousand nine hun-  
17 dred sixty-three, and any annuitant who is eligible for,  
18 but does not elect the plan specified in subsection (a)  
19 of this section shall receive, upon application, an addi-  
20 tional amount equal to twenty-five percent of his present  
21 retirement allowance.

22 (c) Any retired teacher who was an employee of the  
23 West Virginia board of governors or the state board of  
24 education and who was limited in the amount he could  
25 pay into the retirement system to two hundred sixteen  
26 dollars per year from July one, one thousand nine hun-  
27 dred sixty-three, to July one, one thousand nine hundred  
28 seventy, and who retired prior to February one, one thou-  
29 sand nine hundred seventy, shall have the option at any  
30 time within six months from the effective date hereof,  
31 to pay into the retirement system the difference between  
32 such limitations and twice the amount he would have  
33 paid therein had he been paying the full amount pro-  
34 vided by law for members of the retirement system other  
35 than employees of the West Virginia board of governors  
36 or the state board of education. Upon completion of such  
37 above-named contributions the annuitant shall be en-  
38 titled to benefits under the formula specified in sub-  
39 section (a) of this section, plus deposits and tax sheltered  
40 annuities, but not including the supplemental benefits per-  
41 mitted pursuant to sections twenty-six-a, twenty-six-b,  
42 twenty-six-c and twenty-six-d of this article. Any addi-  
43 tional benefit conferred herein shall not be retroactive  
44 to the time of retirement, but shall be paid beginning  
45 July one, one thousand nine hundred seventy-one.

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## CHAPTER 152

(House Bill No. 1040—By Mr. Lohr)

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[Passed March 9, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-four, article seven-a, chapter eighteen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to loans to members of the state teachers retirement system.

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

That section thirty-four, 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 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-34. Loans to members.**

1 A member of the retirement system upon written ap-  
2 plication may borrow from his individual account in  
3 the teachers accumulation fund, subject to these restric-  
4 tions:

5 (1) Loans shall be made in multiples of ten dollars,  
6 the minimal loan being forty dollars and the maximum  
7 being three thousand dollars.

8 (2) Loans to any one member shall not exceed one  
9 half of his contributions to his individual account in the  
10 teachers accumulation fund.

11 (3) Interest charged on the amount of the loan shall  
12 be six percent per annum, and minimal interest charge  
13 shall be for six months.

14 (4) No member shall be eligible for more than one  
15 loan in any one year, except in cases of accidents, illness  
16 requiring medical or hospital care for himself or a mem-  
17 ber of his immediate family.

18 (5) If a refund or benefit is payable to the borrower  
19 or his beneficiary before he repays the loan with interest,  
20 the balance due with interest to date shall be deducted  
21 from such benefit or refund.

22 (6) From his monthly salary as a teacher the member  
23 shall pay the loan and interest by deductions which will  
24 pay the loan and interest in not more than forty-eight  
25 nor less than six months. Upon notice of loan granted  
26 and payment due, the employer shall be responsible for  
27 making such salary deductions and reporting them to  
28 the retirement board. At the option of the retirement  
29 board, loan deductions may be collected as prescribed



30 herein for the collection of members' contribution, or  
31 may be collected through issuance of warrant by em-  
32 ployer. If the borrower decides to make loan payments  
33 while not paid for service as a teacher, the retirement  
34 board must accept such payments.

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## CHAPTER 153

(Com. Sub. for Senate Bill No. 122—Originating in the Senate  
Committee on Education)

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[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to repeal sections six and six-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article nine-a, chapter eighteen of said code; and to amend and reenact sections two, seven and eight, article four, chapter eighteen-a of said code, all relating to the financial support of the free public school system, the powers and duties of the state board of school finance and the minimum salary schedule for public school teachers and auxiliary ✓ and service personnel.

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

That sections six and six-a, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article nine-a, chapter eighteen of said code be amended and reenacted; and that sections two, seven and eight, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

### Chapter

18. Education.

18A. School Personnel.

## CHAPTER 18. EDUCATION.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-1. Public school support plan.

§18-9A-2. Definitions.

§18-9A-3. Total state basic foundation program.

§18-9A-4. Foundation allowance for professional educators.

- §18-9A-5. Foundation allowance for other personnel.
- §18-9A-6. Foundation allowance for fixed charges.
- §18-9A-7. Foundation allowance for transportation cost.
- §18-9A-8. Foundation allowance for administrative cost.
- §18-9A-9. Foundation allowance for other current expense.
- §18-9A-10. Foundation allowance toward national average attainment.
- §18-9A-11. Computation of local share; appraisal and assessment of property.
- §18-9A-12. County basic foundation; total basic state aid allowance.
- §18-9A-13. Allowance for loss reduction.
- §18-9A-14. Incentive for program improvement.
- §18-9A-15. Allowance for increased enrollment.
- §18-9A-16. General school fund and its use.
- §18-9A-17. Administration of school finance.
- §18-9A-18. Rules and regulations.
- §18-9A-19. County request schedule.
- §18-9A-20. Repeal of inconsistent provisions.

### **§18-9A-1. Public school support plan.**

1     The intent of this article is to provide a plan of financial  
 2     support for the public schools to be known as the West  
 3     Virginia public school support plan, and to fix statutorily  
 4     both state and county responsibility for the financing of  
 5     the same. In enacting this plan, the Legislature has in  
 6     mind the following purpose: To effect a basic foundation  
 7     support plan that shall provide for program growth which  
 8     will assure more equitable educational opportunity for  
 9     all children and youth irrespective of where they may  
 10    live.

### **§18-9A-2. Definitions.**

- 1     For the purpose of this article:
- 2     “State board” means the West Virginia board of educa-  
 3     tion.
- 4     “County board” or “board” means a county board of  
 5     education.
- 6     “Professional salaries” means the state legal-mandated  
 7     salaries of the professional educators as provided in article  
 8     four, chapter eighteen-a of this code.
- 9     “Professional educator” shall be synonymous with and  
 10    shall have the same meaning as “teacher” as defined in  
 11    section one, article one, chapter eighteen of this code.
- 12    “Employment term” means the months of employment  
 13    as defined in section fifteen, article five of this chapter.
- 14    “Net enrollment” means the number of pupils enrolled  
 15    in special education programs, early childhood programs

16 and grades one to twelve, inclusive, of the public schools  
17 of the county.

18 "Adjusted enrollment" means the net enrollment plus  
19 twice the number of pupils enrolled for special education,  
20 all adjusted to the equivalent of the instructional term and  
21 in accordance with such eligibility requirements and  
22 regulations as established by the state board, but no pupil  
23 shall be counted more than once by reason of transfer  
24 within the county or from another county within the  
25 state, and no pupil shall be counted who attends school  
26 in this state from another state.

27 "Levies for general current expense purposes" means  
28 on each hundred dollars of valuation, nineteen and six-  
29 tenths cents on Class I property, thirty-nine and two-  
30 tenths cents on Class II property, and seventy-eight and  
31 four-tenths cents on Classes III and IV property.

#### §18-9A-3. Total state basic foundation program.

1 The total basic foundation program for the state for  
2 any year shall be the sum of the computed costs for the  
3 counties in aggregate, as hereinafter determined, for the  
4 following:

- 5 (1) Allowance for professional educators;
- 6 (2) Allowance for other personnel;
- 7 (3) Allowance for fixed charges;
- 8 (4) Allowance for transportation cost;
- 9 (5) Allowance for administrative cost;
- 10 (6) Allowance for other current expense; and
- 11 (7) Allowance toward national average attainment.

#### §18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for pro-  
2 fessional educators shall be the amount of money re-  
3 quired to pay the state minimum salaries, in accordance  
4 with provisions of article four, chapter eighteen-a of the  
5 code, to such personnel employed: *Provided*, That in  
6 making this computation no county shall receive an al-  
7 lowance for such personnel which number is in excess

8 of fifty-five professional educators to each one thousand  
9 students in adjusted enrollment: *Provided*, That any  
10 county not qualifying under the provision of section four-  
11 teen of this article shall be eligible for a growth-rate in  
12 professional personnel in any one year not to exceed  
13 twenty percent of its total potential increase under this  
14 provision, except that in no case shall such limit be fewer  
15 than five professional: *Provided, however*, That the num-  
16 ber of and the allowance for personnel paid in part by  
17 state and county funds shall be prorated: *Provided further*,  
18 That where two or more counties join together in sup-  
19 port of a vocational or comprehensive high school or any  
20 other program or service, the professional educators for  
21 such school or program may be prorated among the  
22 participating counties on the basis of each one's enroll-  
23 ment therein and that such personnel shall be considered  
24 within the above stated limit.

**§18-9A-5. Foundation allowance for other personnel.**

1 The total allowance for other personnel shall be the  
2 sum of the following:

3 (1) An amount equal to thirteen and one-half percent  
4 of the computed total state allocation for professional  
5 educators, as defined in section four, above, such amount  
6 to be distributed to the counties in proportion to the ad-  
7 justed enrollment; and

8 (2) An amount equal to five and one-half percent of  
9 the total state allocation for professional educators, such  
10 amount to be distributed in proportion to the number of  
11 full-time school bus drivers employed within the several  
12 counties.

**§18-9A-6. Foundation allowance for fixed charges.**

1 The total allowance for fixed charges shall be equal to  
2 the sum of the foundation allowance for professional edu-  
3 cators and the foundation allowance for other personnel,  
4 as determined in sections four and five above, multiplied  
5 by the sum of the current social security rate of con-  
6 tribution plus two percent. Computation for distribution  
7 to the counties shall be made in the same manner.

**§18-9A-7. Foundation allowance for transportation cost.**

1 The allowance in the foundation school program for  
2 each county for transportation shall be the sum of the  
3 following computations:

4 (1) Eighty percent of the transportation cost within  
5 each county for maintenance, operation and related costs,  
6 exclusive of all salaries;

7 (2) The total cost, within each county, of insurance  
8 premiums on buses, buildings and equipment used in  
9 transportation: *Provided*, That such premiums were pro-  
10 cured through competitive bidding;

11 (3) An amount equal to ten percent of the current re-  
12 placement value of the bus fleet within each county as  
13 determined by the state board, such amount to be used  
14 only for the replacement of buses;

15 (4) Eighty percent of the cost of contracted transpor-  
16 tation services and public utility transportation with each  
17 county; and

18 (5) Aid in lieu of transportation equal to the state  
19 average amount per pupil for each pupil receiving such  
20 aid within each county.

21 The total state share for this purpose shall be the sum  
22 of the county shares: *Provided*, That no county shall re-  
23 ceive an allowance which is greater than one third above  
24 the computed state average allowance per mile multiplied  
25 by the total mileage in the county.

**§18-9A-8. Foundation allowance for administrative cost.**

1 The allowance for administrative cost shall be equal to  
2 one percent of the allocation for professional educators,  
3 as determined in section four of this article. Distribution  
4 of the computed allowance shall be made to the counties  
5 in equal amounts.

**§18-9A-9. Foundation allowance for other current expense.**

1 The total allowance for other current expense shall be  
2 equal to ten percent of the sum of the computed state al-  
3 location for professional educators and other personnel  
4 as determined in sections four and five of this article.  
5 Distribution to the counties shall be made proportional  
6 to adjusted enrollment.

**§18-9A-10. Foundation allowance toward national average attainment.**

1 So long as the average expenditure per pupil in West  
2 Virginia remains below the national average as com-  
3 puted by the United States office of education, funds  
4 which accrue from allocations due to increase in total  
5 local share, from balances in the general school fund, or  
6 from appropriations for such purpose shall be allocated  
7 proportional to adjusted enrollment.

**§18-9A-11. Computation of local share; appraisal and assessment of property.**

1 On the basis of the most recent survey of property  
2 valuations in the state, completed as to all classes of  
3 property in all counties determined by the tax commis-  
4 sioner under present or former provisions of this article,  
5 the state board shall for each county compute by applica-  
6 tion of the levies for general current expense purposes,  
7 as defined in section two of this article, the amount of  
8 revenue which such levies would produce if levied upon  
9 one hundred percent of the appraised value of each of  
10 the several classes of property contained in the report  
11 or revised report of such value, made to it by the tax  
12 commissioner as follows: (1) The state board shall first  
13 take ninety-seven and one-half percent of the amount  
14 ascertained by applying these rates to the total assessed  
15 public utility valuation in each classification of property  
16 in the county. (2) The state board shall then apply these  
17 rates to the appraised value of other property in each  
18 classification in the county as determined by the tax  
19 commissioner and shall deduct therefrom five percent as  
20 an allowance for the usual losses in collections due to  
21 discounts, exonerations, delinquencies and the like. Fifty  
22 percent of the amount so determined shall be added to  
23 the ninety-seven and one-half percent of public utility  
24 taxes computed as provided above and this total shall  
25 be the local share of the particular county.

26 The tax commissioner shall make or cause to be made  
27 an appraisal in the several counties of the state of all  
28 nonutility real property and of all nonutility personal

29 property which shall be based upon true and actual  
30 value as set forth in article three, chapter eleven of this  
31 code. In determining the value of personal property—  
32 other than all machinery, equipment, furniture and fix-  
33 tures of any industrial plant, mine, quarry or installation  
34 and of any commercial, industrial, or professional estab-  
35 lishment—the tax commissioner shall prescribe accepted  
36 methods of determining such values. The tax commissioner  
37 shall in accordance with such methods determine the  
38 value of such property.

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

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

51 Such appraisal of all said property in the several coun-  
52 ties shall be completed prior to the first day of July,  
53 one thousand nine hundred sixty-seven. Each year after  
54 the completion of the property appraisal in a county  
55 the tax commissioner shall maintain the appraisal by  
56 making or causing to be made such surveys, examina-  
57 tions, audits, maps and investigations of the value of  
58 the several classes of property in each county which  
59 should be listed and taxed under the several classifica-  
60 tions, and shall determine the appraised value thereof.  
61 On the basis of information so ascertained, the tax com-  
62 missioner shall annually revise his reports to the Legis-  
63 lature and to the state board concerning such appraisals,  
64 such reports to be made not later than the first day of  
65 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  
69 commissioner shall notify the county court and the as-  
70 sessor of said county that such information is available  
71 and shall make available to said county court and assessor  
72 all data, records and reports or other information relating  
73 to said work, along with a list of any properties in said  
74 district, municipality and county which are entered on  
75 the assessment rolls but for which no appraisal has been  
76 made, a list of any properties which were appraised but  
77 which cannot be found on the assessment rolls and a  
78 list of all properties carried on the assessment rolls which  
79 have not been identified on the map. Said list shall set  
80 forth the name of the owner and a description of the  
81 property and the reason, if known, for its failure to have  
82 been entered on the assessment rolls or to have been  
83 appraised or to have been identified on the map, as the  
84 case may be.

85 As such appraisal of property in a county, under this  
86 section, is completed to the extent that a total valuation  
87 for each class of property can be determined, such ap-  
88 praisal shall be delivered to the assessor and the county  
89 court, and in each assessment year commencing after  
90 such appraisal is so delivered and received, the county  
91 assessor and the county court, sitting as a board of  
92 equalization and review, shall use such appraised valua-  
93 tions as a basis for determining the true and actual value  
94 for assessment purposes of the several classes of property.  
95 The total assessed valuation in each of the four classes  
96 of property shall be not less than fifty percent nor more  
97 than one hundred percent of the appraised valuation of  
98 each said class of property.

99 Whenever in any year a county assessor or a county  
100 court shall fail or refuse to comply with the provisions  
101 of this section in setting the valuations of property for  
102 assessment purposes in any class or classes of property  
103 in the county, the state tax commissioner shall review  
104 the valuations for assessment purposes made by the  
105 county assessor and the county court and shall direct the  
106 county assessor and the county court to make such cor-  
107 rections in the valuations as may be necessary so that



108 they shall comply with the requirements of chapter eleven  
109 of this code and of this section, and the tax commissioner  
110 shall enter the county and fix the assessments at the  
111 required ratios. Refusal of the assessor or the county  
112 court to make such corrections shall constitute grounds  
113 for removal from office.

114 In any year in which the total assessed valuation of  
115 a county shall fail to meet the minimum requirements  
116 above set forth, the county court of such county shall  
117 allocate for such year to the county board of education  
118 from the tax levies allowed to the county court a sufficient  
119 portion of its levies as will, when applied, to the valua-  
120 tions for assessment purposes of such property in the  
121 county, provide a sum of money equal to the difference  
122 between the amount of revenue which will be produced  
123 by application of the allowable school levy rates defined  
124 in section two of this article upon the valuations for  
125 assessment purposes of such property and the amount  
126 of revenue which would be yielded by the application of  
127 such levies to fifty percent of the total of appraised  
128 valuations of such property. In the event the county  
129 court shall fail or refuse to make the reallocation of  
130 levies as provided for herein, the county board of educa-  
131 tion, the tax commissioner, the state board, or any  
132 other interested party, shall have the right to enforce  
133 the same by writ of mandamus in any court of competent  
134 jurisdiction.

135 In conjunction with and as a result of the appraisal  
136 herein set forth the tax commissioner shall have the  
137 power, and it shall be his duty, to establish a permanent  
138 records system for each county in the state, consisting of:

139 (1) Tax maps of the entire county drawn to scale or  
140 aerial maps, which maps shall indicate all property and  
141 lot lines, set forth dimensions or areas, indicate whether  
142 the land is improved, and identify the respective parcels  
143 or lots by a system of numbers or symbols and numbers,  
144 whereby the ownership of such parcels and lots can be  
145 ascertained by reference to the property record cards and  
146 property owner's index;

147 (2) Property record cards arranged geographically ac-  
148 cording to the location of property on the tax maps, which  
149 cards shall set forth the location and description thereof,  
150 the acreage or dimensions, description of improvements, if  
151 any, the owner's name, address and date of acquisition,  
152 the purchase price, if any, set forth in the deed of ac-  
153 quisition, the amount of tax stamps, if any, on the deed,  
154 the assessed valuation, and the identifying number or  
155 symbol and number, shown on the tax map; and

156 (3) Property owner's index consisting of an alpha-  
157 betical listing of all property owners, setting forth brief  
158 descriptions of each parcel or lot owned and cross-indexed  
159 with the property record cards and the tax map.

160 The tax commissioner is hereby authorized and em-  
161 powered to enter into such contracts as may be neces-  
162 sary, and for which funds may be available, to establish  
163 the permanent records system herein provided for, or  
164 may through his staff and employees, prepare and com-  
165 plete such system.

166 All microfilm photography and original copies of tax  
167 maps created under the provisions of this section are  
168 the property of the state of West Virginia and the re-  
169 production, copying, distribution or sale of such microfilm,  
170 photography or tax maps or any copies thereof without  
171 the written permission of the state tax commissioner  
172 is prohibited. Any person who shall violate the provisions  
173 of this paragraph shall be guilty of a misdemeanor, and,  
174 upon conviction thereof, shall be fined not less than  
175 fifty dollars nor more than three hundred dollars, or  
176 imprisoned in the county jail not less than thirty days  
177 nor more than one year, or both fined and imprisoned.  
178 Justices of the peace shall have concurrent jurisdiction  
179 with other courts having jurisdiction for the trial of all  
180 misdemeanors arising under this paragraph.

181 The tax commissioner shall by uniform regulations  
182 establish a procedure for the sale of reproduction of  
183 microfilm, photography and maps and may pay for  
184 having such reproductions made from the appropriation  
185 for "property appraisal." Any funds received as a result  
186 of the sale of such reproductions shall be deposited to

187 the appropriated account from which the payment for  
188 reproduction is made.

189 The cost of conducting the appraisal herein provided  
190 for shall be borne jointly by the state and the several  
191 counties in the following manner and terms: There  
192 shall be appropriated from the general revenue fund  
193 annually an amount sufficient to maintain the appraisal  
194 in all counties of the state. Each county shall furnish,  
195 through its county court, not more than ten percent of  
196 the cost of such appraisal or reappraisal and permanent  
197 records system for each county. Such county costs may  
198 be paid over a period of three years with the approval  
199 of the tax commissioner. In those instances where the  
200 cost of the appraisal, reappraisal or permanent records  
201 system required by this section has been paid by the  
202 tax commissioner from funds appropriated for these  
203 purposes, the share of such cost allocated to each coun-  
204 ty shall, upon receipt thereof by the tax commissioner,  
205 be deposited to the appropriated account from which  
206 such payments have been made.

207 The county assessor and the county court shall comply  
208 with the provisions of chapter eleven of this code in de-  
209 termining the true and actual value of property for  
210 assessment purposes and shall not arbitrarily use a direct  
211 percentage application to the appraisal valuations, wheth-  
212 er complete appraisal or spot survey, of any class of  
213 property or property within a class for such purpose.

214 The provisions of this section shall not be construed to  
215 alter or repeal in any manner the provisions of chapter  
216 eleven of this code, but shall be construed in *pari*  
217 *materia* therewith, and compliance with this section by  
218 the assessor and county court shall be considered, *pro*  
219 *tanto*, as compliance with said chapter eleven.

**§18-9A-12. County basic foundation; total basic state aid al-  
lowance.**

1 The basic foundation program for each county for the  
2 fiscal year shall be the sum of the amounts computed in  
3 accordance with the provisions of sections four, five, six,  
4 seven, eight, nine and ten of this article. On the first

5 working day of July in each year, the state board shall  
6 determine the basic foundation program for each county  
7 for that fiscal year. Data used in the computations re-  
8 lating to net and adjusted enrollment, and the number  
9 of professional educators, shall be for the third month of  
10 the prior school term. Transportation expenditures used  
11 in these computations shall be for the most recent year  
12 in which data are available. The allocated state aid  
13 share of the county's basic foundation program shall be  
14 the difference between the cost of its basic foundation  
15 program and the county's local share as determined in  
16 section eleven of this article.

17 Total basic state aid to the county shall be the com-  
18 puted state share of basic foundation support. After such  
19 computation is completed, the state board shall imme-  
20 diately certify to each county board the amount of state  
21 aid allocated to the county for that fiscal year, subject to  
22 any qualifying provisions of this article.

**§18-9A-13. Allowance for loss reduction.**

1 For the fiscal year beginning on the first day of July,  
2 one thousand nine hundred seventy-one, and for each of  
3 the next three fiscal years, there shall be an allowance  
4 for loss reduction which shall be distributed as provided  
5 in this section.

6 In order to determine which counties are entitled to  
7 such allowance, and the amount of such aid, the state  
8 board shall first compute the amount to be received by  
9 each county from the regular state aid appropriation for  
10 the fiscal year beginning on the first day of July, one  
11 thousand nine hundred seventy-one, allocated as pro-  
12 vided in section twelve of this article. The state board  
13 shall then compare such amount with the state aid the  
14 county would have received from the plan in effect dur-  
15 ing the fiscal year one thousand nine hundred seventy—  
16 one thousand nine hundred seventy-one. From the funds  
17 appropriated for the purpose, the state board shall then  
18 allocate to each county showing a loss in state aid on the  
19 basis of such comparison, eighty percent of such loss the  
20 first year, sixty percent the second year, forty percent

21 the third year, and twenty percent the fourth and last  
22 year.

**§18-9A-14. Incentive for program improvement.**

1 In order to encourage counties to move toward new  
2 and improved programs and to reduce class size, counties  
3 having ratios of adjusted enrollment to professional staff  
4 higher than the state average will be granted advance  
5 funds to employ sufficient additional staff to reach the  
6 state average: *Provided*, That in any one fiscal year no  
7 more than one half of such additional staff may be counted  
8 under this provision. Such funds shall be granted to each  
9 eligible county based on data at the end of the third  
10 month of school but only on the basis of actual staff  
11 members employed.

**§18-9A-15. Allowance for increased enrollment.**

1 To provide for the support of increased net enrollments  
2 in the counties in a school year over the net enrollments  
3 used in the computation of total state aid for that year,  
4 there shall be appropriated for that purpose from the  
5 general revenue fund an amount equal to the average  
6 total state aid per net pupil multiplied by the total of all  
7 of the increases in the net enrollments of the counties  
8 made by comparing the most recent reports of net enroll-  
9 ment for the third school month to the immediately  
10 previous year's reports for the same school month.

11 Upon determination of the several increases in the re-  
12 spective counties' net enrollments, as of the close of the  
13 third school month, each county showing such increase  
14 shall be allocated an amount equal to that county's aver-  
15 age per net pupil total state aid multiplied by the in-  
16 crease in that county's net enrollment found as provided  
17 heretofore. Such allocations shall be distributed not later  
18 than December thirty-one of each year to the counties  
19 having increases in net enrollment as heretofore pro-  
20 vided. If the amount appropriated for this purpose shall  
21 not be sufficient to provide payment in full for the total of  
22 these several allocations, each county allocation shall be  
23 reduced to an amount which is proportionate to the  
24 appropriation compared to the total of the several alloca-

25 tions, and the allocations as thus adjusted shall be dis-  
26 tributed to the counties as provided in this section.

27 No provision of this section shall be construed to in any  
28 way affect the allocation of moneys for educational pur-  
29 poses to a county under other provisions of law.

**§18-9A-16. General school fund and its use.**

1 There shall be established a separate school fund to  
2 be known as the "general school fund" which shall be  
3 administered by the same board as provided in section  
4 five, article nine of this chapter. The proceeds from the  
5 income of this school fund, and the interest thereon, as  
6 provided for under the irreducible school fund amend-  
7 ment to the constitution shall accrue to the general school  
8 fund which, with moneys appropriated by the Legislature,  
9 shall be used to support the public schools of the state.  
10 All other state funds and taxes formerly dedicated to  
11 the general school fund shall hereafter be paid into the  
12 state general fund.

13 No person who, at the time of passage of this article,  
14 depended on the general school fund in part or in whole  
15 for payment of his salary shall have his salary reduced  
16 by virtue of this article.

**§18-9A-17. Administration of school finance.**

1 Notwithstanding any and all references to the board  
2 of school finance as found in article nine-b of this chap-  
3 ter, the West Virginia board of education, through its  
4 chief executive officer, shall direct and carry out all pro-  
5 visions of said article nine-b.

**§18-9A-18. Rules and regulations.**

1 The state board shall have authority to make such  
2 reasonable rules and regulations as may be necessary to  
3 enable it to carry out the purposes and intent of this ar-  
4 ticle with respect to the allocation of state aid for schools.

**§18-9A-19. County request schedule.**

1 Each county board of education shall file a request  
2 schedule with the state board for payments of state aid  
3 to which it is entitled in each fiscal year. The state board  
4 shall have authority to examine and approve, disapprove

5 or modify the schedule of payments, so long as its ac-  
 6 tion does not unreasonably curtail the educational pro-  
 7 gram of any county. The state board shall pay state aid  
 8 by requisition upon the state auditor in favor of the  
 9 fiscal officer of each county board in installments accord-  
 10 ing to the schedule as finally approved or modified.

**§18-9A-20. Repeal of inconsistent provisions.**

1 The provisions of any section or parts of sections, or  
 2 articles or parts of articles, of the code of West Virginia,  
 3 one thousand nine hundred thirty-one, as amended, which  
 4 are inconsistent with the provisions of this article, are  
 5 hereby repealed to the extent of such inconsistency.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

§18A-4-2. State minimum salary schedule.

§18A-4-7. Substitute teachers.

§18A-4-8. Minimum pay for service and auxiliary personnel.

**§18A-4-2. State minimum salary schedule.**

**STATE MINIMUM SALARY SCHEDULE**

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) B.A.	(6) B.A. +15	(7) M.A.	(8) M.A. +15	(9) M.A. +30	(10) Doctor- ate
0	3945	4483	4698	5719	5988	6257	6525	6794	7063
1	4074	4612	4827	5848	6117	6386	6654	6923	7192
2	4203	4741	4956	5977	6246	6515	6783	7052	7321
3	4332	4870	5085	6106	6375	6644	6912	7181	7450
4	4461	4999	5214	6235	6504	6773	7041	7310	7579
5	4590	5128	5343	6364	6633	6902	7170	7439	7708
6	4719	5257	5472	6493	6762	7031	7299	7568	7837
7		5386	5601	6622	6891	7160	7428	7697	7966
8		5515	5730	6751	7020	7289	7557	7826	8095
9			5859	6880	7149	7418	7686	7955	8224
10			5988	7009	7278	7547	7815	8084	8353
11				7138	7407	7676	7944	8213	8482
12				7267	7536	7805	8073	8342	8611
13				7396	7665	7934	8202	8471	8740
14						8063	8331	8600	8869
15						8192	8460	8729	8998
16						8321	8589	8858	9127
17								8987	9256
18								9116	9385
19								9245	9514

**§18A-4-7. Substitute teachers.**

1 The pay of the substitute teacher shall be based upon  
2 his training classification and experience and shall be in  
3 accordance with the salary schedule of the regularly em-  
4 ployed teachers of the county in which he is employed;  
5 except that any substitute teacher who teaches five con-  
6 secutive instructional days or less in the same position  
7 shall be paid only the basic salary in effect in his county.

**§18A-4-8. Minimum pay for service and auxiliary personnel.**

1 Until such time as a state minimum pay scale is estab-  
2 lished for service and auxiliary personnel, the foundation  
3 allowance as provided in section five, article nine-a,  
4 chapter eighteen of the code shall be used for the employ-  
5 ment, adjustment of and increase in the pay of such  
6 personnel: *Provided*, That any increase in allocation  
7 under this computation resulting solely from an increase  
8 in the minimum pay schedule of teachers effective with  
9 the date of passage of this act, or for any year thereafter,  
10 shall be used solely to increase the pay of all such per-  
11 sonnel included under the provisions of this section.

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## CHAPTER 154

(Senate Bill No. 415—By Mr. McCourt, Mr. President)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the division of vocational rehabilitation.

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

That section three, article ten-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 10A. VOCATIONAL REHABILITATION.****§18-10A-3. Director of division of vocational rehabilitation; powers and duties.**

1 The division shall be administered, under the general  
2 supervision and direction of the state board, by a direc-  
3 tor appointed by such board in accordance with estab-  
4 lished personnel standards and on the basis of his educa-  
5 tion, training, experience and demonstrated ability.

6 In carrying out his duties under this article, the direc-  
7 tor shall:

8 (1) Appoint, with the approval of the state board, such  
9 personnel as he deems necessary for the efficient per-  
10 formance of the functions of the division.

11 (2) Establish a merit system of personnel manage-  
12 ment, or in lieu thereof, avail himself of the services of  
13 the state merit system upon payment of a fair share of  
14 the expenses of the operation of such system.

15 (3) Make regulations governing the protection of  
16 records and confidential information; the manner and  
17 form of filing applications for vocational rehabilitation  
18 services, eligibility therefor, and investigation and de-  
19 termination thereof; procedures for fair hearings; and  
20 such other matters as may be necessary or desirable in  
21 accomplishing the purposes of this article.

22 (4) Have the authority to establish and operate a staff  
23 development program for the employees of the division  
24 and may, in furtherance of such a program, and utilizing  
25 any funds appropriated or made available, for such pur-  
26 pose, pay to such employees compensation or expenses, or  
27 both, while such employees are pursuing approved train-  
28 ing courses or academic studies for the purpose of becom-  
29 ing better equipped for their employment in such division;  
30 such staff development program shall be conducted sub-  
31 ject to appropriate rules and regulations as adopted by the  
32 director and approved by the state board: *Provided*, That  
33 such rules and regulations shall include reasonable provi-  
34 sions for the return of any employee, receiving the benefits  
35 of such training, for a reasonable period of duty, or for  
36 reimbursement to the state for expenditures incurred on  
37 behalf of the training of such employee.

38 (5) Establish, with the approval of the state board, ap-  
39 propriate subordinate administrative units within the di-  
40 vision.

41 (6) Prepare and submit to the state board annual re-  
42 ports of activities and expenditures and, prior to each reg-  
43 ular session of the Legislature, estimates of sums required  
44 for carrying out the provisions of this article and estimates  
45 of the amounts to be made available for this purpose from  
46 all sources.

47 (7) Make requisition for disbursement, in accordance  
48 with regulations of the funds available for vocational  
49 rehabilitation purposes.

50 (8) Take such other action, with the approval of the  
51 state board, as may be deemed necessary or appropriate  
52 to carry out the purposes of this article.

53 In addition to the foregoing, the director may, with  
54 the approval of the state board, delegate to any officer or  
55 employee of the division such of his powers and duties,  
56 except the making of regulations and the appointment  
57 of personnel, as may be necessary or appropriate for the  
58 purposes of this article.

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## CHAPTER 155

(House Bill No. 1002—By Mr. Lohr)

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[Passed March 3, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section two, article ten-d, chap-  
ter eighteen of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating to West  
Virginia's members on the education commission of the  
states under the compact for education.

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

That section two, article ten-d, 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 10D. COMPACT FOR EDUCATION.****§18-10D-2. Members of the education commission of the states; term; qualifications.**

1 In pursuance of Article III A of said compact, there  
 2 shall be seven members of the education commission of  
 3 the states from the state of West Virginia consisting of  
 4 the governor and four persons appointed by the governor,  
 5 by and with the advice and consent of the Senate,  
 6 who shall serve at the pleasure of the governor, and  
 7 two members of the Legislature, one appointed  
 8 from the Senate by the president thereof and one ap-  
 9 pointed from the House of Delegates by the speaker  
 10 thereof, who shall serve at the pleasure of the appoint-  
 11 ing officer. Members so appointed shall have the qualifi-  
 12 cations specified in said Article III A of the compact.

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## CHAPTER 156

(Senate Bill No. 149—By Mr. McCourt, Mr. President)

[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
 Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-g, relating to the operation of food service in public office buildings by the West Virginia society for the blind and severely disabled.

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

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

**ARTICLE 10G. PROVIDING OF FOOD SERVICE IN PUBLIC OFFICE BUILDINGS BY THE WEST VIRGINIA SOCIETY FOR THE BLIND AND SEVERELY DISABLED.**

§18-10G-1. Policy and purposes; construction of article.

§18-10G-2. Definitions.

§18-10G-3. Operation of food service in public office buildings by West Virginia division of vocational rehabilitation; operation of food service by governmental agency in violation of article prohibited.

**§18-10G-1. Policy and purposes; construction of article.**

1 It is hereby declared to be the policy of this state and  
2 the purposes of this article to provide blind and severely  
3 disabled persons with the maximum opportunities for  
4 remunerative employment and for training for such em-  
5 ployment; to enlarge the economic opportunities of the  
6 blind and severely disabled; and to stimulate them to  
7 greater effort in striving to make themselves self-sup-  
8 porting. This article shall be construed so as to most ef-  
9 fectively carry out this policy and to accomplish these  
10 purposes.

**§18-10G-2. Definitions.**

1 For the purpose of this article:

2 (a) "Public office building" shall mean and include the  
3 state capitol, all county courthouses, all city and town  
4 halls, all buildings used primarily for governmental of-  
5 fices of the state and of any county, city and town within  
6 the state, but shall not include public school buildings  
7 and buildings of institutions under the jurisdiction of the  
8 West Virginia board of regents, the department of health,  
9 the department of mental health, the department of nat-  
10 ural resources or the commissioner of public institutions.

11 (b) "Food service" shall mean and include a restaurant,  
12 cafeteria, snack bar, vending machine for the dispensing  
13 of foods, beverages, confections, tobacco, or other prod-  
14 ucts for human consumption, and other facilities for  
15 the sale or providing of goods and services of the types  
16 customarily offered in connection with the operation of  
17 any of the foregoing: *Provided*, That the term "food ser-  
18 vice" shall not include, and there is expressly excepted  
19 therefrom, goods and services sold, dispensed, or provided  
20 by the veterans administration and the facilities for the  
21 sale, dispensing, or providing thereof.

22 (c) "Society" shall mean the West Virginia society  
23 for the blind and severely disabled, a nonstock corpora-  
24 tion.

25 (d) "Governmental agency" shall mean and include  
26 the state of West Virginia, each instrumentality and  
27 agency thereof, and every county, city and town within  
28 and every political subdivision of, the state of West Vir-  
29 ginia, except county boards of education, the West Vir-  
30 ginia board of regents, the department of health, the de-  
31 partment of mental health, the department of natural  
32 resources or the commissioner of public institutions.

**§18-10G-3. Operation of food service in public office buildings  
by West Virginia division of vocational rehabilita-  
tion; operation of food service by governmental  
agency in violation of article prohibited.**

1 (a) If a governmental agency proposes operating in  
2 a public office building a food service, whether such op-  
3 eration be of a food service in existence on the effective  
4 date of this article or be one thereafter to be instituted,  
5 the governmental agency, before continuing such exist-  
6 ing operation beyond the period of six months imme-  
7 diately following the effective date of this article or  
8 before instituting such proposed new operation, shall  
9 in writing offer to the society the opportunity to operate  
10 such food service in such public office building.

11 (b) If the society within sixty days from the receipt  
12 of the offer mentioned in subsection (a) of this section  
13 elects to operate such food service as is mentioned in  
14 the offer and if the governmental agency by which  
15 such offer shall have been made does not, within such  
16 sixty-day period, make the determination of inability  
17 mentioned in subsection (d) of this section in the man-  
18 ner prescribed in that subsection, the society may in-  
19 stitute and conduct the operation of such proposed food  
20 service in such public office building without the pay-  
21 ment of rent or other compensation for the premises  
22 occupied by it in the rendition of such service therein  
23 or for the privilege of conducting such operation.

24 (c) If the society under the authority of subsection  
25 (b) of this section shall institute and conduct the opera-  
26 tion of such food service as is mentioned therein, the  
27 governmental agency shall not during the course of  
28 such operation, operate a food service in such public

29 office building or by contract, lease, license, or other-  
30 wise, permit any other person, firm, corporation, or  
31 agency so to do.

32 (d) If within sixty days from the receipt by the so-  
33 ciety of the offer mentioned in subsection (a) of this  
34 section, the society shall reject or shall fail to accept the  
35 offer, or the governmental agency by which the offer  
36 was made shall, in good faith and after a full and thor-  
37 ough study of the relevant circumstances, determine that  
38 the society is unable satisfactorily to operate such pro-  
39 posed food service, or the society shall have accepted  
40 such offer, but, within the period of six months from  
41 such acceptance, shall have failed to institute such food  
42 service, such proposed food service may thereupon be  
43 provided in such other manner as may be permitted  
44 by law, free from the requirements of this article, and  
45 if so instituted, the society shall not thereafter, without  
46 the express permission of the offering agency, institute  
47 such proposed food service in the public office building  
48 designated in such offer. If the governmental agency by  
49 which such offer shall have been made shall make the  
50 determination of inability of the society to operate the  
51 proposed food service, the governmental agency shall,  
52 within the aforementioned sixty-day period, provide  
53 the society with a full written statement of the reasons  
54 upon which such determination was predicated, and a  
55 food service shall not be operated in such public office  
56 building free from the requirements of this article until  
57 the written statement mentioned in this subsection shall  
58 have first been given.

59 (e) Notwithstanding any other provisions contained  
60 in this article, no governmental agency shall by reason  
61 of the provisions of this article take any action which  
62 will result in the violation of the terms of any valid  
63 contract, lease or license existing on the effective date  
64 hereof, nor shall such governmental agency be precluded  
65 from extending the period of such an existing contract,  
66 lease or license upon the same terms, and with the same  
67 contracting parties, as in the contract, lease or license so  
68 extended.

# CHAPTER 157

(Senate Bill No. 184—By Mr. Moreland)

[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing security officers at West Virginia University to assist local police officers on public highways in the control of traffic in and around premises owned by the state whenever such traffic is generated as a result of athletic or other activities conducted or sponsored by West Virginia University.

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

That section ten-b, article eleven, 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 11. WEST VIRGINIA UNIVERSITY.

### §18-11-10b. Security officers.

1 The board of regents is hereby authorized to appoint  
2 bona fide residents of this state to act as security officers  
3 upon any premises owned or leased by the state of West  
4 Virginia and under the jurisdiction of the board, subject  
5 to the conditions and restrictions hereinafter imposed.  
6 Before entering upon the performance of his duties as  
7 such security officer in any county, each person so ap-  
8 pointed shall qualify therefor in the same manner as is  
9 required of constables by the taking and filing of an  
10 oath of office as required by article one, chapter six of  
11 this code and by the posting of an official bond as re-  
12 quired by article two, chapter six of this code. No such  
13 person shall have authority to carry a gun or any other  
14 dangerous weapon until he shall have obtained a license  
15 therefor in the manner prescribed by section two, article  
16 seven, chapter sixty-one of this code: *Provided*, That no  
17 enrolled student of West Virginia University shall be  
18 appointed as a security officer.

19 It shall be the duty of any person so appointed and  
20 qualified to preserve law and order on any premises under

21 the jurisdiction of the board to which he may be assigned  
22 by the president of the university. For this purpose he  
23 shall as to offenses committed on such premises have  
24 and may exercise all the powers and authority and shall  
25 be subject to all the responsibilities of regularly elected  
26 constables of the county. The assignment of security offi-  
27 cers to any premises under the jurisdiction of the board  
28 shall not be deemed to supersede in any way the authority  
29 or duty of other peace officers to preserve law and order  
30 on such premises. In addition, the security officers ap-  
31 pointed under provisions of this section shall have author-  
32 ity to assist local peace officers on public highways in the  
33 control of traffic in and around premises owned by the  
34 state of West Virginia whenever such traffic is generated  
35 as a result of athletic or other activities conducted or  
36 sponsored by West Virginia University.

37 The salary of all such security officers shall be paid by  
38 the board. The board may also furnish such security  
39 officers with an official uniform and shall furnish and  
40 require each such officer while on duty to wear a metal-  
41 lic shield with an appropriate inscription and to carry cre-  
42 dentials certifying to his identity and to his authority as  
43 a security officer.

44 The board of regents may at its pleasure revoke the  
45 authority of any such officer by filing a notice to that  
46 effect in the office of the clerk of each county in which  
47 his oath of office was filed, and in the case of officers  
48 licensed to carry a gun or other dangerous weapons by  
49 notifying the clerk of the circuit court of the county in  
50 which the license therefor was granted.

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## CHAPTER 158

(Senate Bill No. 148—By Mr. McCourt, Mr. President)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article seventeen, chapter eighteen of the code of West Virginia, one thou-



sand nine hundred thirty-one, as amended, relating to the establishment of a minimum salary scale for employees of the West Virginia schools for the deaf and blind, and granting such employees the same tenure as school teachers.

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

That section one, article seventeen, 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 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.**

**§18-17-1. Continuation; management; minimum salary scale.**

1 The West Virginia schools for deaf pupils and blind  
2 pupils heretofore established and located at Romney, in  
3 Hampshire county, shall be continued and shall be known  
4 as the "West Virginia schools for the deaf and the blind."  
5 The schools shall be maintained for the care and educa-  
6 tion of the deaf youth and blind youth of the state. The  
7 educational or business affairs of the schools shall be  
8 under the control, supervision and management of the  
9 state board of education and the state board shall employ  
10 the superintendent, principals, teachers and other em-  
11 ployees and shall fix the yearly or monthly salary to be  
12 paid to each person so employed.

13 The minimum salary scale for said principals and  
14 teachers shall be the same as set forth in chapter eighteen-  
15 a, article four, sections two and three of the code of West  
16 Virginia, one thousand nine hundred thirty-one, as  
17 amended.

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## CHAPTER 159

(House Bill No. 869—By Mr. Speaker, Mr. Boiarsky, and Mr. Lohr)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article twenty, chapter eighteen of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to establishment of special schools and teaching services for exceptional children.

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

That section one, article twenty, 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 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-1. Establishment of special programs and teaching services for exceptional children.**

1 In accordance with the following provisions, county  
2 boards of education throughout the state having five or  
3 more exceptional children of any one of the types or  
4 classifications hereinafter provided for shall establish  
5 and maintain special educational programs, including  
6 but not limited to special schools, classes, home-teaching  
7 or visiting-teacher services for such type or classification  
8 in order to provide for educating exceptional children  
9 who meet the public school age requirement but who  
10 differ from the average or normal in physical, mental  
11 or emotional characteristics, or in communicative or in-  
12 tellectual deviation characteristics, or in both communi-  
13 cative and intellectual deviation characteristics, to the  
14 extent that they cannot be educated safely or profitably  
15 in the regular grades of the public schools, and for  
16 whom special educational provisions need to be made  
17 in order to educate them in accordance with their ca-  
18 pacities, limitations and needs. In addition, county boards  
19 of education may establish and maintain other educa-  
20 tional services for such types or classifications as the  
21 state superintendent of free schools may approve.

22 The general types and classifications of exceptional  
23 children for whom provision may be made under this  
24 article are the following areas of exceptionality: Vis-  
25 ually impaired, hearing impaired, physically or ortho-  
26 pedically handicapped, epileptic, mentally retarded,  
27 speech handicapped, multiple handicapped, autistic, in-  
28 tellectually gifted, socially or emotionally maladjusted  
29 including the delinquent, learning disabilities both phy-

30 sical and psychological and any other areas of excep-  
31 tionality which are identified and approved by the state  
32 superintendent of free schools.

33 By the school year beginning on the first day of July,  
34 one thousand nine hundred seventy-four, county boards  
35 of education shall establish and maintain these special  
36 educational programs, including but not limited to spe-  
37 cial schools, classes, home-teaching and visiting-teacher  
38 services. The state superintendent of free schools shall  
39 adopt rules and regulations to advance and accomplish  
40 this program.

41 Nothing in this section shall be construed to prevent  
42 county boards of education from providing special edu-  
43 cational programs, including but not limited to special  
44 schools, classes, home-teaching or visiting-teacher ser-  
45 vices for exceptional children who are three years of  
46 age or older.

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## CHAPTER 160

(Senate Bill No. 419—By Mr. Palumbo)

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[Passed March 12, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section six, article twenty-two-b,  
chapter eighteen of the code of West Virginia, one thou-  
sand nine hundred thirty-one, as amended, relating to  
increasing the maximum scholarship award available to  
scholarship recipients under the state scholarship program.

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

That section six, article twenty-two-b, 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 22B. STATE SCHOLARSHIP PROGRAM.**

#### **§18-22B-6. Recipients and awards of scholarships.**

1 The scholarship recipient shall be free to attend any ap-  
2 proved institution of higher education in this state. The

3 institution is not required to accept the scholarship re-  
4 cipient for enrollment, but is free to exact compliance with  
5 its own admission requirements, standards and policies.

6 Scholarship grants shall be made to undergraduate  
7 students only.

8 Each scholarship is renewable until the course of study  
9 is completed, but not to exceed an additional three aca-  
10 demic years beyond the first year of the award. These  
11 may not necessarily be consecutive years and the schol-  
12 arship will be terminated if the student receives his  
13 degree in a shorter period of time. Qualifications for  
14 renewal will include maintaining satisfactory academic  
15 standing, making normal progress toward completion of  
16 the course of study and continued eligibility, as deter-  
17 mined by the commission.

18 Scholarship awards shall be made without regard to  
19 the applicant's race, creed, color, sex, national origin  
20 or ancestry; and in making scholarship awards, the com-  
21 mission shall provide a fair and equitable geographical  
22 distribution of the awards and shall treat all approved  
23 institutions of higher education in a fair and equitable  
24 manner.

25 The maximum scholarship award shall be six hundred  
26 dollars per academic year: *Provided, however,* That for  
27 those recipients attending an approved institution of  
28 higher education in this state where the tuition exceeds  
29 six hundred dollars per academic year, the maximum  
30 scholarship award shall be nine hundred dollars or the  
31 amount of tuition and fees generally charged by the in-  
32 stitution to all students per academic year, whichever  
33 is the lesser amount.

34 Payments of scholarships shall be made directly to  
35 the institution.

36 In the event that a scholarship recipient transfers from  
37 one approved institution of higher education to another,  
38 his scholarship shall be transferable only with the ap-  
39 proval of the commission.

40 Should the recipient terminate his enrollment for any  
41 reason during the academic year, the unused portion of  
42 the scholarship shall be returned to the commission by

- 43 the institution according to the institution's own policy  
44 for issuing refunds.

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## CHAPTER 161

(House Bill No. 1115—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Seibert)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section four, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state system special capital improvements fund to be expended for all state institutions of higher education.

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

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

**ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18-24-4. Collection, disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.**

1 In addition to all other fees imposed by the West Vir-  
2 ginia board of regents, there is hereby imposed and  
3 the board of regents is hereby directed to provide for  
4 the collection of an additional registration fee from  
5 all students in the amounts hereinafter provided.

6 For full-time students at each state institution of  
7 higher education, the additional registration fee shall  
8 be fifty dollars per semester. The board of regents  
9 shall have authority to increase such additional regis-  
10 tration fee at any institution of higher education for  
11 students who are nonresidents of this state. For all  
12 part-time students and for all summer school students,

13 the board of regents shall impose and collect such fee  
14 in proportion to, but not exceeding, that paid by full-  
15 time students.

16 The fee imposed by this section shall be in addition  
17 to the maximum fees allowed to be collected under  
18 the provisions of section one of this article and shall  
19 not be limited thereby. Refunds of such fee may be  
20 made in the same manner as any other fee collected  
21 at state institutions of higher education.

22 There is hereby created in the state treasury a special  
23 capital improvements fund into which shall be paid  
24 on and after the first day of July, one thousand nine  
25 hundred sixty-three, all proceeds of the additional regis-  
26 tration fees collected from students at West Virginia  
27 University and at Potomac State College. Subject to  
28 any lien created by a pledge of the moneys in said  
29 special capital improvements fund for the payment of  
30 the principal of and interest on any revenue bonds  
31 issued pursuant to this section prior to the first day  
32 of July, one thousand nine hundred seventy-one, to  
33 finance capital improvements at West Virginia Univer-  
34 sity and at Potomac State College, the board of regents  
35 is empowered to expend moneys from this fund for  
36 the benefit of any state institution of higher education  
37 as provided in this section.

38 There is hereby created in the state treasury a second  
39 special capital improvements fund into which shall be  
40 paid on and after the first day of July, one thousand  
41 nine hundred sixty-three, all proceeds of the additional  
42 registration fees collected from students at all state  
43 institutions of higher education other than West Vir-  
44 ginia University and Potomac State College. Subject  
45 to any lien created by a pledge of the moneys in said  
46 capital improvements fund for the payment of the  
47 principal of and interest on any revenue bonds issued  
48 pursuant to this section prior to the first day of July,  
49 one thousand nine hundred seventy-one, to finance cap-  
50 ital improvements at state institutions of higher edu-  
51 cation other than West Virginia University and Potomac  
52 State College, the board of regents is empowered to

53 expend moneys from this fund for the benefit of any  
54 state institution of higher education as provided in this  
55 section.

56 There is created in the state treasury a state system  
57 special capital improvements fund to be expended by  
58 the board of regents for the benefit of any and all  
59 state institutions of higher education. On and after the  
60 first day of July, one thousand nine hundred seventy-  
61 one, the board of regents may periodically transfer from  
62 each of the two special capital improvements funds  
63 previously established by this section into the state sys-  
64 tem special capital improvements fund moneys in excess  
65 of the amount pledged for the payment of the prin-  
66 cipal of and interest on any revenue bonds issued pur-  
67 suant to this section prior to the first day of July, one  
68 thousand nine hundred seventy-one.

69 The board of regents may make expenditures from  
70 any of the special capital improvements funds established  
71 in this section to finance in whole or in part, together  
72 with any federal, state or other grants or contributions,  
73 any one or more of the following purposes: (1) The  
74 acquisition of land or any rights or interest therein,  
75 (2) the construction or acquisition of new buildings,  
76 (3) the renovation or construction of additions to exist-  
77 ing buildings, (4) the acquisition of furnishings and  
78 equipment for any such buildings, and (5) the con-  
79 struction or acquisition of any other capital improve-  
80 ments or capital educational facilities at such state  
81 institutions of higher education, including any roads,  
82 utilities or other properties, real or personal, or for  
83 other purposes necessary, appurtenant or incidental to  
84 the construction, acquisition, financing and placing in  
85 operation of such buildings, capital improvements or  
86 capital educational facilities.

87 The board of regents, in its discretion, may use the  
88 moneys in such special capital improvements funds to  
89 finance the costs of the above purposes on a cash basis,  
90 or may from time to time issue revenue bonds of the  
91 state as provided in this section to finance all or part  
92 of such purposes and pledge all or any part of the moneys

93 in such special funds for the payment of the principal  
94 of and interest on such revenue bonds, and for reserves  
95 therefor. Any pledge of such special funds for such  
96 revenue bonds shall be a prior and superior charge  
97 on such special funds over the use of any of the moneys  
98 in such funds to pay for the cost of any of such pur-  
99 poses on a cash basis: *Provided*, That any expenditures  
100 from such special funds, other than for the retirement  
101 of revenue bonds, may only be made by the board of  
102 regents to meet the cost of a predetermined capital  
103 improvements program for one or more of the state  
104 institutions of higher education, in such order of priority  
105 as shall have been agreed upon by the board of regents  
106 and presented to the governor for inclusion in the annual  
107 budget bill, and only with the approval of the Legis-  
108 lature as indicated by direct appropriation for the pur-  
109 pose.

110 Such revenue bonds may be authorized and issued  
111 from time to time by the board of regents to finance in  
112 whole or in part the purposes provided in this section  
113 in an aggregate principal amount not exceeding the  
114 amount which the board of regents shall determine can  
115 be paid as to both principal and interest and reason-  
116 able margins for a reserve therefor from the moneys in  
117 such special funds.

118 The issuance of such revenue bonds shall be autho-  
119 rized by a resolution adopted by the board of regents,  
120 and such revenue bonds shall bear such date or dates,  
121 mature at such time or times not exceeding forty years  
122 from their respective dates; be in such form either  
123 coupon or registered, with such exchangeability and  
124 interchangeability privileges; be payable in such me-  
125 dium of payment and at such place or places, within  
126 or without the state; be subject to such terms of prior  
127 redemption at such prices not exceeding one hundred  
128 five per centum of the principal amount thereof; and  
129 shall have such other terms and provisions as the board  
130 of regents shall determine. Such revenue bonds shall  
131 be signed by the governor and by the president of the  
132 board of regents authorizing the issuance thereof, under



133 the great seal of the state, attested by the secretary of  
134 state, and the coupons attached thereto shall bear the  
135 facsimile signature of the president of the board of  
136 regents. Such revenue bonds shall be sold in such man-  
137 ner as the board of regents may determine to be for  
138 the best interests of the state.

139 The board of regents may enter into trust agreements  
140 with banks or trust companies, within or without the  
141 state, and in such trust agreements or the resolutions  
142 authorizing the issuance of such bonds may enter into  
143 valid and legally binding covenants with the holders  
144 of such revenue bonds as to the custody, safeguarding  
145 and disposition of the proceeds of such revenue bonds,  
146 the moneys in such special funds, sinking funds, reserve  
147 funds, or any other moneys or funds; as to the rank and  
148 priority, if any, of different issues of revenue bonds  
149 by the board of regents under the provisions of this  
150 section; as to the maintenance or revision of the amounts  
151 of such additional registration fees, and the terms and  
152 conditions, if any, under which such additional regis-  
153 tration fees may be reduced; and as to any other matters  
154 or provisions which are deemed necessary and advisable  
155 by the board of regents in the best interests of the  
156 state and to enhance the marketability of such revenue  
157 bonds.

158 After the issuance of any of such revenue bonds, the  
159 additional registration fees at the state institutions of  
160 higher education shall not be reduced as long as any  
161 of such revenue bonds are outstanding and unpaid except  
162 under such terms, provisions and conditions as shall  
163 be contained in the resolution, trust agreement or other  
164 proceedings under which such revenue bonds were  
165 issued.

166 Such revenue bonds shall be and constitute negotiable  
167 instruments under the uniform commercial code of this  
168 state; shall, together with the interest thereon, be exempt  
169 from all taxation by the state of West Virginia, or by  
170 any county, school district, municipality or political sub-  
171 division thereof; and such revenue bonds shall not be  
172 deemed to be obligations or debts of the state, and the

173 credit or taxing power of the state shall not be pledged  
174 therefor, but such revenue bonds shall be payable only  
175 from the revenue pledged therefor as provided in this  
176 section.

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## CHAPTER 162

(House Bill No. 864—By Mr. Speaker, Mr. Boiarsky,  
and Mr. Seibert)

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[Passed March 5, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section two, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions applicable to the West Virginia board of regents.

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

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

### **ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

#### **§18-26-2. Definitions.**

1 Notwithstanding the provisions of section one, article  
2 one of this chapter, the following words when used in  
3 this article, shall have the meaning hereafter ascribed  
4 to them unless the context clearly indicates a different  
5 meaning:

6 (a) The term "board" shall mean the West Virginia  
7 board of regents.

8 (b) The term "state colleges" shall mean Bluefield  
9 State College, Concord College, Fairmont State College,  
10 Glenville State College, Shepherd College, West Liberty  
11 State College, West Virginia Institute of Technology,  
12 West Virginia State College and any state community  
13 college or other state institution of higher education  
14 which may hereafter be established and not designated  
15 as a "university".

16 (c) The term "state college" shall mean one of the  
17 state colleges.

18 (d) The terms "state universities" and "universities"  
19 shall mean Marshall University and West Virginia Uni-  
20 versity and any other state institution of higher educa-  
21 tion which may hereafter be established and designated  
22 as a "university".

23 (e) The terms "state university" and "university"  
24 shall mean one of the state universities.

25 (f) The term "community college" shall mean any  
26 institution of higher education which has been desig-  
27 nated as a community college by the West Virginia board  
28 of regents under the provisions of section thirteen-b, arti-  
29 cle twenty-six, chapter eighteen of this code.

30 (g) The term "higher educational institution" shall  
31 mean any institution as defined by sections 401 (f), (g),

32 (h) of the Federal Higher Education Facilities Act of 1963,  
33 as amended.

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## CHAPTER 163

(House Bill No. 729—By Mr. Speaker, Mr. Boiarsky)

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[Passed March 4, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to repeal articles twenty-two and twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article twenty-six of said chapter; to further amend article twenty-six of said chapter by adding thereto twelve new sections, designated sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, all relating to the transfer of powers, duties and authorities with respect to the academic facilities program, the state scholarship program and the guaranteed student loan program from the state commission on higher education to the board of regents; the creation of an advisory commission; its membership,

terms and organization; the abolishment of the state commission on higher education.

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

That articles twenty-two and twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section ten, article twenty-six of said chapter be amended and reenacted; and that article twenty-six be further amended by adding thereto twelve new sections, designated sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, all to read as follows:

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

- §18-26-10. State agency for participation in federal and private grants to higher education; further powers and duties of board of regents.
- §18-26-13. Transfer of powers, duties, and authorities, title to property, agreements, and orders, resolutions, etc., of the state commission on higher education to board of regents.
- §18-26-14. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.
- §18-26-15. Guaranteed student loan program to be administered by board of regents.
- §18-26-16. "Act," "undertaking" and "obligations" defined.
- §18-26-17. Board's authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.
- §18-26-18. Powers and duties of board of regents regarding loan program.
- §18-26-19. Title to property.
- §18-26-20. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.
- §18-26-21. Terms of acquisitions.
- §18-26-22. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.
- §18-26-23. Construction of provisions of article relating to loan program.
- §18-26-24. Purpose of provisions of article relating to loan program.
- §18-26-10. State agency for participation in federal and private grants to higher education; further powers and duties of board of regents.**

- 1 The board of regents, on behalf of the state of West
- 2 Virginia, is authorized and empowered to apply for, to
- 3 accept and administer and expend for the purpose or
- 4 purposes designated, any funds which now are, or may
- 5 be made available to the board or to any institution

6 under its authority from federal or private grants, ap-  
7 propriations, allocations and programs.

8 The board of regents shall have the power:

9 (1) To receive and disburse funds appropriated by  
10 the federal government for the construction, equipment,  
11 and improvement of academic facilities of institutions  
12 of higher education as required by the federal Higher  
13 Education Facilities Act of 1963, and any and all subse-  
14 quent acts of Congress relating to the same subject;

15 (2) To apply for, receive, and administer, subject  
16 to any applicable regulations or laws of the federal gov-  
17 ernment or any agency thereof, any federal grants, ap-  
18 propriations, allocations, and programs for the develop-  
19 ment of academic facilities on behalf of the state of West  
20 Virginia, or any institution of higher education, public  
21 or private, within the state;

22 (3) To develop, alter, amend, and submit to the fed-  
23 eral government state plans for participation in federal  
24 grants, appropriations, allocations, and programs for the  
25 development of academic facilities and to formulate  
26 regulations, criteria, methods, forms, procedures, and to  
27 do all other things which may be necessary to make pos-  
28 sible the participation of the state in such federal grants,  
29 appropriations, allocations, and programs for the de-  
30 velopment of academic facilities;

31 (4) To hold hearings, and render decisions as to the  
32 priority assigned to any project, or as to any other matter  
33 or determination affecting any applicant for federal  
34 grants, appropriations, allocations and programs for the  
35 development of academic facilities;

36 (5) To hire personnel, purchase materials, make  
37 studies and reports, enter into contracts, and do all  
38 other things necessary to accomplish the duties as set  
39 forth in this section within the limits of the funds avail-  
40 able.

**§18-26-13. Transfer of powers, duties, and authorities, title to property, agreements, and orders, resolutions, etc., of the state commission on higher education to board of regents.**

1 All powers, duties, and authorities vested in the state

2 commission on higher education by articles twenty-two,  
3 twenty-two-a and twenty-two-b of this chapter or by  
4 any other provisions of law are hereby transferred to  
5 the West Virginia board of regents; and on and after the  
6 effective date of this article all of the powers, duties, and  
7 authorities of the state commission on higher education  
8 shall be exercised and performed by the West Virginia  
9 board of regents, and the state commission on higher  
10 education shall be abolished and repealed.

11 The title to all property heretofore acquired in the  
12 name of the state commission on higher education is  
13 hereby transferred to and vested in the West Virginia  
14 board of regents.

15 Each valid agreement and obligation of the state com-  
16 mission on higher education shall on or after the effective  
17 date of this section become and be deemed the agreement  
18 and obligation of the West Virginia board of regents.

19 All orders, resolutions, rules and regulations adopted  
20 or promulgated by the state commission on higher edu-  
21 cation and in effect immediately prior to the effective  
22 date of this section shall continue and shall be deemed  
23 the orders, resolutions, rules and regulations of the  
24 West Virginia board of regents until rescinded by the  
25 board; and all such orders, resolutions, rules and regula-  
26 tions may be rescinded, revised, altered or amended by  
27 the board in the manner and to the extent authorized  
28 and permitted by law.

**§18-26-14. Creation of advisory council on federal resources;  
appointment, terms and qualifications of mem-  
bers; vacancies; compensation and expenses;  
meetings; quorum.**

1 There is hereby created an advisory council to be  
2 known as the higher education advisory council on fed-  
3 eral resources. The council shall review the state plan  
4 for administration of the federal Higher Education Fa-  
5 cilities Act of 1963 and Titles I and VI of the federal  
6 Higher Education Act of 1965, as amended. The council  
7 shall also evaluate proposals pertaining to the afore-  
8 mentioned federal acts and shall submit such recom-  
9 mendations as it deems appropriate to the board of

10 regents. The council shall be involved in every significant  
11 function of the board of regents pertaining to said federal  
12 acts.

13 The advisory council shall consist of nine members to  
14 be appointed as follows: One member shall be a member  
15 of the board of regents appointed by the president of the  
16 board of regents, three members appointed by the board  
17 of regents to represent the public at large, two members  
18 appointed by the board of regents to represent public  
19 institutions of higher education, and three members ap-  
20 pointed by the board of regents to represent nonpublic  
21 institutions of higher education: *Provided*, That of the  
22 three members representing nonpublic institutions of  
23 higher education, one shall be a president of a nonpublic  
24 institution, and of the two members representing public  
25 institutions of higher education, one shall be a president  
26 of a public institution. The board of regents shall appoint  
27 a chairman of the advisory council who shall be selected  
28 from the representatives of the public at large.

29 The members shall serve for a term of six years, ex-  
30 cept that the original appointments shall be as follows:  
31 Three members shall serve two years, three members to  
32 serve four years, and three members to serve six years.  
33 The board of regents shall appoint a member to fill any  
34 vacancy, which member shall serve for the unexpired  
35 term of the vacating member. All shall be eligible for  
36 reappointment.

37 The members of the advisory council shall serve with-  
38 out compensation, but shall be reimbursed for their  
39 necessary expenses actually incurred in the performance  
40 of their duties not to exceed twenty-five dollars per day  
41 plus an allowance of ten cents per mile actually traveled  
42 to and from such meetings.

43 A meeting of the advisory council shall be held within  
44 sixty days after the effective date of this section, and  
45 thereafter the advisory council shall meet at least an-  
46 nually and at such other times as necessary upon the  
47 call of the chairman. Five members of the advisory coun-  
48 cil shall constitute a quorum, and a majority vote of the  
49 quorum shall be necessary to pass upon matters before  
50 the council.

**§18-26-15. Guaranteed student loan program to be administered by board of regents.**

1 The guaranteed student loan program established and  
2 authorized by this article shall be administered by the  
3 West Virginia board of regents.

**§18-26-16. "Act," "undertaking" and "obligations" defined.**

1 As used in this article, the following words and terms  
2 shall have the following meanings, unless the context  
3 shall indicate another or different meaning or intent:

4 (a) The words "act" or "undertaking" shall mean the  
5 official act of the board in connection with the acquisi-  
6 tion or deposition of all or any part of obligations or  
7 interest therein which the board of regents is authorized  
8 to buy or sell hereunder.

9 (b) The word "obligations" shall mean those evidences  
10 of debt which the board may buy, sell, endorse, or guar-  
11 antee under the provisions of this article.

**§18-26-17. Board's authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.**

1 In order to facilitate the education of residents in this  
2 state and promote the industrial and economic develop-  
3 ment of the state, the board of regents is hereby autho-  
4 rized and empowered to buy and sell obligations of stu-  
5 dents who are residents of West Virginia, who have been  
6 residents of this state for at least one year and who are  
7 students at state supported or private institutions of  
8 higher education or vocational schools accredited by a na-  
9 tionally recognized accrediting agency or by a state  
10 agency designated by the governor and representing loans  
11 made to such students who have met the requirement of  
12 financial need as determined by the board of regents,  
13 such loans having been made for the purpose of an edu-  
14 cation.

15 No act or undertaking of the board shall be deemed  
16 to constitute a debt of the state or of any political sub-  
17 division thereof or a pledge of the faith and credit of  
18 the state or of any such political subdivision, but shall  
19 be payable solely from the funds of the board specifically



20 appropriated for the guaranteed student loan program.  
21 All such acts and undertakings shall contain on the face  
22 thereof a statement to the effect that neither the state  
23 nor the board shall be obligated to pay the same or the  
24 interest thereon except from revenues of the board and  
25 that neither the faith and credit nor the taxing power  
26 of the state or of any political subdivision thereof is  
27 pledged to the payment of the principal of or the interest  
28 on such acts and undertakings.

29 All expenses incurred in carrying out the provisions  
30 of this article dealing with the guaranteed student loan  
31 program shall be payable solely from funds provided for  
32 the purpose and no liability or obligation shall be in-  
33 curred by the board hereunder beyond the extent to  
34 which money shall have been provided under the ap-  
35 plicable provisions of this article for the guaranteed stu-  
36 dent loan program.

**§18-26-18. Powers and duties of board of regents regarding  
loan program.**

1 The board of regents is hereby authorized and em-  
2 powered:

3 (1) To fix and revise from time to time and charge  
4 and collect fees for its acts and undertakings;

5 (2) To establish rules and regulations concerning the  
6 acts and undertakings;

7 (3) To acquire, hold and dispose of personal property  
8 in the exercise of its powers and the performance of its  
9 duties;

10 (4) To make and enter into all contracts and agree-  
11 ments necessary or incidental to the performance of its  
12 duties and the execution of its powers under this article;

13 (5) To employ in its discretion such employees as it  
14 may deem necessary to carry out its powers and duties  
15 as enumerated in this article;

16 (6) To receive and accept from any federal or private  
17 agency, corporation, association or person, grants to be  
18 expended in accomplishing the objectives of this article  
19 and to receive and accept from the state, from any munic-  
20 ipality, county or other political subdivision thereof and

21 from any other source, aid or contributions of either  
22 money, property, or other things of value to be held,  
23 used and applied only for the purposes for which such  
24 grants and contributions may be made;

25 (7) To sue and be sued as provided by law;

26 (8) To do all other acts and things necessary or con-  
27 venient to carry out the powers expressly granted by  
28 the provisions of this article which relate to the guar-  
29 anteed student loan program. Nothing in this article  
30 shall be construed to empower the board to engage in  
31 the business of banking or insurance.

**§18-26-19. Title to property.**

1 Title to any property acquired by the board of regents  
2 under the provisions of this article which relate to the  
3 guaranteed student loan program shall be taken and  
4 held in the name of the board of regents.

**§18-26-20. Acquisition of contingent interests in obligations  
from lending institutions; collection of delinquent  
obligations.**

1 With funds available to the board of regents for pur-  
2 poses other than the payment of compensation to per-  
3 sonnel and the lease or rental of offices or equipment,  
4 the board may acquire from any bank or other lending  
5 institution of this state a contingent interest in student  
6 obligations; the total contingent interest of the board  
7 on all such obligations shall not exceed at any one time  
8 a sum of twelve and one-half times the total funds which  
9 the board can employ to acquire such contingent in-  
10 terests. When the board acquires any such contingent  
11 interest, it may require the payment to it of a portion  
12 of the interest payable upon any such obligation. In each  
13 such acquisition, the board shall provide that at such time  
14 as the obligation becomes delinquent, the bank or other  
15 lending institution shall notify the board forthwith and  
16 shall transfer forthwith to the board, by assignment or  
17 otherwise, an interest in such obligation equal to the  
18 contingent interest of the board therein. The bank or  
19 other lending institution and the board shall forthwith  
20 take such steps as may be necessary to recover the bal-  
21 ance due upon any such obligation, and such recovery

22 shall be apportioned between the board and the bank or  
23 other lending institution as their respective interests may  
24 appear.

**§18-26-21. Terms of acquisitions.**

1 The board of regents shall prescribe the terms, condi-  
2 tions and limitations upon which it will acquire a con-  
3 tingent or direct interest in any obligation and such terms,  
4 conditions and limitations shall include, but without  
5 limiting the generality thereof, the terms for payment of  
6 principal and interest, applicable life or other insurance  
7 which may be required in connection with any such  
8 obligation and who shall pay the premiums thereon, the  
9 safekeeping of assets pledged to secure any such under-  
10 taking, and any and all matters in connection with the  
11 foregoing as will protect the assets of the board.

**§18-26-22. Trust fund established; limitations on use of fund;  
duties of treasurer in connection therewith;  
special account created.**

1 The appropriation made to the board under the pro-  
2 visions of this article which relate to the guaranteed  
3 student loan program shall be used exclusively for the  
4 purpose of acquiring contingent or vested rights in obliga-  
5 tions which it may acquire under this article, and such  
6 appropriation, payments, revenue and interest, as well  
7 as other income received in connection with such obliga-  
8 tions, is hereby established as a trust fund. Such fund  
9 shall be used for the purposes of the board other than  
10 maintenance and operation.

11 The maintenance and operating expenses of the board  
12 shall be paid from funds specifically appropriated for  
13 such purposes. No part of the trust fund established under  
14 this section shall be expended for such purposes.

15 The board of regents shall be the trustee of the trust  
16 fund hereby created and all investments to be made from  
17 the assets of such trust shall be made by the state trea-  
18 surer in the manner provided by law. For the purposes  
19 of this article there is hereby created in the treasury  
20 of this state a special revolving account for deposits and  
21 withdrawals as herein provided. The state treasurer shall

22 be the custodian of the assets of the board. All payments  
23 from the accounts thereof shall be made by him upon  
24 warrants issued by the auditor upon vouchers signed  
25 by such persons as are designated by the board. A duly  
26 attested copy of a resolution of the board designating such  
27 persons shall be filed with the state treasurer as his au-  
28 thority for issuing warrants upon such vouchers.

**§18-26-23. Construction of provisions of article relating to loan program.**

1 The provisions of this article which relate to the guar-  
2 anteed student loan program shall be liberally construed  
3 to the end that its beneficial purposes may be effectuated.

**§18-26-24. Purpose of provisions of article relating to loan program.**

1 The Legislature enacts the provisions of this article  
2 which relate to the establishment of the guaranteed stu-  
3 dent loan program to continue and encourage education  
4 of citizens of this state who are in need of financial as-  
5 sistance, such assistance and education being for the wel-  
6 fare of this state, and the Legislature hereby declares  
7 such to be a public purpose.

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## CHAPTER 164

(Senate Bill No. 66—By Mr. McKown)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to empowering the West Virginia board of regents to determine minimum standards for institutions of higher education and the conferring of higher education degrees.

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

That article twenty-six, 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 thirteen-a, to read as follows:

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

**§18-26-13a. Accreditation of institutions of higher education; standards for degrees.**

1 The West Virginia board of regents shall make rules  
2 and regulations for the accreditation of all colleges,  
3 universities and other institutions of higher education  
4 in the state, and shall determine the minimum standards  
5 for the conferring of degrees. No institution of higher  
6 educational status may confer any degree on any basis  
7 of work or merit below the minimum standards pre-  
8 scribed by the West Virginia board of regents. Nothing  
9 contained herein shall infringe upon the rights granted  
10 to any institution by charter given according to law  
11 previous to the adoption of this section.

12 No charter or other instrument containing the right  
13 to confer degrees of higher educational status shall be  
14 granted by the state of West Virginia to any institution,  
15 association or organization within the state, nor shall  
16 any such degree be awarded until the condition of con-  
17 ferring such degree has first been approved in writing  
18 by the West Virginia board of regents.

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## CHAPTER 165

(Senate Bill No. 255—By Mr. Carrigan)

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[Passed March 9, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to repeal section fifteen-a, article two; section nine-b, article eleven; section one, article sixteen; and section eleven, article twenty-four, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-

one, as amended; and to amend article twenty-six, chapter eighteen of said code by adding thereto a new section, designated section thirteen-b, relating to branch colleges, off-campus locations of state universities and colleges, community colleges, and all other state institutions of higher education offering only programs of two years or less duration.

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

That section fifteen-a, article two; section nine-b, article eleven; section one, article sixteen; and section eleven, article twenty-four, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six, chapter eighteen of said code be amended by adding thereto a new section, designated section thirteen-b, to read as follows:

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

**§18-26-13b. Continuance, establishment and operation of branch colleges, off-campus locations of state universities and colleges, and community colleges.**

- 1 (a) The board of regents is authorized and empowered
- 2 to continue to operate and maintain any branch colleges
- 3 and off-campus locations of state universities and colleges
- 4 heretofore established including Potomac State College
- 5 of West Virginia University, the Parkersburg branch of
- 6 West Virginia University, the Logan and Williamson
- 7 branches of Marshall University, the Hancock county
- 8 branch and the Wheeling campus of West Liberty State
- 9 College.
- 10 (b) Notwithstanding any other provisions of this code
- 11 to the contrary, the board of regents may designate any
- 12 one, several or all of the existing branches or off-campus
- 13 locations of the state universities and colleges (including
- 14 Potomac State College of West Virginia University, the
- 15 Parkersburg branch of West Virginia University, the
- 16 Logan and Williamson branches of Marshall University,
- 17 and the Hancock county branch and the Wheeling campus
- 18 of West Liberty State College) to be established as com-
- 19 munity colleges responsible directly to and subject to the
- 20 governance of the board of regents. The board of regents

21 shall determine programs to be offered in each community  
22 college, provided such programs are of two years or less  
23 duration, fix enrollments, designate a name for each com-  
24 munity college, employ a president and such staff and  
25 faculty as determined appropriate, appoint an advisory  
26 board for each institution consistent with section nine  
27 of this article and exercise such general determination,  
28 control, supervision and management of the financial,  
29 business and educational policies and affairs of each com-  
30 munity college as is provided in this chapter.

31 (c) The board of regents may fix tuition and establish  
32 and set such other fees to be charged students as it deems  
33 appropriate, retaining the same in a revolving fund for  
34 the partial or full support, including the making of capital  
35 improvements, of any branch college or off-campus loca-  
36 tion of a state university or college authorized to be con-  
37 tinued in subsection (a) of this section or of any commu-  
38 nity college designated or established under the authority  
39 granted in subsection (b) of this section. Funds collected  
40 at any such branch college, off-campus location of a state  
41 university or college, or community college may be used  
42 only for the benefit of the institution at which collected.  
43 The board of regents may also establish special fees for  
44 such purposes as, including but not limited to, health  
45 services, student activities, student recreation, athletics  
46 or any other extracurricular purposes. Such special fees  
47 shall be paid into special funds and used only for the  
48 purposes for which collected.

49 (d) The board of regents may allocate from the ap-  
50 propriations for the state system of higher education fund  
51 for the operation and capital improvement of any insti-  
52 tution continued under authority of subsection (a) of  
53 this section or designated or established as a community  
54 college under authority of subsection (b) of this section  
55 and may accept federal grants, funds from county boards  
56 of education, other local governmental bodies, corpora-  
57 tions or persons. The board may enter into memoranda  
58 of agreements with such governmental bodies, corpora-  
59 tions or persons for the use or acceptance of local plant  
60 facilities and/or the acceptance of grants or contribu-  
61 tions toward the cost of the acquisition or construction

62 of such facilities. Such local governmental bodies may  
63 convey capital improvements, or lease the same without  
64 monetary consideration, to the board, for the use by the  
65 institution, and the board may accept such facilities  
66 or the use or lease thereof, and such grants or contribu-  
67 tions, for such purposes from such governmental bodies,  
68 the federal government or any corporation or person.

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## CHAPTER 166

(Senate Bill No. 183—By Mr. Poffenbarger)

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[Passed March 2, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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AN ACT to amend and reenact section four, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities; and providing that the provisions of the chapter shall not be applicable to transactions by an issuer not involving any public offering.

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

That section four, article one, chapter thirty-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. SECURITIES; DEFINITIONS; REGISTRATION; UNLAWFUL ACTS; PENALTIES; LIABILITIES.**

**§32-1-4. Transactions not included.**

1 The provisions of this chapter shall not apply to any  
2 of the following transactions:

3 (a) Any judicial, sheriff's, constable's, executor's, ad-  
4 ministrator's, guardian's or conservator's sale or any  
5 sale by a receiver or trustee in insolvency or bank-  
6 ruptcy, or the sale by a pledgee, in good faith and in  
7 the ordinary course of business and not for the purpose  
8 of evading any provision of this chapter, of a security  
9 pledged for a bona fide debt;



10 (b) An isolated transaction in which any security  
11 is sold, offered for sale, subscription or delivery by the  
12 owner thereof, such sale or offer for sale, subscription  
13 or delivery not being made in the course of repeated  
14 and successive transactions of a like character by such  
15 owner;

16 (c) A sale upon a customer's order of any security,  
17 if sale is made to a person outside this state: *Provided*,  
18 That such sale in another state is not a violation of the  
19 securities laws of that state;

20 (d) The distribution by a corporation actively en-  
21 gaged in the business authorized by its charter, of capital  
22 stock, bonds or other securities to its stockholders or its  
23 other security holders as a stock dividend or other dis-  
24 tribution out of earnings or surplus;

25 (e) The sale, transfer or delivery to any bank, sav-  
26 ings institution, trust company, insurance company or  
27 to any broker or dealer: *Provided*, That such broker or  
28 dealer is actually engaged in buying and selling securi-  
29 ties as a business;

30 (f) Bonds or notes, or other obligations secured by  
31 mortgage, deed of trust, or other lien upon property,  
32 where the entire lien, together with all of the bonds  
33 or notes secured thereby, is sold to a single purchaser  
34 at a single sale, or where the lien is given or incurred  
35 to secure the payment of unpaid purchase money;

36 (g) The issue and delivery of any security in exchange  
37 for any other security of the same issuer pursuant to  
38 a right of conversion entitling the holder of the security  
39 surrendered in exchange to make such conversion: *Pro-*  
40 *vided*, That the security so surrendered has been regis-  
41 tered under the provisions of this chapter or was, when  
42 sold, exempt through the provisions of said chapter;

43 (h) Transactions by an issuer not involving any pub-  
44 lic offering;

45 (i) The transfer or exchange by one corporation to  
46 another corporation of its own securities in connection  
47 with a consolidation or merger of such corporations;

48 (j) The solicitation or execution by a registered dealer  
49 of orders for the purchase of any security, provided such

50 dealer acts as agent for the purchaser, has no direct  
51 material interest in the sale or distribution of such  
52 security, receives no commission, profit or other com-  
53 pensation from any source other than the purchaser,  
54 and delivers to the purchaser written confirmation of  
55 the transaction which clearly itemizes his commission,  
56 profit or other compensation.

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## CHAPTER 167

(House Bill No. 944—By Mr. Speaker, Mr. Boiarsky)

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[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to conform article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, with the principles recently declared with respect thereto in a decision by the supreme court of appeals of West Virginia and to provide funds for the payment of outstanding "State Building Revenue Bonds" issued pursuant to said article, by amending and reenacting said article six and sections nine-a and nineteen-a, article three, chapter sixty of said code; relating to the state building commission of West Virginia, its composition, the appointment, terms and qualifications of its members, its chairman and secretary, the compensation and expenses of its members, and its powers and duties generally; setting forth certain legislative findings with respect to said "State Building Revenue Bonds", the public purpose of the projects constructed with the proceeds from said bonds, and said decision of the supreme court of appeals of West Virginia; defining various terms used in said article six; specifying various specific powers of said commission; relating to the deposits and disbursements of the commission; relating to security for its deposits and audits of its accounts; relating to the authority of the city of Charleston to make certain dedications to the commission; providing that contracts with the commission shall be secured by bonds; requiring competitive bids for certain contracts and specifying requirements with respect thereto; authorizing the issuance of state building revenue bonds; relating to the form of and requirements

and procedures for the issuance of such bonds; relating to the interest on such bonds and the maturity thereof; exempting said bonds and the interest thereon from taxation; relating to the sale of said bonds and the proceeds therefrom; relating to temporary bonds; authorizing such bonds as investments for certain state funds; authorizing a trustee for the holders of said bonds; relating to the contents of any trust agreement; providing that a trust exists in favor of the holders of existing "State Building Revenue Bonds"; relating to the management and control of projects of the commission; specifying that article shall not authorize state debt; specifying that compliance with article six and constitution only required; providing that said article six shall be liberally construed; providing a severability clause; continuing in effect a price increase of alcoholic liquors beyond the time the price increase would otherwise expire; providing for a further price increase of alcoholic liquors; requiring the receipts from such continued price increase and such further price increase to be paid into a special fund created in the office of the state treasurer for the purpose of the payment of said "State Building Revenue Bonds"; and providing that the West Virginia alcohol beverage control commissioner shall make quarterly payments in the amount of nine hundred thousand dollars into said special fund created in the office of the state treasurer for the purpose of retiring said "State Building Revenue Bonds".

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

That article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections nine-a and nineteen-a, article three, chapter sixty of said code be amended and reenacted, all to read as follows:

#### **Chapter**

- 5. General Powers and Duties of the Governor, Secretary of State and Attorney General; Board of Public Works; State Building Commission; Social Security Agency; Public Records Management and Preservation Act; Department of Commerce; West Virginia Public Employees Retirement Act; Human Rights Commission; West Virginia Antiquities Commission; Public Em-**

**ployees' and Teachers' Reciprocal Service Credit Act;  
White Cane Law.**

**60. State Control of Alcoholic Liquors.**

**CHAPTER 5. GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; STATE BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT; WHITE CANE LAW.**

**ARTICLE 6. STATE BUILDING COMMISSION.**

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally.

§5-6-2. Legislative findings; purpose of revision of article.

§5-6-3. Definitions.

§5-6-4. Powers of commission.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

§5-6-6. City of Charleston may dedicate streets, property, etc., to commission.

§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars.

§5-6-8. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-9. Trustee for holders of bonds; contents of trust agreement.

§5-6-10. Trust existing in favor of existing bondholders.

§5-6-11. Management and control of project.

§5-6-12. Article not authority to create state debt.

§5-6-13. Compliance with article and state constitution only restrictions on construction and management of project.

§5-6-14. Article to be liberally construed.

§5-6-15. Severability.

**§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally.**

1 "The State Office Building Commission of West Vir-  
2 ginia," heretofore created, shall continue in existence  
3 but on and after February nine, one thousand nine hun-  
4 dred sixty-six, shall be known and designated as "The  
5 State Building Commission of West Virginia" and shall

6 continue as a body corporate and as an agency of the  
7 state of West Virginia. On and after the date aforesaid,  
8 the commission shall consist of the governor, and four  
9 additional members to be appointed by the governor  
10 by and with the advice and consent of the Senate. The  
11 terms of office for said members to be appointed by  
12 the governor shall be four years, except that the terms  
13 of office of the first four members so appointed by  
14 the governor shall be for one, two, three and four  
15 years respectively. No more than three of such mem-  
16 bers so appointed by the governor shall be members  
17 of the same political party, nor shall any of said members  
18 be members or employees of the executive, legislative  
19 or judicial branches of government of West Virginia  
20 or any political subdivision thereof. The governor shall  
21 be chairman of the commission. The secretary of state  
22 shall be a member of the commission and serve as its  
23 secretary, but shall not have the right to vote upon  
24 matters before the commission. All members of the  
25 commission shall be citizens and residents of this state.  
26 The members of the commission shall be paid or reim-  
27 bursed for their necessary expenses incurred under this  
28 article, but shall receive no compensation for their ser-  
29 vices as members or officers of the commission: *Pro-*  
30 *vided, however,* That each member of the commission  
31 appointed by the governor shall, in addition to such  
32 reimbursement for necessary expenses receive a per  
33 diem of thirty-five dollars for each day or substantial  
34 portion thereof that he is engaged in the work of the  
35 commission. Such expenses and per diem shall be paid  
36 solely from funds provided under the authority of this  
37 article, and the commission shall not proceed to exercise  
38 or carry out any authority or power herein given it to  
39 bind said commission beyond the extent to which money  
40 has been provided under the authority of this article.  
41 On or before the fifteenth day of each month, the com-  
42 mission shall prepare and transmit to the president and  
43 minority leader of the Senate and the speaker and the  
44 minority leader of the House of Delegates a report cover-  
45 ing the activities of the said commission for the pre-  
46 ceding calendar month.

**§5-6-2. Legislative findings; purpose of revision of article.**

1 (a) The Legislature hereby finds that, with the con-  
2 currence of the Legislature, the commission heretofore  
3 authorized pursuant to resolution adopted on the eleventh  
4 day of March, one thousand nine hundred sixty-eight,  
5 the issuance of "State Building Revenue Bonds, Series  
6 1968," in the aggregate principal amount of twenty-four  
7 million two hundred thousand dollars; pursuant to reso-  
8 lution adopted the fourteenth day of October, one thou-  
9 sand nine hundred sixty-eight, the issuance of "State  
10 Building Revenue Bonds, Public Safety Series," in the  
11 aggregate principal amount of two million five hundred  
12 thousand dollars; and pursuant to resolution adopted  
13 on the thirteenth day of April, one thousand nine hun-  
14 dred seventy, the issuance of "State Building Revenue  
15 Bonds, Science and Cultural Center Series," in the  
16 aggregate principal amount of nine million dollars.

17 (b) The Legislature hereby further finds that the  
18 said "State Building Revenue Bonds, Series 1968" were  
19 all sold and are now outstanding in the principal amount  
20 of twenty-four million two hundred thousand dollars;  
21 that the said "State Building Revenue Bonds, Public  
22 Safety Series" were all sold and are now outstanding  
23 in the principal amount of two million five hundred  
24 thousand dollars; and that said "State Building Revenue  
25 Bonds, Science and Cultural Center Series," in the prin-  
26 cipal amount of one million five hundred thousand dol-  
27 lars were sold and are now outstanding.

28 (c) The Legislature hereby further finds that the  
29 proceeds from the issuance and sale of the aforesaid  
30 "State Building Revenue Bonds, Series 1968", the afore-  
31 said "State Building Revenue Bonds, Public Safety  
32 Series" and the aforesaid "State Building Revenue Bonds,  
33 Science and Cultural Center Series" have been expended  
34 or obligated in and for construction of or in connection  
35 with projects undertaken pursuant to this article, which  
36 projects are owned and held in the name of the state or  
37 the commission.

38 (d) The Legislature hereby further finds that the  
39 acquisition and construction of the aforesaid projects

40 have been in the best interests of the state by providing  
41 additional essential office space and other related struc-  
42 tures which are needed for the use of the state, and the  
43 officers, departments, agencies and public corporations  
44 of the state, and the fulfillment of other public uses and  
45 purposes.

46 (e) The Legislature further finds and declares that  
47 the supreme court of appeals of West Virginia has held  
48 that the former provisions of this article were uncon-  
49 constitutional to the extent that the same contemplated  
50 that the principal of and the interest on bonds issued  
51 by the commission would be paid solely from a fund  
52 to be created and maintained from general tax revenues  
53 of the state.

54 (f) The Legislature further finds and declares that  
55 the amendments made by this act to this article are  
56 intended (1) to modify the provisions of this article  
57 so as to cause the same to be in full compliance with  
58 the provisions of the constitution of the state of West  
59 Virginia, which said court held were violated by the  
60 former provisions of this article, and to be in full com-  
61 pliance with said decision of the supreme court of ap-  
62 peals of West Virginia, and (2) to accord statutory recog-  
63 nition to existing rights, legal and equitable, of the  
64 holders of bonds heretofore issued by the commission,  
65 afford security for the payment of the obligations evi-  
66 denced thereby and provide a special fund for the pay-  
67 ment of the obligations evidenced thereby.

### §5-6-3. Definitions.

1 The following terms, wherever used or referred to in  
2 this article, shall have the following meanings, unless a  
3 different meaning clearly appears from the context:

4 (1) "Commission" means the state building commis-  
5 sion of West Virginia or if said commission shall be  
6 abolished, any board or officer succeeding to the princi-  
7 pal functions thereof, or to whom the powers given to  
8 said commission shall be given by law;

9 (2) "Bonds" means bonds issued by the commission  
10 pursuant to this article;

11 (3) "Project" means collectively the acquisition of  
12 land, the construction, equipping and furnishing of a  
13 building or buildings, together with incidental approaches,  
14 structures and facilities, herein authorized to be con-  
15 structed;

16 (4) "Cost of project" includes the cost of construc-  
17 tion, the cost of equipping and furnishing same, the cost  
18 of all land, property, material and labor which are  
19 deemed essential thereto, the cost of improvements, financ-  
20 ing charges, interest during construction, and all other  
21 expenses, including legal fees, trustees', engineers' and  
22 architects' fees which are necessarily or properly inci-  
23 dental to the project;

24 (5) "General tax revenues of the state" means rev-  
25 enues of the state derived from the exercise of the power  
26 of taxation and available for appropriation by the Leg-  
27 islatre for general public purposes and shall not in-  
28 clude revenues of the state, or of any officer, department  
29 or agency thereof, derived from taxes levied, collected  
30 and dedicated for a special purpose or purposes or de-  
31 rived from sources other than taxes such as profits, fees  
32 or charges; and

33 (6) "Rent" or "rental" includes all moneys received  
34 for the use of any part of a project either from the state  
35 of West Virginia or any officer, department or public  
36 corporation thereof, or from any instrumentality or po-  
37 litical subdivision of the state, or directly or indirectly,  
38 from the United States of America or any officer, de-  
39 partment, agency, instrumentality or public corporation  
40 thereof: *Provided*, That nothing in this article shall be  
41 taken to authorize the payment to the commission by or  
42 on behalf of the state, of general tax revenues of the  
43 state: *Provided, however*, That nothing in this article  
44 shall be taken to authorize the payment by or on behalf  
45 of the state of any rent in excess of the fair rental value  
46 of property used by or for such state officer or depart-  
47 ment or public corporation in the exercise of his or its  
48 statutory duties.

#### §5-6-4. Powers of commission.

1 The commission shall have power:



- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name  
5 of the commission or of the state, by purchase or other-  
6 wise, real property or rights or easements necessary or  
7 convenient for its corporate purposes and to exercise the  
8 power of eminent domain to accomplish such purposes;
- 9 (4) To acquire, hold and dispose of personal property  
10 for its corporate purposes;
- 11 (5) To make bylaws for the management and regu-  
12 lation of its affairs;
- 13 (6) With the consent of the attorney general of the  
14 state of West Virginia, to use the facilities of his office,  
15 assistants and employees in all legal matters relating to  
16 or pertaining to the commission;
- 17 (7) To appoint officers, agents and employees, and  
18 fix their compensation;
- 19 (8) To make contracts, and to execute all instru-  
20 ments necessary or convenient to effectuate the intent of,  
21 and to exercise the powers granted to it by, this article;
- 22 (9) To renegotiate all contracts entered into by it  
23 whenever, due to a change in situation, it appears to the  
24 commission that its interests will be best served;
- 25 (10) To construct a building or buildings on real  
26 property, which it may acquire, or which may be owned  
27 by the state of West Virginia, in the city of Charleston,  
28 as convenient as may be to the capitol building, to-  
29 gether with incidental approaches, structures and facili-  
30 ties, subject to such consent and approval of the city of  
31 Charleston in any case as may be necessary; and, in addi-  
32 tion, to acquire or construct a warehouse, including office  
33 space therein, in Kanawha county for the West Virginia  
34 alcohol beverage control commissioner, and equip and  
35 furnish the same; and to acquire or construct buildings  
36 and additions to buildings (and equip and furnish the  
37 same), including remodeling, renovation and repair, as  
38 may be required for the safety and care of patients,  
39 guests and inmates at hospitals under the jurisdiction and

40 supervision of the department of mental health and at  
41 institutions under the jurisdiction and supervision of the  
42 commissioner of public institutions; and to formulate and  
43 program plans for the orderly and timely capital improve-  
44 ment of all of said hospitals and institutions and the  
45 state capitol buildings; and to construct a building or  
46 buildings in Kanawha county to be used as a general  
47 headquarters by the department of public safety to ac-  
48 commodate that department's executive staff, clerical  
49 offices, technical services, supply facilities and dormitory  
50 accommodations; and to develop, improve and expand  
51 state parks and recreational facilities to be operated by  
52 the department of natural resources; and to establish one  
53 or more systems or complexes of buildings and projects  
54 under control of the commission; and, subject to prior  
55 agreements with holders of bonds previously issued, to  
56 change the same from time to time, in order to facilitate  
57 the issuance and sale of bonds of different series on a  
58 parity with each other or having such priorities between  
59 series as the commission may determine; and to acquire  
60 by purchase, eminent domain or otherwise all real prop-  
61 erty or interests therein necessary or convenient to ac-  
62 complish the purposes of this subdivision;

63 (11) To maintain, construct and operate a project  
64 authorized hereunder;

65 (12) To charge rentals for the use of all or any part  
66 of a project or buildings at any time financed, constructed,  
67 acquired or improved in whole or in part with the pro-  
68 ceeds of sale of bonds issued pursuant to this article,  
69 subject to and in accordance with such agreements with  
70 bondholders as may be made as hereinafter provided;

71 (13) To issue negotiable bonds and to provide for  
72 the rights of the holders thereof;

73 (14) To accept and expend any gift, grant or con-  
74 tribution of money to, or for the benefit of, the com-  
75 mission, from the state of West Virginia or any other  
76 source for any or all of the purposes specified in this  
77 article or for any one or more of such purposes as may  
78 be specified in connection with such gift, grant or con-  
79 tribution;

80 (15) To enter on any lands and premises for the pur-  
81 pose of making surveys, soundings and examinations;

82 (16) To invest in United States government obliga-  
83 tions, on a short-term basis, any surplus funds which the  
84 commission may have on hand pending the completion of  
85 any project or projects; and

86 (17) To do all things necessary or convenient to carry  
87 out the powers given in this article.

88 The rights and powers set forth in subdivision (10)  
89 of this section shall not be construed as in derogation of  
90 any rights and powers now vested in the West Virginia  
91 alcohol beverage control commissioner, the department  
92 of mental health, the commissioner of public institutions  
93 or the department of natural resources.

**§5-6-5. Deposit and disbursement of funds of commission;  
security for deposits; audits.**

1 All moneys of the commission from whatever source  
2 derived shall be paid to the treasurer of the state of  
3 West Virginia, who shall not commingle said moneys  
4 with any other moneys, but shall deposit them in a  
5 separate bank account or accounts. The moneys in said  
6 accounts shall be impressed with and subject to the lien  
7 or liens thereon in favor of the bondholders provided  
8 in the proceedings for issuance of bonds pursuant to  
9 this article. The moneys in said accounts shall be paid  
10 out on check of the treasurer on requisition of the  
11 chairman of the commission, or of such other person as  
12 the commission may authorize to make such requisition.  
13 All deposits of such moneys shall, if required by  
14 the treasurer or the commission, be secured by obligations  
15 of the United States, of the state of West Virginia,  
16 or of the commission, of a market value equal at all  
17 times to the amount of the deposit, and all banking  
18 institutions are authorized to give such security for  
19 such deposits. The state auditor and his legally au-  
20 thorized representatives are hereby authorized and em-  
21 powered from time to time to examine the accounts and  
22 books of the commission, including its receipts, disburse-  
23 ments, contracts, leases, sinking funds, investments and  
24 any other matters relating to its financial standing.

**§5-6-6. City of Charleston may dedicate streets, property, etc., to commission.**

1 Notwithstanding the provisions of any other law, the  
2 council of the city of Charleston is hereby authorized  
3 to dedicate to the commission for a project any street,  
4 real property, easements or rights in land or any com-  
5 bination of the foregoing owned by such city.

**§5-6-7. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars.**

1 The commission shall construct a project pursuant to  
2 a contract or contracts. Every such contract shall be  
3 secured by a bond meeting the requirements of section  
4 thirty-nine, article two, chapter thirty-eight of this  
5 code.

6 No contract or contracts for the construction, re-  
7 modeling, renovation or repair of any building or build-  
8 ings or any approaches, structures or facilities incidental  
9 thereto, or for the equipping and furnishing of any build-  
10 ing or buildings, when the anticipated expenditure  
11 therefor will exceed the sum of two thousand dollars,  
12 shall be entered into except upon the basis of com-  
13 petitive sealed bids. Such bids shall be obtained by  
14 public notice soliciting such bids published as a Class  
15 II legal advertisement in compliance with the provi-  
16 sions of article three, chapter fifty-nine of this code,  
17 and the publication area for such publication shall be  
18 the county in which any such contract is to be per-  
19 formed. The publication shall be completed at least four-  
20 teen days prior to the final date for the submission of  
21 bids. The commission may in addition to such publi-  
22 cation also solicit sealed bids by sending requests by  
23 mail to prospective bidders. The contract shall be  
24 awarded to the lowest responsible bidder, unless any  
25 and all bids are rejected, in which event new bids shall  
26 be sought by again publishing notice as aforesaid. Any  
27 bid, with the name of the bidder, shall be entered on  
28 a record and each record, with the successful bid indi-  
29 cated thereon, shall, after the award of any contract,

30 be open to public inspection in the office of the secretary  
31 of the commission.

**§5-6-8. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.**

1 The commission is hereby empowered to raise the  
2 cost of a project, as defined hereinabove, by the issu-  
3 ance of state building revenue bonds of the state, the  
4 principal of and interest on which bonds shall be pay-  
5 able solely from the special fund herein provided for  
6 such payment. Subject to the proceedings pursuant to  
7 which any bonds outstanding were authorized and issued  
8 pursuant to this article, the commission shall pledge  
9 the moneys in such special fund, except such part of  
10 the proceeds of sale of any bonds to be used to pay the  
11 cost of a project, for the payment of the principal of  
12 and interest on bonds issued pursuant to this article,  
13 such pledge to apply equally and ratably to separate  
14 series of bonds or upon such priorities as the commission  
15 shall determine. Such bonds shall be authorized by  
16 resolution of the commission which shall recite an esti-  
17 mate by the commission of such cost, and shall provide  
18 for the issuance of bonds in an amount sufficient, when  
19 sold as hereinafter provided, to produce such cost, less  
20 the amount of any funds, grant or grants, gift or gifts,  
21 contribution or contributions received, or in the opinion  
22 of the commission expected to be received, from the  
23 United States of America or from any other source. The  
24 acceptance by the commission of any and all such funds,  
25 grants, gifts and contributions whether in money or  
26 in land, labor or materials, is hereby expressly autho-  
27 rized. All such bonds shall have and are hereby de-  
28 clared to have all the qualities of negotiable instru-  
29 ments. Such bonds shall bear interest at not more than  
30 eight percent per annum, payable semiannually, and  
31 shall mature in not more than forty years from their  
32 date or dates, and may be made redeemable at the option  
33 of the state, to be exercised by the commission, at such  
34 price and under such terms and conditions as the com-

35 mission may fix prior to the issuance of such bonds.  
36 The commission shall determine the form of such bonds,  
37 including coupons to be attached thereto to evidence  
38 the right of interest payments, which bonds shall be  
39 signed by the chairman and secretary of the commis-  
40 sion, under the great seal of the state, attested by the  
41 secretary of state, and the coupons attached thereto shall  
42 bear the facsimile signature of said chairman of the  
43 commission. In case any of the officers whose signatures  
44 appear on the bonds or coupons issued as hereinbefore  
45 authorized shall cease to be such officers before the  
46 delivery of such bonds, such signatures shall neverthe-  
47 less be valid and sufficient for all purposes the same  
48 as if they had remained in office until such delivery.  
49 The commission shall fix the denominations of said  
50 bonds, the principal and interest of which shall be pay-  
51 able at the office of the treasurer of the state of West  
52 Virginia, at the capitol of said state, or, at option of  
53 the holder, at some bank or trust company in the city  
54 of New York to be named in the bonds in such medium  
55 as may be determined by the commission. The said  
56 bonds and interest thereon shall be exempt from tax-  
57 ation by the state of West Virginia, or any county or  
58 municipality therein. The commission may provide for  
59 the registration of such bonds in the name of the owner  
60 as to principal alone, and as to both principal and in-  
61 terest under such terms and conditions as the com-  
62 mission may determine, and shall sell such bonds in  
63 such manner as it may determine to be for the best  
64 interest of the state, taking into consideration the  
65 financial responsibility of the purchaser, and the terms  
66 and conditions of the purchase, and especially the avail-  
67 ability of the proceeds of the bonds when required for  
68 payment of the cost of the project, such sale to be made  
69 at a price not lower than a price which, computed upon  
70 standard tables of bond values, will show a net return  
71 of not more than eight percent per annum to the pur-  
72 chaser upon the amount paid therefor. The proceeds  
73 of such bonds shall be used solely for the payment of  
74 the cost of the project for which bonds were issued,  
75 and shall be deposited and checked out as provided by

76 section five of this article, and under such further re-  
77 strictions, if any, as the commission may provide. If  
78 the proceeds of bonds issued for a project shall exceed  
79 the cost thereof, the surplus shall be paid into the fund  
80 hereinafter provided for payment of the principal and  
81 interest of such bonds. Such fund may be used for the  
82 purchase of any of the outstanding bonds payable from  
83 such fund at the market price, but at not exceeding  
84 the price, if any, at which such bonds shall in the same  
85 year be redeemable, and all bonds redeemed or pur-  
86 chased shall forthwith be cancelled, and shall not again  
87 be issued. Prior to the preparation of definitive bonds,  
88 the commission may, under like restrictions, issue tem-  
89 porary bonds with or without coupons, exchangeable  
90 for definitive bonds upon the issuance of the latter.  
91 Notwithstanding the provisions of sections nine and ten,  
92 article six, chapter twelve of this code, revenue bonds  
93 issued under the authority herein granted shall be  
94 eligible as investments for the workmen's compensation  
95 fund, teachers retirement fund, department of public  
96 safety death, disability and retirement fund, West Vir-  
97 ginia public employees retirement system and as security  
98 for the deposit of all public funds. Such revenue bonds  
99 may be issued without any other proceedings or the  
100 happenings of any other conditions or things than those  
101 proceedings, conditions and things which are specified  
102 and required by this article, or by the constitution of  
103 the state. The aggregate amount of all issues of bonds  
104 outstanding at one time for all projects authorized here-  
105 under shall not exceed sixty-two million five hundred  
106 thousand dollars including the renegotiation, reissuance  
107 or refinancing of any such bonds. No bonds or other  
108 obligations shall be issued or incurred hereunder, unless  
109 and until the Legislature by concurrent resolution has  
110 approved the purpose and amount of each separate  
111 project.

**§5-6-9. Trustee for holders of bonds; contents of trust agree-  
ment.**

- 1 The commission may enter into an agreement or agree-
- 2 ments with any trust company, or with any bank hav-

3 ing the powers of a trust company, whether within or  
4 outside of the state, as trustee for the holders of bonds  
5 issued hereunder, setting forth therein such duties of  
6 the state and of the commission in respect of the ac-  
7 quisition, construction, improvement, maintenance, oper-  
8 ation, repair and insurance of the project, the conserva-  
9 tion and application of all moneys, the insurance of  
10 moneys on hand or on deposit, and the rights and reme-  
11 dies of the trustee and the holders of the bonds, as may  
12 be agreed upon with the original purchasers of such  
13 bonds, and including therein provisions restricting the  
14 individual right of action of bondholders as is customary  
15 in trust agreements respecting bonds and debentures of  
16 corporations, protecting and enforcing the rights and  
17 remedies of the trustee and the bondholders, and provid-  
18 ing for approval by the original purchasers of the bonds  
19 of the appointment of consulting architects, and of the  
20 security given by those who contract to construct the  
21 building, and by any bank or trust company in which the  
22 proceeds of bonds or rentals shall be deposited, and for  
23 approval by the consulting architects of all contracts for  
24 construction. All expenses incurred in carrying out such  
25 agreement may be treated as a part of the cost of main-  
26 tenance, operation and repairs of the project.

**§5-6-10. Trust existing in favor of existing bondholders.**

1 The properties and interests in properties, real, per-  
2 sonal and mixed, tangible and intangible, standing or  
3 held in the name of or for and in behalf of, or for the  
4 benefit of, the commission, or the state of West Virginia  
5 to the extent that the same were acquired or improved  
6 by the expenditure of the proceeds of bonds heretofore  
7 issued by the commission, and the moneys, deposits, se-  
8 curities and choses in action and other rights held in  
9 the name of or for and in behalf of, or for the benefit of,  
10 the commission, other than moneys, deposits, securities,  
11 choses in action and other rights which are, or which  
12 are investments of, (1) proceeds of bonds heretofore  
13 issued by the commission held for expenditure for com-  
14 pletion of now existing projects of the commission, or  
15 (2) revenues of the commission from existing projects



16 of the commission which, after provision for operation  
17 and maintenance expenses and coverage requirements  
18 not otherwise provided for, are in excess of sums re-  
19 quired to pay the principal of and interest on the bonds  
20 of the commission heretofore issued, as and when due  
21 and payable, or (3) proceeds of bonds of the commission  
22 issued hereafter, or (4) revenues of the commission from  
23 projects hereafter acquired or constructed by the com-  
24 mission, are declared to be subject to and shall be held  
25 by the commission in trust for the satisfaction of the  
26 obligations evidenced by the bonds heretofore issued by  
27 the commission and the interest coupons thereon: *Pro-*  
28 *vided*, That nothing in this article shall be taken to vali-  
29 date or to attempt to validate rights under any existing  
30 lease or other agreement entered into under the former  
31 provisions of this article between the commission and  
32 the state of West Virginia or any officer, department or  
33 agency thereof to the extent that such lease or agree-  
34 ment provides for payments from general tax revenues  
35 of the state. Until the satisfaction in full of the obliga-  
36 tions evidenced by bonds heretofore issued by the com-  
37 mission, the commission shall hold, manage and operate  
38 the aforesaid trust properties and interests in properties,  
39 moneys, deposits, securities and choses in action and  
40 other rights, separate from all other properties and in-  
41 terests in properties, moneys, deposits, securities and  
42 choses in action and other rights that may hereafter be  
43 held and owned by the commission. Upon the satisfac-  
44 tion of all of the aforesaid obligations of the commission,  
45 all of the aforesaid trust properties and interests in prop-  
46 erties, moneys, deposits, securities and choses in action  
47 and other rights shall become and be free and clear of  
48 the aforesaid trust.

**§5-6-11. Management and control of project.**

1 The commission shall properly maintain, repair, oper-  
2 ate, manage and control the project, fix the rates of  
3 rental, and establish bylaws and rules and regulations  
4 for the use and operation of the project, and may make  
5 and enter into all contracts or agreements necessary and  
6 incidental to the performance of its duties and the exe-  
7 cution of its powers under this article.

**§5-6-12. Article not authority to create state debt.**

1 Nothing in this article contained shall be so construed  
 2 or interpreted as to authorize or permit the incurring of  
 3 state debt of any kind or nature as contemplated by the  
 4 provisions of the constitution of the state of West Vir-  
 5 ginia in relation to state debt.

**§5-6-13. Compliance with article and state constitution only restrictions on construction and management of project.**

1 It shall not be necessary to secure from any officer or  
 2 board not named in this article any approval or consent,  
 3 or any certificate or finding, or to hold an election, or to  
 4 take any proceedings whatever, either for the construc-  
 5 tion of such project, or the improvement, maintenance,  
 6 operation or repair thereof, or for the issuance of bonds  
 7 hereunder, except such as are prescribed by this article  
 8 or are required by the constitution of the state.

**§5-6-14. Article to be liberally construed.**

1 This article, being necessary for the health, welfare  
 2 and convenience of the citizens of the state, should be  
 3 liberally construed to effectuate the purposes thereof.

**§5-6-15. Severability.**

1 If any provision or any part or clause of any provision  
 2 of this article, or the application thereof to any person  
 3 or circumstance, is held unconstitutional or invalid, such  
 4 unconstitutionality or invalidity shall not affect other  
 5 provisions, or other parts or other clauses of any pro-  
 6 vision, or applications of this article, and to this end the  
 7 provisions of this article are declared to be severable.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

**ARTICLE 3. SALES BY COMMISSIONER.**

**§60-3-9a.** Additional price increase for payment of Korean veterans' bonus bonds and payment of state building revenue bonds.

**§60-3-19a.** Payment into veterans' bonus sinking fund for retirement of Korean veterans' bonus bonds and payment into special fund for retirement of state building revenue bonds.

**§60-3-9a. Additional price increase for payment of Korean veterans' bonus bonds and payment of state building revenue bonds.**

1 For the purpose of providing revenue for the pay-  
2 ment of bonds issued under and by virtue of said  
3 "Korean Veterans' Bonus Amendment" of one thousand  
4 nine hundred fifty-six, the commissioner in the exer-  
5 cise of his authority under section nine of this article  
6 is hereby directed to increase the price of alcoholic  
7 liquors in addition to the price increase provided in  
8 said section nine hereof, on or before the last day of  
9 June, one thousand nine hundred fifty-seven, in an  
10 amount sufficient to produce an additional revenue of  
11 one million eight hundred thousand dollars on an an-  
12 nual volume of business equal to the average for the  
13 last three years. Whenever in any fiscal year the amount  
14 of money accumulated in the veterans' bonus sinking  
15 fund for the retirement of Korean veterans' bonus  
16 bonds shall be sufficient to pay at maturity all outstand-  
17 ing bonus bonds issued under said "Korean Veterans'  
18 Bonus Amendment" of one thousand nine hundred fifty-  
19 six, together with the interest due or payable thereon,  
20 then the commissioner is hereby directed to continue  
21 in effect the aforesaid price increase of alcoholic liquors  
22 and further increase the same as necessary for such  
23 continued increase together with such further increase  
24 to equal an amount sufficient to provide revenue of  
25 three million six hundred thousand dollars on an annual  
26 volume of business equal to the average for the last  
27 three years for the purpose of providing revenue to  
28 be paid into a special fund hereby created in the office  
29 of the state treasurer for the purpose of the payment  
30 of principal and interest on bonds of the state known  
31 as the "State Building Revenue Bonds", and for which  
32 payment, to the extent that the state building commis-  
33 sion of West Virginia has available space in buildings  
34 operated by it in excess of revenue-producing uses, said  
35 commission shall provide at its established rates and  
36 charges such available excess space for use by such of-  
37 ficers, departments or agencies of the state as the com-  
38 missioner of finance and administration, or such other

39 officer, agency or department as shall from time to time  
40 have the duty to arrange for office space for officers,  
41 departments or agencies of the state, shall specify.  
42 Whenever in any fiscal year the amount of money ac-  
43 cumulated in the special fund for the retirement of said  
44 "State Building Revenue Bonds" shall be sufficient to  
45 pay at maturity all outstanding bonds together with the  
46 interest due or payable thereon, the provision herein  
47 made for continuing in effect the aforesaid price increase  
48 and the provision herein for a further price increase  
49 shall become ineffective at the end of such fiscal year.

**§60-3-19a. Payment into veterans' bonus sinking fund for  
retirement of Korean veterans' bonus bonds and  
payment into special fund for retirement of state  
building revenue bonds.**

1 On and after the first day of July, one thousand nine  
2 hundred fifty-seven, from receipts in excess of the re-  
3 quirements of the operating fund of the commissioner,  
4 the sum of four hundred fifty thousand dollars shall,  
5 upon requisition of the governor, be paid each quarter  
6 into the veterans' bonus sinking fund to be used for  
7 the purpose of retiring bonds issued under said "Korean  
8 Veterans' Bonus Amendment" of one thousand nine hun-  
9 dred fifty-six. Whenever, in any fiscal year, the amount  
10 of money accumulated in the veterans' bonus sinking  
11 fund for the retirement of said Korean veterans' bonus  
12 bonds shall be sufficient to pay at maturity all outstand-  
13 ing bonus bonds issued under the "Korean Veterans'  
14 Bonus Amendment" of one thousand nine hundred fifty-  
15 six, together with interest due or payable thereon, no  
16 further transfers to such sinking fund shall be made  
17 after the end of such fiscal year. Thereafter, from re-  
18 cepts in excess of the requirements of the operating  
19 fund of the commissioner, the sum of nine hundred  
20 thousand dollars shall be paid by the commissioner  
21 each quarter into the special fund created in section  
22 nine-a of this article for the purpose of retiring bonds  
23 of the state known as the "State Building Revenue  
24 Bonds." It shall be the duty and responsibility of the  
25 state treasurer to pay the principal and interest on said  
26 bonds as they become due and payable. Whenever, in

27 any fiscal year, the amount of money accumulated in  
28 the special fund for the retirement of said "State Build-  
29 ing Revenue Bonds" is sufficient to pay at maturity all  
30 of the outstanding bonds, together with interest due or  
31 payable thereon, no further transfers to such special  
32 fund shall be made after the end of such fiscal year.  
33 Nothing in section nine-a of this article or in this sec-  
34 tion nineteen-a contained shall be taken as limiting the  
35 power and authority of the Legislature to at any time  
36 appropriate the aforesaid receipts for some other purpose  
37 or make other direction or provision respecting such  
38 receipts.

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## CHAPTER 168

(House Bill No. 835—By Mrs. Given and Mr. Ballouz)

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[Passed March 8, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to repeal section three, article thirteen, chapter eight; to amend and reenact section five-(fifty-six), article two, chapter eleven, section two, article five of said chapter eleven and section one, article seven of said chapter eleven; to amend and reenact section twelve, article one, chapter eleven-a; to amend and reenact section twenty-three, article ten, chapter seventeen; and to amend and reenact section six, article nine, chapter eighteen, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to taxes, collection, records, receipts and disposition thereof; and repealing or amending from the code reference to capitation taxes.

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

That section three, article thirteen, chapter eight be repealed; that section five-(fifty-six), article two, chapter eleven, section two, article five of said chapter eleven and section one, article seven of said chapter eleven be amended and reenacted; that section twelve, article one, chapter eleven-a be amended and reenacted; that section twenty-three, article ten, chapter seventeen be amended and reenacted; and that section six,

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

**Chapter**

- 11. **Taxation.**
- 11A. **Collection and Enforcement of Property Taxes.**
- 17. **Roads and Highways.**
- 18. **Education.**

**CHAPTER 11. TAXATION.**

**Article**

- 2. **Assessors.**
- 5. **Assessment of Personal Property.**
- 7. **Capitation Taxes.**

**ARTICLE 2. ASSESSORS.**

**§11-2-5(56). Salaries paid out of county fund.**

- 1 The salaries of assessors and their deputies, assistants
- 2 and employees shall be paid out of the county fund at
- 3 the time and in the manner now provided by law for
- 4 paying other county officers.

**ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.**

**§11-5-2. Personal property books.**

- 1 In his personal property books the assessor shall enter
- 2 the names and post-office addresses of the owners of
- 3 personal property alphabetically arranged by districts,
- 4 showing separately the values of:
  - 5 (1) All tangible personal property employed exclu-
  - 6 sively in agriculture including horticulture and grazing;
  - 7 (2) All products of agriculture (including livestock)
  - 8 while owned by the producer;
  - 9 (3) All notes, bonds, bills and accounts receivable,
  - 10 stocks and any other intangible personal property;
  - 11 (4) The total of one, two and three;
  - 12 (5) All other tangible personal property.
- 13 The tax commissioner may prescribe such itemization
- 14 and further information as he deems necessary. The
- 15 assessor shall make the same number of copies and

16 extend the levies in the same way as he does with the  
17 land book.

#### **ARTICLE 7. CAPITATION TAXES.**

##### **§11-7-1. Collection of capitation taxes for tax year 1970; effective date; legislative intent.**

1 It is hereby declared to be the intent of the Legislature  
2 that the provisions of this act whereby the former pro-  
3 visions for collection of capitation taxes are repealed,  
4 shall become effective July one, one thousand nine hun-  
5 dred seventy-one, but that such effective date shall in  
6 no way impair the right of the sheriff or any other public  
7 official in carrying out the law as existing prior to the  
8 passage of this act with respect to capitation taxes due  
9 and collectible for the tax year one thousand nine hundred  
10 seventy or any other prior year, the collection of which  
11 was formerly provided for under the provisions of this  
12 section.

#### **CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.**

##### **ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.**

##### **§11A-1-12. Receipt for taxes.**

1 The sheriff or his deputy shall deliver to the person  
2 paying any taxes a written or printed receipt therefor,  
3 and shall retain for his records the stub or duplicate of  
4 such receipt. The receipt and the stub or duplicate shall  
5 specify the total value of personal property; the num-  
6 ber of acres of land, and the number of town lots, with  
7 the valuation of each tract or lot separately charged;  
8 and shall show the total amount of the aggregate tax  
9 paid for state, school, county, municipal, district, and  
10 any other purpose for which levied. The officer receiv-  
11 ing payment shall sign each receipt in his own hand-  
12 writing. The sheriff shall furnish to each taxpayer a  
13 statement showing the levies laid for each class of tax-  
14 able property in each taxing district of the county when  
15 requested so to do by the taxpayer. The sheriff shall  
16 cause a statement of the levies, as aforesaid, to be posted  
17 at the front door of the courthouse and at two conspic-  
18 uous places in his office, but failure to post such state-

19 ment shall in no wise affect the rights of the state, or  
20 any of its agencies, to collect such taxes. The tax commis-  
21 sioner may prescribe uniform tax statements and re-  
22 cepts, not inconsistent herewith, for use in all counties  
23 of the state.

## CHAPTER 17. ROADS AND HIGHWAYS.

### ARTICLE 10. COUNTY COURTS; MUNICIPALITIES; GENERAL AUTHORITY AND DUTIES AS TO ROADS, ETC.

#### §17-10-23. Levy tax on property outside municipalities.

1 The county court of each county may levy a tax on all  
2 property situated outside of municipalities as follows:  
3 On class one property, as defined by law, not to exceed  
4 twelve and one-half cents on the one hundred dollars'  
5 valuation, and on class two property, as defined by law,  
6 not to exceed twenty-five cents on the one hundred dol-  
7 lars' valuation. The levy tax shall be collected by the  
8 sheriff and the proceeds thereof shall be paid into the  
9 state treasury and credited to the road fund for the benefit  
10 of and to be expended for the maintenance, repair,  
11 construction and reconstruction of the roads of the  
12 county, outside of municipalities, in which the tax was  
13 raised.

## CHAPTER 18. EDUCATION.

### ARTICLE 9. SCHOOL FINANCES.

#### §18-9-6. General school fund.

1 A separate school fund, to be called the "general school  
2 fund," shall be set apart for the support of the free schools  
3 of the state, and the revenue from the following sources  
4 and not otherwise appropriated shall be paid into it:

- 5 (1) The income of the school funds;
- 6 (2) The net proceeds of all fines and forfeitures  
7 which accrued to the state during the previous year,  
8 except fines referred to in section six, article eight of this  
9 chapter;
- 10 (3) All moneys arising from the sources named in  
11 section four, article twelve of the Constitution, heretofore  
12 going to the "school fund" but as now amended going  
13 to the "general school fund";



- 14 (4) All interest on public moneys received from state  
15 depositories;
- 16 (5) State license tax on marriages;
- 17 (6) State tax on forfeitures;
- 18 (7) State tax on state licenses, except on motor vehi-  
19 cles and on owners, chauffeurs, operators and dealers in  
20 motor vehicles, hunting and fishing licenses and state  
21 licenses paid directly to the state auditor and secretary  
22 of state; and
- 23 (8) All funds from any source paid into the treasury  
24 for school purposes and not otherwise appropriated.

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## CHAPTER 169

(Com. Sub. for House Bill No. 1078—Originating in the House  
Committee on Finance)

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[Passed March 13, 1971; in effect April 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons and rates therein; and to amend and reenact sections one, two, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j, three, three-b and twenty-five, article thirteen of said chapter; and to further amend said article thirteen by adding thereto two new sections, designated sections two-k and twenty-six, all relating to definitions; clarifications of taxable status; providing for tax on the severance and production of natural resources; providing for dressing and processing of food not to be considered as manufacturing but taxable on wholesale basis; increasing rates of taxpayers; inclusion of banking business and other financial business as taxable; making legislative findings; providing for the deletion of former exemptions for banks, building and loan associations, federal savings and loan associations, and business of industrial loans; permitting taxation by municipalities of banking businesses and

financial organizations; and providing for the severability of any invalid provisions.

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

That sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i, two-j, three, three-b and twenty-five, article thirteen of said chapter be amended and reenacted; and that said article thirteen be further amended by adding thereto two new sections, designated sections two-k and twenty-six, all to read as follows:

**Article**

**12A. Annual Tax on Incomes of Certain Carriers.**

**13. Business and Occupation Tax.**

**ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.**

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

**§11-12A-2. Imposition of annual tax on gross income of certain carriers.**

1 Every motor vehicle carrier operating on the public  
 2 highways of this state and every railroad car carrier,  
 3 railroad carrier, express company, pipeline company, tele-  
 4 phone and telegraph company, airline company and any  
 5 person operating a steamboat or other watercraft, for  
 6 the transportation of passengers or freight, doing busi-  
 7 ness in the state shall pay to the state an annual tax  
 8 for each calendar year. This tax shall be equal to the  
 9 gross income from all business beginning and ending  
 10 within the state multiplied by the respective rates as  
 11 follows: Motor vehicle carriers, railroad car carrier,  
 12 railroad carrier, express companies, pipeline companies,  
 13 airline companies, any person operating a steamboat  
 14 or other watercraft and telegraph companies, three and  
 15 three-tenths percent, and telephone companies, three and  
 16 seventy-four one-hundredths percent: *Provided*, That  
 17 any motor vehicle carrier which is an urban or suburban  
 18 bus line shall be taxed at the rate of one and sixty-five  
 19 one-hundredths percent of such gross income and any

20 motor vehicle carrier which is a taxi or cab company  
21 or a company which hauls waste, refuse or garbage shall  
22 be taxed at the rate of two and five-tenths percent of  
23 such gross income.

**§11-12A-3. Imposition of annual tax on net income of certain carriers.**

1 In addition to the tax imposed in the preceding section,  
2 every motor vehicle carrier operating on the public high-  
3 ways of the state and every railroad carrier, railroad  
4 car carrier, express company, pipeline company, tele-  
5 phone and telegraph company, airline company and any  
6 person operating a steamboat or other watercraft for  
7 the transportation of passengers or freight, doing busi-  
8 ness in this state shall pay an annual tax for each  
9 calendar year on the net income earned within the state  
10 equal to three and seventy-four one-hundredths percent  
11 of such net income for telephone companies and six and  
12 six-tenths percent of such net income for all other car-  
13 riers included in this section: *Provided*, That any motor  
14 vehicle carrier which is an urban or suburban bus line  
15 or a taxi or cab company or a company which hauls  
16 waste, refuse or garbage, five percent of such net in-  
17 come. Net income shall be determined as follows:

18 (a) The net income of motor vehicle carriers earned  
19 within the state shall be determined by ascertaining a  
20 sum bearing the proportion to the total net income of  
21 the motor vehicle carrier that its business done in West  
22 Virginia measured in motor vehicle miles of motor vehicle  
23 carrier operation, bears to all business done, mea-  
24 sured in like fashion;

25 (b) The net income of railroad carriers earned with-  
26 in the state shall be determined by ascertaining a sum  
27 bearing the proportion to total net income of the car-  
28 riers that its business done in West Virginia, measured in  
29 ton-miles, bears to all business done, measured in like  
30 fashion;

31 (c) The net income of railroad car carriers and ex-  
32 press companies earned within the state shall be deter-  
33 mined by ascertaining a sum bearing the proportion  
34 to the total net income of the carriers or company that

35 its business done in West Virginia, measured in car-miles  
36 of car operation, bears to all business done, measured  
37 in like fashion: *Provided, however,* That nothing in this  
38 article shall be construed as applying to railroad freight  
39 car carriers not owned by railroad carriers or their sub-  
40 sidiaries;

41 (d) The net income of pipeline companies earned  
42 within the state shall be determined by ascertaining a  
43 sum bearing the proportion to the total net income of  
44 the company that its business done in West Virginia,  
45 measured in barrel-miles in the case of oil and liquid  
46 coal or slurry and of thousand cubic feet-miles in the  
47 case of gas, bears to all business done, measured in like  
48 fashion;

49 (e) The net income of airline companies and any per-  
50 son operating a steamboat or other watercraft for the  
51 transportation of passengers or freight earned within the  
52 state shall be determined by ascertaining a sum  
53 bearing the proportion to the total net income of the  
54 corporation that its business done in West Virginia,  
55 measured in passenger-miles in the case of airline com-  
56 panies and ton-miles in the case of any person operating  
57 a steamboat or other watercraft, bears to all business  
58 done, measured in like fashion;

59 (f) The net income of telephone and telegraph com-  
60 panies shall be determined by ascertaining a sum bear-  
61 ing the proportion to the total net income of the com-  
62 panies that its business done in West Virginia, measured  
63 in wire-miles, bears to all business done, measured in  
64 like fashion;

65 (g) In computing the tax imposed by this section, the  
66 total net income of a taxpayer who shall have been taxed  
67 under the preceding section shall be reduced by an  
68 amount bearing the proportion to such total net income  
69 that the gross income of the taxpayer which is the  
70 measure of the tax under the preceding section bears to  
71 its total gross income from all business done wherever  
72 conducted. No county, city, town, village or other political  
73 subdivision of the state shall levy a license, net income  
74 or any other kind of tax on the business taxed under  
75 this article.

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

- §11-13-1. Definitions.
- §11-13-2. Imposition of privilege tax.
- §11-13-2a. Severance, extraction and production of coal and other natural resource products.
- §11-13-2b. Manufacturing, compounding or preparing products; processing of food excepted.
- §11-13-2c. Business of selling tangible property; sales exempt.
- §11-13-2d. Public service or utility business.
- §11-13-2e. Business of contracting.
- §11-13-2g. Business of operating amusements.
- §11-13-2h. Service business or calling not otherwise specifically taxed.
- §11-13-2i. Business of furnishing property for hire.
- §11-13-2j. Small loan and industrial loan businesses.
- §11-13-2k. Banking and other financial business; legislative findings.
- §11-13-3. Exemptions.
- §11-13-3b. Definitions; reduction allowed in tax due; how computed.
- §11-13-25. Cities, towns or villages restricted from imposing additional tax.
- §11-13-26. Severability.

**§11-13-1. Definitions.**

1 When used in this article, the term "person" or the  
2 term "company," herein used interchangeably, includes  
3 any individual, firm, copartnership, joint adventure, asso-  
4 ciation, corporation, trust, or any other group or combi-  
5 nation acting as a unit, and the plural as well as the  
6 singular number, unless the intention to give a more  
7 limited meaning is disclosed by the context.

8 "Tax year" or "taxable year" means either the calendar  
9 year, or the taxpayer's fiscal year when permission is  
10 obtained from the tax commissioner to use same as the  
11 tax period in lieu of the calendar year.

12 "Sale," "sales" or "selling" includes any transfer of the  
13 ownership of, or title to, property, whether for money or  
14 in exchange for other property.

15 "Taxpayer" means any person liable for any tax hereunder.

16 "Gross income" means the gross receipts of the taxpayer,  
17 other than a banking or financial business, received as com-  
18 pensation for personal services and the gross receipts of the  
19 taxpayer derived from trade, business, commerce or sales  
20 and the value proceeding or accruing from the sale of tan-  
21 gible property (real or personal), or service, or both, and  
22 all receipts by reason of the investment of the capital of  
23 the business engaged in, including rentals, royalties, fees,  
24 reimbursed costs or expenses or other emoluments how-  
25 ever designated and including all interest, carrying charges,  
26 fees or other like income, however denominated, derived

27 by the taxpayer from repetitive carrying of accounts, in the  
28 regular course and conduct of his business, and extension  
29 of credit in connection with the sale of any tangible per-  
30 sonal property or service, and without any deductions on  
31 account of the cost of property sold, the cost of materials  
32 used, labor costs, taxes, royalties paid in cash or in kind or  
33 otherwise, interest or discount paid or any other expense  
34 whatsoever. "Gross income" of a banking or financial  
35 business is specified in section two-k of this article.

36 "Gross proceeds of sales" means the value, whether in  
37 money or other property, actually proceeding from the  
38 sale of tangible property without any deduction on ac-  
39 count of the cost of property sold or expenses of any kind.

40 The terms "gross income" and "gross proceeds of sales"  
41 shall not be construed to include (1) cash discounts al-  
42 lowed and taken on sales; (2) the proceeds of sale of goods,  
43 wares or merchandise returned by customers when the  
44 sale price is refunded either in cash or by credit; (3) the  
45 amount allowed as "trade-in value" for any article ac-  
46 cepted as part payment for any article sold; (4) excise  
47 taxes imposed by this state; or (5) money or other prop-  
48 erty received or held by a professional person for the sole  
49 use and benefit of a client or another person or money re-  
50 ceived by the taxpayer on behalf of a bank or other  
51 financial institution for the repayment of a debt of  
52 another.

53 "Business" shall include all activities engaged in or  
54 caused to be engaged in with the object of gain or  
55 economic benefit, either direct or indirect. "Business"  
56 shall not include a casual sale by a person who is not  
57 engaged in the business of selling the type of prop-  
58 erty involved in such casual sale. "Business" shall  
59 include the production of natural resources or manu-  
60 factured products which are used or consumed by  
61 the producer or manufacturer and shall include the  
62 activities of a banking business or financial organiza-  
63 tion.

64 The term "banking business" or "financial organization"  
65 shall mean any bank, banking association, trust company,  
66 industrial loan company, small loan company or licensee,

67 building and loan association, savings and loan associa-  
68 tion, credit union, finance company, investment company,  
69 investment broker or dealer, and any other similar busi-  
70 ness organization at least ninety per centum of the assets  
71 of which consists of intangible personal property and  
72 at least ninety per centum of the gross receipts of which  
73 consists of dividends, interest and other charges derived  
74 from the use of money or credit.

75 "Service business or calling" shall include all activi-  
76 ties engaged in by a person for other persons for a  
77 consideration, which involve the rendering of a service as  
78 distinguished from the sale of tangible property, but shall  
79 not include the services rendered by an employee to his  
80 employer. This term shall include, but not be limited to:

81 (a) Persons engaged in manufacturing, compounding  
82 or preparing for sale, profit, or commercial use, articles,  
83 substances, or commodities which are owned by another  
84 or others;

85 (b) Persons engaged as independent contractors in  
86 producing natural resource products which are owned by  
87 another or others, as personal property, immediately after  
88 the same are severed, extracted, reduced to possession  
89 and produced;

90 (c) The repetitive carrying of accounts, in the regular  
91 course and conduct of business, and extension of credit  
92 in connection with the sale of any tangible personal  
93 property or service, except as to persons taxed pursuant  
94 to the provisions of section two-k of this article.

95 "Selling at wholesale" or "wholesale sales" shall mean  
96 and include: (1) Sales of any tangible personal property  
97 for the purpose of resale in the form of tangible personal  
98 property; (2) sales of machinery, supplies or materials  
99 which are to be directly consumed or used by the pur-  
100 chaser in the conduct of any business or activity which  
101 is subject to the tax imposed by this article or by article  
102 twelve-a of this chapter; (3) sales of any tangible per-  
103 sonal property to the United States of America, its  
104 agencies and instrumentalities or to the state of West  
105 Virginia, its institutions or political subdivisions.

106 "Contracting" shall include the furnishing of work, or  
107 both materials and work, in the fulfillment of a contract  
108 for the construction, alteration, repair, decoration or im-  
109 provement of a new or existing building or structure,  
110 or any part thereof, or for the alteration, improvement or  
111 development of real property.

**§11-13-2. Imposition of privilege tax.**

1 There is hereby levied and shall be collected annual  
2 privilege taxes against the persons, on account of the  
3 business and other activities, and in the amounts to be  
4 determined by the application of rates against values or  
5 gross income as set forth in sections two-a to two-k,  
6 inclusive, of this article.

7 If any person liable for any tax under sections two-a or  
8 two-b shall ship or transport his products or any part  
9 thereof out of the state without making sale of such  
10 products, the value of the products in the condition or  
11 form in which they exist immediately before transpor-  
12 tation out of the state shall be the basis for the assess-  
13 ment of the tax imposed in said sections, except in those  
14 instances in which another measure of the tax is ex-  
15 pressly provided. The tax commissioner shall prescribe  
16 equitable and uniform rules for ascertaining such value.

17 In determining value, however, as regards sales from  
18 one to another of affiliated companies or persons, or  
19 under other circumstances where the relation between  
20 the buyer and seller is such that the gross proceeds  
21 from the sale are not indicative of the true value of the  
22 subject matter of the sale, the tax commissioner shall  
23 prescribe uniform and equitable rules for determining  
24 the value upon which such privilege tax shall be levied,  
25 corresponding as nearly as possible to the gross proceeds  
26 from the sale of similar products of like quality or char-  
27 acter where no common interest exists between the  
28 buyer and seller but the circumstances and conditions  
29 are otherwise similar.

30 Gross income included in the measure of the tax un-  
31 der sections two-a and two-b of this article shall neither  
32 be added nor deducted in computing the tax levied under  
33 the other sections of this article.



34 A person exercising any privilege taxable under sec-  
35 tions two-a or two-b of this article and engaging in the  
36 business of selling his natural resources or manufactured  
37 products at retail in this state shall be required to make  
38 returns of the gross proceeds of such retail sales and  
39 pay the tax imposed in section two-c of this article for  
40 the privilege of engaging in the business of selling such  
41 natural resources or manufactured products at retail in  
42 this state. But any person exercising any privilege tax-  
43 able under sections two-a or two-b of this article and  
44 engaging in the business of selling his natural resources  
45 or manufactured products to producers of natural re-  
46 sources, manufacturers, wholesalers, jobbers, re-  
47 tailers or commercial consumers for use or con-  
48 sumption in the purchaser's business shall not be  
49 required to pay the tax imposed in section two-c  
50 of this article.

51 Manufacturers exercising any privilege taxable under  
52 section two-b of this article shall not be required to pay  
53 the tax imposed in section two-c of this article for the  
54 privilege of selling their manufactured products for de-  
55 livery outside of this state, but the gross income derived  
56 from the sale of such manufactured products outside of  
57 this state shall be included in determining the measure  
58 of the tax imposed on such manufacturer in section two-b.

59 A person exercising privileges taxable under the other  
60 sections of this article, producing coal, oil, natural gas,  
61 minerals, timber or other natural resource products the  
62 production of which is taxable under section two-a, and  
63 using or consuming the same in his business or transfer-  
64 ring or delivering the same as any royalty payment, in  
65 kind, or the like, shall be deemed to be engaged in the  
66 business of mining and producing coal, oil, natural gas,  
67 minerals, timber or other natural resource products for  
68 sale, profit or commercial use, and shall be required to  
69 make returns on account of the production of the business  
70 showing the gross proceeds or equivalent in accordance  
71 with uniform and equitable rules for determining the  
72 value upon which such privilege tax shall be levied,  
73 corresponding as nearly as possible to the gross proceeds  
74 from the sale of similar products of like quality or char-

75 acter by other taxpayers, which rules the tax commis-  
76 sioner shall prescribe.

**§11-13-2a. Severance, extraction and production of coal and other natural resource products.**

1 Upon every person exercising the privilege of en-  
2 gaging or continuing within this state in the business of  
3 severing, extracting, reducing to possession and producing  
4 for sale, profit or commercial use any natural resource  
5 products, the amount of such tax to be equal to the  
6 value of the articles produced as shown by the gross  
7 proceeds derived from the sale thereof by the producer,  
8 except as otherwise provided, multiplied by the respec-  
9 tive rates as follows: Coal, three and five-tenths percent;  
10 limestone or sandstone, quarried or mined, two and two-  
11 tenths percent; oil, four and thirty-four one-hundredths  
12 percent; natural gas, in excess of the value of five thou-  
13 sand dollars, eight and sixty-three one-hundredths per-  
14 cent; blast furnace slag, four and thirty-four one-  
15 hundredths percent; sand, gravel or other mineral prod-  
16 uct not quarried or mined, four and thirty-four one-  
17 hundredths percent; timber, two and two-tenths per-  
18 cent; other natural resource products, two and eighty-six  
19 one-hundredths percent. The measure of this tax is the  
20 value of the entire production in this state, regardless  
21 of the place of sale or the fact that the delivery may be  
22 made to points outside the state: *Provided, however,*  
23 *That for the purposes of the production of oil classifica-*  
24 *tion, and the production of natural gas classification, as*  
25 *set forth in this section, multiple coowners of oil or*  
26 *natural gas, in place, lessees thereof, or others being*  
27 *vested with title and ownership to part or all of*  
28 *the oil and gas, as personal property, immediately after*  
29 *severance, extraction, reduction to possession and pro-*  
30 *duction, except royalty recipients, in kind, shall be*  
31 *deemed to be a "group or combination acting as a unit"*  
32 *and one "person", as defined in section one of this article,*  
33 *if not otherwise defined therein, whenever engaged in*  
34 *the business of producing oil or natural gas through*  
35 *common use, by joint or separately executed contracts,*  
36 *of the same independent contractor driller or operator's*

37 services; and notwithstanding provisions of private con-  
38 tracts for separate deposit of gross receipts in separate  
39 members' accounts or for members of such group or  
40 combination to take in kind any proportionate part of such  
41 natural resources.

42 Lessees, sublessees or other denominated lessees are  
43 considered to be producers of all of the oil or natural gas  
44 produced, regardless of any payment, in kind, to lessors,  
45 sublessors or other denominated lessors of a part of such  
46 natural resources as rents or royalties. Recipients of  
47 royalties or rents, in kind, in cash or otherwise are tax-  
48 able on their gross income pursuant to the provisions of  
49 section two-i of this article.

**§11-13-2b. Manufacturing, compounding or preparing prod-  
ucts; processing of food excepted.**

1 Upon every person engaging or continuing within this  
2 state in the business of manufacturing, compounding or  
3 preparing for sale, profit, or commercial use, either di-  
4 rectly or through the activity of others in whole or part,  
5 any article or articles, substance or substances, com-  
6 modity or commodities, or electric power produced by  
7 public utilities or others and not taxed under other provi-  
8 sions of this article, the amount of the tax to be equal to  
9 the value of the article, substance, commodity or electric  
10 power manufactured, compounded or prepared for sale, as  
11 shown by the gross proceeds derived from the sale there-  
12 of by the manufacturer or person compounding or pre-  
13 paring the same, except as otherwise provided, multi-  
14 plied by a rate of eighty-eight one-hundredths of one  
15 percent. The measure of this tax is the value of the  
16 entire product manufactured, compounded or prepared  
17 in this state for sale, profit or commercial use, regard-  
18 less of the place of sale or the fact that deliveries may  
19 be made to points outside the state. However, the  
20 dressing and processing of food by a person, firm or  
21 corporation, which food is to be sold on a wholesale  
22 basis by such person, firm or corporation shall not be  
23 considered as manufacturing or compounding, but the  
24 sale of these products on a wholesale basis shall be sub-  
25 ject to the same tax as is imposed on the business of

26 selling at wholesale as provided in section two-c.  
27 It is further provided, however, that in those instances  
28 in which the same person partially manufactures, com-  
29 pounds or prepares products within this state and parti-  
30 ally manufactures, compounds or prepares such products  
31 outside of this state the measure of his tax under this  
32 section shall be that proportion of the sale price of the  
33 product that the payroll cost of manufacturing within  
34 this state bears to the entire payroll cost of manufacturing  
35 the product; or, at the option of the taxpayer, the mea-  
36 sure of his tax under this section shall be the proportion  
37 of the sales value of the articles that the cost of oper-  
38 ations in West Virginia bears to the full cost of manu-  
39 facture of the articles.

**§11-13-2c. Business of selling tangible property; sales exempt.**

1 Upon every person engaging or continuing within this  
2 state in the business of selling any tangible property  
3 whatsoever, real or personal, including the sale of food,  
4 and the services incident to the sale of food in hotels,  
5 restaurants, cafeterias, confectioneries, and other public  
6 eating houses, except sales by any person engaging or  
7 continuing in the business of horticulture, agriculture  
8 or grazing, or of selling stocks, bonds or other evidences  
9 of indebtedness, there is likewise hereby levied, and shall  
10 be collected, a tax equivalent to fifty-five one-hundredths  
11 of one percent of the gross income of the business, ex-  
12 cept that in the business of selling at wholesale the tax  
13 shall be equal to twenty-seven one-hundredths of one  
14 percent of the gross income of the business.

**§11-13-2d. Public service or utility business.**

1 Upon any person engaging or continuing within this  
2 state in any public service or utility business, except  
3 railroad, railroad car, express, pipeline, telephone and  
4 telegraph companies, water carriers by steamboat or  
5 steamship and motor carriers, there is likewise hereby  
6 levied and shall be collected taxes on account of the  
7 business engaged in equal to the gross income of the  
8 business multiplied by the respective rates as follows:  
9 Street and interurban and electric railways, one and four-

10 tenths percent; water companies, four and four-tenths  
11 percent except as to income received by municipally  
12 owned water plants; electric light and power companies,  
13 five and seventy-two hundredths percent on sales and  
14 demand charges for domestic purposes and commercial  
15 lighting and four and twenty-nine hundredths percent  
16 on sales and demand charges for all other purposes,  
17 except as to income received by municipally owned  
18 plants producing or purchasing electricity and distributing  
19 same; natural gas companies, four and twenty-nine  
20 hundredths percent on the gross income; toll bridge  
21 companies, four and twenty-nine hundredths percent;  
22 and upon all other public service or utility business, two  
23 and eighty-six hundredths percent. The measure of this  
24 tax shall not include gross income derived from com-  
25 merce between this state and other states of the United  
26 States or between this state and foreign countries. The  
27 measure of the tax under this section shall include only  
28 gross income received from the supplying of public ser-  
29 vices. The gross income of the taxpayer from any other  
30 activity shall be included in the measure of the tax im-  
31 posed upon the appropriate section or sections of this  
32 article.

**§11-13-2e. Business of contracting.**

1 Upon every person engaging or continuing within this  
2 state in the business of contracting, the tax shall be equal  
3 to: (a) Two and six-tenths percent of the gross income  
4 of the business derived from contracts entered into prior  
5 to the first day of July, one thousand nine hundred sixty-  
6 five; (b) two percent of the gross income of the business  
7 derived from contracts entered into on or after the first  
8 day of July, one thousand nine hundred sixty-five and  
9 prior to the first day of April, one thousand nine hundred  
10 seventy-one; and (c) two and two-tenths percent of  
11 the gross income of the business derived from contracts  
12 entered into on or after the first day of April, one  
13 thousand nine hundred seventy-one.

**§11-13-2g. Business of operating amusements.**

1 Upon every person engaging or continuing within this  
2 state in the business of operating a theatre, opera house,

3 moving picture show, vaudeville, amusement park, dance  
4 hall, skating rink, racetrack, radio broadcasting station  
5 or any other place at which amusements are offered to  
6 the public, the tax shall be equal to seventy-one one-  
7 hundredths of one percent of the gross income of the  
8 business.

**§11-13-2h. Service business or calling not otherwise specifically taxed.**

1 Upon every person engaging or continuing within this  
2 state in any service business or calling not otherwise  
3 specifically taxed under this law, there is likewise here-  
4 by levied and shall be collected a tax equal to one and  
5 fifteen one-hundredths percent of the gross income of  
6 any such business.

**§11-13-2i. Business of furnishing property for hire.**

1 Upon every person engaging or continuing within this  
2 state in the business of furnishing any real or tangible  
3 personal property, which has a tax situs in this state, or  
4 any interest therein for hire, loan, lease or otherwise,  
5 whether the return be in the form of rentals, royalties,  
6 fees or otherwise, the tax shall be one and fifteen one-  
7 hundredths percent of the gross income of any such  
8 activity.

9 The term "tangible personal property," as used herein,  
10 shall not include money or public securities.

**§11-13-2j. Small loan and industrial loan businesses.**

1 Upon every person engaging or continuing within this  
2 state in the business of making loans of money, credit  
3 goods, or things in action, who because of such activity  
4 is required under the provisions of article seven-a, chap-  
5 ter forty-seven of the code of West Virginia, one thou-  
6 sand nine hundred thirty-one, as amended, to obtain a  
7 license from the commissioner of banking of the state  
8 of West Virginia, and upon each and every industrial  
9 loan company, the tax shall be one and five one-hun-  
10 dredths percent of the gross income of any activity, not-  
11 withstanding any other provisions of this article: *Pro-*  
12 *vided*, That such tax shall apply only to gross income

13 received prior to the first day of April, one thousand nine  
14 hundred seventy-one. Persons subject to the provisions  
15 of this section shall, on and after the first day of April,  
16 one thousand nine hundred seventy-one, be subject to  
17 the provisions of section two-k of this article.

**§11-13-2k. Banking and other financial business; legislative findings.**

1 Upon every person engaging or continuing within  
2 this state in the business of banking or financial busi-  
3 ness, from and after the first day of April, one thousand  
4 nine hundred seventy-one, the tax shall be equal to one  
5 and fifteen one-hundredths percent of the gross income  
6 received from interest, premiums, discounts, dividends,  
7 service fees or charges, commissions, fines, rents from  
8 real or tangible personal property, however denominated,  
9 royalties, charges for bookkeeping or data processing,  
10 receipts from check sales, charges or fees, and receipts  
11 from the sale of tangible personal property: *Provided,*  
12 *however,* That gross income shall not include (a) inter-  
13 est received on the obligations of the United States, its  
14 agencies and instrumentalities, (b) interest received on  
15 the obligations of this or any other state, territory or  
16 possession of the United States, or any political sub-  
17 division of any of the foregoing or of the District of  
18 Columbia, or (c) interest received on investments or  
19 loans primarily secured by first mortgages or deeds  
20 of trust on residential property occupied by nontrans-  
21 sients; *Provided, however,* That all interest derived on  
22 activities exempt under (c) above, shall be reported, as to  
23 amounts, on the return of a person taxable under the  
24 provisions of this section.

25 Persons taxed pursuant to the provisions of this sec-  
26 tion shall not be taxed under sections two-a to two-j,  
27 inclusive, of this article.

28 The Legislature hereby finds and declares that it is  
29 the intent of the Legislature to subject national bank-  
30 ing associations and other financial organizations to the  
31 tax imposed by this article, in accordance with the  
32 authorization contained in section five thousand two hun-

33 dred nineteen of the Revised Statutes of the United  
34 States as amended by Public Law 91-156 enacted the  
35 twenty-fourth day of December, one thousand nine hun-  
36 dred sixty-nine.

**§11-13-3. Exemptions.**

1 There shall be an exemption in every case of fifty  
2 dollars in amount of tax computed under the provi-  
3 sions of this article. A person exercising a privilege  
4 taxable hereunder for a fractional part of a tax year  
5 shall be entitled to an exemption of the sum bearing  
6 the proportion to fifty dollars that the period of time  
7 the privilege is exercised bears to a whole year. Only  
8 one exemption shall be allowed to any one person,  
9 whether he exercises one or more privileges taxable here-  
10 under.

11 The provisions of the article shall not apply to: (a) In-  
12 surance companies which pay the state of West Virginia  
13 a tax upon premiums: *Provided*, That said exemption  
14 shall not extend to that part of the gross income of in-  
15 surance companies which is received for the use of real  
16 property, other than property in which any such com-  
17 pany maintains its office or offices, in this state, whether  
18 such income be in the form of rentals or royalties;  
19 (b) nonprofit cemetery companies organized and oper-  
20 ated for the exclusive benefit of their members; (c) fra-  
21 ternal societies, organizations and associations orga-  
22 nized and operated for the exclusive benefit of their mem-  
23 bers and not for profit: *Provided, however*, That said  
24 exemption shall not extend to that part of the gross  
25 income arising from the sale of alcoholic liquor, food  
26 and related services, of such fraternal societies, organi-  
27 zations and associations which are licensed as private  
28 clubs under the provisions of article seven, chapter sixty  
29 of this code; (d) corporations, associations and societies  
30 organized and operated exclusively for religious or chari-  
31 table purposes; (e) production credit association, orga-  
32 nized under the provisions of the federal "Farm Credit  
33 Act of one thousand nine hundred thirty-three": *Pro-*  
34 *vided, however*, That the exemptions of this section shall



35 not apply to corporations or cooperative associations  
36 organized under the provisions of article four, chapter  
37 nineteen of the code of West Virginia, one thousand  
38 nine hundred thirty-one, as amended.

**§11-13-3b. Definitions; reduction allowed in tax due; how computed.**

1 When used in this section, the phrase "normal tax"  
2 shall mean the tax computed by the application of rates  
3 against values or gross income as set forth in sections  
4 two-a to two-k, inclusive, of this article, less exemption  
5 at the rate of fifty dollars annually or at the rate of  
6 four dollars and sixteen cents per month for the period  
7 actually engaged in business.

8 The normal tax shall be computed by the application  
9 of rates against values or gross income as set forth in  
10 sections two-a to two-k, inclusive, of this article.

**§11-13-25. Cities, towns or villages restricted from imposing additional tax.**

1 Notwithstanding the provisions of section five, article  
2 thirteen, chapter eight of this code, no city, town, or  
3 village shall impose a business and occupation tax or  
4 privilege tax upon occupations or privileges taxed under  
5 sections two-a, two-b, two-c, two-d, two-e, two-g, two-h,  
6 two-i and two-j of this article, in excess of rates in effect  
7 under this article on January one, one thousand nine hun-  
8 dred fifty-nine, or in excess of one percent of gross income  
9 under section two-k of this article.

**§11-13-26. Severability.**

1 If any provision of this article or the application  
2 thereof shall for any reason be adjudged by any court  
3 of competent jurisdiction to be invalid, such judgment  
4 shall not affect, impair or invalidate the remainder of  
5 said article, but shall be confined in its operation to the  
6 provision thereof directly involved in the controversy  
7 in which such judgment shall have been rendered,  
8 and the applicability of such provision to other persons  
9 or circumstances shall not be affected thereby.

## CHAPTER 170

(Senate Bill No. 22—By Mr. McCourt, Mr. President)

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[Passed January 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, all relating to the determination of the meaning of terms used in the West Virginia personal income tax and the West Virginia corporation net income tax act.

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

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article twenty-four of said chapter be amended and reenacted, all to read as follows:

### **Article**

**21. Personal Income Tax.**

**24. Corporation Net Income Tax.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-9. Meaning of terms.**

1 Any term used in this article shall have the same  
2 meaning as when used in a comparable context in the  
3 laws of the United States relating to income taxes, unless  
4 a different meaning is clearly required. Any reference  
5 in this article to the laws of the United States shall  
6 mean the provisions of the Internal Revenue Code of  
7 1954, as amended, and such other provisions of the laws  
8 of the United States as relate to the determination of  
9 income for federal income tax purposes. All amendments  
10 made to the laws of the United States prior to the first  
11 day of January, one thousand nine hundred seventy-one,  
12 shall be given effect in determining the taxes imposed  
13 by this article for the tax period beginning the first  
14 day of January, one thousand nine hundred seventy-one,

15 and thereafter, but no amendment to laws of the United  
16 States made on or after the first day of January, one  
17 thousand nine hundred seventy-one, shall be given effect.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

##### §11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have  
2 the same meaning as when used in a comparable context  
3 in the laws of the United States relating to federal in-  
4 come taxes, unless a different meaning is clearly re-  
5 quired by the context or by definition in this article. Any  
6 reference in this article to the laws of the United States  
7 or to the Internal Revenue Code or to the federal income  
8 tax law shall mean the provisions of the laws of the  
9 United States as relate to the determination of income for  
10 federal income tax purposes. All amendments made to  
11 the laws of the United States prior to the first day of  
12 January, one thousand nine hundred seventy-one, shall  
13 be given effect in determining the taxes imposed by  
14 this article for the tax period beginning the first day of  
15 July, one thousand nine hundred seventy-one, and there-  
16 after, but no amendment to laws of the United States  
17 made on or after the first day of January, one thousand  
18 nine hundred seventy-one, shall be given effect.

19 (b) *Certain terms defined.*—For purposes of this  
20 article:

21 (1) The term “tax commissioner” means the tax com-  
22 missioner of the state of West Virginia or his delegate.

23 (2) The term “corporation” means and includes a joint-  
24 stock company or any association which is taxable as a  
25 corporation under the federal income tax law.

26 (3) The term “domestic corporation” means any cor-  
27 poration organized under the laws of West Virginia.

28 (4) The term “foreign corporation” means any cor-  
29 poration other than a domestic corporation.

30 (5) The term “state” means any state of the United  
31 States, the District of Columbia, the Commonwealth of  
32 Puerto Rico, any territory or possession of the United  
33 States, and any foreign country or political subdivision  
34 thereof.

- 35 (6) The term "taxable year" means the taxable year  
36 for which the taxable income of the taxpayer is computed  
37 under the federal income tax law.
- 38 (7) The term "taxpayer" means a corporation subject  
39 to the tax imposed by this article.
- 40 (8) The term "tax" includes, within its meaning, in-  
41 terest and penalties unless the intention to give it a  
42 more limited meaning is disclosed by the context.
- 43 (9) The term "commercial domicile" means the prin-  
44 cipal place from which the trade or business of the  
45 taxpayer is directed or managed.
- 46 (10) The term "compensation" means wages, salaries,  
47 commissions and any form of remuneration paid to em-  
48 ployees for personal services.
- 49 (11) The term "West Virginia taxable income" means  
50 the taxable income of a corporation as defined by the laws  
51 of the United States for federal income tax purposes, ad-  
52 justed as provided in section six: *Provided*, That in the  
53 case of a corporation having income from business activity  
54 which is taxable without this state, its "West Virginia  
55 taxable income" shall be such portion of its taxable  
56 income as so defined and adjusted as is allocated or  
57 apportioned to this state under the provisions of section  
58 seven.
- 59 (12) The term "business income" means income arising  
60 from transactions and activity in the regular course of  
61 the taxpayer's trade or business and includes income  
62 from tangible and intangible property if the acquisition  
63 and disposition of the property constitute integral parts  
64 of the taxpayer's regular trade or business operations.
- 65 (13) "Nonbusiness income" means all income other  
66 than business income.
- 67 (14) The term "public utility" means any business ac-  
68 tivity to which the jurisdiction of the public service  
69 commission of West Virginia extends under section one,  
70 article two, chapter twenty-four of the code of West  
71 Virginia, as amended.
- 72 (15) The term "this code" means the code of West

- 73 Virginia, one thousand nine hundred thirty-one, as  
74 amended.  
75 (16) The term "this state" means the state of West  
76 Virginia.

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## CHAPTER 171

(Com. Sub. for Senate Bill No. 380—Originating in the Senate  
Committee on Finance)

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[Passed March 10, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section seventy-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employer's returns and payment of withheld taxes under the West Virginia personal income tax act.

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

That section seventy-four, article twenty-one, 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 21. PERSONAL INCOME TAX.**

#### **§11-21-74. Employer's return and payment of withheld taxes.**

- 1 (a) *General.*—Every employer required to deduct and  
2 withhold tax under this article shall, for each calendar  
3 quarter, on or before the last day of the month following  
4 the close of such calendar quarter, file a withholding re-  
5 turn as prescribed by the tax commissioner and pay over  
6 to the tax commissioner the taxes so required to be de-  
7 ducted and withheld. Where the aggregate amount so de-  
8 ducted and withheld by any employer is less than twenty-  
9 five dollars in a calendar quarter and the aggregate for the  
10 calendar year can reasonably be expected to be less than  
11 one hundred dollars, the tax commissioner may by regu-  
12 lation permit an employer to file an annual return and  
13 pay over to the tax commissioner the taxes deducted and  
14 withheld on or before the last day of the month following  
15 the close of such calendar year. The tax commissioner

16 may, if he believes such action necessary for the protection  
17 of the revenues, require any employer to make such re-  
18 turn and pay to him the tax deducted and withheld at any  
19 time, or from time to time.

20 (b) *Monthly returns and payments of withheld tax for*  
21 *April and May 1971.*—Notwithstanding the provisions of  
22 subsection (a), in the case of each of the months of April  
23 and May, one thousand nine hundred seventy-one, every  
24 employer required to deduct and withhold tax under  
25 this article, except any employer with respect to whom  
26 the tax commissioner may have by regulation provided  
27 otherwise in accordance with the provisions of subsec-  
28 tion (a), shall, for the months of April and May, one thou-  
29 sand nine hundred seventy-one, file a withholding return for  
30 each of such months as prescribed by the tax commissioner  
31 and pay over to the tax commissioner the taxes so required  
32 to be deducted and withheld for each of such months by  
33 the twentieth day of June, one thousand nine hundred sev-  
34 enty-one.

35 (c) *Monthly returns and payments of withheld tax on*  
36 *and after June 1, 1971.*—Notwithstanding the provisions  
37 of subsection (a), on and after June 1, 1971, every em-  
38 ployer required to deduct and withhold tax under this ar-  
39 ticle shall, for each month, on or before the twentieth day  
40 of the succeeding month, file a withholding return as pre-  
41 scribed by the tax commissioner and pay over to the tax  
42 commissioner the taxes so required to be deducted and  
43 withheld, if such withheld taxes aggregate one hundred  
44 dollars or more for such month; except any employer with  
45 respect to whom the tax commissioner may have by regu-  
46 lation provided otherwise in accordance with the pro-  
47 visions of subsection (a).

48 (d) *Deposit in trust for tax commissioner.*—Whenever  
49 any employer fails to collect, truthfully account for, pay  
50 over the tax, or make returns of the tax as required in this  
51 section, the tax commissioner may serve a notice requiring  
52 such employer to collect the taxes which become col-  
53 lectible after service of such notice, to deposit such taxes  
54 in a bank approved by the tax commissioner, in a separate  
55 account, in trust for and payable to the tax commissioner,

56 and to keep the amount of such tax in such account until  
57 payment over to the tax commissioner. Such notice shall  
58 remain in effect until a notice of cancellation is served by  
59 the tax commissioner.

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## CHAPTER 172

(House Bill No. 989—By Mr. Myles)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections seventeen, eighteen and thirty-two, article four, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of deputy commissioners of forfeited and delinquent lands.

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

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

### **ARTICLE 4. SALE OF LANDS FOR SCHOOL FUND.**

§11A-4-17. Compensation of deputy commissioners; court costs.

§11A-4-18. Application for permission to redeem.

§11A-4-32. Deed to purchaser; record.

#### **§11A-4-17. Compensation of deputy commissioners; court costs.**

1 As compensation for his services, the deputy commis-  
2 sioner shall be entitled to an attorney's fee of ten  
3 dollars for each item included in the suit. In addition  
4 thereto he shall receive a commission of fifteen per-  
5 cent on each sale or redemption. Such commission on  
6 sales shall be based on the sale price and in the case  
7 of redemption on the total taxes and interest due. Such  
8 compensation shall be collected from the redeмпtor as  
9 provided for in section eighteen of this article. Such  
10 compensation, together with a charge of one dollar

11 payable to the clerk of the circuit court for each item  
12 in the suit, shall be taxed to the state as part of its  
13 cost in the suit and shall be paid as hereinafter pro-  
14 vided. Except as otherwise provided in this article, no  
15 other costs shall be taxed.

**§11A-4-18. Application for permission to redeem.**

1 The former owner of any forfeited or delinquent land,  
2 or any other person who was entitled to redeem such  
3 land under the provisions of section eight, article three  
4 of this chapter, may file his petition in such suit with  
5 the circuit court or the judge thereof in vacation, at any  
6 time before confirmation of sale thereof requesting per-  
7 mission to redeem such land to the extent that title thereto  
8 remains in the state. The court or the judge thereof in  
9 vacation may by proper decree, permit the petitioner  
10 to redeem the land upon payment to the sheriff of the  
11 total amount of taxes, interest and charges properly due  
12 or chargeable thereon on the date of redemption, and all  
13 court costs taxable in respect thereto under the provisions  
14 of this article, which amount shall be fixed by the court  
15 or the judge thereof in vacation, in the order.

16 Upon payment being made, the court or the judge  
17 thereof in vacation, shall enter a decree declaring the  
18 redemption of such land by the petitioner, so far only  
19 as the title thereto remains in the state, and dismissing  
20 the suit in respect thereto. If redemption was allowed  
21 after sale, the decree shall also direct the sheriff to  
22 return the purchase money to the purchaser. Such decree  
23 shall operate as a release of all the right, title and in-  
24 terest of the state in and to such land, but shall in no  
25 wise affect or impair any right, title or interest which any  
26 other person may have therein.

27 Any redemption, which may have been heretofore had  
28 by a former owner of real estate, pursuant to permis-  
29 sion, granted such former owner by a vacation order, in  
30 any such suit, is hereby declared valid.

**§11A-4-32. Deed to purchaser; record.**

1 Whenever ordered to do so as provided in the pre-  
2 ceding section, the deputy commissioner shall make and



3 deliver to the person entitled thereto a deed in form or  
4 effect as follows:

5 This deed made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
6 by and between \_\_\_\_\_, deputy com-  
7 missioner of forfeited and delinquent lands for \_\_\_\_\_  
8 County, West Virginia, acting for and on behalf of the  
9 State of West Virginia, grantor, and \_\_\_\_\_  
10 purchaser, (or \_\_\_\_\_, heir, devisee  
11 or assignee of \_\_\_\_\_, purchaser,)  
12 grantee, witnesseth that

13 WHEREAS, In pursuance of and in accordance with the  
14 statutes in such case made and provided, the above named  
15 deputy commissioner did, by order of the Circuit Court  
16 of \_\_\_\_\_ County, in the month of \_\_\_\_\_,  
17 in the year 19\_\_\_\_, sell the real estate, hereinafter men-  
18 tioned and described, for the benefit of the school fund,  
19 and \_\_\_\_\_, (here insert name of pur-  
20 chaser) for the sum of \$\_\_\_\_\_, that being the  
21 amount of purchase money paid, did become the pur-  
22 chaser of such real estate (or of an undivided \_\_\_\_\_  
23 interest in such real estate) which was sold to the State  
24 for nonpayment of taxes in the name of \_\_\_\_\_;  
25 (or which was forfeited to the State for nonentry in the  
26 name of \_\_\_\_\_; or which escheated  
27 to the State in the name of \_\_\_\_\_; or  
28 which was waste and unappropriated land belonging to  
29 the State;) and

30 WHEREAS, By an order entered on the \_\_\_\_ day of  
31 \_\_\_\_\_, 19\_\_\_\_, in the case of State of West  
32 Virginia v. (A. B., et al.), the Circuit Court of \_\_\_\_\_  
33 County has confirmed the sale and has ordered that this  
34 deed be executed.

35 Now, therefore, the grantor, for and in consideration  
36 of the premises and in pursuance of the statute, doth grant  
37 and convey unto \_\_\_\_\_, grantee, his heirs and assigns  
38 forever, the real estate so purchased, situate in the County  
39 of \_\_\_\_\_, bounded and described as follows: \_\_\_\_\_

40 Witness the following signature:

41 \_\_\_\_\_  
42 Deputy Commissioner of Forfeited and  
43 Delinquent Lands for \_\_\_\_\_ County

44 After execution and acknowledgment of the deed, the  
45 deputy commissioner shall ascertain from the clerk of  
46 the county court the total amount of the transfer fee,  
47 the fee for recording the deed, and if the grantee was  
48 an assignee of the purchaser, the fee for recording the  
49 assignment, and shall notify the grantee to pay such  
50 amount to the clerk of the county court. Upon such  
51 payment and upon payment by the grantee to the deputy  
52 commissioner of a fee of twenty dollars as his compensa-  
53 tion for preparing and executing the deed, the deputy  
54 commissioner shall have the deed and the assignment,  
55 if any, recorded by the clerk of the county court before  
56 delivery of the deed to the grantee. The purchaser shall  
57 have the right to examine the deed before it is recorded.

58 The clerk of the county court shall index the deed in  
59 the grantor's index under the name of the former owner  
60 mentioned in the deed as well as under the name "State  
61 of West Virginia."

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## CHAPTER 173

(Senate Bill No. 404—By Mr. Palumbo)

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[Passed March 6, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article two, chapter thirty-five 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 the distribution of income by a trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and providing a definition of terms.

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

That article two, chapter thirty-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 nine, all to read as follows:

**ARTICLE 2. EDUCATIONAL, FRATERNAL AND CHARITABLE ORGANIZATIONS.****§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and definition of terms.**

1     (a) *Distribution of income by trust which is deemed*  
2 *a private foundation; prohibitions as to such private*  
3 *foundation.*—Every trust, receiving a gift, grant, devise  
4 or bequest, which is deemed to be a private foundation  
5 as defined in section 509 of the Internal Revenue Code  
6 of 1954, unless its governing instrument expressly in-  
7 cludes specific provisions to the contrary, shall distribute  
8 its income for each taxable year at such time and in  
9 such manner as not to subject such trust to tax under  
10 section 4942 of the Internal Revenue Code, and such trust  
11 shall not engage in any act of self-dealing as defined  
12 in section 4941 (d) of the Internal Revenue Code, retain  
13 any excess business holdings as defined in section 4943 (c)  
14 of the Internal Revenue Code, make any investments in  
15 such manner as to subject the trust to tax under section  
16 4944 of the Internal Revenue Code, or make any tax-  
17 able expenditures as defined in section 4945 (d) of the  
18 Internal Revenue Code. This subsection shall apply to  
19 any charitable trust established after December thirty-  
20 one, one thousand nine hundred sixty-nine, and to any  
21 charitable trust established before January one, one thou-  
22 sand nine hundred seventy, only for its taxable years  
23 beginning on and after January one, one thousand nine  
24 hundred seventy-two.

25     (b) *Prohibitions as to trust which is deemed a split-*  
26 *interest trust.*—Every trust, receiving a gift, grant, de-  
27 vise or bequest, to the extent that such trust is deemed  
28 to be a split-interest trust subject to the provisions of  
29 section 4947 (a) (2) of the Internal Revenue Code of 1954,  
30 unless its governing instrument expressly includes spe-  
31 cific provisions to the contrary, shall not:

32     (1) Engage in any act of self-dealing, as defined in  
33 section 4941 (d) of the Internal Revenue Code;

34 (2) Retain any excess business holdings, as defined in  
35 section 4943(c) of the Internal Revenue Code;

36 (3) Make any investments in such manner as to sub-  
37 ject the foundation to tax under section 4944 of the  
38 Internal Revenue Code; or

39 (4) Make any taxable expenditures as defined in sec-  
40 tion 4945(d) of the Internal Revenue Code.

41 Subparagraphs (2) and (3) of this subsection shall not  
42 apply to a split-interest trust if:

43 (1) All the income interest (and none of the re-  
44 mainder interest) of such trust is devoted solely to one  
45 or more of the purposes described in section 170(c)(2)(B)  
46 of the Internal Revenue Code, and all amounts in such  
47 trust for which a deduction was allowed under section  
48 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or  
49 section 2522 of the Internal Revenue Code have an ag-  
50 gregate fair market value not more than sixty percent  
51 of the aggregate fair market value of all amounts in  
52 such trust, or

53 (2) A deduction was allowed under section 170, 545  
54 (b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or section  
55 2522 of the Internal Revenue Code for amounts payable  
56 under the terms of such trust to every remainder bene-  
57 ficiary but not to any income beneficiary.

58 (c) *Definitions; meaning of terms.*—Any term used  
59 in this section shall have the same meaning as  
60 when used in a comparable context in the laws of the  
61 United States relating to federal income taxes and any  
62 reference in this section to the Internal Revenue Code  
63 or to the Internal Revenue Code of 1954 or to any section  
64 or provision thereof shall mean the provisions of the laws  
65 of the United States as relate to the determination of  
66 income for federal income tax purposes, including all  
67 amendments made to the laws of the United States prior  
68 to the first day of January, one thousand nine hundred  
69 seventy-one, but no amendment to the laws of the United  
70 States made on or after the first day of January, one  
71 thousand nine hundred seventy-one, shall be given effect.

## CHAPTER 174

(Com. Sub. for Senate Bill No. 280—Originating in the Senate  
Committee on the Judiciary)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one; section sixteen, article two; sections two, three, five, seven and ten, article five; and sections three and ten, article six, all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article five by adding thereto a new section, designated section three-a; to further amend said article six by adding thereto a new section, designated section fifteen; and to further amend said chapter by adding thereto a new article, designated article six-a, all relating to the department of employment security, the commissioner of employment security and unemployment compensation.

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

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

### Article

1. Department of Employment Security.
2. The Commissioner of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
- 6A. Extended Benefits Program.

### ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

#### §21A-1-3. Definitions.

- 1 As used in this chapter, unless the context clearly re-
- 2 quires otherwise:

3 "Administration fund" means the employment security  
4 administration fund, from which the administrative ex-  
5 penses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for  
7 employment paid by an employer during a twelve-month  
8 period ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the  
10 last three annual payrolls of an employer.

11 "Base period" means the first four out of the last five  
12 completed calendar quarters immediately preceding the  
13 first day of the individual's benefit year.

14 "Base period employer" means any employer who in  
15 the base period for any benefit year paid wages to an  
16 individual who filed claim for unemployment compen-  
17 sation within such benefit year.

18 "Base period wages" means wages paid to an individual  
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the  
21 one-year period beginning with the first day of the  
22 calendar week in which he filed a valid claim for bene-  
23 fits, and thereafter the one-year period beginning with  
24 the first day of the calendar week in which such individual  
25 next files a valid claim for benefits after the termination  
26 of his last preceding benefit year. An initial claim for  
27 benefits filed in accordance with the provisions of this  
28 chapter shall be deemed to be a valid claim within the  
29 purposes of this definition if the individual has been paid  
30 wages in his base period sufficient to make him eligible  
31 for benefits under the provisions of this chapter.

32 "Benefits" means the money payable to an individual  
33 with respect to his unemployment.

34 "Board" means board of review.

35 "Calendar quarter" means the period of three consecu-  
36 tive calendar months ending on March thirty-one, June  
37 thirty, September thirty, or December thirty-one, or the  
38 equivalent thereof as the commissioner may by regula-  
39 tion prescribe.

40 "Commissioner" means the employment security com-  
41 missioner.

42 "Computation date" means June thirty of the year im-  
43 mediately preceding the January one on which an em-  
44 ployer's contribution rate becomes effective.

45 "Employing unit" means an individual, or type of or-  
46 ganization, including any partnership, association, trust,  
47 estate, joint-stock company, insurance company, corpora-  
48 tion (domestic or foreign), institution of higher educa-  
49 tion, or the receiver, trustee in bankruptcy, trustee or  
50 successor thereof, or the legal representative of a de-  
51 ceased person, which has on January first, one thousand  
52 nine hundred thirty-five, or subsequent thereto, had in  
53 its employ one or more individuals performing service  
54 within this state.

55 "Employer" means:

56 (1) Until January one, one thousand nine hundred  
57 seventy-two, any employing unit which for some portion  
58 of a day, not necessarily simultaneously, in each of twenty  
59 different calendar weeks, which weeks need not be con-  
60 secutive, within either the current calendar year, or the  
61 preceding calendar year, has had in employment four or  
62 more individuals irrespective of whether the same individ-  
63 uals were or were not employed on each of such days;

64 (2) Any employing unit which is or becomes a liable  
65 employer under any federal unemployment tax act;

66 (3) Any employing unit which has acquired or acquires  
67 the organization, trade or business, or substantially all the  
68 assets thereof, of any employing unit which at the time of  
69 such acquisition was an employer subject to this chapter;

70 (4) Any employing unit which, after December thirty-  
71 one, one thousand nine hundred sixty-three, and until  
72 January one, one thousand nine hundred seventy-two, in  
73 any one calendar quarter, in any calendar year, has in  
74 employment four or more individuals and has paid wages  
75 for employment in the total sum of five thousand dollars  
76 or more, or which, after such date, has paid wages for  
77 employment in any calendar year in the sum total of  
78 twenty thousand dollars or more;

79 (5) Any employing unit which, after December thirty-  
80 one, one thousand nine hundred sixty-three, and until  
81 January one, one thousand nine hundred seventy-two, in

82 any three weeks' period, in any calendar year, has in  
83 employment ten or more individuals;

84 (6) For the effective period of its election pursuant to  
85 section three, article five of this chapter, any employing  
86 unit which has elected to become subject to this chapter;

87 (7) Any employing unit which, after December thirty-  
88 one, one thousand nine hundred seventy-one, (i) in any  
89 calendar quarter in either the current or preceding  
90 calendar year paid for service in employment wages of  
91 one thousand five hundred dollars or more, or (ii) for  
92 some portion of a day in each of twenty different calendar  
93 weeks, whether or not such weeks were consecutive, in  
94 either the current or the preceding calendar year had  
95 in employment at least one individual (irrespective of  
96 whether the same individual was in employment in each  
97 such day);

98 (8) Any employing unit for which service in employ-  
99 ment, as defined in subdivision nine of the definition of  
100 "employment" in this section, is performed after Decem-  
101 ber thirty-one, one thousand nine hundred seventy-one;

102 (9) Any employing unit for which service in employ-  
103 ment, as defined in subdivision ten of the definition of  
104 "employment" in this section, is performed after Decem-  
105 ber thirty-one, one thousand nine hundred seventy-one.

106 "Employment," subject to the other provisions of this  
107 section, means:

108 (1) Service, including service in interstate commerce,  
109 performed for wages or under any contract of hire, writ-  
110 ten or oral, express or implied;

111 (2) Any service performed prior to January one, one  
112 thousand nine hundred seventy-two, which was employ-  
113 ment as defined in this section prior to such date and,  
114 subject to the other provisions of this section, service  
115 performed after December thirty-one, one thousand nine  
116 hundred seventy-one, by an employee, as defined in  
117 section 3306(i) of the "Federal Unemployment Tax Act,"  
118 including service in interstate commerce;

119 (3) Any service performed prior to January one, one  
120 thousand nine hundred seventy-two, which was employ-



121 ment as defined in this section prior to such date and,  
122 subject to the other provisions of this section, service  
123 performed after December thirty-one, one thousand nine  
124 hundred seventy-one, including service in interstate com-  
125 merce, by any officer of a corporation;

126 (4) An individual's entire service, performed within  
127 or both within and without this state if: (a) The ser-  
128 vice is localized in this state; or (b) the service is not  
129 localized in any state but some of the service is per-  
130 formed in this state and (i) the base of operations, or,  
131 if there is no base of operations, then the place from  
132 which such service is directed or controlled, is in this  
133 state; or (ii) the base of operations or place from which  
134 such service is directed or controlled is not in any state  
135 in which some part of the service is performed but the  
136 individual's residence is in this state;

137 (5) Service not covered under paragraph four of this  
138 subdivision and performed entirely without this state with  
139 respect to no part of which contributions are required  
140 and paid under an unemployment compensation law  
141 of any other state or of the federal government, shall  
142 be deemed to be employment subject to this chapter  
143 if the individual performing such services is a resident  
144 of this state and the commissioner approves the election  
145 of the employing unit for whom such services are per-  
146 formed that the entire service of such individual shall  
147 be deemed to be employment subject to this chapter;

148 (6) Service shall be deemed to be localized within  
149 a state, if: (a) The service is performed entirely with-  
150 in such state; or (b) the service is performed both within  
151 and without such state, but the service performed with-  
152 out such state is incidental to the individual's service  
153 within this state, as, for example, is temporary or transi-  
154 tory in nature or consists of isolated transactions;

155 (7) Services performed by an individual for wages  
156 shall be deemed to be employment subject to this chap-  
157 ter unless and until it is shown to the satisfaction of  
158 the commissioner that: (a) Such individual has been  
159 and will continue to be free from control or direction  
160 over the performance of such services, both under his

161 contract of service and in fact; and (b) such service  
162 is either outside the usual course of the business for  
163 which such service is performed or that such service  
164 is performed outside of all the places of business of  
165 the enterprise for which such service is performed; and  
166 (c) such individual is customarily engaged in an in-  
167 dependently established trade, occupation, profession or  
168 business;

169 (8) All service performed by an officer or member  
170 of the crew of an American vessel (as defined in section  
171 three hundred five of an act of Congress entitled "Social  
172 Security Act Amendment of 1946," approved August tenth,  
173 one thousand nine hundred forty-six) on or in connection  
174 with such vessel, provided that the operating office,  
175 from which the operations of such vessel operating on  
176 navigable waters within or within and without the United  
177 States is ordinarily and regularly supervised, managed,  
178 directed and controlled, is within this state;

179 (9) Service performed after December thirty-one, one  
180 thousand nine hundred seventy-one, by an individual  
181 in the employ of this state or any of its instrumentali-  
182 ties (or in the employ of this state and one or more  
183 other states or their instrumentalities), when such ser-  
184 vice is performed for a hospital or institution of higher  
185 education located in this state provided that such service  
186 is excluded from "employment" as defined in the "Federal  
187 Unemployment Tax Act" solely by reason of section  
188 3306(c)(7) of that act, and is not excluded from "em-  
189 ployment" under subdivision eleven of the exclusions  
190 from the term "employment";

191 (10) Service performed after December thirty-one, one  
192 thousand nine hundred seventy-one, by an individual in  
193 the employ of a religious, charitable, educational or other  
194 organization but only if the following conditions are  
195 met:

196 (a) the service is excluded from "employment" as de-  
197 fined in the "Federal Unemployment Tax Act" solely  
198 by reason of section 3306(c)(8) of that act; and

199 (b) the organization had four or more individuals in  
200 employment for some portion of a day in each of twenty

201 different weeks, whether or not such weeks were con-  
202 secutive, within either the current or preceding calendar  
203 year, regardless of whether they were employed at the  
204 same moment of time;

205 (11) Service of an individual who is a citizen of the  
206 United States, performed outside the United States (ex-  
207 cept in Canada or the Virgin Islands), after December  
208 thirty-one, one thousand nine hundred seventy-one, in  
209 the employ of an American employer (other than ser-  
210 vice which is deemed "employment" under the provisions  
211 of subdivisions four, five or six of this definition of "em-  
212 ployment" or the parallel provisions of another state's  
213 law), if:

214 (a) the employer's principal place of business in the  
215 United States is located in this state; or

216 (b) the employer has no place of business in the  
217 United States, but (i) the employer is an individual  
218 who is a resident of this state; or (ii) the employer is  
219 a corporation which is organized under the laws of  
220 this state; or (iii) the employer is a partnership or a  
221 trust and the number of the partners or trustees who  
222 are residents of this state is greater than the number  
223 who are residents of any one other state; or

224 (c) none of the criteria of subparagraphs (a) and (b)  
225 of this subdivision (11) is met but the employer has  
226 elected coverage in this state or, the employer having  
227 failed to elect coverage in any state, the individual  
228 has filed a claim for benefits, based on such service,  
229 under the law of this state.

230 An "American employer," for purposes of this subdivi-  
231 sion (11) means a person who is (i) an individual who  
232 is a resident of the United States; or (ii) a partnership  
233 if two thirds or more of the partners are residents of  
234 the United States; or (iii) a trust, if all of the trustees  
235 are residents of the United States; or (iv) a corpora-  
236 tion organized under the laws of the United States or  
237 of any state.

238 Notwithstanding the foregoing definition of "employ-  
239 ment," if the services performed during one half or

240 more of any pay period by an employee for the person  
241 employing him constitute employment, all the services  
242 of such employee for such period shall be deemed to  
243 be employment; but if the services performed during  
244 more than one half of any such pay period by an  
245 employee for the person employing him do not constitute  
246 employment, then none of the services of such employee  
247 for such period shall be deemed to be employment.

248 The term "employment" shall not include:

249 (1) Services performed in the employ of this state  
250 or any political subdivision thereof, or any instrumen-  
251 tality of this state or its subdivisions, except as other-  
252 wise provided herein;

253 (2) Service performed directly in the employ of an-  
254 other state, or its political subdivisions;

255 (3) Service performed in the employ of the United  
256 States or an instrumentality of the United States exempt  
257 under the constitution of the United States from the  
258 payments imposed by this law, except that to the extent  
259 that the Congress of the United States shall permit states  
260 to require any instrumentalities of the United States to  
261 make payments into an unemployment fund under a  
262 state unemployment compensation law, all of the pro-  
263 visions of this law shall be applicable to such instrumen-  
264 tialities, and to service performed for such instrumentali-  
265 ties, in the same manner, to the same extent and on  
266 the same terms as to all other employers, employing  
267 units, individuals, and services: *Provided*, That if this  
268 state shall not be certified for any year by the secretary  
269 of labor under section 1603(c) of the "Federal Internal  
270 Revenue Code," the payments required of such instru-  
271 mentalities with respect to such year shall be refunded  
272 by the commissioner from the fund in the same man-  
273 ner and within the same period as is provided in section  
274 nineteen, article five of this chapter, with respect to  
275 payments erroneously collected;

276 (4) Service performed after June thirty, one thou-  
277 sand nine hundred thirty-nine, with respect to which  
278 unemployment compensation is payable under the "Rail-  
279 road Unemployment Insurance Act" (52 Stat. 1094), and

280 service with respect to which unemployment benefits  
281 are payable under an unemployment compensation sys-  
282 tem for maritime employees established by an act of  
283 Congress. The commissioner may enter into agreements  
284 with the proper agency established under such an act  
285 of Congress to provide reciprocal treatment to individuals  
286 who, after acquiring potential rights to unemployment  
287 compensation under an act of Congress, or who have,  
288 after acquiring potential rights to unemployment com-  
289 pensation under an act of Congress, acquired rights to  
290 benefit under this chapter. Such agreements shall be-  
291 come effective ten days after such publications as comply  
292 with the general rules of the department;

293 (5) Agricultural labor, and for the purposes of this  
294 chapter, the term "agricultural labor" includes all ser-  
295 vices performed:

296 (a) On a farm, in the employ of any person, in con-  
297 nection with cultivating the soil, or in connection with  
298 raising or harvesting any agricultural or horticultural  
299 commodity, including the raising, shearing, feeding, car-  
300 ring for, training, and management of livestock, bees,  
301 poultry, and fur-bearing animals and wildlife;

302 (b) In the employ of the owner or tenant or other  
303 operator of a farm, in connection with the operation,  
304 management, conservation, improvement, or maintenance  
305 of such farm and its tools and equipment, or in salvag-  
306 ing timber or clearing land of brush and other debris  
307 left by a hurricane, if the major part of such service  
308 is performed on a farm;

309 (c) In connection with the production or harvesting  
310 of any commodity defined as an agricultural commodity  
311 in section 15(g) of the "Agricultural Marketing Act," as  
312 amended (46 Stat. 1550, sec. 3; 12 U.S.C. §1141j) or in  
313 connection with the ginning of cotton, or in connection  
314 with the operation or maintenance of ditches, canals,  
315 reservoirs, or waterways, not owned or operated for  
316 profit, used exclusively for supplying and storing water  
317 for farming purposes;

318 (d) (i) In the employ of the operator of a farm in  
319 handling, planting, drying, packing, packaging, proces-

320 sing, freezing, grading, storing or delivering to storage  
321 or to market or to a carrier for transportation to market,  
322 in its unmanufactured state, any agricultural or horti-  
323 cultural commodity; but only if such operator produced  
324 more than one half of the commodity with respect to  
325 which such service is performed; or (ii) in the employ  
326 of a group of operators of farms (or a cooperative organi-  
327 zation of which such operators are members) in the per-  
328 formance of service described in subparagraph (i), but  
329 only if such operators produced more than one half of  
330 the commodity with respect to which such service is  
331 performed; but the provisions of subparagraphs (i) and  
332 (ii) shall not be deemed to be applicable with respect  
333 to service performed in connection with commercial can-  
334 ning or commercial freezing or in connection with any  
335 agricultural or horticultural commodity after its delivery  
336 to a terminal market for distribution for consumption;

337 (e) On a farm operated for profit if such service is  
338 not in the course of the employer's trade or business  
339 or is domestic service in a private home of the employer.  
340 As used in this subdivision (5), the term "farm" includes  
341 stock, dairy, poultry, fruit, fur-bearing animal, and truck  
342 farms, plantations, ranches, greenhouses and nurseries,  
343 or other similar land areas or structures used primarily  
344 for the raising of any agricultural or horticultural com-  
345 modity, and orchards, and the term "greenhouses and  
346 nurseries" shall not include greenhouses and nurseries  
347 employing more than fifteen full-time employees;

348 (6) Domestic service in a private home;

349 (7) Service performed by an individual in the employ  
350 of his son, daughter, or spouse;

351 (8) Service performed by a child under the age of  
352 twenty-one years in the employ of his father or mother;

353 (9) Service as an officer or member of a crew of an  
354 American vessel, performed on or in connection with  
355 such vessel, if the operating office, from which the oper-  
356 ations of the vessel operating on navigable water with-  
357 in or without the United States are ordinarily and regu-  
358 larly supervised, managed, directed and controlled, is  
359 without this state;

360 (10) Services performed by agents of mutual fund  
361 broker-dealers or insurance companies, exclusive of in-  
362 dustrial insurance agents, or by agents of investment  
363 companies, who are compensated wholly on a commis-  
364 sion basis;

365 (11) Service performed (i) in the employ of a church  
366 or convention or association of churches, or an organiza-  
367 tion which is operated primarily for religious purposes  
368 and which is operated, supervised, controlled, or prin-  
369 cipally supported by a church or convention or associa-  
370 tion of churches; or (ii) by a duly ordained, commis-  
371 sioned or licensed minister of a church in the exercise  
372 of his ministry or by a member of a religious order in  
373 the exercise of duties required by such order; or (iii)  
374 the employ of a school which is not an institution of  
375 higher education; or (iv) in a facility conducted for the  
376 purpose of carrying out a program of rehabilitation for  
377 individuals whose earning capacity is impaired by age  
378 or physical or mental deficiency or injury or provid-  
379 ing remunerative work for individuals who because of  
380 their impaired physical or mental capacity cannot be  
381 readily absorbed in the competitive labor market by an  
382 individual receiving such rehabilitation or remunerative  
383 work; or (v) as part of an unemployment work-relief  
384 or work-training program assisted or financed in whole  
385 or in part by any federal agency or an agency of a  
386 state or political subdivision thereof, by an individual  
387 receiving such work relief or work training; or (vi)  
388 for a hospital in a state prison or other state correctional  
389 institution by an inmate of the prison or correctional  
390 institution;

391 (12) Service performed, in the employ of a school,  
392 college or university, if such service is performed (i)  
393 by a student who is enrolled and is regularly attending  
394 classes at such school, college or university, or (ii) by  
395 the spouse of such a student, if such spouse is advised,  
396 at the time such spouse commences to perform such  
397 service, that (I) the employment of such spouse to per-  
398 form such service is provided under a program to pro-  
399 vide financial assistance to such student by such school,

400 college or university, and (II) such employment will not  
401 be covered by any program of unemployment insurance;

402 (13) Service performed by an individual under the  
403 age of twenty-two who is enrolled at a nonprofit or public  
404 educational institution which normally maintains a regu-  
405 lar faculty and curriculum and normally has a regularly  
406 organized body of students in attendance at the place  
407 where its educational activities are carried on as a stu-  
408 dent in a full-time program, taken for credit at such in-  
409 stitution, which combines academic instruction with work  
410 experience, if such service is an integral part of such  
411 program, and such institution has so certified to the em-  
412 ployer, except that this subdivision shall not apply to  
413 service performed in a program established for or on  
414 behalf of an employer or group of employers;

415 (14) Service performed in the employ of a hospital,  
416 if such service is performed by a patient of the hospital,  
417 as defined in this section.

418 Notwithstanding the foregoing exclusions from the defi-  
419 nition of "employment," services, except agricultural labor  
420 and domestic service in a private home, shall be deemed  
421 to be in employment if with respect to such services a  
422 tax is required to be paid under any federal law imposing  
423 a tax against which credit may be taken for contributions  
424 required to be paid into a state unemployment compensa-  
425 tion fund.

426 "Employment office" means a free employment office or  
427 branch thereof, operated by this state, or any free public  
428 employment office maintained as a part of a state-con-  
429 trolled system of public employment offices in any other  
430 state.

431 "Fund" means the unemployment compensation fund  
432 established by this chapter.

433 "Hospital" means an institution which has been licensed,  
434 certified or approved by the state department of health  
435 as a hospital.

436 "Institution of higher education" means an educational  
437 institution which:



438 (1) Admits as regular students only individuals having  
439 a certificate of graduating from a high school, or the recog-  
440 nized equivalent of such a certificate;

441 (2) Is legally authorized in this state to provide a  
442 program of education beyond high school;

443 (3) Provides an educational program for which it  
444 awards a bachelor's or higher degree, or provides a pro-  
445 gram which is acceptable for full credit toward such a  
446 degree, or provides a program of post-graduate or post-  
447 doctoral studies, or provides a program of training to  
448 prepare students for gainful employment in a recognized  
449 occupation; and

450 (4) Is a public or other nonprofit institution.

451 Notwithstanding any of the foregoing provisions of this  
452 definition, all colleges and universities in this state are in-  
453 stitutions of higher education for purposes of this section.

454 "Payments" means the money required to be paid or  
455 that may be voluntarily paid into the state unemploy-  
456 ment compensation fund as provided in article five of  
457 this chapter.

458 "Separated from employment" means, for the purposes  
459 of this chapter, the total severance whether by quit-  
460 ting, discharge, or otherwise, of the employer-employee  
461 relationship.

462 "State" includes, in addition to the states of the United  
463 States, Puerto Rico, District of Columbia and the Virgin  
464 Islands.

465 "Total and partial unemployment" means:

466 (1) An individual shall be deemed totally unemployed  
467 in any week in which such individual is separated from  
468 employment for an employing unit and during which he  
469 performs no services and with respect to which no wages  
470 are payable to him.

471 (2) An individual who has not been separated from  
472 employment shall be deemed to be partially unemployed  
473 in any week in which due to lack of work he performs  
474 no services and with respect to which no wages are pay-  
475 able to him, or in any week in which due to lack of full-

476 time work wages payable to him are less than his weekly  
477 benefit amount plus ten dollars.

478 "Wages" means all remuneration for personal service,  
479 including commissions and bonuses and the cash value  
480 of all remuneration in any medium other than cash:  
481 *Provided*, That the term "wages" shall not include:

482 (1) That part of the remuneration which, after re-  
483 muneration equal to three thousand dollars has been  
484 paid to an individual by an employer with respect to  
485 employment during any calendar year, is paid after  
486 December thirty-one, one thousand nine hundred thirty-  
487 nine, and prior to January one, one thousand nine hundred  
488 forty-seven, to such individual by such employer with  
489 respect to employment during such calendar year; or  
490 that part of the remuneration which, after remuneration  
491 equal to three thousand dollars with respect to employ-  
492 ment after one thousand nine hundred thirty-eight has  
493 been paid to an individual by an employer during any  
494 calendar year after one thousand nine hundred forty-  
495 six, is paid to such individual by such employer during  
496 such calendar year, except that for the purposes of  
497 sections one, ten, eleven and thirteen, article six of this  
498 chapter, all remuneration earned by an individual in  
499 employment shall be credited to the individual and in-  
500 cluded in his computation of base period wages: *Pro-*  
501 *vided*, That notwithstanding the foregoing provisions, on  
502 and after January one, one thousand nine hundred sixty-  
503 two, the term "wages" shall not include:

504 That part of the remuneration which, after remunera-  
505 tion equal to three thousand six hundred dollars has  
506 been paid to an individual by an employer with respect  
507 to employment during any calendar year, is paid during  
508 any calendar year after one thousand nine hundred sixty-  
509 one; and shall not include that part of remuneration  
510 which, after remuneration equal to four thousand two  
511 hundred dollars is paid during a calendar year after one  
512 thousand nine hundred seventy-one to an individual by  
513 an employer or his predecessor with respect to employ-  
514 ment during any calendar year, is paid to such individual  
515 by such employer during such calendar year unless that

516 part of the remuneration is subject to a tax under a  
517 federal law imposing a tax against which credit may be  
518 taken for contributions required to be paid into a state  
519 unemployment fund. For the purposes of this subdivi-  
520 sion (1), the term employment shall include service  
521 constituting employment under any unemployment com-  
522 pensation law of another state; or which as a condition  
523 for full tax credit against the tax imposed by the "Fed-  
524 eral Unemployment Tax Act" is required to be covered  
525 under this chapter; and, except, that for the purposes  
526 of sections one, ten, eleven and thirteen of article six of  
527 this chapter, all remuneration earned by an individual  
528 in employment shall be credited to the individual and  
529 included in his computation of base period wages:  
530 *And provided further*, That the remuneration paid to an  
531 individual by an employer with respect to employment  
532 in another state or other states upon which contribu-  
533 tions were required of and paid by such employer under  
534 an unemployment compensation law of such other state  
535 or states shall be included as a part of the remuneration  
536 equal to the amounts of three thousand six hundred  
537 dollars or four thousand two hundred dollars herein  
538 referred to. In applying such limitation on the amount  
539 of remuneration that is taxable an employer shall be  
540 accorded the benefit of all or any portion of such amount  
541 which may have been paid by its predecessor or predeces-  
542 sors: *Provided, however*, That if the definition of the  
543 term "wages" as contained in section 3306(b) of the  
544 "Internal Revenue Code of 1954" is amended (a) effec-  
545 tive prior to January one, one thousand nine hundred  
546 sixty-two, to include remuneration in excess of three  
547 thousand dollars, or (b) effective on or after January  
548 one, one thousand nine hundred sixty-two, to include  
549 remuneration in excess of three thousand six hundred  
550 dollars, or effective on or after January one, one thou-  
551 sand nine hundred seventy-two, to include remuneration  
552 in excess of four thousand two hundred dollars, paid  
553 to an individual by an employer under the "Federal Un-  
554 employment Tax Act" during any calendar year, wages  
555 for the purposes of this definition shall include remunera-  
556 tion paid in a calendar year to an individual by an em-

557 ployer subject to this article or his predecessor with re-  
558 spect to employment during any calendar year up to an  
559 amount equal to the amount of remuneration taxable  
560 under the "Federal Unemployment Tax Act";

561 (2) The amount of any payment made after December  
562 thirty-one, one thousand nine hundred fifty-two (includ-  
563 ing any amount paid by an employer for insurance or an-  
564 nuities, or into a fund, to provide for any such payment),  
565 to, or on behalf of, an individual in its employ or any of his  
566 dependents, under a plan or system established by an em-  
567 ployer which makes provision for individuals in its employ  
568 generally (or for such individuals and their dependents),  
569 or for a class or classes of such individuals (or for a class  
570 or classes of such individuals and their dependents), on ac-  
571 count of (A) retirement, or (B) sickness or accident disa-  
572 bility, or (C) medical or hospitalization expenses in con-  
573 nection with sickness or accident disability, or (D) death;

574 (3) Any payment made after December thirty-one, one  
575 thousand nine hundred fifty-two, by an employer to an in-  
576 dividual in its employ (including any amount paid by an  
577 employer for insurance or annuities, or into a fund, to pro-  
578 vide for any such payment) on account of retirement;

579 (4) Any payment made after December thirty-one,  
580 one thousand nine hundred fifty-two, by an employer  
581 on account of sickness or accident disability, or medical  
582 or hospitalization expenses in connection with sickness  
583 or accident disability, to, or on behalf of, an individual  
584 in its employ after the expiration of six calendar months  
585 following the last calendar month in which such in-  
586 dividual worked for such employer;

587 (5) Any payment made after December thirty-one,  
588 one thousand nine hundred fifty-two, by an employer to,  
589 or on behalf of, an individual in its employ or his bene-  
590 ficiary (A) from or to a trust described in section 401(a)  
591 which is exempt from tax under section 501(a) of the  
592 "Federal Internal Revenue Code" at the time of such  
593 payment unless such payment is made to such individual  
594 as an employee of the trust as remuneration for services  
595 rendered by such individual and not as a beneficiary of the  
596 trust, or (B) under or to an annuity plan which, at the

597 time of such payment, is a plan described in section 403(a)  
598 of the "Federal Internal Revenue Code";

599 (6) The payment by an employer (without deduction  
600 from the remuneration of the individual in its employ)  
601 of the tax imposed upon an individual in its employ  
602 under section 3101 of the "Federal Internal Revenue  
603 Code";

604 (7) Remuneration paid by an employer after Decem-  
605 ber thirty-one, one thousand nine hundred fifty-two, in  
606 any medium other than cash to an individual in its  
607 employ for service not in the course of the employer's  
608 trade or business;

609 (8) Any payment (other than vacation or sick pay)  
610 made by an employer after December thirty-one, one  
611 thousand nine hundred fifty-two, to an individual in its  
612 employ after the month in which he attains the age of  
613 sixty-five, if he did not work for the employer in the  
614 period for which such payment is made;

615 (9) Payments, not required under any contract of hire,  
616 made to an individual with respect to his period of  
617 training or service in the armed forces of the United  
618 States by an employer by which such individual was  
619 formerly employed.

620 Gratuities customarily received by an individual in the  
621 course of his employment from persons other than his  
622 employing unit shall be treated as wages paid by his  
623 employing unit, if accounted for and reported to such  
624 employing unit.

625 The reasonable cash value of remuneration in any  
626 medium other than cash shall be estimated and determined  
627 in accordance with rules prescribed by the commissioner.

628 "Week" means a calendar week, ending at midnight  
629 Saturday, or the equivalent thereof, as determined in  
630 accordance with the regulations prescribed by the com-  
631 missioner.

632 "Weekly benefit rate" means the maximum amount of  
633 benefit an eligible individual will receive for one week  
634 of total unemployment.

635 "Year" means a calendar year or the equivalent there-  
636 of, as determined by the commissioner.

## ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

### §21A-2-16. Federal-state cooperation.

1 The commissioner shall have all powers and duties  
2 necessary to secure to the state the benefits of congres-  
3 sional action for the promotion and maintenance of a  
4 system of public employment offices. To this end the  
5 provisions of the act referred to in the preceding section  
6 and such additional congressional action consistent with  
7 the above act are accepted by the state and the state  
8 pledges its observance and compliance therewith.

9 The department of employment security, by its com-  
10 missioner, is designated the agent of this state for the  
11 purpose of compliance with the act of Congress entitled  
12 "An act to provide for the establishment of a national  
13 employment system and for cooperation with states in  
14 the promotion of such systems, and for other purposes,"  
15 approved June six, one thousand nine hundred thirty-  
16 three, as amended.

17 The department of employment security, by its com-  
18 missioner, is designated the agent of this state for the  
19 purpose of complying with and administering sections  
20 sixteen and seventeen of an act of Congress entitled "An  
21 act to extend and improve the unemployment compen-  
22 sation program," approved September one, one thousand  
23 nine hundred fifty-four.

24 The department of employment security, by its com-  
25 missioner, is designated the agent of this state for the  
26 purpose of complying with and administering an act  
27 of Congress entitled "An act to amend title XV of the  
28 Social Security Act to extend the unemployment insur-  
29 ance system to exservicemen, and for other purposes,"  
30 approved August twenty-eight, one thousand nine hun-  
31 dred fifty-eight.

32 The department of employment security, by its com-  
33 missioner, is designated the agent of this state for the  
34 purpose of complying with and administering an act

35 of Congress entitled "An act relating to manpower re-  
36 quirements, resources, development, and utilization, and  
37 for other purposes," approved March fifteen, one thou-  
38 sand nine hundred sixty-two.

39 The department of employment security, by its com-  
40 missioner, is designated the agent of this state for the  
41 purpose of complying with and administering an act of  
42 Congress entitled "An act to establish an effective pro-  
43 gram to alleviate conditions of substantial and persistent  
44 unemployment and under employment in certain eco-  
45 nomically distressed areas," approved May one, one thou-  
46 sand nine hundred sixty-one.

47 The department of employment security, by its com-  
48 missioner, is designated the agent of this state for the  
49 purpose of complying with and administering chapter  
50 three of title III of an act of Congress entitled "An act  
51 to promote the general welfare, foreign policy, and  
52 security of the United States through international trade  
53 agreements and through adjustment assistance to do-  
54 mestic industry, agriculture, and labor, and for other  
55 purposes," approved October eleven, one thousand nine  
56 hundred sixty-two.

57 The department of employment security, by its com-  
58 missioner, is designated the agent of this state for the  
59 purpose of complying with and administering an act of  
60 Congress entitled "An act to provide for the establish-  
61 ment of a temporary program of extended unemployment  
62 compensation, to provide for a temporary increase in  
63 the rate of the federal unemployment tax, and for other  
64 purposes," approved January three, one thousand nine  
65 hundred sixty-one.

66 The department of employment security, by its com-  
67 missioner, is also designated the agent of this state for  
68 the purpose of complying with and administering other  
69 programs of the United States government such as the  
70 foregoing.

71 The commissioner of employment security is desig-  
72 nated as the officer of this state for the purpose of com-  
73 plying with and administering the tasks assigned to the  
74 West Virginia department of employment security pur-

75 suant to section six, article two-b, chapter eighteen of  
76 this code relating to the area vocational educational  
77 program of this state.

78 The commissioner is also authorized with the approval  
79 of the advisory council, to apply for an advance to the  
80 unemployment compensation fund in accordance with  
81 the conditions specified in title XII of the "Social Se-  
82 curity Act," as amended, in order to secure to this state  
83 and its citizens the advantages available under the pro-  
84 visions of that title.

85 In the administration of this chapter the commissioner  
86 shall cooperate with the United States department of  
87 labor to the fullest extent consistent with the provisions  
88 of this chapter, and shall take such action through the  
89 adoption of appropriate rules, regulations, administrative  
90 methods and standards, as may be necessary to secure  
91 to this state and its citizens all advantages available  
92 under the provisions of the "Social Security Act" which  
93 relate to unemployment compensation, the "Federal  
94 Unemployment Tax Act," the "Wagner-Peyser Act," and  
95 the "Federal-State Extended Unemployment Compensa-  
96 tion Act of 1970."

97 In the administration of the provisions in article six-a  
98 of this chapter, which are enacted to conform with the  
99 requirements of the "Federal-State Extended Unemploy-  
100 ment Compensation Act of 1970," the commissioner shall  
101 take such action as may be necessary (i) to ensure that  
102 the provisions are so interpreted and applied as to meet  
103 the requirements of such federal act, and (ii) to secure  
104 this state the full reimbursement of the federal share of  
105 extended and regular benefits paid under this chapter  
106 which are reimbursable under said federal act.

#### **ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

§21A-5-2. Termination of coverage.

§21A-5-3. Voluntary coverage; elective coverage by political sub-  
divisions.

§21A-5-3a. Financing benefits paid to employees of nonprofit organi-  
zations.

§21A-5-5. Rate of contribution.

§21A-5-7. Joint and separate accounts.

§21A-5-10. Same—Decreased rates; adjustment of accounts and rates;  
debit balance account rates.



**§21A-5-2. Termination of coverage.**

1 Except as otherwise provided in section three of this  
2 article, an employing unit, with the exception of any  
3 employing unit for which service in employment is de-  
4 fined in subdivision ten of the definition of "employment"  
5 as set forth in section three, article one of this chapter,  
6 shall cease to be an employer subject to this chapter  
7 only as of the first day of any calendar year and only if  
8 it files with the commissioner not later than January  
9 thirty-first of such year, a written application for termi-  
10 nation of coverage, as of such first day of January, and  
11 the commissioner finds that within the preceding calen-  
12 dar year the employing unit did not pay wages of one  
13 thousand five hundred dollars or more in any calendar  
14 quarter for employment subject to this chapter and dur-  
15 ing that calendar year no service was performed for it  
16 with respect to which it was liable for any tax against  
17 which credit may be taken for contributions required  
18 to be paid into the unemployment compensation fund  
19 of this state; and any employing unit for which service  
20 in employment is defined in subdivision ten of the defi-  
21 nition of "employment" as set forth in section three,  
22 article one of this chapter, shall cease to be an employer  
23 subject to this chapter only as of the first day of any  
24 calendar year and only if it files with the commissioner  
25 not later than January thirty-first of such year, a writ-  
26 ten application for termination of coverage, as of such  
27 first day of January, and the commissioner finds that  
28 there were no twenty different days, each day being in  
29 a different calendar week within the preceding calen-  
30 dar year, within which such employing unit had four  
31 or more individuals in employment subject to this chap-  
32 ter: *Provided*, That the commissioner may for good cause  
33 extend the time for filing application for termination of  
34 coverage, effective as of the first day of the next suc-  
35 ceeding quarter after the application is approved.

**§21A-5-3. Voluntary coverage; elective coverage by political subdivisions.**

1 (1) An employing unit, not otherwise subject to the  
2 provisions of this chapter, which files with the com-

3 commissioner its written election to become an employer  
4 subject hereto for not less than two calendar years,  
5 shall, with the written approval of such election by the  
6 commissioner, become an employer subject hereto to  
7 the same extent as all other employers, as of the date  
8 stated in such approval, and shall cease to be subject  
9 hereto as of January one of any calendar year subse-  
10 quent to such two calendar years, only if during January  
11 of such year it has filed with the commissioner a written  
12 notice to that effect.

13 (2) Any employing unit for which services that do  
14 not constitute employment as defined in this chapter are  
15 performed, may file with the commissioner a written  
16 election that all such services performed by individuals  
17 in its employ in one or more distinct establishments or  
18 places of business shall be deemed to constitute employ-  
19 ment for all the purposes of this chapter for not less than  
20 two calendar years. Upon the written approval of such  
21 election by the commissioner, such services shall be  
22 deemed to constitute employment subject to this chap-  
23 ter from and after the date stated in such approval. Such  
24 services shall cease to be deemed employment subject  
25 hereto as of January first of any calendar year subsequent  
26 to such two calendar years, only if during January of such  
27 year such employing unit has filed with the commissioner  
28 a written notice to that effect.

29 (3) An employing unit which is or becomes an em-  
30 ployer subject to this chapter within any calendar year  
31 shall be subject to this chapter during the whole of such  
32 calendar year.

33 (4) Any political subdivision of this state may elect  
34 to cover under this chapter service performed by em-  
35 ployees in all of the hospitals and institutions of higher  
36 education, as defined in section three, article one of this  
37 chapter, operated by such political subdivision. Any such  
38 election of coverage is to be made by filing with the com-  
39 missioner a notice of such election at least thirty days  
40 prior to the effective date of such election. Any political  
41 subdivision electing coverage under this subsection shall  
42 make payments in lieu of contributions with respect to

43 benefits attributable to such employment as provided with  
44 respect to nonprofit organizations in section three-a of  
45 this article. The provisions of section fifteen, article six  
46 of this chapter with respect to benefit rights based on  
47 service for state and nonprofit institutions of higher edu-  
48 cation shall be applicable also to service covered by an  
49 election under this subsection. The amounts required to  
50 be paid in lieu of contributions by any political sub-  
51 division under this subsection shall be billed and pay-  
52 ment made as provided in section thirteen of this article  
53 with respect to similar payments by nonprofit organiza-  
54 tions. An election under this subsection may be termi-  
55 nated, by filing with the commissioner written notice not  
56 later than thirty days preceding the last day of the  
57 calendar year in which the termination is to be effective.  
58 Such termination becomes effective as of the first day  
59 of the next ensuing calendar year with respect to services  
60 performed after that date.

**§21A-5-3a. Financing benefits paid to employees of nonprofit organizations.**

1 Benefits paid to employees of nonprofit organizations  
2 shall be financed in accordance with the provisions of this  
3 section. For the purpose of this section, a nonprofit  
4 organization is an organization (or group of organiza-  
5 tions) described in section 501(c)(3) of the "U. S. In-  
6 ternal Revenue Code" which is exempt from income tax  
7 under section 501(a) of such code.

8 (1) *Liability for contribution payments and election*  
9 *of reimbursement*—Any nonprofit organization which,  
10 pursuant to the provisions of this chapter, is, or becomes,  
11 subject to this chapter on or after January one, one thou-  
12 sand nine hundred seventy-two, shall be liable for pay-  
13 ments and shall pay contributions in accordance with the  
14 provisions of this article and of this chapter, unless it  
15 elects, in accordance with this subdivision (1), to pay  
16 to the commissioner for the unemployment fund an  
17 amount equal to the amount of regular benefits and of  
18 one half of the extended benefits paid, that is attributable  
19 to service in the employ of such nonprofit organization,

20 to individuals for weeks of unemployment which begin  
21 during the effective period of such election.

22 (a) Any nonprofit organization which is, or becomes,  
23 subject to this chapter on January one, one thousand nine  
24 hundred seventy-two, may elect to become liable for pay-  
25 ments in lieu of contributions for a period of not less  
26 than one taxable year beginning with January one, one  
27 thousand nine hundred seventy-two, provided it files  
28 with the commissioner a written notice of its election  
29 within the thirty-day period immediately following such  
30 date or within a like period immediately following the  
31 date of enactment of this section, whichever occurs later.

32 (b) Any nonprofit organization which becomes subject  
33 to this chapter after January one, one thousand nine  
34 hundred seventy-two, may elect to become liable for pay-  
35 ments in lieu of contributions for a period of not less  
36 than twelve months beginning with the date on which  
37 such subjectivity begins by filing a written notice of its  
38 election with the commissioner not later than thirty days  
39 immediately following the date of the determination of  
40 such subjectivity.

41 (c) Any nonprofit organization which makes an elec-  
42 tion in accordance with subparagraph (a) or subpara-  
43 graph (b) of this subdivision (1) will continue to be  
44 liable for payments in lieu of contributions until it files  
45 with the commissioner a written notice terminating its  
46 election not later than thirty days prior to the beginning  
47 of the taxable year for which such termination shall first  
48 be effective.

49 (d) Any nonprofit organization which has been pay-  
50 ing contributions under this chapter for a period subse-  
51 quent to January one, one thousand nine hundred  
52 seventy-two, may change to a reimbursable basis by filing  
53 with the commissioner not later than thirty days prior  
54 to the beginning of any taxable year a written notice of  
55 election to become liable for payments in lieu of contri-  
56 butions. Such election shall not be terminable by the  
57 organization for that and the next year.

58 (e) The commissioner may for good cause extend the  
59 period within which a notice of election, or a notice of

60 termination, must be filed and may permit an election to  
61 be retroactive but not any earlier than with respect to  
62 benefits paid after December thirty-one, one thousand  
63 nine hundred sixty-nine.

64 (f) The commissioner, in accordance with such regu-  
65 lations as he may prescribe, shall notify each nonprofit  
66 organization of any determination which he may make  
67 of its status as an employer and of the effective date of  
68 any election which it makes and of any termination of  
69 such election.

70 (2) *Reimbursement payments*—Payments in lieu of  
71 contributions shall be made in accordance with the pro-  
72 visions of this subdivision (2) including either sub-  
73 paragraph (a) or subparagraph (b) of this subdivi-  
74 sion (2).

75 (a) At the end of each calendar quarter, or at the end  
76 of any other period as determined by the commissioner,  
77 the commissioner shall bill each nonprofit organization  
78 (or group of such organizations) which has elected to  
79 make payments in lieu of contributions for an amount  
80 equal to the full amount of regular benefits plus one half  
81 of the amount of extended benefits paid during such  
82 quarter or other prescribed period which is attributable  
83 to service in the employ of such organization.

84 (b) Each nonprofit organization which has elected  
85 payments in lieu of contributions may request permission  
86 to make such payments as provided herein. Such method  
87 of payment shall become effective upon approval by the  
88 commissioner.

89 At the end of each calendar quarter, or at the end of  
90 such other period as determined by the commissioner,  
91 the commissioner shall bill each nonprofit organization  
92 for an amount representing one of the following: (i) For  
93 one thousand nine hundred seventy-two, one percent of  
94 its total payroll for one thousand nine hundred seventy-  
95 one; or (ii) for years after one thousand nine hundred  
96 seventy-two, such percentage of its total payroll for the  
97 immediately preceding calendar year as the commissioner  
98 shall determine. Such determination shall be based each  
99 year on the average benefit costs attributable to service

100 in the employ of nonprofit organizations during the pre-  
101 ceding calendar year; or (iii) for any organization which  
102 did not pay wages throughout the four calendar quarters  
103 of the preceding calendar year, such percentage of its  
104 payroll during such year as the commissioner shall de-  
105 termine.

106 At the end of each taxable year, the commissioner may  
107 modify the quarterly percentage of payroll thereafter  
108 payable by the nonprofit organization in order to minimize  
109 excess or insufficient payments.

110 At the end of each taxable year, the commissioner shall  
111 determine whether the total of payments for such year  
112 made by a nonprofit organization is less than, or in excess  
113 of, the total amount of regular benefits plus one half of  
114 the amount of extended benefits paid to individuals dur-  
115 ing such taxable year based on wages attributable to  
116 service in the employ of such organization. Each non-  
117 profit organization whose total payments for such year  
118 are less than the amount so determined shall be liable  
119 for payment of the unpaid balance to the fund in ac-  
120 cordance with subparagraph (c) of this subdivision (2).  
121 If the total payments exceed the amount so determined  
122 for the taxable year, all or a part of the excess may, at  
123 the discretion of the commissioner, be refunded from the  
124 fund or retained in the fund as part of the payments  
125 which may be required for the next taxable year.

126 (c) Payment of any bill rendered under subparagraph  
127 (a) or subparagraph (b) of this subdivision (2) shall be  
128 made not later than thirty days after such bill was mailed  
129 to the last known address of the nonprofit organization  
130 or was otherwise delivered to it, unless there has been  
131 an application for review and redetermination in ac-  
132 cordance with subparagraph (e) of this subdivision (2).

133 (d) Payments made by any nonprofit organization  
134 under the provisions of this subdivision (2) shall not be  
135 deducted or deductible, in whole or in part, from the  
136 remuneration of individuals in the employ of the orga-  
137 nization.

138 (e) The amount due specified in any bill from the  
139 commissioner shall be conclusive on the organization

140 unless, not later than fifteen days after the bill was mailed  
141 to its last known address or otherwise delivered to it, the  
142 organization files an application for redetermination by  
143 the commissioner, setting forth the grounds for such ap-  
144 plication. The commissioner shall promptly review and  
145 reconsider the amount due specified in the bill and shall  
146 thereafter issue a redetermination in any case in which  
147 such application for redetermination has been filed. Any  
148 such redetermination shall be conclusive on the organiza-  
149 tion unless, not later than fifteen days after the redeter-  
150 mination was mailed to its last known address or other-  
151 wise delivered to it, the organization files an appeal to  
152 the board of review, setting forth the grounds for the  
153 appeal.

154 (f) Past-due payments of amounts in lieu of contribu-  
155 tions shall be subject to the same interest and penalties  
156 that, pursuant to section seventeen of this article and the  
157 provisions of article ten of this chapter, apply to past-due  
158 contributions. Also, unpaid amounts in lieu of contribu-  
159 tions are subject to the same assessment and civil action  
160 provisions of this chapter as apply to unpaid contribu-  
161 tions. Further, the provisions of this chapter which pro-  
162 vide for the adjustment or refund of contributions shall  
163 apply to the adjustment or refund of payments in lieu of  
164 contributions.

165 (3) *Allocation of benefit costs*—Each employer which  
166 is liable for payments in lieu of contributions shall pay  
167 to the commissioner for the fund the amount of regular  
168 benefits plus the amount of one half of extended benefits  
169 paid which are attributable to service in the employ of  
170 such employer. If benefits paid to an individual are based  
171 on wages paid by more than one employer and one or  
172 more of such employers are liable for payments in lieu  
173 of contributions, the amount payable to the fund by each  
174 employer which is liable for such payments shall be  
175 determined in accordance with the provisions of sub-  
176 paragraph (a) or subparagraph (b) of this subdivision (3).

177 (a) Proportionate allocation (when fewer than all  
178 base period employers are liable for reimbursement)—  
179 If benefits paid to an individual are based on wages paid

180 by one or more employers which are liable for payments  
181 in lieu of contributions and on wages paid by one or more  
182 employers which are liable for contributions, the amount  
183 of benefits payable by each employer which is liable for  
184 payments in lieu of contributions shall be an amount  
185 which bears the same ratio to the total benefits paid to  
186 the individual as the total base period wages paid to the  
187 individual by such employer bear to the total base  
188 period wages paid to the individual by all of his base  
189 period employers.

190 (b) Proportionate allocation (when all base period  
191 employers are liable for reimbursement)—If benefits paid  
192 to an individual are based on wages paid by two or more  
193 employers which are liable for payments in lieu of con-  
194 tributions, the amount of benefits payable by each such  
195 employer shall be an amount which bears the same ratio  
196 to the total benefits paid to the individual as the total  
197 base period wages paid to the individual by such employer  
198 bear to the total base period wages paid to the individual  
199 by all of his base period employers.

200 (4) *Group accounts*—Two or more employers which  
201 have become liable for payments in lieu of contributions,  
202 in accordance with the provisions of this section, may  
203 file a joint application with the commissioner for the  
204 establishment of a group account for the purpose of shar-  
205 ing the cost of benefits paid which are attributable to  
206 service in the employ of such employers. Each such appli-  
207 cation shall identify and authorize a group representative  
208 to act as the group's agent for the purposes of this sub-  
209 division (4). Upon his approval of the application, the  
210 commissioner shall establish a group account for such  
211 employers effective as of the beginning of the calendar  
212 quarter in which he receives the application and shall  
213 notify the group's representative of the effective date of  
214 the account. Such account shall remain in effect for not  
215 less than three years and thereafter until terminated at  
216 the discretion of the commissioner or upon application  
217 by the group. Upon establishment of the account, each  
218 member of the group shall be liable for payments in lieu  
219 of contributions with respect to each calendar quarter  
220 in the amount which bears the same ratio to the total



221 benefits paid in such quarter which are attributable to  
222 service performed in the employ of all members of the  
223 group as the total wages paid for service in employment  
224 by such member in such quarter bear to the total wages  
225 paid during such quarter for service performed in the  
226 employ of all members of the group. The commissioner  
227 shall prescribe such regulation as he deems necessary  
228 with respect to applications for establishment, mainte-  
229 nance and termination of group accounts which are  
230 authorized by this subdivision (4), for addition of new  
231 members to, and withdrawal of active members from,  
232 such accounts, and for the determination of the amounts  
233 which are payable under this subdivision (4) by members  
234 of the group and the time and manner of such payments.

**§21A-5-5. Rate of contribution.**

1 On and after January first, one thousand nine hun-  
2 dred forty-one, an employer shall make payments to the  
3 unemployment compensation fund equal to two and  
4 seven-tenths percent of wages paid by him with respect  
5 to employment during each calendar year beginning with  
6 the calendar year one thousand nine hundred forty-one,  
7 subject, however, to other provisions of this article; ex-  
8 cept that on and after January first, one thousand nine  
9 hundred seventy-two, each employer subject to this chap-  
10 ter shall pay contributions at the rate of one and five-  
11 tenths percent of wages paid by him with respect to em-  
12 ployment during each calendar year until he has been  
13 an employer for not less than thirty-six consecutive  
14 months ending on the computation date; thereafter, his  
15 contribution rate shall be determined in accordance with  
16 the provisions of section ten of this article.

**§21A-5-7. Joint and separate accounts.**

1 (1) The commissioner shall maintain a separate ac-  
2 count for each employer, and shall credit his account  
3 with all contributions paid by him prior to July first, one  
4 thousand nine hundred sixty-one. On and after July first,  
5 one thousand nine hundred sixty-one, the commissioner  
6 shall maintain a separate account for each employer, and  
7 shall credit said employer's account with all contribu-  
8 tions of such employer in excess of seven tenths of one

9 percent of taxable wages; and on and after July first, one  
10 thousand nine hundred seventy-one, the commissioner  
11 shall maintain a separate account for each employer, and  
12 shall credit said employer's account with all contributions  
13 of such employer in excess of four tenths of one percent  
14 of taxable wages: *Provided*, That any adjustment made  
15 in an employer's account after the computation date shall  
16 not be used in the computation of the balance of an em-  
17 ployer until the next following computation date: *Pro-*  
18 *vided, however*, That nothing in this chapter shall be con-  
19 strued to grant an employer or individual in his service  
20 prior claims or rights to the amounts paid by him into  
21 the fund, either on his behalf or on behalf of such in-  
22 dividuals. The account of any employer which has been  
23 inactive for a period of four consecutive calendar years  
24 shall be terminated for all purposes.

25 (2) Benefits paid to an eligible individual for regular  
26 and extended total unemployment beginning after the  
27 effective date of this act shall be charged to the account  
28 of the last employer with whom he has been employed  
29 as much as thirty working days, whether or not such  
30 days are consecutive: *Provided further*, That no em-  
31 ployer's account shall be charged with benefits paid to  
32 any individual who has been separated from a non-  
33 covered employing unit in which he was employed as  
34 much as thirty days, whether or not such days are con-  
35 secutive: *And provided further*, That benefits paid to  
36 an eligible individual for regular and extended partial  
37 unemployment beginning after the effective date of this  
38 act shall be charged to the account of the claimant's cur-  
39 rent employer: *Provided*, That no employer's account  
40 shall be charged with more than fifty percent of the  
41 benefits paid to an eligible individual as extended bene-  
42 fits under the provisions of article six-a of this chapter.

43 (3) The commissioner shall, for each calendar year  
44 hereafter, classify employers in accordance with their  
45 actual experience in the payment of contributions on  
46 their own behalf and with respect to benefits charged  
47 against their accounts, with a view of fixing such contribu-  
48 tion rates as will reflect such experiences. For the pur-  
49 pose of fixing such contribution rates for each calendar

50 year, the books of the department shall be closed on July  
51 thirty-one of the preceding calendar year, and any con-  
52 tributions thereafter paid, as well as benefits thereafter  
53 paid with respect to compensable weeks ending on or  
54 before June thirty of the preceding calendar year, shall  
55 not be taken into account until the next annual date for  
56 fixing contribution rates: *Provided, however,* That if an  
57 employer has failed to furnish to the commissioner on  
58 or before July thirty-one of such preceding calendar  
59 year the wage information for all past periods necessary  
60 for the computation of the contribution rate, such em-  
61 ployer's rate shall be, if it is immediately prior to such  
62 July thirty-one, less than three and three-tenths percent,  
63 increased to three and three-tenths percent: *Provided*  
64 *further,* That any payment made or any information  
65 necessary for the computation of a reduced rate fur-  
66 nished on or before the termination of an extension  
67 of time for such payment or reporting of such informa-  
68 tion granted pursuant to a regulation of the commis-  
69 sioner authorizing such extension, shall be taken into  
70 account for the purposes of fixing contribution rates:  
71 *And provided further,* That when the time for filing any  
72 report or making any payment required hereunder falls  
73 on Saturday, Sunday, or a legal holiday, the due date  
74 shall be deemed to be the next succeeding business day:  
75 *Provided,* That whenever through mistake or inadvert-  
76 ence erroneous credits or charges are found to have been  
77 made to or against the reserved account of any employer,  
78 the rate shall be adjusted as of January one of the calen-  
79 dar year in which such mistake or inadvertence is dis-  
80 covered, but payments made under any rate assigned  
81 prior to January one of such year shall not be deemed  
82 to be erroneously collected.

83 (4) The commissioner may prescribe regulations for  
84 the establishment, maintenance, and dissolution of joint  
85 accounts by two or more employers, and shall, in ac-  
86 cordance with such regulations and upon application by  
87 two or more employers to establish such an account,  
88 or to merge their several individual accounts in a joint  
89 account, maintain such joint account as if it constituted  
90 a single employer's account.

**§21A-5-10. Same—Decreased rates; adjustment of accounts and rates; debit balance account rates.**

1 After the requirements of section nine of this article  
2 have been complied with, on and after January one, one  
3 thousand nine hundred fifty-four, an employer's pay-  
4 ment shall remain two and seven-tenths percent; and  
5 on and after January one, one thousand nine hundred  
6 seventy-two, an employer's payment shall remain one  
7 and five-tenths percent; until:

8 (1) There have elapsed thirty-six consecutive months  
9 immediately preceding the computation date throughout  
10 which an employer's account was chargeable with  
11 benefits.

12 (2) His payments credited to his account for all past  
13 years exceed the benefits charged to his account by an  
14 amount equal to at least the percent of his average an-  
15 nual payroll as shown in Column B of Table II. His rate  
16 shall be the amount appearing in Column C of Table II  
17 on line with the percentage in Column B.

18 When the total assets of the fund as of January one  
19 of a calendar year equal or exceed one hundred million  
20 dollars, an employer's rate shall be the amount appear-  
21 ing in Column D of Table II on line with the percentage  
22 in Column B.

23 When the total assets of the fund as of January one  
24 of a calendar year equal or exceed one hundred ten  
25 million dollars, an employer's rate shall be the amount  
26 appearing in Column E of Table II on line with the  
27 percentage in Column B.

28 If the commissioner, in accordance with the provisions  
29 of section ten-a of this article, determines the fund to  
30 be below the sum of seventy-five million dollars, then,  
31 by the express provisions of this paragraph, the em-  
32 ployer's rate shall immediately be the amount appearing  
33 in Column C of Table II on line with the percentage in  
34 Column B; and the provisions of section ten-a of this  
35 article shall be fully applied by the commissioner. It is  
36 the express intent of this paragraph that the increases  
37 of the aforesaid section ten-a be applied to and added

38 to the employers' rates set forth in the aforesaid Column  
39 C of Table II.

40 The commission shall determine an employer's com-  
41 pliance with these requirements.

42 **TABLE II**

43	Col. A	Col. B	Col. C	Col. D	Col. E
44		Percent of			
45		Average			
46		Annual Payroll			
47	Rate	by Which Credits	Employer's		
48	Class	Exceed Charges	Rate		
49	(1)	0.0 to 6.0	2.7	2.2	1.7
50	(2)	6.0	2.5	2.0	1.5
51	(3)	7.0	2.3	1.8	1.3
52	(4)	8.0	2.1	1.6	1.1
53	(5)	9.0	1.9	1.4	0.9
54	(6)	10.0	1.7	1.2	0.7
55	(7)	10.5	1.5	1.0	0.5
56	(8)	11.0	1.3	0.8	0.3
57	(9)	11.5	1.1	0.6	0.1
58	(10)	12.0	0.9	0.4	0.0
59	(11)	12.5	0.7	0.2	0.0
60	(12)	13.0	0.5	0.0	0.0
61	(13)	14.0	0.3	0.0	0.0
62	(14)	16.0	0.1	0.0	0.0
63	(15)	18.0 and over	0.0	0.0	0.0

64 All employer accounts in which charges for all past  
65 years exceed credits for such past years shall be adjusted  
66 effective June thirty, one thousand nine hundred sixty-  
67 seven, so that as of said date, for the purpose of deter-  
68 mining such employer's rate of contribution, the credits  
69 for all past years shall be deemed to equal the charges  
70 to such accounts.

71 Effective on and after the computation date of June  
72 thirty, one thousand nine hundred sixty-eight, and not-  
73 withstanding the provisions of subsection (1), section  
74 seven of this article relating to the noncrediting of em-  
75 ployers' accounts with the first seven tenths or with the  
76 first four tenths of one percent of contributions paid; for

77 the purpose of determining whether or not an employer  
78 shall pay contributions at a rate in excess of two and  
79 seven-tenths percent as hereinafter set forth, but not for  
80 the purpose of determining such rate, the department  
81 shall, only for the purpose set forth herein and not as  
82 a credit to such account, add to the accounts of all  
83 employers having a debit balance, contribution payments  
84 made by such employers on and after July one, one  
85 thousand nine hundred sixty-seven, which payments are  
86 not credited to employers' accounts by reason of the  
87 provisions contained in subsection (1), section seven of  
88 this article. If, after such contribution payments have  
89 been added to such employers' accounts, such accounts  
90 continue to show a debit balance, such employers shall  
91 make payments at a rate in excess of two and seven-  
92 tenths percent. If, after such contribution payments have  
93 been added to such employers' accounts, such accounts  
94 show a credit balance, such employers shall make pay-  
95 ments at the rate of two and seven-tenths percent. If,  
96 under the conditions set forth in this paragraph, it is  
97 determined that an employer shall pay contributions at  
98 a rate in excess of two and seven-tenths percent, the rate  
99 in excess of two and seven-tenths percent at which an  
100 employer shall pay contributions shall then be deter-  
101 mined solely under the conditions set forth in the fol-  
102 lowing paragraphs of this section. The provisions con-  
103 tained in this paragraph shall in no way be considered  
104 as providing for the crediting to an employer's account,  
105 of amounts of employer contribution payments which are  
106 expressly not credited to employers' accounts in sub-  
107 section (1), section seven of this article.

108 Effective on and after the computation date of June  
109 thirty, one thousand nine hundred sixty-seven, all em-  
110 ployers with a debit balance account in which the bene-  
111 fits charged to their account for all past years exceed the  
112 payments credited to their account for such past years  
113 by an amount up to and including ten percent of their  
114 average annual payroll, shall make payments to the un-  
115 employment compensation fund at the rate of three  
116 percent of wages paid by them with respect to employ-  
117 ment.

118 Effective on and after the computation date of June  
119 thirty, one thousand nine hundred sixty-seven, all em-  
120 ployers with a debit balance account in which the bene-  
121 fits charged to their account for all past years exceed  
122 the payments credited to their account for such past  
123 years by an amount in excess of ten percent of their  
124 average annual payroll, shall make payments to the un-  
125 employment compensation fund at the rate of three and  
126 three-tenths percent of wages paid by them with respect  
127 to employment.

128 "Debit balance account" for the purposes of this sec-  
129 tion means an account in which the benefits charged for  
130 all past years exceed the payments credited for such past  
131 years.

132 "Credit balance account" for the purposes of this sec-  
133 tion means an account in which the payments credited  
134 for all past years exceed the benefits charged for such  
135 past years.

136 Once a debit balance account rate is established for  
137 an employer's account for a year, it shall apply for the  
138 entire year notwithstanding the provisions of section  
139 ten-a of this article.

#### **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals and institutions of higher education.

#### **§21A-6-3. Disqualification for benefits.**

1 Upon the determination of the facts by the commis-  
2 sioner, an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent  
4 work voluntarily without good cause involving fault on  
5 the part of the employer and the six weeks immediately  
6 following such week. Such disqualification shall carry  
7 a reduction in the maximum benefit amount equal to  
8 six times the individual's weekly benefit rate. However,  
9 if the claimant returns to work in covered employment  
10 during his benefit year, the maximum benefit amount  
11 shall be increased by the amount of decrease imposed  
12 under the disqualification. For the purpose of this sub-

13 division, the term "work" means employment with the  
14 last employing unit with whom such individual was  
15 employed as much as thirty days, whether or not such  
16 days are consecutive.

17 For purposes of this subdivision (1), an individual  
18 shall not be deemed to have left his most recent work  
19 voluntarily without good cause involving fault on the  
20 part of the employer, if such individual leaves his work  
21 with an employer with whom he has been employed  
22 at least thirty working days or more for the purpose  
23 of returning to, and if he in fact, within a fourteen-day  
24 calendar period, does return to, employment with the  
25 last preceding employer with whom he was previously  
26 employed within the past year prior to his return to  
27 work day, and which last preceding employer, after  
28 having previously employed such individual for thirty  
29 working days or more, laid off such individual because  
30 of lack of work, which layoff occasioned the payment of  
31 benefits under this chapter or could have occasioned the  
32 payment of benefits under this chapter had such in-  
33 dividual applied for such benefits. It is the intent of this  
34 paragraph to cause no disqualification for benefits for  
35 such an individual who complies with the foregoing set  
36 of requirements and conditions. Benefits paid to such  
37 individual under the provisions of this chapter shall,  
38 notwithstanding the provisions of subsection (2), sec-  
39 tion seven, article five of this chapter, and of subdivision  
40 (12) of this section three, be charged to the account of  
41 such last preceding employer with whom such individual  
42 was previously employed for thirty working days.

43 (2) For the week in which he was discharged from  
44 his most recent work for misconduct and the six weeks  
45 immediately following such week; or for the week in  
46 which he was discharged from his last thirty day em-  
47 ploying unit for misconduct and the six weeks immedi-  
48 ately following such week. Such disqualification shall  
49 carry a reduction in the maximum benefit amount equal  
50 to six times the individual's weekly benefit. However,  
51 if the claimant returns to work in covered employment  
52 for thirty days during his benefit year, whether or not



53 such days are consecutive, the maximum benefit amount  
54 shall be increased by the amount of the decrease imposed  
55 under the disqualification; except that:

56 If he were discharged from his most recent work for  
57 one of the following reasons; or if he were discharged from  
58 his last thirty day employing unit for one of the follow-  
59 ing reasons: Misconduct consisting of willful destruc-  
60 tion of his employer's property, assault upon the person  
61 of his employer or any employee of his employer, if such  
62 assault is committed at such individual's place of em-  
63 ployment or in the course of employment; reporting to  
64 work in an intoxicated condition, or being intoxicated  
65 while at work; arson, theft, larceny, fraud or embezzle-  
66 ment in connection with his work; or any other gross  
67 misconduct; he shall be and remain disqualified for bene-  
68 fits until he has thereafter worked for at least thirty days  
69 in covered employment.

70 (3) For the week in which he failed without good cause  
71 to apply for available suitable work, accept suitable work  
72 when offered, or return to his customary self-employ-  
73 ment when directed to do so by the commissioner, and  
74 for the four weeks which immediately follow and for  
75 such an additional period as any offer of suitable work  
76 shall continue open for his acceptance.

77 (4) For a week in which his total or partial unem-  
78 ployment is due to a stoppage of work which exists be-  
79 cause of a labor dispute at the factory, establishment,  
80 or other premises at which he was last employed, unless  
81 the commissioner is satisfied that he was not (one) par-  
82 ticipating, financing, or directly interested in such dis-  
83 pute, and (two) did not belong to a grade or class of  
84 workers who were participating, financing, or directly  
85 interested in the labor dispute which resulted in the  
86 stoppage of work. No disqualification under this sub-  
87 division shall be imposed if the employees are required  
88 to accept wages, hours or conditions of employment sub-  
89 stantially less favorable than those prevailing for similar  
90 work in the locality, or if employees are denied the right  
91 of collective bargaining under generally prevailing con-  
92 ditions, or if an employer shuts down his plant or opera-

93 tion or dismisses his employees in order to force wage re-  
94 duction, changes in hours or working conditions.

95 For the purpose of this subdivision, if any stoppage  
96 of work continues longer than four weeks after the  
97 termination of the labor dispute which caused stoppage  
98 of work, there shall be a rebuttable presumption that  
99 that part of the stoppage of work which exists after said  
100 period of four weeks after the determination of said labor  
101 dispute, did not exist because of said labor dispute; and  
102 in such event the burden shall be upon the employer or  
103 other interested party to show otherwise.

104 (5) For a week with respect to which he is receiving  
105 or has received:

106 (a) Wages in lieu of notice or payments under any  
107 form of a separation wage plan;

108 (b) Compensation for temporary total disability under  
109 the workmen's compensation law of any state or under  
110 a similar law of the United States;

111 (c) Unemployment compensation benefits under the  
112 laws of the United States or any other state.

113 (6) For the week in which an individual has volun-  
114 tarily quit employment to marry or to perform any mari-  
115 tal, parental or family duty, or to attend to his or her per-  
116 sonal business or affairs, and until the individual returns  
117 to covered employment and has been employed in cov-  
118 ered employment at last thirty working days.

119 (7) For the week in which an individual:

120 (a) Voluntarily quit her employment because of preg-  
121 nancy, whether or not upon a physician's advice, and  
122 until she returns to covered employment and has been  
123 employed therein at least thirty working days; except  
124 that such disqualification shall last no longer than six  
125 weeks subsequent to the birth of her child, provided such  
126 individual furnishes to the department a certificate from  
127 a physician that she is physically able to work;

128 (b) Was discharged or laid off from her employment  
129 because of pregnancy and until she returns to covered  
130 employment and has been employed therein at least  
131 thirty working days; except that such disqualification

132 shall last no longer than six weeks prior to and six weeks  
133 subsequent to the date of birth of the child, provided such  
134 individual furnishes to the department certificates from  
135 a physician that she is physically able to work.

136 (8) For each week in which an individual is unem-  
137 ployed because, having voluntarily left employment to  
138 attend a school, college, university, or other educational  
139 institution, he is attending such school, college, univer-  
140 sity, or other educational institution, or is awaiting en-  
141 trance thereto or is awaiting the starting of a new term  
142 or session thereof, and until the individual returns to  
143 covered employment.

144 (9) For each week in which he is unemployed because  
145 of his request, or that of his duly authorized agent, for a  
146 vacation period at a specified time that would leave the  
147 employer no other alternative but to suspend operations.

148 (10) For each week in which he is receiving or has  
149 received remuneration in the form of an annuity, pen-  
150 sion, or other retirement pay, from an employer or from  
151 any trust or fund contributed to by an employer. But if  
152 such remuneration for any week is less than the benefits  
153 which would otherwise be due him for such week under  
154 this chapter, he shall be entitled to receive for such week,  
155 if otherwise eligible, benefits reduced by the amount of  
156 such remuneration: *Provided*, That if such amount of  
157 benefits is not a multiple of one dollar, it shall be com-  
158 puted to the next higher multiple of one dollar: *Pro-*  
159 *vided, however*, That there shall be no disqualification  
160 if in the individual's base period there are no wages  
161 which were paid by the employer paying such remun-  
162 eration, or by a fund into which the employer has paid  
163 during said base period. Claimant may be required to cer-  
164 tify as to whether or not he is receiving or has received  
165 remuneration in the form of an annuity, pension, or other  
166 retirement pay from an employer or from a trust fund  
167 contributed to by an employer.

168 (11) For each week with respect to which he know-  
169 ingly made a false statement or representation knowing  
170 it to be false or knowingly failed to disclose a material  
171 fact in order to obtain or increase a benefit under this

172 article. For each week of disqualification he shall be dis-  
173 qualified an additional five weeks and his maximum  
174 benefit amount shall be reduced by an amount equal to  
175 five times his weekly benefit rate. Such five weeks' dis-  
176 qualification periods are to run consecutively beginning  
177 with the first week in which it is determined a fraudu-  
178 lent claim was filed: *Provided further*, That an individual  
179 shall not be disqualified under this subdivision for a  
180 period of more than fifty-two consecutive weeks: *And*  
181 *provided further*, That disqualification under this sub-  
182 division shall not preclude prosecution under section  
183 seven, article ten of this chapter.

184 (12) For the purposes of this section an employer's ac-  
185 count shall not be charged under any of the following con-  
186 ditions: When benefits are paid for unemployment im-  
187 mediately after the expiration of a period of disqualifica-  
188 tion for (a) leaving work voluntarily without good cause  
189 involving fault on the part of the employer, (b) discharge  
190 for any of the causes set forth in subdivision (2) of this  
191 section, (c) failing without good cause to apply for avail-  
192 able suitable work, accept suitable work, when offered, or  
193 to return to his customary self-employment when di-  
194 rected to do so by the commissioner.

**§21A-6-10. Benefit rate—Total unemployment; annual compu-  
tation and publication of rates.**

1 Each eligible individual who is totally unemployed in  
2 any week shall be paid benefits with respect to that week  
3 at the weekly rate appearing in column (C) in Table A  
4 in this paragraph, on the line on which in column (A)  
5 there is indicated the employee's wage class, except as  
6 otherwise provided under the term "total and partial  
7 unemployment" in section three, article one of this chap-  
8 ter. The employee's wage class shall be determined by  
9 his base period wages as shown in column (B) in Table A.  
10 The right of an employee to receive benefits shall not be  
11 prejudiced nor the amount thereof be diminished by  
12 reason of failure by an employer to pay either the wages  
13 earned by the employee or the contribution due on such  
14 wages. An individual who is totally unemployed but

15 earns in excess of fifteen dollars as a result of odd-job or  
 16 subsidiary work in any benefit week shall be paid benefits  
 17 for such week in accordance with the provisions of this  
 18 chapter pertaining to benefits for partial unemployment.

19

TABLE A

20				Maximum Benefit
21	Wage	Wages in	Weekly	in Benefit Year for
22	Class	Base Period	Benefit Rate	Total and/or Partial
23	(Column A)	(Column B)	(Column C)	Unemployment
24		Under \$700.00	Ineligible	(Column D)
25	1	700.00— 799.99	\$12.00	\$312.00
26	2	800.00— 899.99	13.00	338.00
27	3	900.00— 999.99	14.00	364.00
28	4	1000.00—1149.99	15.00	390.00
29	5	1150.00—1299.99	16.00	416.00
30	6	1300.00—1449.99	17.00	442.00
31	7	1450.00—1599.99	18.00	468.00
32	8	1600.00—1749.99	19.00	494.00
33	9	1750.00—1899.99	20.00	520.00
34	10	1900.00—2049.99	21.00	546.00
35	11	2050.00—2199.99	22.00	572.00
36	12	2200.00—2349.99	23.00	598.00
37	13	2350.00—2499.99	24.00	624.00
38	14	2500.00—2599.99	25.00	650.00
39	15	2600.00—2699.99	26.00	676.00
40	16	2700.00—2799.99	27.00	702.00
41	17	2800.00—2899.99	28.00	728.00
42	18	2900.00—2999.99	29.00	754.00
43	19	3000.00—3099.99	30.00	780.00
44	20	3100.00—3199.99	31.00	806.00
45	21	3200.00—3349.99	32.00	832.00
46	22	3350.00—3499.99	33.00	858.00
47	23	3500.00—3649.99	34.00	884.00
48	24	3650.00—3799.99	35.00	910.00

49 Notwithstanding any of the foregoing provisions of  
 50 this section, on and after July one, one thousand nine  
 51 hundred sixty-seven, the maximum weekly benefit rate  
 52 shall be forty percent of the average weekly wage in West  
 53 Virginia.

54 Notwithstanding any of the foregoing provisions of this  
55 section, on and after July one, one thousand nine hundred  
56 seventy, the maximum weekly benefit rate shall be forty-  
57 five percent of the average weekly wage in West Virginia.

58 Notwithstanding any of the foregoing provisions of this  
59 section, on and after July one, one thousand nine hun-  
60 dred seventy-one, the maximum weekly benefit rate  
61 shall be fifty percent of the average weekly wage in West  
62 Virginia.

63 The commissioner, after he has determined the maxi-  
64 mum weekly benefit rate upon the basis of the above  
65 formula, shall establish as many additional wage classes  
66 as are required, increasing the amount of base period  
67 wages required for each class by one hundred fifty dollars,  
68 the weekly benefit rate for each class by one dollar, and  
69 the maximum benefit by twenty-six dollars. The maxi-  
70 mum weekly benefit rate, when computed by the com-  
71 missioner, in accordance with the foregoing provisions,  
72 shall be rounded to the next higher dollar amount, if  
73 the computation exceeds forty-nine percent of a dollar  
74 amount. Such rounding off to the next higher dollar  
75 amount shall result in one additional wage class, with  
76 commensurate base period wage requirement of one  
77 hundred fifty dollars over the preceding wage class, and  
78 with a maximum benefit increase over the preceding  
79 wage class of twenty-six dollars. Such an additional wage  
80 class shall be published by the commissioner with the  
81 table required to be published by the foregoing pro-  
82 visions of this section.

83 After he has established such additional wage classes,  
84 the commissioner shall prepare and publish a table setting  
85 forth such information.

86 Average weekly wage shall be computed by dividing  
87 the number of employees in West Virginia earning wages  
88 in covered employment into the total wages paid to em-  
89 ployees in West Virginia in covered employment, and by  
90 further dividing said result by fifty-two, and shall be de-  
91 termined from employer wage and contribution reports  
92 for the previous calendar year which are furnished to the  
93 department on or before June one following such calendar

94 year. The average weekly wage, as determined by the  
95 commissioner, shall be rounded to the next higher dollar.

96 The computation and determination of rates as afore-  
97 said shall be completed annually before July one, and  
98 any such new wage class, with its corresponding wages  
99 in base period, weekly benefit rate, and maximum benefit  
100 in a benefit year established by the commissioner in the  
101 foregoing manner effective on a July one, shall apply  
102 only to a new claim established by a claimant on and  
103 after said July one, and shall not apply to continued  
104 claims of a claimant based on his new claim established  
105 before said July one.

**§21A-6-15. Benefit payments for service with nonprofit organi-  
zations, state hospitals and institutions of higher  
education.**

1 Benefits based on service in employment as defined in  
2 subdivisions nine and ten of the definition of "employ-  
3 ment" in section three, article one of this chapter, shall  
4 be payable in the same amount, on the same terms and  
5 subject to the same conditions as compensation payable  
6 on the basis of other service subject to this chapter;  
7 except that benefits based on service in an instructional,  
8 research, or principal administrative capacity in an insti-  
9 tution of higher education shall not be paid to an indi-  
10 vidual for any week of unemployment which begins dur-  
11 ing the period between two successive academic years, or  
12 during a similar period between two regular terms,  
13 whether or not successive, or during a period of paid  
14 sabbatical leave provided for in the individual's contract,  
15 if the individual has a contract or contracts to perform  
16 services in any such capacity for any institution or insti-  
17 tutions of higher education for both such academic years  
18 or both such terms.

**ARTICLE 6A. EXTENDED BENEFITS PROGRAM.**

§21A-6A-1. Definitions.

§21A-6A-2. Effect of state law provisions relating to regular benefits  
on claims for, and the payment of, extended benefits.

§21A-6A-3. Eligibility requirements for extended benefits.

§21A-6A-4. Weekly extended benefit amount.

§21A-6A-5. Total extended benefit amount.

§21A-6A-6. Beginning and termination of extended benefit period.

§21A-6A-7. Effective date of article.

**§21A-6A-1. Definitions.**

1 As used in this article, unless the context clearly re-  
2 quires otherwise:

3 (1) "Extended benefit period" means a period which

4 (a) begins with the third week after whichever of  
5 the following weeks occurs first:

6 (i) A week for which there is a national "on" indicator;  
7 or

8 (ii) a week for which there is a state "on" indicator;  
9 and

10 (b) ends with either of the following weeks, which-  
11 ever occurs later:

12 (i) the third week after the first week for which there  
13 is both a national "off" indicator and a state "off" indi-  
14 cator; or

15 (ii) the thirteenth consecutive week of such period.

16 Notwithstanding the foregoing provisions of this sec-  
17 tion, no extended benefit period may begin by reason of  
18 a state "on" indicator before the fourteenth week follow-  
19 ing the end of a prior extended benefit period which was  
20 in effect with respect to this state, and no extended bene-  
21 fit period may become effective in this state prior to the  
22 sixty-first day following the date of enactment of the  
23 "Federal-State Extended Unemployment Compensation  
24 Act of 1970" and, within the period beginning on such  
25 sixty-first day and ending on December thirty-one, one  
26 thousand nine hundred seventy-one, an extended benefit  
27 period may become effective and be terminated in this  
28 state solely by reason of a state "on" and a state "off"  
29 indicator, respectively.

30 (2) There is a "national 'on' indicator" for a week if  
31 the United States secretary of labor determines that for  
32 each of the three most recent completed calendar months  
33 ending before such week, the rate of insured unemploy-  
34 ment (seasonally adjusted) for all states equaled or  
35 exceeded four and five-tenths percent.

36 (3) There is a "national 'off' indicator" for a week if  
37 the United States secretary of labor determines that for  
38 each of the three most recent completed calendar months



39 ending before such week, the rate of insured unemploy-  
40 ment (seasonally adjusted) for all states was less than  
41 four and five-tenths percent.

42 (4) There is a "state 'on' indicator" for this state for  
43 a week if the commissioner determines, in accordance  
44 with the regulations of the United States secretary of  
45 labor, that for the period consisting of such week and the  
46 immediately preceding twelve weeks, the rate of insured  
47 unemployment (not seasonally adjusted) under this  
48 article:

49 (a) equaled or exceeded one hundred twenty percent  
50 of the average of such rates for the corresponding thir-  
51 teen-week period ending in each of the preceding two  
52 calendar years, and

53 (b) equaled or exceeded four percent.

54 (5) There is a "state 'off' indicator" for this state for  
55 a week if the commissioner determines, in accordance  
56 with the regulations of the United States secretary of  
57 labor, that for the period consisting of such week and the  
58 immediately preceding twelve weeks, the rate of insured  
59 unemployment (not seasonally adjusted) under this  
60 article:

61 (a) was less than one hundred twenty percent of the  
62 average of such rates for the corresponding thirteen-week  
63 period ending in each of the preceding two calendar  
64 years, or

65 (b) was less than four percent.

66 (6) "Rate of insured unemployment," for purposes of  
67 subdivisions (4) and (5) of this section, means the per-  
68 centage derived by dividing

69 (a) the average weekly number of individuals filing  
70 claims in this state for weeks of unemployment with  
71 respect to the most recent thirteen-consecutive-week  
72 period, as determined by the commissioner on the basis  
73 of his reports to the United States secretary of labor, by

74 (b) the average monthly employment covered under  
75 this chapter for the first four of the most recent six com-  
76 pleted calendar quarters ending before the end of such  
77 thirteen-week period.

78 (7) "Regular benefits" means benefits payable to an  
79 individual under this chapter or under any other state  
80 law (including benefits payable to federal civilian em-  
81 ployees and to ex-servicemen pursuant to 5 U.S.C., chap-  
82 ter 85) other than extended benefits.

83 (8) "Extended benefits" means benefits (including  
84 benefits payable to federal civilian employees and to ex-  
85 servicemen pursuant to 5 U.S.C., chapter 85) payable to  
86 an individual under the provisions of this article for  
87 weeks of unemployment in his eligibility period.

88 (9) "Eligibility period" of an individual means the  
89 period consisting of the weeks in his benefit year which  
90 begin in an extended benefit period and, if his benefit  
91 year ends within such extended benefit period, any weeks  
92 thereafter which begin in such period.

93 (10) "Exhaustee" means an individual who, with re-  
94 spect to any week of unemployment in his eligibility  
95 period:

96 (a) has received, prior to such week, all of the regular  
97 benefits which were available to him under this chapter  
98 or any other state law (including dependents' allowances  
99 and benefits payable to federal civilian employees and  
100 ex-servicemen under 5 U.S.C., chapter 85) in his current  
101 benefit year that includes such week: *Provided*, That for  
102 the purposes of this subdivision, an individual shall be  
103 deemed to have received all of the regular benefits which  
104 were available to him although (i) as a result of a pend-  
105 ing appeal with respect to wages and/or employment  
106 which were not considered in the original monetary  
107 determination in his benefit year, he may subsequently be  
108 determined to be entitled to added regular benefits, or  
109 (ii) he may be entitled to regular benefits with respect  
110 to future weeks of unemployment, but such benefits are  
111 not payable with respect to such week of unemployment  
112 by reason of the provisions of section one-a, article six of  
113 this chapter; or

114 (b) his benefit year having expired prior to such week,  
115 has no, or insufficient, wages and/or employment on the  
116 basis of which he could establish a new benefit year which  
117 would include such week; and

118 (c) has no right to unemployment benefits or allow-  
119 ances, as the case may be, under the "Railroad Unemploy-  
120 ment Insurance Act," the "Trade Expansion Act of 1962,"  
121 the "Automotive Products Trade Act of 1965" and such  
122 other federal laws as are specified in regulations issued  
123 by the United States secretary of labor; and has not re-  
124 ceived and is not seeking unemployment benefits under  
125 the unemployment compensation law of the Virgin  
126 Islands or of Canada; but if he is seeking such benefits  
127 and the appropriate agency finally determines that he is  
128 not entitled to benefits under such law he is considered  
129 an exhaustee.

130 (11) "State law" means the unemployment insurance  
131 law of any state, approved by the United States secretary  
132 of labor under section 3304 of the "Internal Revenue Code  
133 of 1954."

**§21A-6A-2. Effect of state law provisions relating to regular  
benefits on claims for, and the payment of, ex-  
tended benefits.**

1 Except when the result would be inconsistent with  
2 the other provisions of this article, as provided in the  
3 regulations of the commissioner, the provisions of this  
4 chapter which apply to claims for, or the payment of,  
5 regular benefits shall apply to claims for, and the pay-  
6 ment of, extended benefits.

**§21A-6A-3. Eligibility requirements for extended benefits.**

1 An individual shall be eligible to receive extended bene-  
2 fits with respect to any week of unemployment in his  
3 eligibility period only if the commissioner finds that with  
4 respect to such week:

5 (1) he is an "exhaustee" as defined in subdivision ten,  
6 section one of this article,

7 (2) he has satisfied the eligibility requirements of this  
8 chapter for the receipt of regular benefits which are ap-  
9 plicable to individuals claiming extended benefits, in-  
10 cluding not being subject to a disqualification for the  
11 receipt of benefits.

**§21A-6A-4. Weekly extended benefit amount.**

1 The weekly extended benefit amount payable to an  
2 individual for a week of total unemployment in his  
3 eligibility period shall be an amount equal to the weekly  
4 benefit amount payable to him during his applicable bene-  
5 fit year.

**§21A-6A-5. Total extended benefit amount.**

1 The total extended benefit amount payable to any  
2 eligible individual with respect to his applicable benefit  
3 year shall be the least of the following amounts:

4 (1) fifty percent of the total amount of regular benefits  
5 which were payable to him under this chapter in his ap-  
6 plicable benefit year;

7 (2) thirteen times his weekly benefit amount which  
8 was payable to him under this chapter for a week of  
9 total unemployment in the applicable benefit year.

**§21A-6A-6. Beginning and termination of extended benefit period.**

1 (1) Whenever an extended benefit period is to become  
2 effective in this state (or in all states) as a result of a  
3 state or a national "on" indicator, or an extended benefit  
4 period is to be terminated in this state as a result of  
5 a state "off" indicator or state and national "off" indi-  
6 cators, the commissioner shall make an appropriate public  
7 announcement.

8 (2) Computations required by the provisions of sub-  
9 division (6), section one of this article shall be made by  
10 the commissioner, in accordance with regulations pre-  
11 scribed by the United States secretary of labor.

**§21A-6A-7. Effective date of article.**

1 The provisions of this article shall be applicable to  
2 compensable weeks beginning on or after February seven,  
3 one thousand nine hundred seventy-one, determined in  
4 accordance with the provisions of this article on the basis  
5 of a state "on" indicator which occurred prior to said  
6 February seven, as determined by the commissioner.

## CHAPTER 175

(House Bill No. 1074—By Mr. Terry)

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[Passed March 13, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section four hundred three, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform commercial code, secured transactions and the effective period of financing statements.

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

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

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER.**

**§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.**

- 1 (1) Presentation for filing of a financing statement and  
2 tender of the filing fee or acceptance of the statement  
3 by the filing officer constitutes filing under this article.
- 4 (2) A filed financing statement which states a maturity  
5 date of the obligation secured of five years or less is  
6 effective until such maturity date and thereafter for a  
7 period of sixty days. Any other filed financing statement  
8 is effective for a period of five years from the date of  
9 filing. The effectiveness of a filed financing statement  
10 lapses on the expiration of such sixty-day period after  
11 a stated maturity date or on the expiration of such five-  
12 year period, as the case may be, unless a continuation  
13 statement is filed prior to the lapse. Upon such lapse  
14 the security interest becomes unperfected. A filed financ-  
15 ing statement which states that the obligation secured  
16 is payable on demand is effective for five years from the  
17 date of filing.
- 18 (3) A continuation statement may be filed by the  
19 secured party (i) within six months before and sixty

20 days after a stated maturity date of five years or less,  
21 and (ii) otherwise within six months prior to the expira-  
22 tion of the five-year period specified in subsection (2).  
23 Any such continuation statement must be signed by the  
24 secured party, identify the original statement by file  
25 number and state that the original statement is still  
26 effective. Upon timely filing of the continuation state-  
27 ment, the effectiveness of the original statement is con-  
28 tinued for five years after the last date to which the  
29 filing was effective whereupon it lapses in the same man-  
30 ner as provided in subsection (2) unless another contin-  
31 uation statement is filed prior to such lapse. Succeed-  
32 ing continuation statements may be filed in the same  
33 manner to continue the effectiveness of the original state-  
34 ment. Unless a statute on disposition of public records  
35 provides otherwise, the filing officer may remove a lapsed  
36 statement from the files and destroy it.

37 (4) A filing officer shall mark each statement with a  
38 consecutive file number and with the date and hour of  
39 filing and shall hold the statement for public inspection.  
40 In addition the filing officer shall index the statements  
41 according to the name of the debtor and shall note in  
42 the index the file number and the address of the debtor  
43 given in the statement.

44 (5) The uniform fee for filing, indexing and furnish-  
45 ing filing data for an original or a continuation state-  
46 ment shall be \$1.00.

47 (6) Notwithstanding any provision of this code to the  
48 contrary, a filed financing statement on public bond issues  
49 of counties, municipalities or public service districts of  
50 this state shall be effective for the life of such bond issues  
51 without the need for filing continuation statements.

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## CHAPTER 176

(House Bill No. 1147—By Mr. Potter and Mr. Huffman)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article  
one, chapter twenty-three of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to the workmen's compensation commissioner and the payment of salaries and expenses of the workmen's compensation fund.

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

That sections one and three, 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.**

§23-1-1. Workmen's compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner.

§23-1-3. Payment of salaries and expenses—Manner; limitation.

**§23-1-1. Workmen's compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner.**

1 There shall be a state workmen's compensation com-  
2 missioner who shall be appointed by the governor by  
3 and with the advice and consent of the Senate and who  
4 shall serve at the will and pleasure of the governor  
5 during the term for which the governor was elected  
6 and until the commissioner's successor has been ap-  
7 pointed and qualified. An appointment may be made to  
8 fill a vacancy or otherwise when the Senate is not in  
9 session, but shall be acted upon at the next session  
10 thereof. The person so appointed shall take the oath  
11 or affirmation prescribed by section five of article four  
12 of the constitution, and such oath shall be certified by  
13 the person who administers the same and shall be filed  
14 in the office of the secretary of state. He shall give bond  
15 in the penalty of twenty-five thousand dollars condi-  
16 tioned for the faithful performance of the duties of his  
17 office, which bond shall be approved by the attorney  
18 general as to form, and by the governor as to sufficiency.  
19 The surety of such bond may be a bonding or surety

20 company, in which case the premiums shall be paid  
21 out of the appropriation made for the administration of  
22 this chapter. The commissioner shall hold no position  
23 of trust or profit, or engage in any occupation or busi-  
24 ness, interfering or inconsistent with his duties as such  
25 commissioner. Notwithstanding the provisions of sec-  
26 tion two-a, article seven, chapter six of the code of  
27 West Virginia, one thousand nine hundred thirty-one,  
28 as amended, the commissioner shall receive an annual  
29 salary of twenty thousand dollars, payable out of the  
30 workmen's compensation fund. The commissioner shall  
31 have an official seal for the authentication of his or-  
32 ders and proceedings, upon which seal shall be en-  
33 graved the words, "West Virginia Compensation Com-  
34 missioner," and such other design as the commissioner  
35 may prescribe. The courts in this state shall take judi-  
36 cial notice of the seal of the commissioner and in all  
37 cases copies of orders, proceedings or records in the  
38 office of the West Virginia compensation commissioner  
39 shall be equal to the original in evidence.

40 The attorney general shall perform all legal services  
41 required by the commissioner under the provisions of  
42 this chapter: *Provided*, That in any case in which an  
43 application for review is prosecuted from any final de-  
44 cision of the workmen's compensation appeal board  
45 to the supreme court of appeals, as provided by section  
46 four, article five of this chapter, or in any court pro-  
47 ceeding before the workmen's compensation appeal board,  
48 in which such representation shall appear to the com-  
49 missioner to be desirable, he may designate a regular  
50 employee of his office, qualified to practice before such  
51 court, to represent him upon such appeal or proceeding,  
52 and in no case shall the person so appearing for the  
53 commissioner before the court receive remuneration  
54 therefor other than his regular salary.

55 Whenever in this chapter or elsewhere in law refer-  
56 ence is made to "State Director of Workmen's Com-  
57 pensation" or "Compensation Commissioner" such ref-  
58 erence shall henceforth be construed and understood to  
59 mean "State Workmen's Compensation Commissioner."



**§23-1-3. Payment of salaries and expenses—Manner; limitation.**

1 All payments of salaries and expenses in the adminis-  
2 tration of this chapter shall be made by the state trea-  
3 surer upon requisitions signed by the commissioner, di-  
4 rected to the auditor of the state, who shall draw his  
5 warrant therefor, and any such payment shall be charged  
6 to the workmen's compensation fund: *Provided*, That the  
7 total charges against such fund under this section for  
8 any one fiscal year shall not exceed the amount appro-  
9 priated therefor.

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**CHAPTER 177**

(Com. Sub. for House Bill No. 790—Originating in the House  
Committee on the Judiciary)

[Passed March 13, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to repeal sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four; to further amend said article four, by adding thereto a new section, designated section sixteen-a; to further amend said chapter by adding thereto a new article, designated article four-a; to amend and reenact sections one, two and five, article five of said chapter; to further amend said article five by adding thereto a new section, designated section three-a; and to further amend said chapter by adding thereto a new article, designated article six, relating generally to workmen's compensation; relating to the contraction or aggravation of occupational pneumoconiosis or other occupational disease; abolishing the occupational diseases medical board, except as to any claim in which the claimant is examined by such board before July one, one thousand nine hundred seventy-one; relating to funeral expenses in workmen's compensation claims; relating to the payment of temporary total disability benefits; relating to the classification of disability benefits; relating to the maximum and minimum work-

men's compensation benefits; relating to the average weekly wage in West Virginia; relating to payment following death of claimant of statutory award for severance of a member of the body and providing limitations and qualifications with respect thereto; relating to the evaluation of disability where there is an injury to a member of the body as opposed to the severance thereof; providing that temporary total disability benefits shall not be subtracted from permanent partial disability awards; relating to hernias; relating to physical examinations of claimants; relating to examinations for the occupational pneumoconiosis board; relating to the time during which protests may be filed to the findings of the occupational pneumoconiosis board; providing that preexisting physical impairments shall not be considered in fixing amount of compensation; relating to the classification and amounts of death benefits; relating to the computation of benefits and providing that in any claim for injuries, including occupational pneumoconiosis or other occupational diseases, occurring on or after July one, one thousand nine hundred seventy-one, any award for disability benefits or for dependent benefits shall be paid at the weekly rates or the monthly amount in effect on the date of such injury and further providing that if during the life of any such award, the weekly rates or the monthly amount are increased or decreased, the claimant shall receive such increased or decreased benefits as of the effective date of said increase or decrease; relating to the time periods within which applications for various types of workmen's compensation benefits must be filed; relating to the time within which an employer must report an injury; relating to certain nonmedical findings to be made by the commissioner in claims for occupational pneumoconiosis; relating to the time within which such nonmedical findings may be protested; relating to the reopening of claims; providing for interest on certain benefits under certain circumstances; creating the disabled workmen's relief fund and providing for the payment of benefits from such fund; relating to the computation of benefits to be paid from such fund; relating to the mode of payment of benefits from such fund; providing for the payment of bene-

fits from such fund to employees of self-insurers; relating to the powers of the commissioner over such fund; prohibiting the charging of any fee, compensation or gratuity for representing or assisting or pretending to represent or assist any person to receive benefits from such workmen's relief fund; relating to the employees to administer such workmen's relief fund and their salaries and expenses; providing that such workmen's relief fund shall be funded out of interest earned on the workmen's compensation fund; providing that the purpose of such workmen's relief fund is to increase the benefits being paid under life awards or in fatal claims to the minimum amount payable in such claims under the laws in effect on July one, one thousand nine hundred sixty-one; relating to the time within which the commissioner is to order supplemental hearings and render his decision; relating to the payment of expenses and loss of wages when the claimant attends a hearing under certain circumstances; relating to the salary of the members of the workmen's compensation appeal board; relating to continuances; placing a limitation upon the fees which may be charged by an attorney for a claimant or dependent; and providing a severability clause for said chapter twenty-three.

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

That sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section sixteen-a; that said chapter be further amended by adding thereto a new article, designated article four-a; that sections one, two and five, article five of said chapter be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section three-a; and that said chapter be further amended by adding thereto a new article, designated article six, all to read as follows:

**Article**

4. Disability and Death Benefits.
- 4A. Disabled Workmen's Relief Fund.
5. Review.
6. Severability.

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

- §23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.
- §23-4-4. Funeral expenses.
- §23-4-5. Benefits for first three days after injury.
- §23-4-6. Classification of disability benefits.
- §23-4-7. Hernia.
- §23-4-8. Physical examination of claimant.
- §23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.
- §23-4-8c. Same—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.
- §23-4-9b. Preexisting physical impairments not considered in fixing amount of compensation.
- §23-4-10. Classification of death benefits; "dependent" defined.
- §23-4-14. Computation of benefits.
- §23-4-15. Application for benefits; report of injuries by employer.
- §23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.
- §23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.
- §23-4-16a. Interest on benefits.
- §23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.**

1 Subject to the provisions and limitations elsewhere  
 2 in this chapter set forth, the commissioner shall disburse  
 3 the workmen's compensation fund to the employees of  
 4 such employers as are not delinquent in the payment of  
 5 the premiums for the quarter in which the injury occurs,  
 6 and in case of catastrophe, in addition to the employees  
 7 next above described, to the employees of employers who  
 8 have elected, under section nine, article two of this  
 9 chapter, to make payments into the surplus fund as pro-  
 10 vided in that section, and which employees shall have  
 11 received personal injuries in the course of and resulting  
 12 from their employment in this state, or in temporary  
 13 employment without the state as provided in section  
 14 one, article two of this chapter, or to the dependents, if  
 15 any, of such employees in case death has ensued, ac-

16 cording to the provisions hereinafter made; and also for  
17 the expenses of the administration of this chapter, as  
18 provided in section two, article one of this chapter.

19 For the purposes of this chapter the terms "injury"  
20 and "personal injury" shall include occupational pneumo-  
21 coniosis and any other occupational disease, as herein-  
22 after defined, and the commissioner shall likewise dis-  
23 burse the workmen's compensation fund to the employees  
24 of such employers as are not delinquent in the payment  
25 of premiums for the last quarter in which such employees  
26 have been exposed to the hazards of occupational pneu-  
27 moconiosis or other occupational disease and in this  
28 state have contracted occupational pneumoconiosis or  
29 other occupational disease, or have suffered a perceptible  
30 aggravation of an existing pneumoconiosis or other oc-  
31 cupational disease, or to the dependents, if any, of such  
32 employees, in case death has ensued, according to the  
33 provisions hereinafter made: *Provided*, That compensa-  
34 tion shall not be payable for the disease of occupational  
35 pneumoconiosis, or death resulting therefrom, unless the  
36 employee has been exposed to the hazards of occupational  
37 pneumoconiosis in the state of West Virginia over a  
38 continuous period of not less than two years during the  
39 ten years immediately preceding the date of his last  
40 exposure to such hazards. An application for benefits on  
41 account of occupational pneumoconiosis shall set forth the  
42 name of the employer or employers and the time worked  
43 for each, and the commissioner may allocate to and divide  
44 any charges resulting from such claim among the employ-  
45 ers by whom the claimant was employed for as much as  
46 sixty days during the period of three years immediately  
47 preceding the date of last exposure to the hazards of  
48 occupational pneumoconiosis. The allocation shall be  
49 based upon the time and degree of exposure with each  
50 employer.

51 For the purposes of this chapter disability or death  
52 resulting from occupational pneumoconiosis, as defined  
53 in the immediately succeeding sentence, shall be treated  
54 and compensated as an injury by accident.

55 Occupational pneumoconiosis is a disease of the lungs  
56 caused by the inhalation of minute particles of dust

57 over a period of time due to causes and conditions aris-  
58 ing out of and in the course of the employment. The  
59 term "occupational pneumoconiosis" shall include, but  
60 shall not be limited to, such diseases as silicosis, an-  
61 thracosilicosis, coal worker's pneumoconiosis, commonly  
62 known as black lung or miner's asthma, silico-tuber-  
63 culosis (silicosis accompanied by active tuberculosis of  
64 the lungs), coal worker's pneumoconiosis accompanied  
65 by active tuberculosis of the lungs, asbestosis, siderosis,  
66 anthrax and any and all other dust diseases of the lungs  
67 and conditions and diseases caused by occupational  
68 pneumoconiosis which are not specifically designated  
69 herein meeting the definition of occupational pneu-  
70 moconiosis set forth in the immediately preceding sen-  
71 tence.

72 X-ray evidence shall not necessarily be held conclu-  
73 sive insofar as it bears upon the absence of occupational  
74 pneumoconiosis.

75 For the purposes of this chapter, occupational disease  
76 means a disease incurred in the course of and resulting  
77 from employment. No ordinary disease of life to which  
78 the general public is exposed outside of the employ-  
79 ment shall be compensable except when it follows as  
80 an incident of occupational disease as defined in this  
81 chapter. Except in the case of occupational pneumo-  
82 coniosis, a disease shall be deemed to have been in-  
83 curred in the course of or to have resulted from the  
84 employment only if it is apparent to the rational mind,  
85 upon consideration of all the circumstances (1) that  
86 there is a direct causal connection between the condi-  
87 tions under which work is performed and the occupa-  
88 tional disease, (2) that it can be seen to have followed  
89 as a natural incident of the work as a result of the  
90 exposure occasioned by the nature of the employment,  
91 (3) that it can be fairly traced to the employment as  
92 the proximate cause, (4) that it does not come from  
93 a hazard to which workmen would have been equally  
94 exposed outside of the employment, (5) that it is in-  
95 cidental to the character of the business and not inde-  
96 pendent of the relation of employer and employee, and  
97 (6) that it must appear to have had its origin in a risk

98 connected with the employment and to have flowed  
99 from that source as a natural consequence, though it  
100 need not have been foreseen or expected before its  
101 contraction.

102 Except in the case of silicosis, no award shall be  
103 made under the provisions of this chapter for any oc-  
104 cupational disease contracted prior to the first day of  
105 July, one thousand nine hundred forty-nine. An em-  
106 ployee shall be deemed to have contracted an occu-  
107 pational disease within the meaning of this paragraph  
108 if the disease or condition has developed to such an  
109 extent that it can be diagnosed as an occupational dis-  
110 ease.

111 Claims for occupational disease as hereinbefore de-  
112 fined, except occupational pneumoconiosis, shall be pro-  
113 cessed in like manner as claims for all other personal  
114 injuries: *Provided*, That in any claim in which the oc-  
115 cupational diseases medical board has examined the claim-  
116 ant prior to July one, one thousand nine hundred seventy-  
117 one, such claim shall be processed and final disposition  
118 made with respect thereto without regard to the fore-  
119 going provisions of this paragraph and with like effect as  
120 if (i) sections eight-d, eight-e, eight-f and fifteen-c of  
121 this article had not been repealed by this act, and (ii)  
122 section eight of this article had not been amended and  
123 reenacted by this act.

#### §23-4-4. Funeral expenses.

1 In case the personal injury causes death, and dis-  
2 ability is continuous from the date of such injury to  
3 date of death, reasonable funeral expenses, not to exceed  
4 twelve hundred dollars, shall be paid from the fund,  
5 payment to be made to the persons who have fur-  
6 nished the services and supplies, or to the persons who  
7 have advanced payment for same, as the commissioner  
8 may deem proper, in addition to such award as may  
9 be made to the employee's dependents.

#### §23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than  
2 three days from the day the employee leaves work as

3 the result of the injury, no award shall be allowed,  
4 except the disbursements provided for in the two next  
5 preceding sections, but if the period of disability lasts  
6 longer than fourteen days from the day the employee  
7 leaves work as a result of the injury, an award shall  
8 be allowed for the first three days of such disability.

**§23-4-6. Classification of disability benefits.**

1 Where compensation is due an employee under the  
2 provisions of this chapter for a personal injury, such  
3 compensation shall be as provided in the following  
4 schedule:

5 (a) The expressions "average weekly wage earnings,  
6 wherever earned, of the injured employee, at the date  
7 of injury" and "average weekly wage in West Vir-  
8 ginia," as used in this chapter, shall have the meaning  
9 and shall be computed as set forth in section fourteen  
10 of this article.

11 (b) If the injury causes temporary total disability,  
12 the employee shall receive during the continuance  
13 thereof weekly benefits as follows: A maximum weekly  
14 benefit to be computed on the basis of sixty-six and  
15 two-thirds percent of the average weekly earnings,  
16 wherever earned, of the injured employee, at the date  
17 of injury, not to exceed the percentage of the average  
18 weekly wage in West Virginia, as follows: On or after  
19 July one, one thousand nine hundred sixty-nine, forty-  
20 five percent; on or after July one, one thousand nine  
21 hundred seventy, fifty percent; on or after July one,  
22 one thousand nine hundred seventy-one, fifty-five per-  
23 cent.

24 The minimum weekly benefits paid hereunder shall  
25 not be less than twenty-six dollars per week for in-  
26 juries occurring on or after July one, one thousand nine  
27 hundred sixty-nine and not less than thirty-five dol-  
28 lars per week for injuries occurring on or after July  
29 one, one thousand nine hundred seventy-one.

30 (c) Subdivision (b) shall be limited as follows:  
31 Aggregate award for a single injury causing temporary  
32 disability shall be for a period not exceeding two hun-  
33 dred eight weeks.



34 (d) If the injury causes permanent disability, the  
35 percentage of disability to total disability shall be  
36 determined and the award computed on the basis of  
37 four weeks compensation for each percent of disability  
38 determined and the maximum and minimum weekly  
39 benefits as provided in subdivision (b) of this sec-  
40 tion for temporary total disability benefits shall be  
41 payable.

42 For a disability of eighty-five percent or more, bene-  
43 fits shall be payable during the remainder of life at  
44 the maximum or minimum weekly benefits as pro-  
45 vided in subdivision (b) of this section for temporary  
46 total disability.

47 (e) If the injury results in the total loss by sever-  
48 ance of any of the members named in this subdivision,  
49 the percentage of disability shall be determined in  
50 accordance with the following table, and award made  
51 as provided in subdivision (d) of this section:

52 The loss of a great toe shall be considered a ten  
53 percent disability.

54 The loss of a great toe (one phalanx) shall be con-  
55 sidered a five percent disability.

56 The loss of other toes shall be considered a four per-  
57 cent disability.

58 The loss of other toes (one phalanx) shall be con-  
59 sidered a two percent disability.

60 The loss of all toes shall be considered a twenty-  
61 five percent disability.

62 The loss of forepart of foot shall be considered a  
63 thirty percent disability.

64 The loss of foot shall be considered a thirty-five per-  
65 cent disability.

66 The loss of a leg shall be considered a forty-five per-  
67 cent disability.

68 The loss of thigh shall be considered a fifty percent  
69 disability.

70 The loss of thigh at hip joint shall be considered a  
71 sixty percent disability.

- 72 The loss of a little or fourth finger (one phalanx)  
73 shall be considered a three percent disability.
- 74 The loss of little or fourth finger shall be considered  
75 a five percent disability.
- 76 The loss of ring or third finger (one phalanx) shall  
77 be considered a three percent disability.
- 78 The loss of ring or third finger shall be considered  
79 a five percent disability.
- 80 The loss of middle or second finger (one phalanx)  
81 shall be considered a three percent disability.
- 82 The loss of middle or second finger shall be considered  
83 a seven percent disability.
- 84 The loss of index or first finger (one phalanx) shall  
85 be considered a six percent disability.
- 86 The loss of index or first finger shall be considered  
87 a ten percent disability.
- 88 The loss of thumb (one phalanx) shall be considered  
89 a twelve percent disability.
- 90 The loss of thumb shall be considered a twenty per-  
91 cent disability.
- 92 The loss of thumb and index finger shall be con-  
93 sidered a thirty-two percent disability.
- 94 The loss of index and middle finger shall be con-  
95 sidered a twenty percent disability.
- 96 The loss of middle and ring finger shall be considered  
97 a fifteen percent disability.
- 98 The loss of ring and little finger shall be considered  
99 a ten percent disability.
- 100 The loss of thumb, index and middle finger shall be  
101 considered a forty percent disability.
- 102 The loss of index, middle and ring finger shall be  
103 considered a thirty percent disability.
- 104 The loss of middle, ring and little finger shall be  
105 considered a twenty percent disability.
- 106 The loss of four fingers shall be considered a thirty-  
107 two percent disability.
- 108 The loss of hand shall be considered a fifty percent  
109 disability.

110 The loss of forearm shall be considered a fifty-five  
111 percent disability.

112 The loss of arm shall be considered a sixty percent  
113 disability.

114 The total and irrecoverable loss of the sight of one  
115 eye shall be considered a thirty-three percent disability.  
116 For the partial loss of vision in one, or both eyes, the  
117 percentage of disability shall be determined by the  
118 commissioner, using as a basis the total loss of one  
119 eye.

120 The total and irrecoverable loss of the hearing of  
121 one ear shall be considered a fifteen percent disability,  
122 and the injured employee shall be entitled to compen-  
123 sation for a period of sixty weeks. The total and irre-  
124 coverable loss of hearing of both ears shall be con-  
125 sidered a forty-five percent disability, and the injured  
126 employee shall be entitled to compensation for a period  
127 of one hundred eighty weeks.

128 For the partial loss of hearing in one, or both ears,  
129 the percentage of disability shall be determined by  
130 the commissioner, using as a basis the total loss of hear-  
131 ing in both ears.

132 Should a claimant sustain a compensable injury which  
133 results in the total loss by severance of any of the  
134 bodily members named in this subdivision, die from  
135 sickness or noncompensable injury before the com-  
136 missioner makes the proper award for such injury, the  
137 commissioner shall make such award to claimant's de-  
138 pendents as defined in this chapter, if any; such pay-  
139 ment to be made in the same installments that would  
140 have been paid to claimant if living: *Provided*, That  
141 no payment shall be made to any widow of such claim-  
142 ant after her remarriage, and that this liability shall  
143 not accrue to the estate of such claimant and shall  
144 not be subject to any debts of, or charges against, such  
145 estate.

146 (f) Should a claimant to whom has been made a  
147 permanent partial award of from one percent to eighty-  
148 four percent, both inclusive, die from sickness or non-  
149 compensable injury, the unpaid balance of such award

- 72 The loss of a little or fourth finger (one phalanx)  
73 shall be considered a three percent disability.
- 74 The loss of little or fourth finger shall be considered  
75 a five percent disability.
- 76 The loss of ring or third finger (one phalanx) shall  
77 be considered a three percent disability.
- 78 The loss of ring or third finger shall be considered  
79 a five percent disability.
- 80 The loss of middle or second finger (one phalanx)  
81 shall be considered a three percent disability.
- 82 The loss of middle or second finger shall be considered  
83 a seven percent disability.
- 84 The loss of index or first finger (one phalanx) shall  
85 be considered a six percent disability.
- 86 The loss of index or first finger shall be considered  
87 a ten percent disability.
- 88 The loss of thumb (one phalanx) shall be considered  
89 a twelve percent disability.
- 90 The loss of thumb shall be considered a twenty per-  
91 cent disability.
- 92 The loss of thumb and index finger shall be con-  
93 sidered a thirty-two percent disability.
- 94 The loss of index and middle finger shall be con-  
95 sidered a twenty percent disability.
- 96 The loss of middle and ring finger shall be considered  
97 a fifteen percent disability.
- 98 The loss of ring and little finger shall be considered  
99 a ten percent disability.
- 100 The loss of thumb, index and middle finger shall be  
101 considered a forty percent disability.
- 102 The loss of index, middle and ring finger shall be  
103 considered a thirty percent disability.
- 104 The loss of middle, ring and little finger shall be  
105 considered a twenty percent disability.
- 106 The loss of four fingers shall be considered a thirty-  
107 two percent disability.
- 108 The loss of hand shall be considered a fifty percent  
109 disability.

110 The loss of forearm shall be considered a fifty-five  
111 percent disability.

112 The loss of arm shall be considered a sixty percent  
113 disability.

114 The total and irrecoverable loss of the sight of one  
115 eye shall be considered a thirty-three percent disability.  
116 For the partial loss of vision in one, or both eyes, the  
117 percentage of disability shall be determined by the  
118 commissioner, using as a basis the total loss of one  
119 eye.

120 The total and irrecoverable loss of the hearing of  
121 one ear shall be considered a fifteen percent disability,  
122 and the injured employee shall be entitled to compen-  
123 sation for a period of sixty weeks. The total and irre-  
124 coverable loss of hearing of both ears shall be con-  
125 sidered a forty-five percent disability, and the injured  
126 employee shall be entitled to compensation for a period  
127 of one hundred eighty weeks.

128 For the partial loss of hearing in one, or both ears,  
129 the percentage of disability shall be determined by  
130 the commissioner, using as a basis the total loss of hear-  
131 ing in both ears.

132 Should a claimant sustain a compensable injury which  
133 results in the total loss by severance of any of the  
134 bodily members named in this subdivision, die from  
135 sickness or noncompensable injury before the com-  
136 missioner makes the proper award for such injury, the  
137 commissioner shall make such award to claimant's de-  
138 pendents as defined in this chapter, if any; such pay-  
139 ment to be made in the same installments that would  
140 have been paid to claimant if living: *Provided*, That  
141 no payment shall be made to any widow of such claim-  
142 ant after her remarriage, and that this liability shall  
143 not accrue to the estate of such claimant and shall  
144 not be subject to any debts of, or charges against, such  
145 estate.

146 (f) Should a claimant to whom has been made a  
147 permanent partial award of from one percent to eighty-  
148 four percent, both inclusive, die from sickness or non-  
149 compensable injury, the unpaid balance of such award

150 shall be paid to claimant's dependents as defined in  
151 this chapter, if any; such payment to be made in the  
152 same installments that would have been paid to claim-  
153 ant if living: *Provided, however,* That no payment  
154 shall be made to any widow of such claimant after  
155 her remarriage, and that this liability shall not accrue  
156 to the estate of such claimant and shall not be sub-  
157 ject to any debts of, or charges against, such estate.

158 (g) The award for permanent disabilities intermedi-  
159 ate to those fixed by the foregoing schedule and per-  
160 manent disability of from one percent to eighty-four  
161 percent shall be in the same proportion and shall be com-  
162 puted and allowed by the commissioner.

163 (h) The percentage of all permanent disabilities  
164 other than those enumerated in subdivision (e) of this  
165 section shall be determined by the commissioner, and  
166 awards made in accordance with the provisions of sub-  
167 division (d) of this section. Where there has been  
168 an injury to a member as distinguished from total  
169 loss by severance of that member, the commissioner  
170 in determining the percentage of disability may be  
171 guided by but shall not be limited to the disabilities  
172 enumerated in subdivision (e) of this section.

173 (i) Compensation payable under any subdivision of  
174 this section shall be limited as follows: Not to exceed  
175 the maximum nor to be less than the minimum weekly  
176 benefits specified in subdivision (b) of this section.

177 (j) Temporary total disability benefits payable un-  
178 der subdivision (b) of this section shall not be deduct-  
179 ible from permanent partial disability awards pay-  
180 able under subdivisions (d) and (e) of this section.  
181 Compensation, either total temporary or permanent par-  
182 tial, under this section shall be payable only to the in-  
183 jured employee and the right thereto shall not vest in  
184 his or her estate, except that any unpaid compensation  
185 which would have been paid or payable to the em-  
186 ployee up to the time of his death, if he had lived, shall  
187 be paid to the dependents of such injured employee  
188 if there be such dependents at the time of death.

189 (k) The following permanent disabilities shall be  
190 conclusively presumed to be total in character:

191 Loss of both eyes or the sight thereof.

192 Loss of both hands or the use thereof.

193 Loss of both feet or the use thereof.

194 Loss of one hand and one foot or the use thereof.

195 In all other cases permanent disability shall be de-  
196 termined by the commissioner in accordance with the  
197 facts in the case, and award made in accordance with  
198 the provisions of subdivision (d).

199 (1) A disability which renders the injured employee  
200 unable to engage in substantial gainful activity requir-  
201 ing skills or abilities comparable to those of any gainful  
202 activity in which he has previously engaged with some  
203 regularity and over a substantial period of time shall  
204 be considered in determining the issue of total dis-  
205 ability.

#### §23-4-7. Hernia.

1 In all claims for compensation for hernia resulting  
2 from personal injury received in the course of and re-  
3 sulting from the employee's employment, it must be  
4 proven by a preponderance of the evidence: First, that  
5 there was an injury resulting in hernia; second, that it  
6 was accompanied by pain; third, that the hernia fol-  
7 lowed an injury; and fourth, that the hernia did not exist  
8 prior to the injury for which compensation is claimed.  
9 All hernia, inguinal, femoral or otherwise, so proven  
10 to be the result of an injury received in the course of  
11 and resulting from the employment, shall be treated  
12 in a surgical manner by radical operation. If death  
13 results from such operation, the death shall be con-  
14 sidered as a result of the injury, and compensation paid  
15 in accordance with the provisions of section ten of this  
16 article. In nonfatal cases, time loss only shall be paid,  
17 unless it is shown by special examination that the in-  
18 jured employee has a permanent partial disability re-  
19 sulting after the operation. If so, compensation shall be  
20 paid in accordance with the provisions in section six of  
21 this article with reference to permanent partial disabil-  
22 ity. In case the injured employee refuses to undergo  
23 the radical operation for the cure of said hernia, no  
24 compensation will be allowed during the time such re-

25 fusil continues. If, however, it is shown that the em-  
26 ployee has some chronic disease, or is otherwise in such  
27 physical condition that it is considered unsafe for him  
28 to undergo such operation, he shall be paid as pro-  
29 vided in section six.

**§23-4-8. Physical examination of claimant.**

1 The commissioner shall have authority, after due no-  
2 tice to the employer and claimant, whenever in his opin-  
3 ion it shall be necessary, to order a claimant of compen-  
4 sation for a personal injury other than occupational  
5 pneumoconiosis to appear for examination before a med-  
6 ical examiner or examiners selected by the commissioner;  
7 and the claimant and employer, respectively, shall each  
8 have the right to select a physician of his or its own  
9 choosing and at his or its own expense to participate in  
10 such examination. The claimant and employer shall,  
11 respectively, be furnished with a copy of the report of  
12 examination made by the medical examiner or examiners  
13 selected by the commissioner. The respective physicians  
14 selected by the claimant and employer shall have the  
15 right to concur in any report made by the medical exam-  
16 iner or examiners selected by the commissioner, or each  
17 may file with the commissioner a separate report, which  
18 separate report shall be considered by the commissioner  
19 in passing upon the claim. If the compensation claimed  
20 is for occupational pneumoconiosis, the commissioner  
21 shall have the power, after due notice to the employer,  
22 and whenever in his opinion it shall be necessary, to  
23 order a claimant to appear for examination before the  
24 occupational pneumoconiosis board hereinafter provided.  
25 In any case the claimant shall be entitled to reasonable  
26 traveling and other expenses necessarily incurred by him  
27 in obeying such order, which shall be paid out of the  
28 amount allowed under this chapter for medical, surgical,  
29 dental and hospital treatment.

30 Where the claimant is required to undergo a medical  
31 examination or examinations by a physician or physicians  
32 selected by the employer, as aforesaid or in connection  
33 with any claim which is in litigation, in addition to the



34 reasonable traveling and other expenses, not to exceed  
35 the expenses paid when a claimant is examined by a  
36 physician or physicians selected by the commissioner,  
37 such claimant shall be reimbursed by the employer for  
38 loss of wages necessarily incurred by him in connection  
39 with such examination or examinations.

**§23-4-8b. Occupational pneumoconiosis board; procedure;  
autopsy.**

1 The occupational pneumoconiosis board, upon refer-  
2 ence to it by the commissioner of a case of occupational  
3 pneumoconiosis, shall notify the employee, or in case he  
4 is dead, the claimant, and the employer, to appear be-  
5 fore such board at a time and place stated in the notice.  
6 If the employee be living, he shall appear before the  
7 board at the time and place specified and submit to  
8 such examination, including clinical and X-ray exami-  
9 nations, as the board may require. If a physician lic-  
10 ensed to practice medicine in the state shall make af-  
11 fidavit that the employee is physically unable to appear  
12 at the time and place designated by the board, such  
13 board shall, on notice to the proper parties, change the  
14 place and time as may reasonably facilitate the hear-  
15 ing or examination of the employee, or may appoint a  
16 qualified specialist in the field of respiratory disease  
17 to examine the claimant on behalf of the board. The  
18 employee, or in case he is dead, the claimant, and the  
19 employer shall also produce as evidence to the board  
20 all reports of medical and X-ray examinations which  
21 may be in their respective possession or control, show-  
22 ing the past or present condition of the employee. If the  
23 employee be dead, the notice of the board shall further  
24 require that the claimant produce necessary consents  
25 and permits so that an autopsy may be performed, if  
26 the board shall so direct. When in the opinion of the  
27 board an autopsy is deemed necessary accurately and  
28 scientifically to ascertain and determine the cause of  
29 death, such autopsy examination shall be ordered by  
30 the board, which shall designate a duly licensed phy-  
31 sician, a pathologist, or such other specialists as may be  
32 deemed necessary by the board, to make such exami-  
33 nation and tests to determine the cause of death and

34 certify his or their written findings, in triplicate, to the  
35 board, which findings shall be public records. In the  
36 event that a claimant for compensation for such death  
37 refuses to consent and permit such autopsy to be made,  
38 all rights for compensation shall thereupon be forfeited.

39 The employee, or if he be dead, the claimant, and  
40 the employer, shall be entitled to be present at all  
41 examinations conducted by the board, and to be rep-  
42 resented by attorneys and physicians.

**§23-4-8c. Same—Reports and distribution thereof; presump-  
tion; findings required of board; objection to find-  
ings; procedure thereon.**

1 (a) The occupational pneumoconiosis board, as soon  
2 as practicable, after it has completed its investigation,  
3 shall make its written report, to the commissioner, of  
4 its findings and conclusions on every medical question  
5 in controversy, and the commissioner shall send one  
6 copy thereof to the employee or claimant and one copy  
7 to the employer, and the board shall also return to and  
8 file with the commissioner all the evidence as well as  
9 all statements under oath, if any, of the persons who  
10 appeared before it on behalf of the employee or claim-  
11 ant, or employer and also all medical reports and X-ray  
12 examinations produced by or on behalf of the employee  
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased  
15 employee has been exposed to the hazard of inhaling  
16 minute particles of dust in the course of and resulting  
17 from his employment for a period of ten years during  
18 the fifteen years immediately preceding the date of his  
19 last exposure to such hazard and that such claimant or  
20 deceased employee has sustained a chronic respiratory  
21 disability, then it shall be presumed that such claimant  
22 is suffering or such deceased employee was suffering at  
23 the time of his death from occupational pneumoconiosis  
24 which arose out of and in the course of his employment.  
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall  
27 set forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased  
29 employee has contracted occupational pneumonconiosis,  
30 and, if so, the percentage of permanent disability re-  
31 sulting therefrom.

32 (2) Whether or not the exposure in the employment  
33 was sufficient to have caused the claimant's or deceased  
34 employee's occupational pneumoconiosis or to have per-  
35 ceptibly aggravated an existing occupational pneumo-  
36 coniosis, or other occupational disease.

37 (3) What, if any, physician appeared before the  
38 board on behalf of the claimant or employer, and what,  
39 if any, medical evidence was produced by or on behalf  
40 of the claimant or employer.

41 If either party objects to the whole or any part of  
42 such findings and conclusions of the board, he shall file  
43 with the commissioner, within fifteen days of the mail-  
44 ing of such copy to him, unless for good cause shown, the  
45 commissioner extends such time, his objections thereto  
46 in writing, specifying the particular statements of the  
47 board's findings and conclusions to which he objects.  
48 After the time has expired for the filing of objections  
49 to the findings and conclusions of the board, the com-  
50 missioner shall proceed to act as provided in this chap-  
51 ter. If after the time has expired for the filing of ob-  
52 jections to the findings and conclusions of the board no  
53 objections have been filed, the report of a majority of  
54 the board of its findings and conclusions on any medical  
55 question shall be taken to be plenary and conclusive  
56 evidence of the findings and conclusions therein stated.  
57 If objection has been filed to the findings and conclus-  
58 ions of the board, notice thereof shall be given to the  
59 board, and the members thereof joining in such findings  
60 and conclusions shall appear at the time fixed by the  
61 commissioner for the hearing to submit to examination  
62 and cross-examination in respect to such findings and  
63 conclusions. At such hearing evidence to support or con-  
64 trovert the findings and conclusions of the board shall  
65 be limited to examination and cross-examination of the  
66 members of the board, and to the taking of testimony of  
67 other qualified physicians and roentgenologists.

**§23-4-9b. Preexisting physical impairments not considered in fixing amount of compensation.**

1 Where an employee has a definitely ascertainable  
2 physical impairment and such employee shall there-  
3 after receive an injury in the course of and resulting  
4 from his employment, unless such injury results in  
5 total permanent disability within the meaning of sec-  
6 tion one, article three of this chapter, such physical  
7 impairment, and the effect thereof, and an aggravation  
8 thereof, shall not be taken into consideration in fixing  
9 the amount of compensation allowed by reason of such  
10 injury, and such compensation shall be awarded only  
11 in the amount that would have been allowable had  
12 such employee not had such preexisting physical im-  
13 pairment.

**§23-4-10. Classification of death benefits; "dependent" defined.**

1 In case a personal injury other than occupational  
2 pneumoconiosis or other occupational disease, suffered  
3 by an employee in the course of and resulting from his  
4 employment, causes death within the period of ten  
5 years and disability is continuous from date of such  
6 injury until date of death, or if death results from  
7 occupational pneumoconiosis or from any other occu-  
8 pational disease within ten years from the date of the  
9 last exposure to the hazards of occupational pneumo-  
10 coniosis or to the other particular occupational hazard  
11 involved, as the case may be, the benefits shall be  
12 in the amounts and to the persons as follows:

13 (a) If there be no dependents, the disbursements  
14 shall be limited to the expense provided for in sections  
15 three and four of this article.

16 (b) If the deceased employee leaves a dependent widow  
17 or invalid widower, the payment shall be one hun-  
18 dred sixty dollars a month until death or remarriage  
19 of such widow or widower, and in addition fifty dol-  
20 lars a month for each child under eighteen years of  
21 age, to be paid until such child reaches such age, or  
22 where such child after reaching eighteen years of age  
23 continues as a full-time student in an accredited high  
24 school, college, university, business or trade school,

25 to be paid until such child reaches the age of twenty-  
26 two years, or if an invalid child, fifty dollars a month,  
27 to continue as long as such child remains an invalid  
28 to be increased to one hundred sixty dollars per month  
29 upon the death of the surviving dependent parent:  
30 *Provided*, That if such widow or invalid widower shall  
31 remarry within ten years from the date of the death  
32 of such employee, such widow or widower shall be  
33 paid at the time of remarriage twenty percent of the  
34 amount that would be due for the period remaining  
35 between the date of such remarriage and the end of  
36 ten years from the date of death of such employee,  
37 and such widow or widower shall be advised in writing  
38 by the commissioner of his or her rights under this  
39 proviso at the time of making the original award:  
40 *Provided, however*, That if upon investigation and hear-  
41 ing, as provided in article five of this chapter, it shall  
42 be ascertained that such widow or widower is living  
43 with a man or woman, as the case may be, as man  
44 and wife and not married, or that the widow is living  
45 a life of prostitution, the commissioner shall stop pay-  
46 ment of the benefits herein provided to such widow or  
47 widower.

48 If the deceased employee be a widow or widower and  
49 leaves a child or children under the age of eighteen  
50 years, the payments shall be one hundred dollars a  
51 month to each child until he or she reaches the age  
52 of eighteen years, or where such child after reaching  
53 eighteen years of age continues as a full-time student  
54 in an accredited high school, college, university, busi-  
55 ness or trade school to be paid until such child reaches  
56 the age of twenty-two years.

57 In all awards of compensation to children, unless  
58 otherwise provided herein, the award shall be until  
59 they reach the age of eighteen years or until their death  
60 prior thereto.

61 (c) If the deceased employee leaves no dependent  
62 widow or widower and leaves a wholly dependent father  
63 or mother, he or she shall be paid the sum of eighty  
64 dollars a month, payments to continue until death, and  
65 if there be no widow or widower and both the father

66 and mother are wholly dependent, then a joint award  
67 shall be made to the father and mother in the sum of  
68 eighty dollars a month until death.

69 Upon the death of either the father or mother in  
70 any case in which a joint award has been made to them,  
71 the full award of eighty dollars a month shall be paid  
72 to the survivor until his or her death.

73 (d) If the deceased employee leaves no dependent  
74 widow or widower or wholly dependent father or mother  
75 but there are other wholly dependent persons, as de-  
76 fined in subdivision (f) of this section, the payment shall  
77 be sixty-five dollars a month, to continue for six years  
78 after the death of the deceased, except as otherwise  
79 provided herein.

80 (e) If the deceased employee leaves no dependent  
81 widow or widower, child under eighteen years of age,  
82 or wholly dependent person, but there are partially  
83 dependent persons at the time of death, the payment  
84 shall be thirty-five dollars a month, to continue for  
85 such portion of the period of six years after the death,  
86 as the commissioner may determine, but no such par-  
87 tially dependent person shall receive compensation pay-  
88 ments as a result of the death of more than one em-  
89 ployee.

90 Compensation under subdivisions (b), (c), (d) and  
91 (e) hereof shall, except as may be specifically provided  
92 to the contrary therein, cease upon the death of the  
93 dependent, and the right thereto shall not vest in his  
94 or her estate.

95 (f) Dependent, as used in this chapter, shall mean  
96 a widow, invalid widower, child under eighteen years  
97 of age, or under twenty-two years of age when a full-  
98 time student as provided herein, invalid child or post-  
99 humous child, who, at the time of the injury causing  
100 death, is dependent in whole or in part for his or her  
101 support upon the earnings of the employee; also the  
102 following persons who are and continue to be resi-  
103 dents of the United States or its territorial possessions:  
104 Stepchild under eighteen years of age, or under twenty-  
105 two years of age when a full-time student as provided

106 herein, child under eighteen years of age legally adopted  
107 prior to the injury causing death, or under twenty-  
108 two years of age when a full-time student as provided  
109 herein, father, mother, grandfather or grandmother, who  
110 at the time of the injury causing death, is dependent  
111 in whole or in part for his or her support upon the earn-  
112 ings of the employee; and invalid brother or sister  
113 wholly dependent for his or her support upon the earn-  
114 ings of the employee at the time of the injury causing  
115 death.

**§23-4-14. Computation of benefits.**

1 The average weekly wage earnings, wherever earned,  
2 of the injured person at the date of injury, and the  
3 average weekly wage in West Virginia as determined  
4 by the commissioner of employment security, in effect  
5 at the date of injury, shall be taken as the basis upon  
6 which to compute the benefits.

7 In cases involving occupational pneumoconiosis or  
8 other occupational diseases, the "date of injury" shall  
9 be the date of the last exposure to the hazards of oc-  
10 cupational pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-  
12 tional pneumoconiosis, the commissioner shall deduct  
13 the amount of all prior workmen's compensation bene-  
14 fits paid to the same claimant on account of silicosis,  
15 but a prior silicosis award shall not, in any event, pre-  
16 clude an award for occupational pneumoconiosis other-  
17 wise payable under this article.

18 The expression "average weekly wage earnings, wher-  
19 ever earned, of the injured person, at the date of injury,"  
20 within the meaning of this chapter, shall be two months,  
21 six or twelve months immediately preceding the date of  
22 the injury.

23 The expression "average weekly wage in West Vir-  
24 ginia," within the meaning of this chapter, shall be the  
25 average weekly wage in West Virginia as determined  
26 by the commissioner of employment security in ac-  
27 cordance with the provisions of sections ten and eleven,  
28 article six, chapter twenty-one-a of the code of West  
29 Virginia, one thousand nine hundred thirty-one, as

30 amended, and other applicable provisions of said chapter  
31 twenty-one-a.

32 In any claim for injuries, including occupational pneu-  
33 moconiosis and other occupational diseases, occurring on  
34 or after July one, one thousand nine hundred seventy-  
35 one, any award for temporary total, permanent partial or  
36 permanent total disability benefits or for dependent bene-  
37 fits, shall be paid at the weekly rates or in the monthly  
38 amount in the case of dependent benefits applicable to the  
39 claimant therein in effect on the date of such injury. If  
40 during the life of such award for temporary total, per-  
41 manent partial or permanent total disability benefits or for  
42 dependent benefits, the weekly rates or the monthly  
43 amount in the case of dependent benefits are increased or  
44 decreased, the claimant shall receive such increased or de-  
45 creased benefits beginning as of the effective date of said  
46 increase or decrease.

**§23-4-15. Application for benefits; report of injuries by em-  
ployer.**

1 To entitle any employee or dependent of a deceased  
2 employee to compensation under this chapter, other  
3 than for occupational pneumoconiosis or other occupa-  
4 tional disease, the application therefor must be made on  
5 the form or forms prescribed by the commissioner and  
6 filed in the office of the commissioner within two years  
7 from and after the injury or death, as the case may be,  
8 and all proofs of dependency in fatal cases must likewise  
9 be filed with the commissioner within two years from  
10 and after the death. In case the employee is mentally  
11 or physically incapable of filing such application, it may  
12 be filed by his attorney or by a member of his family.  
13 It shall be the duty of every employer to report to the  
14 commissioner every injury sustained by any person in  
15 his employ. Such report shall be on forms prescribed  
16 by the commissioner and shall be made within thirty  
17 days from the date the employer first receives knowledge  
18 of such injury.

19 To entitle any employee to compensation for occupa-  
20 tional pneumoconiosis under the provisions hereof, the  
21 application therefor must be made on the form or forms



22 prescribed by the commissioner and filed in the office of  
23 the commissioner within three years from and after the  
24 last day of the last continuous period of sixty days or  
25 more during which the employee was exposed to the  
26 hazards of occupational pneumoconiosis or within three  
27 years from and after the employee's occupational  
28 pneumoconiosis was made known to him by a physician  
29 or which he should reasonably have known, whichever  
30 shall last occur, or, in the case of death, the applica-  
31 tion shall be filed as aforesaid by the dependent of such  
32 employee within two years from and after such em-  
33 ployee's death.

34 To entitle any employee to compensation for occupa-  
35 tional disease other than occupational pneumoconiosis  
36 under the provisions hereof, the application therefor  
37 must be made on the form or forms prescribed by the  
38 commissioner and filed in the office of the commissioner  
39 within three years from and after the day on which  
40 the employee was last exposed to the particular occupa-  
41 tional hazard involved or within three years from and  
42 after the employee's occupational disease was made  
43 known to him by a physician or which he should reason-  
44 ably have known, whichever shall last occur, or, in case  
45 of death, the application shall be filed as aforesaid by  
46 the dependent of such employee within two years from  
47 and after such employee's death.

**§23-4-15b. Determination of nonmedical questions by commis-  
sioner; claims for occupational pneumoconiosis;  
hearing.**

1 If a claim for occupational pneumoconiosis benefits  
2 be filed by an employee within three years from and  
3 after the last day of the last continuous period of sixty  
4 days exposure to the hazards of occupational pneumoco-  
5 niosis, the commissioner shall determine whether the  
6 claimant was exposed to the hazards of occupational  
7 pneumoconiosis for a continuous period of not less than  
8 sixty days while in the employ of the employer within  
9 three years prior to the filing of his claim, whether in  
10 the state of West Virginia the claimant was exposed to  
11 such hazard over a continuous period of not less than

12 two years during the ten years immediately preceding  
13 the date of his last exposure thereto and whether the  
14 claimant was exposed to such hazard over a period of  
15 not less than ten years during the fifteen years im-  
16 mediately preceding the date of his last exposure thereto.  
17 If a claim for occupational pneumoconiosis benefits be  
18 filed by an employee within three years from and after  
19 the employee's occupational pneumoconiosis was made  
20 known to him by a physician or otherwise should have  
21 reasonably been known to him, the commissioner shall  
22 determine whether the claimant filed his application  
23 within said period and whether in the state of West  
24 Virginia the claimant was exposed to such hazard over  
25 a continuous period of not less than two years during  
26 the ten years immediately preceding the date of last  
27 exposure thereto and whether the claimant was exposed  
28 to such hazard over a period of not less than ten years  
29 during the fifteen years immediately preceding the date  
30 of last exposure thereto. If a claim for occupational  
31 pneumoconiosis benefits be filed by a dependent of a  
32 deceased employee, the commissioner shall determine  
33 whether the deceased employee was exposed to the  
34 hazards of occupational pneumoconiosis for a continuous  
35 period of not less than sixty days while in the employ  
36 of the employer within ten years prior to the filing of the  
37 claim, whether in the state of West Virginia the deceased  
38 employee was exposed to such hazard over a continuous  
39 period of not less than two years during the ten years  
40 immediately preceding the date of his last exposure  
41 thereto and whether the claimant was exposed to such  
42 hazard over a period of not less than ten years during  
43 the fifteen years immediately preceding the date of his  
44 last exposure thereto. The commissioner shall also de-  
45 termine such other nonmedical facts as may in his  
46 opinion be pertinent to a decision on the validity of the  
47 claim.

48 The commissioner shall give each interested party no-  
49 tice in writing of his findings with respect to all such  
50 nonmedical facts and such findings and such action of  
51 the commissioner shall be final unless the employer, em-  
52 ployee, claimant or dependent shall, within fifteen days

53 after receipt of such notice, object to such findings. Upon  
54 receipt of such objection the commissioner shall set a  
55 hearing as provided in section one, article five of this  
56 chapter.

**§23-4-16. Commissioner's jurisdiction over case continuous;  
modification of finding or order; time limitation  
on awards; reimbursement of claimant for ex-  
penses.**

1 The power and jurisdiction of the commissioner over  
2 each case shall be continuing and he may from time  
3 to time, after due notice to the employer, make such  
4 modifications or changes with respect to former findings  
5 or orders as may be justified: *Provided*, That no further  
6 award may be made in fatal cases arising after March  
7 seventh, one thousand nine hundred twenty-nine, ex-  
8 cept within two years after the death of the employee,  
9 or in case of nonfatal injuries, on and after March  
10 seventh, one thousand nine hundred twenty-nine, except  
11 within three years after payments for temporary dis-  
12 ability shall have ceased or not more than two times  
13 within five years after the commissioner shall have made  
14 the last payment in the original award or any subse-  
15 quent increase thereto in any permanent disability case:  
16 *Provided, however*, That no such modification or change  
17 may be made in any case in which no award has been  
18 made, except within three years after the date of in-  
19 jury. In any case in which an injured employee shall  
20 make application for a further adjustment of his claim,  
21 if such application be in writing and filed within the  
22 applicable time limit as prescribed herein, the commis-  
23 sioner shall pass upon and determine the merits of  
24 such application within thirty days after the filing  
25 thereof.

26 If such application is based on a report of any medical  
27 examination made of the claimant and submitted by  
28 the claimant to the commissioner in support of his ap-  
29 plication, and the claim is opened for further consider-  
30 ation and additional award is later made, the claimant  
31 shall be reimbursed for the expenses of such examina-  
32 tion. Such reimbursement shall be made by the com-

33 missioner to the claimant, in addition to all other bene-  
34 fits awarded, upon due proof of the amount thereof  
35 being furnished the commissioner by the claimant, but  
36 shall in no case exceed the sum of one hundred dollars.

**§23-4-16a. Interest on benefits.**

1 Whenever any award of temporary total, permanent  
2 partial or permanent total disability benefits or dependent  
3 benefits is made on or after July one, one thousand nine  
4 hundred seventy-one, and a protest is filed thereto or an  
5 appeal is taken therefrom by an employer only and not  
6 by the claimant or dependent and the award is not ulti-  
7 mately denied or reduced following such protest or ap-  
8 peal, the commissioner shall add thereto interest at the  
9 simple rate of six percent per annum from the date the  
10 award would have been payable had such protest or ap-  
11 peal not been filed or taken, exclusive of any period for  
12 which a continuance was granted upon motion of any  
13 party other than the protesting or appealing employer.  
14 Any interest payable shall be charged to the account of  
15 the protesting or appealing employer to the extent that  
16 the benefits upon which such interest is computed are  
17 charged to the account of such employer.

**ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.**

§23-4A-1. Disabled workmen's relief fund created.

§23-4A-2. To whom benefits paid.

§23-4A-3. Computation of benefits.

§23-4A-4. Mode of payment.

§23-4A-5. Employers providing own system of compensation.

§23-4A-6. Powers of commissicner over disabled workmen's relief fund.

§23-4A-7. Employees to administer disabled workmen's relief fund; pay-  
ment of salaries.

§23-4A-8. Disabled workmen's relief fund; how funded.

**§23-4A-1. Disabled workmen's relief fund created.**

1 For the relief of persons who are receiving workmen's  
2 compensation benefits by virtue of and under the laws of  
3 this state in amounts less than the minimum amount pay-  
4 able under the laws in effect on July one, one thousand  
5 nine hundred sixty-one, there is hereby created a separate  
6 fund to be known as the "Disabled Workmen's Relief  
7 Fund," which fund shall consist of such sums as are from  
8 time to time made available to carry out the objects and  
9 purposes of this article. Said fund shall be in the custody

10 of the state treasurer and disbursements therefrom shall  
11 be made upon requisition signed by the commissioner to  
12 those persons entitled to participate therein and in such  
13 amounts to each participant as is provided in section  
14 three of this article.

**§23-4A-2. To whom benefits paid.**

1 In order to participate in the disabled workmen's relief  
2 fund, an individual must be receiving workmen's compen-  
3 sation benefits by virtue of and under the laws of this  
4 state in amounts less than the minimum amount payable  
5 under the laws in effect on July one, one thousand nine  
6 hundred sixty-one, and be receiving such benefits under  
7 a permanent total disability award or be receiving such  
8 benefits because of the death of an employee.

**§23-4A-3. Computation of benefits.**

1 Each individual entitled to participate in the disabled  
2 workmen's relief fund shall be entitled to receive pay-  
3 ments without application (except that an application  
4 shall be required under section five of this article) from  
5 said fund of an amount equal to the difference between  
6 the minimum amount payable under the rates in effect as  
7 of July one, one thousand nine hundred sixty-one, and the  
8 amount said individual is in fact receiving by virtue of  
9 and under the laws of this state. The first such payment  
10 shall be made concurrently with the payment to him of  
11 workmen's compensation for the period next following  
12 the expiration of the twelfth calendar week after this  
13 article becomes effective and subsequent payments shall  
14 be made during the period thereafter in which such par-  
15 ticipant shall be entitled to workmen's compensation  
16 benefits by virtue of and under the laws of this state.

**§23-4A-4. Mode of payment.**

1 Payments to an individual entitled to participate in the  
2 disabled workmen's relief fund may be made from said  
3 fund by separate check or may be made from said fund  
4 and from the workmen's compensation fund by one check,  
5 but each such check drawn on the two funds shall be so  
6 written as to show plainly the payments made from each  
7 fund. No disbursements shall be made from the work-

8 men's compensation fund on account of any provisions of  
9 this article.

**§23-4A-5. Employers providing own system of compensation.**

1 The commissioner shall promptly require of each em-  
2 ployer who has elected to pay compensation direct under  
3 the provisions of section nine, article two of this chapter a  
4 verified list of the names and addresses of all persons to  
5 whom such employer is paying workmen's compensation  
6 on account of permanent total disability or because of the  
7 death of an employee and such evidence respecting such  
8 persons as the commissioner may reasonably deem neces-  
9 sary to determine the eligibility of any such person to  
10 participate in the disabled workmen's relief fund. Any  
11 person claiming the right to participate in said fund under  
12 the provisions of this section may file his application  
13 therefor with the commissioner and shall be accorded a  
14 hearing thereon.

**§23-4A-6. Powers of commissioner over disabled workmen's relief fund.**

1 In the investigation and determination of the right of  
2 persons to participate in the disabled workmen's relief  
3 fund, the commissioner shall have and exercise all the  
4 powers which he possesses under the other articles of this  
5 chapter. His powers and jurisdiction over each case shall  
6 be continuing, but there shall be no appeal from his de-  
7 cisions to any other body or tribunal. No attorney, repre-  
8 sentative or agent of any claimant or participant shall  
9 be entitled to charge or receive a fee or compensation or  
10 gratuity in any form for representing or assisting or pre-  
11 tending to represent or assist any person to become a  
12 participant in said disabled workmen's relief fund.

**§23-4A-7. Employees to administer disabled workmen's relief fund; payment of salaries.**

1 The commissioner shall employ such employees as may  
2 be necessary to discharge his duties and responsibilities  
3 under this article. The salaries and expenses of such em-  
4 ployees shall be paid by the treasurer of the state from  
5 the disabled workmen's relief fund upon vouchers autho-  
6 rized and signed as provided in section two, article one  
7 of this chapter.

**§23-4A-8. Disabled workmen's relief fund; how funded.**

1 For the purpose of carrying out the provisions of this  
2 article, the commissioner shall transfer annually, out of  
3 the interest earned during the previous year on invest-  
4 ments held by the workmen's compensation fund, an  
5 amount estimated by the commissioner to be necessary  
6 to carry out the provisions of this article for one year.  
7 Such money shall be deposited by the commissioner in  
8 the disabled workmen's relief fund, as required by this  
9 article.

**ARTICLE 5. REVIEW.**

- §23-5-1. Notice by commissioner of decision; objections and hearing;  
appeal.  
§23-5-2. Workmen's compensation appeal board—Generally.  
§23-5-3a. Continuances and supplemental hearings; claims not to be  
denied on technicalities.  
§23-5-5. Fees of attorney for claimant or dependent.

**§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.**

1 The commissioner shall have full power and authority  
2 to hear and determine all questions within his jurisdic-  
3 tion, but upon the making or refusing to make any  
4 award, or upon the making of any modification or change  
5 with respect to former findings or orders, as provided  
6 by section sixteen, article four of this chapter, the com-  
7 missioner shall give notice, in writing, to the employer,  
8 employee, claimant, or dependent, as the case may be,  
9 of his action, which notice shall state the time allowed  
10 for filing an objection to such finding, and such action  
11 of the commissioner shall be final unless the employer,  
12 employee, claimant or dependent shall, within thirty  
13 days after the receipt of such notice, object, in writ-  
14 ing, to such finding. Upon receipt of such objection the  
15 commissioner shall, within thirty days from receipt  
16 thereof, set a time and place for the hearing of evidence.  
17 Any such hearing may be conducted by the commis-  
18 sioner or his duly authorized representative at the coun-  
19 ty seat of the county wherein the injury occurred, or  
20 at any other place which may be agreed upon by the  
21 interested parties, and in the event the interested parties  
22 cannot agree, and it appears in the opinion of the com-

23 commissioner that the ends of justice require the taking  
24 of evidence elsewhere, then at such place as the com-  
25 missioner may direct, having due regard for the con-  
26 venience of witnesses. Both the employer and claimant  
27 shall be notified of such hearing at least ten days in  
28 advance, and the hearing shall be held within sixty  
29 days after the filing of objection to the commissioner's  
30 findings as hereinabove provided, unless such hearing  
31 be postponed by agreement of the parties or by the com-  
32 missioner for good cause. The evidence taken at such  
33 hearing shall be transcribed and become part of the  
34 record of the proceedings, together with the other  
35 records thereof in the commissioner's office. At any time  
36 within forty-five days after hearing, if the commissioner  
37 is of the opinion that the facts have not been adequately  
38 developed at such hearing, he may order supplemental  
39 hearing upon due notice to the parties. After final  
40 hearing the commissioner shall, within forty-five days,  
41 render his decision affirming, reversing or modifying,  
42 his former action, which shall be final: *Provided*, That  
43 the claimant or the employer may apply to the appeal  
44 board herein created for a review of such decision;  
45 but no appeal or review shall lie unless application  
46 therefor be made within thirty days of receipt of notice  
47 of the commissioner's final action, or in any event within  
48 sixty days of the date of such final action, regardless of  
49 notice.

50 After protest by the employer only to any finding or  
51 determination of the commissioner made on or after July  
52 one, one thousand nine hundred seventy-one, and the em-  
53 ployer does not prevail in its protest and, in the event  
54 the claimant is required to attend a hearing by subpoena  
55 or agreement of counsel or at the express direction of the  
56 commissioner, then such claimant in addition to reason-  
57 able traveling and other expenses shall be reimbursed  
58 for loss of wages incurred by him in attending such hear-  
59 ing.

**§23-5-2. Workmen's compensation appeal board—Generally.**

1 There shall be a board to be known as the "Workmen's  
2 Compensation Appeal Board", which shall be referred



3 to in this article as the "board", to be composed of three  
4 members, none of whom shall be a contributor to the  
5 compensation fund or in any way connected with a  
6 contributor thereto and none of whom shall be a bene-  
7 ficiary of the compensation fund or in any way connected  
8 with a beneficiary thereof. Two members of such board  
9 shall be of opposite politics to the third, and all three  
10 shall be citizens of this state who have resided therein  
11 for a period of at least five years. All members of the  
12 board shall be appointed by the governor for a term of  
13 six years. The governor is hereby vested with the power  
14 to remove any member of the board in accordance with  
15 the provisions of section four, article six, chapter six  
16 of this code. Notwithstanding the provisions of section  
17 two-a, article seven, chapter six of this code, they shall  
18 each receive an annual salary of seven thousand five  
19 hundred dollars, payable in monthly installments, and  
20 shall also be entitled to reasonable and necessary trav-  
21 eling and other expenses incurred while actually en-  
22 gaged in the performance of their duties. The governor  
23 shall designate one of the members of the board as  
24 chairman thereof, and the board shall meet at the capitol  
25 or at such other places throughout the state as it may  
26 deem proper at regular sessions commencing on the  
27 first Tuesday in February, April, June, August, October  
28 and December, and continuing as long as may be neces-  
29 sary for the proper and expeditious transaction of the  
30 business before it. All clerical services required by the  
31 board shall be paid for by the compensation commis-  
32 sioner from any funds at his disposal. The board shall,  
33 from time to time, compile and promulgate such rules  
34 of practice and procedure as to it shall appear proper  
35 for the prompt and efficient discharge of its business  
36 and such rules shall be submitted to the supreme court  
37 of appeals for approval, and if approved by such court  
38 shall have the same force and effect as the approved  
39 rules of procedure of circuit courts. The board shall  
40 employ such clerical staff as may be necessary for the  
41 efficient conduct of its business but the number of such  
42 employees shall not exceed two. Salaries of the board,  
43 and its employees, and all of its necessary operating

44 expense shall be paid from the workmen's compensation  
45 fund. The board shall submit its annual budget to the  
46 state compensation commissioner for inclusion as a sep-  
47 arate item in the budget estimates prepared by him  
48 annually and within the limits of such budget, all ex-  
49 penses of the board shall be by the requisition of the  
50 commissioner. Salaries of the employees of the board  
51 shall be fixed by the board.

**§23-5-3a. Continuances and supplemental hearings; claims not to be denied on technicalities.**

1 It is the policy of this chapter that the rights of claim-  
2 ants for workmen's compensation be determined as  
3 speedily and expeditiously as possible to the end that  
4 those incapacitated by injuries and the dependents of de-  
5 ceased workmen may receive benefits as quickly as pos-  
6 sible in view of the severe economic hardships which  
7 immediately befall the families of injured or deceased  
8 workmen. Therefore, the criteria for continuances and  
9 supplemental hearings "for good cause shown" are to be  
10 strictly construed by the commissioner and his authorized  
11 representatives to prevent delay, in granting or denying  
12 continuances and supplemental hearings. It is also the  
13 policy of this chapter to prohibit the denial of just claims  
14 of injured or deceased workmen or their dependents on  
15 technicalities.

**§23-5-5. Fees of attorney for claimant or dependent.**

1 On or after July one, one thousand nine hundred  
2 seventy-one, no attorney's fee in excess of twenty-five  
3 percent of any award granted shall be charged or received  
4 by an attorney for a claimant or dependent. In the event  
5 of any award to be paid for the remainder of the life of  
6 the claimant or in the event of any award to a dependent  
7 of an employee, an attorney's fee shall not be charged or  
8 received by the attorney of such claimant or dependent  
9 in excess of twenty-five percent of the benefits to be paid  
10 during a period of two hundred eight weeks. This para-  
11 graph shall not apply to awards made prior to July one,  
12 one thousand nine hundred seventy-one: *Provided*, That  
13 the interest on disability or dependent benefits as pro-

14 vided for in this chapter shall not be considered as part of  
15 the award in determining any such attorney's fee.

**ARTICLE 6. SEVERABILITY.**

**§23-6-1. Severability.**

1 If any provision of this chapter or the application there-  
2 of to any person or circumstance is held unconstitutional  
3 or invalid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of the chapter, and  
5 to this end the provisions of this chapter are declared to  
6 be severable.

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## CHAPTER 178

(House Bill No. 1022—By Mr. Steptoe and Mr. Terry)

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[Passed March 11, 1971; in effect ninety days from passage. Approved by the  
Governor.]

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**AN ACT** to authorize a lump sum contribution of budgeted  
funds by the Berkeley county court.

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

**BERKELEY COUNTY.**

**§1. County court authorized to make lump sum contribution  
of budgeted funds.**

1 The county court of Berkeley county, as an aid to the  
2 health and welfare of the citizens of said county, is  
3 hereby authorized and empowered to appropriate and  
4 pay out of the general county fund such amounts as it  
5 deems necessary to the South Berkeley volunteer fire  
6 company, Bedington volunteer fire company, Hedgesville  
7 volunteer fire company, eastern panhandle training cen-  
8 ter for the retarded and handicapped, Adam Stephen as-  
9 sociation and the Berkeley county committee on the  
10 aging, for the support and maintenance of such organi-  
11 zations.

## CHAPTER 179

(House Bill No. 806—By Mr. Romine and Mr. White, of Cabell)

[Passed March 13, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred seventy, relating to the Cabell county youth center.

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

That section four, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as last amended and reenacted by chapter eighty-two, acts of the Legislature, regular session, one thousand nine hundred seventy, be amended and reenacted to read as follows:

### **CABELL COUNTY YOUTH CENTER.**

#### **§4. Foster homes division.**

1 The foster homes division of the Cabell county youth  
2 center shall be erected and maintained at the Cabell  
3 county farm at Ona, West Virginia, as homes for Cabell  
4 county children who are orphans, homeless, neglected or  
5 deserted, or who, if permitted to run uncontrolled or un-  
6 disciplined, are apt to become delinquent, and which  
7 said children are within the age prescribed by the statutes  
8 of this state for juveniles.

9 The board of supervisors of the Cabell county youth  
10 center with the approval of the Cabell county court, is  
11 authorized to erect and maintain at said farm sufficient  
12 cottages and of capacity to comfortably house the afore-  
13 mentioned juveniles. Each cottage when children are  
14 housed therein shall have as "cottage parents" a husband  
15 and wife team in charge, both of whom shall be persons  
16 of good moral character, experienced in child care, hav-  
17 ing proper understanding of children and temperamen-  
18 tally fit to care and rear them. Each cottage shall be  
19 conducted comparable to a well ordered home, with  
20 proper supervision and understanding discipline main-

21 tained by the "cottage parents". The children therein  
22 housed shall be treated as members of a well ordered  
23 family where there is proper intellectual, physical, spir-  
24 itual and exemplary moral training. Each child shall be  
25 given a home therein so long as its need therefor exists  
26 and it remains a juvenile or until a satisfactory perm-  
27 anent home has been found or it is placed for adoption.

28 The foster homes division shall be made available for  
29 any and all Cabell county children now or hereafter to  
30 be under the control of the state or county department  
31 of welfare.

32 Both the West Virginia and Cabell county departments  
33 of welfare, at the earliest practicable time after the fa-  
34 cilities hereinabove provided have been made ready to  
35 receive said children, may appear before the juvenile  
36 court of Cabell county and bring to the court's attention  
37 the name of any child then in Cabell county  
38 and in the custody of both of the said departments, the  
39 whereabouts of each child, and all facts and circum-  
40 stances which to the department or the court may ap-  
41 pear pertinent with relation to each child, and all of  
42 which the court shall consider, and having so considered  
43 shall then enter an order committing said child to the  
44 foster homes division, or releasing it to the department  
45 as to the court may seem just and proper, and the court  
46 may from time to time make such other and further  
47 orders for the disposition of said child or children as  
48 may be just or proper.

49 For the support and maintenance of the children  
50 placed in said foster homes divisions, the departments of  
51 welfare shall contribute according to institutional for-  
52 mula paid by the departments in other counties  
53 of the state. The money so contributed shall be paid to  
54 the county court of Cabell county and by that court  
55 set aside for the use of said foster homes division.

56 The "cottage parents" and all other personnel requir-  
57 ed for the efficient operation of said cottages in which  
58 children are maintained shall be carefully selected by  
59 the board of supervisors. Said "cottage parents" shall  
60 be responsible for the supervision and training of all  
61 the children committed to their care; for keeping them

62 in school during school terms and hours; for teaching  
63 them to do a reasonable amount of work, and for making  
64 each cottage as nearly self-supporting as possible.

65 The children residing in said foster homes shall be  
66 required, when within school age, and when their health  
67 and physical condition permits, to attend the public  
68 schools. The board of education of said county shall make  
69 provisions for them in the public school at Ona, West  
70 Virginia, or if any one or more of them be in a grade  
71 higher than is taught at Ona, then provision therefor  
72 shall be made in a school wherein such grade is taught.

73 Complete supervision of the foster homes division to-  
74 gether with the employment and discharge of any and  
75 all personnel including "cottage parents" shall be under  
76 the board of supervisors. The salary of each person so  
77 employed shall be reasonable and be determined by the  
78 board, and when approved by the said board of super-  
79 visors shall be certified for payment as is provided in  
80 section six hereof. In the submission by the board of  
81 supervisors of the estimate of all monetary needs of  
82 the Cabell county youth center to the county court as  
83 provided in section six hereof, the board shall include  
84 all reasonable monetary needs of the foster homes di-  
85 vision for the next fiscal year, said estimate shall cover  
86 all anticipated costs for services for all employees and  
87 personnel employed in the reasonable operation of said  
88 foster homes, and all other reasonable expenses incident  
89 thereto.

90 Physical facilities constructed after the effective date  
91 of this act (June 2, 1959) may be used as deemed ap-  
92 propriate by the board of supervisors in carrying out  
93 the provisions of sections three, four or five of this act.

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## CHAPTER 180

(House Bill No. 544—By Mr. Perry)

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[Passed March 1, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to authorize the board of education of the county of

Jefferson to negotiate and sell, by private sale, to the United States certain real estate.

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

**JEFFERSON COUNTY.**

**§1. Board of education authorized to negotiate and sell certain real estate, by private sale, to the United States.**

1 The board of education of the county of Jefferson is  
2 hereby authorized and empowered to negotiate and sell  
3 to the United States department of interior, division of  
4 national park service, that certain real estate together  
5 with the improvements thereon and the appurtenances  
6 thereunto belonging, commonly known as Grand View  
7 school, and consisting of a four room brick building with  
8 an addition of cinder block and the grounds on which  
9 said building is situated consisting of eight lots fronting  
10 on Putnam street, Harpers Ferry, West Virginia, which  
11 lots total two hundred forty feet by two hundred sixty-  
12 four feet, more or less.

13 The board of education of the county of Jefferson is  
14 hereby further authorized and empowered to negotiate  
15 and sell to the United States department of interior,  
16 division of national park service, that certain real estate  
17 together with the improvements thereon and the ap-  
18 purtenances thereunto belonging, commonly known as  
19 Shipley elementary school, and consisting of ten class-  
20 rooms, cafeteria and toilets of brick construction, situate  
21 on Washington and Filmore streets, Harpers Ferry, West  
22 Virginia, which said real estate is two hundred forty  
23 feet by three hundred twenty-six feet, more or less.

24 Any such sale may be a private sale and the process  
25 of requiring bids or holding a public auction shall not  
26 be required.

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## CHAPTER 181

(House Bill No. 1039—By Mr. Sparacino)

[Passed March 11, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter two hundred twelve, acts of the Legislature, regular session, one

thousand nine hundred sixty-three, relating to the Raleigh county airport authority.

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

That section nine, chapter two hundred twelve, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

**RALEIGH COUNTY AIRPORT AUTHORITY.**

**§9. Powers.**

1 The Raleigh county airport authority is hereby given  
2 power and authority as follows:

3 (1) To make and adopt all necessary bylaws, 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, and generally  
11 to do any and all things necessary or convenient, includ-  
12 ing the development of an industrial park, for the pur-  
13 pose of acquiring, equipping, constructing, maintaining,  
14 improving, extending, financing and operating a public  
15 airport 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, do-  
19 nations and contributions from any source or sources.  
20 including 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 ne-  
30 gotiable 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  
35 mortgage 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 sixteen, chapter eight of the code of  
39 West Virginia, one thousand nine hundred thirty-one,  
40 as amended, it being hereby expressly provided that the  
41 Raleigh county airport authority is a "governing body"  
42 within the definition of that term as used in said article  
43 sixteen, chapter eight of the code;

44 (10) To expend its funds in the execution of the  
45 powers and authority herein given; and

46 (11) To own and operate a water and sewer system  
47 for its own use and for the use of any person, residence,  
48 firm, corporation or governmental department located  
49 within a reasonable distance from the airport.

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## CHAPTER 182

(House Bill No. 1003—By Mr. Fitzgerald)

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[Passed March 12, 1971; in effect from passage. Approved by the Governor.]

AN ACT to authorize the expenditure of one hundred thirty  
thousand dollars by the city of Ripley.

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

**CITY OF RIPLEY.**

**§1. Authority to issue bonds for purchase of land and construction of a county library and a community swimming pool.**

1 The city of Ripley is hereby authorized and empowered  
2 to hold a city election seeking public approval of the  
3 issuance of bonds in the amount of one hundred thirty  
4 thousand dollars to be supported by city levy, the pro-

5 ceeds of which are to be distributed one hundred thou-  
6 sand dollars to the Jackson county board of education to  
7 be used as fifty percent local share for federal matching  
8 funds to build a community swimming pool and thirty  
9 thousand dollars to be expended by such city for the  
10 purpose of purchasing land to be transferred to the Jack-  
11 son county library board for the construction of a new  
12 library thereon.

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## CHAPTER 183

(Senate Bill No. 93—By Mr. Dillon)

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[Passed March 4, 1971; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to authorize the expenditure of surplus funds by the Summers county court.

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

**SUMMERS COUNTY COURT.**

**§1. Expenditure of county funds for expenses of Summers County centennial celebration.**

1 In addition to any and all authority and power hereto-  
2 fore granted to the county court of Summers county with  
3 respect to the expenditure of unexpended sums and sur-  
4 pluses, such county court is hereby authorized and em-  
5 powered to use fifteen hundred dollars of unexpended  
6 sums and surpluses, presently or hereafter existing, in  
7 the general fund or in any special fund of said county,  
8 for the purpose of paying for the expenses of the Sum-  
9 mers county centennial celebration.

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# RESOLUTIONS

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## HOUSE CONCURRENT RESOLUTION NO. 2

(By Mr. Myles)

[Adopted January 29, 1971]

Adopting Joint Rules of the Senate and House of Delegates.

*Resolved by the Legislature of West Virginia:*

(1) That Joint Rule Nos. 5 and 18 of the 59th Legislature be amended to read as follows:

### **Introduction of Bills**

5. No bill, other than an appropriation bill, shall be introduced in either house after the fiftieth day of a regular session unless permission to introduce the bill be given by a concurrent resolution, setting out the title to the bill, and adopted by a two-thirds vote of all the members of each house present and voting.

When permission is requested to introduce a bill under the provisions of this rule, quadruplicate copies of such bill shall accompany the resolution when filed for introduction or introduced.

### **Action of Governor on Bills**

18. When the Legislature is in session, any bill, including an appropriation bill or any part thereof, disapproved by the Governor shall be returned by him to the house in which it originated, with his objections thereto, within five days after receipt thereof, Sundays excepted, or become a law. If the Legislature, by adjournment, prevents the return of a disapproved bill, other than an appropriation bill, within such time, it shall be filed by the Governor in the office of the Secretary of State with his objections within fifteen days, after adjournment, or become a law. If the Legislature, by adjournment, prevents the return of a disapproved appropriation bill or any part thereof, it shall be filed by the

Governor in the office of the Secretary of State with his objections within five days after adjournment, or become a law. When any bill, including an appropriation bill or any part thereof, is disapproved after adjournment of the Legislature and such bill with the Governor's objections is filed in the office of the Secretary of State within the prescribed time as aforesaid, the Governor shall notify the house in which the bill originated of his action.

Every bill approved by the Governor shall, within the prescribed time after it is presented to him, as aforesaid, be filed by the Governor in the office of the Secretary of State and the fact of such approval communicated by the Governor to the house in which said bill originated.

Any bill which shall be neither approved nor disapproved by the Governor shall immediately after the expiration of the time fixed by the Constitution in which he may disapprove the same, be filed in the office of the Secretary of State, who shall forthwith engross thereon a certificate to the following effect: "I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the house of the Legislature in which it originated within the time prescribed by the Constitution of the State, has become a law without his approval," and shall date and sign the same. The Governor shall notify the house in which the bill originated of each bill becoming a law without his approval.

When a bill is returned to either house of the Legislature with the objections of the Governor, proceedings thereon shall be governed by section fourteen, article seven of the State Constitution. In such cases the clerk of the Senate and the clerk of the House of Delegates shall engross the action, if any, of their respective houses on the reconsideration of the bill, and sign the same.

The action of the Governor on all bills presented to him shall be appropriately noted in the journals of the two houses.

(2) That the foregoing Rules as amended and all other Joint Rules governing the proceedings of the 59th Legislature are hereby adopted for the 60th Legislature.

COMMITTEE SUBSTITUTE FOR  
HOUSE CONCURRENT RESOLUTION NO. 3(Originating in the Committee on Agriculture and  
Natural Resources)

[Adopted February 20, 1971]

Requesting Congress to adopt legislation reimbursing counties for revenue loss due to federal land acquisition.

WHEREAS, Taxation of real property is the fundamental source of revenue for the operation of county government; and

WHEREAS, The federal government, which pays no real property taxes has acquired large tracts of land in various parts of the United States and in West Virginia in particular; and

WHEREAS, This acquisition of land has all but destroyed the tax base in some counties of this State resulting in a serious curtailment in county services and facilities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Congress of the United States is hereby requested to adopt appropriate legislation to provide annual reimbursement to the county from which such land may be removed or has been heretofore removed from the tax rolls, equivalent to the revenue lost to such county, and that there be a showing of necessity before there be acquisition; and, be it

*Further Resolved,* That the Clerk of the House of Delegates is hereby directed to forward copies of this resolution to the members of the West Virginia congressional delegation in Washington, D. C.

## HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Speaker, Mr. Boiarsky, and Mr. Ours)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a study concerning the feasibility of consolidating into one department or agency all existing departments,

agencies, boards and commissions that have authority regarding environmental matters.

WHEREAS, Protection of the environment is a major concern of the people; and

WHEREAS, It is the duty of the West Virginia Legislature to respond to the concerns of the people of the State; and

WHEREAS, There is a need for concerted effort in meeting the problem of environmental protection; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance be directed to conduct a comprehensive study of the feasibility of consolidating into one department or agency all existing departments, agencies, boards and commissions that have authority regarding environmental matters; and, be it

*Further Resolved*, That the Joint Committee report its findings and recommendations to the Legislature prior to the convening of its regular session, 1972; and, be it

*Further Resolved*, That the expenses necessary to conduct the study, to prepare reports and to draft any proposed legislation shall be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

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### HOUSE CONCURRENT RESOLUTION NO. 9

(By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

[Adopted January 20, 1971]

Memorializing the Congress of the United States to call a convention for the sole purpose of amending the United States Constitution to provide for intergovernmental sharing of federal income tax revenues.

WHEREAS, A resolution of our Nations myriad and diverse problems is contingent upon a viable partnership between the Federal Government and strengthened state governments; and

WHEREAS, The Federal Government, by its extensive reliance on the graduated income tax as a revenue source, has virtually

preempted the use of this course from state and local governments, thereby creating a disabling fiscal imbalance between the Federal Government and state and local governments; and

WHEREAS, Increasing demands upon state and local governments for essential public services have compelled the states to rely heavily on highly regressive and inelastic consumer taxes and property taxes; and

WHEREAS, Federal revenues based predominantly on income taxes increase significantly faster than economic growth, while state and local revenues based heavily on sales and property taxes do not keep pace with economic growth; and

WHEREAS, The fiscal crisis of state and local governments is the overriding problem of intergovernment relations and of continuing a viable federal system, and the only solution to this problem is a meaningful sharing of federal income tax resources; and

WHEREAS, The Congress of the United States, despite the immediate and imperative need therefor, has failed to enact acceptable revenue sharing legislation; and

WHEREAS, In the event of such Congressional inaction, Article V of the Constitution of the United States grants to the states the right to initiate change by applications from the legislatures of two thirds of the several states to Congress, calling for a constitutional convention; and

WHEREAS, The Congress of the United States is required by the Constitution to call such a convention upon receipt of applications from the legislatures of two thirds of the several states; therefore, be it

*Resolved by the Legislature of West Virginia:*

That pursuant to Article V of the Constitution of the United States, the Legislature of the State of West Virginia does hereby make application to the Congress of the United States to call a convention for the sole purpose of proposing to the several states a constitutional amendment which shall provide that a portion of the taxes on income levied by Congress pursuant to the sixteenth amendment of the Constitution of the United States shall be made available each year to state gov-

ernments and political subdivisions thereof, by means of direct allocation, tax credits, or both, without limiting directly or indirectly the use of such moneys for any purpose not inconsistent with any other provision of the Constitution of the United States; and, be it

*Further Resolved*, That this application shall constitute a continuing application until the legislatures of two thirds of the states shall have made like applications and such convention shall have been called by the Congress of the United States unless previously rescinded by this Legislature; and, be it

*Further Resolved*, That certified copies of this resolution be presented forthwith to the President of the Senate and Speaker of the House of Representatives of the United States and to the legislature of each of the several states attesting the adoption of this resolution by the Legislature of the State of West Virginia.

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#### HOUSE CONCURRENT RESOLUTION NO. 10

(By Mr. Speaker, Mr. Boiarsky)

[Adopted March 13, 1971]

Directing the West Virginia Board of Banking and Financial Institutions to make a study with the view of strengthening the Board of Banking and Financial Institutions and the Department of Banking, which study shall also include branch banking, bank mergers and bank holding companies and to report its findings and recommendations to the Legislature.

WHEREAS, The West Virginia Board of Banking and Financial Institutions is authorized by law to make studies of the organization, programs and services of financial institutions and the laws relating thereto in this State and in other jurisdictions and is authorized to make a report with its recommendations to the Legislature; and

WHEREAS, The Legislature can be assisted materially by the West Virginia Board of Banking and Financial Institutions



through a study by the Board and the development by it of recommendations relative to the complex questions involved in branch banking, bank mergers and bank holding companies and the social and economic results that might occur if present West Virginia Banking laws are modified; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Board of Banking and Financial Institutions shall make a study with the view of strengthening the Board of Banking and Financial Institutions and the Department of Banking, which study shall also include branch banking, bank mergers and bank holding companies with inquiry being made into the present laws of this and other states and the social and economic results of a continuation of present banking laws in this State and of any changes thereto recommended by the Board of this State. The Board shall report to the Legislature not later than the first day of the regular session of the Legislature, 1973, on its findings, conclusions and recommendations, together with drafts of legislation that the Board finds necessary to carry out its recommendations for changes to the West Virginia banking laws.

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## HOUSE CONCURRENT RESOLUTION NO. 16

(By Mr. Seibert)

[Adopted March 12, 1971]

Directing the West Virginia Board of Regents to formulate a plan for the establishment of a state system of comprehensive community colleges as a part of the higher educational system of West Virginia.

WHEREAS, The West Virginia Board of Regents has expressed serious concern over the limited number of higher educational opportunities of less than the baccalaureate degree level available to high school graduates and adults in the State; and

WHEREAS, At the request of the Board of Regents, a consultant team was appointed by the Southern Regional Education Board, to assess the two-year college needs in West Virginia; and

WHEREAS, That team has recommended that the Board of Regents work to effect the establishment of a statewide comprehensive community college program as a part of the state system of higher education in West Virginia; and

WHEREAS, National commissions, associations, and agencies including the Carnegie Commission on Higher Education have endorsed the comprehensive community college as the most effective agency for providing post high school academic, occupational and general educational programs of less than the baccalaureate degree for high school graduates and adults; and

WHEREAS, The development of community college programs statewide will have a significant and beneficial impact on the cultural and economic future of the State of West Virginia and its citizenry; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia Board of Regents is hereby directed to formulate and recommend to the Governor and Legislature not later than November 1, 1971, a state plan, with drafts of proposed legislation necessary to put the plan in effect, for the establishment, operation and maintenance of a state system of comprehensive community colleges which, as a part of the higher educational system of the State, will provide post high school programs of two years or less duration including career technical-occupational programs leading to certificates or associate degrees, college parallel or transfer programs of two years or less duration, credit and noncredit general education, continuing education and cultural development offerings, work-study or cooperative education programs and specialized industry training programs. The plan shall include but shall not be limited to the following:

(1) Designation of a network of districts or regions for providing community college programs throughout the State,

(2) Proposals whereby community college programs may be offered in each district making maximum use of existing private and state higher educational resources in the district,

(3) Forecasts of potential enrollment in community college programs in each district,

- (4) Appraisal of available and needed physical facilities,
- (5) Projections of operating and capital outlay costs; and
- (6) Recommended financial plan for developing and operating the state community college program; and, be it

*Further Resolved*, That the Board of Regents is authorized to employ such professional assistance as may be necessary to prepare the plan and draft proposed legislation with all expenses being paid from appropriations to the Board of Regents.

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### HOUSE CONCURRENT RESOLUTION NO. 19

(By Mr. Huffman and Mr. Steptoe)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a study to identify conflicts between the West Virginia Rules of Civil Procedure and statutory provisions concerning civil pleading and practice and to develop any clarifications and corrections needed.

WHEREAS, The Rules of Civil Procedure as promulgated by the Supreme Court of Appeals and statutory provisions concerning civil pleading and procedure conflict in some areas; and

WHEREAS, Such conflicts cause confusion and uncertainty as to what procedure should be followed; and

WHEREAS, Uniform, nonconflicting rules of civil procedure promote efficiency and fairness in the state court system; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to make a study to identify conflicts between the West Virginia Rules of Civil Procedure and statutory provisions concerning civil pleading and practice and to develop any clarifications and corrections needed; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance consult with the Judicial Council in this study; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning its findings, conclusions and recommendations, together with drafts of any proposed legislation determined necessary to carry its recommendations into effect; and, be it

*Further Resolved*, That the expenses necessary to conduct such study, to prepare such report and draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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### HOUSE CONCURRENT RESOLUTION NO. 22

(By Mr. White, of Cabell, and Mr. Holt)

[Adopted March 13, 1971]

Requesting the National Rail Passenger Corporation to establish between Norfolk, Virginia, and Cincinnati, Ohio, a route with intermediate stops in West Virginia.

WHEREAS, The 91st Congress of the United States has enacted Public Law 91-518, commonly known as the "Rail Passenger Service Act of 1970" the purpose of which is to streamline the railroad passenger system by providing modern efficient management and relieving the financial burden on the present system; and

WHEREAS, Said public law directed the United States Department of Transportation to submit a preliminary report not later than December 31, 1970, and a final report not later than January 28, 1971, which said reports identified the end points of the various passenger services that will be established, and identified the intermediate points now in existence; and

WHEREAS, The incorporation of the National Rail Passenger Corporation, on or before May 1, 1971, will designate the frequency and type of service between the end points, and will designate the route and the intermediate stopping points between the end points; and

WHEREAS, The United States Department of Transportation, in its final report dated January 28, 1971, designated Norfolk, Virginia, and Cincinnati, Ohio, as two of the end points; and

WHEREAS, The best interests of the State of West Virginia will be served if the intermediate stops between said end points are White Sulphur Springs, Hinton, Prince, Charleston and Huntington which is the present route of the Chesapeake and Ohio Railway's "George Washington", trains one and two; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature respectfully prays and petitions the National Rail Passenger Corporation to establish between Norfolk, Virginia, and Cincinnati, Ohio, a route with intermediate stops in the West Virginia cities of White Sulphur Springs, Hinton, Prince, Charleston and Huntington; and, be it

*Further Resolved,* That the Legislature requests that at least one route be through the New River Gorge in the daylight hours for scenic purposes; and, be it

*Further Resolved,* That the Clerk of the West Virginia House of Delegates is hereby instructed to forward copies of this resolution to Mr. David W. Kendall, Chairman, National Rail Passenger Corporation, 800 L'enfant Plaza, Washington, D. C., 20001.

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## HOUSE CONCURRENT RESOLUTION NO. 39

(Originating in the Committee on the Judiciary)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study into the area of conservation and prevention of waste of oil and gas in this State and the feasibility of unitizing pools and the regulated spacing of oil and gas wells.

WHEREAS, The oil and gas reserves in West Virginia constitute one of the major natural resources of this State; and

WHEREAS, There has been expressed great concern with respect to the conservation of these natural resources and opinions have been expressed as to the various methods of conserving oil and gas and proper drilling procedures, well spacing and other methods of fully utilizing the oil and gas reserves of this State and preventing the waste thereof; and

WHEREAS, Some of these proposals could pose grave economic consequences to those persons engaged in the industry of exploring and drilling for or producing oil and gas, as well as consequences and effects upon landowners and others who have an interest in such oil and gas reserves as well as for the entire State of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance conduct a complete and detailed study of the manner and methods for conserving the oil and gas reserves of this State and the prevention of waste of such reserves; such study to include, but not be limited to, the drilling procedures presently used in this State and other states, the feasibility and desirability of unitizing pools for the production of such oil and gas, the spacing of wells used in and about the production of oil and gas, the effects of all of the foregoing upon landowners and other persons in the oil and gas industry and the need for legislation to these and other related matters with respect to the production of oil and gas; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report its findings, conclusions and recommendations together with any proposed legislation that the Committee can recommend to the regular session of the Legislature, 1972; and, be it

*Further Resolved,* That the expenses necessary to conduct such study, to prepare a report and to draft any proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

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### HOUSE CONCURRENT RESOLUTION NO. 55

(Originating in the Committee on Constitutional Revision)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study into the feasibility and advisability of amending the Constitution to allow consolidation of county and municipal governments.

WHEREAS, Municipal and county governments have many problems in common; and

WHEREAS, These common problems may best be solved by one consolidated government which could pool its resources for greater efficiency and uniformity; and

WHEREAS, Consolidation of municipal and county governments would be a significant change in local governmental structure; and

WHEREAS, Any significant change in governmental structure should be studied thoroughly to determine any immediate or future effects; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to study the feasibility and advisability of amending the Constitution to allow consolidation of county and municipal governments; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning its findings, conclusions and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

*Further Resolved,* That the expenses necessary to conduct such study, to prepare such report and draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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HOUSE CONCURRENT RESOLUTION NO. 64

(By Mr. Myles)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the broadest possible scope of the feasibility of granting adult status to eighteen-year-olds with special attention to the ramifications this change would have on present law.

WHEREAS, Very little information is available to determine the various problems that would result from granting adult status to eighteen-year-olds; and

WHEREAS, A computer search of the West Virginia Code has revealed approximately ten thousand references to the terms "minor," "infant," "under disability," etc., involving a wide range of subjects, such as the right to contract, liability for contracts, crimes, elections, marriage and property rights; and

WHEREAS, The granting of adult status to eighteen-year-olds requires careful and meticulous consideration; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance conduct a comprehensive study of the broadest possible scope regarding the feasibility of granting adult status to eighteen-year-olds, the effects this would have on established legal concepts and any problems that might arise from such change; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1972, concerning its findings, conclusions and recommendations, together with drafts of any proposed legislation determined necessary to carry its recommendations into effect; and, be it

*Further Resolved,* That the expenses necessary to conduct such study, to prepare such report and to draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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#### SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Gainer)

[Adopted March 3, 1971]

Creating a continuing special interim Forest Management Review Commission to review the multiple use, sustained yield management policy or any other management policy of the United States Department of Agriculture and the United States Forest Service on national forest lands



located within West Virginia, to determine if the objectives of the multiple use, sustained yield concept are being complied with and to take any appropriate action necessary to protect the public's interest on such lands.

WHEREAS, The West Virginia Legislature created a special commission known as the "Forest Management Practices Commission," which conducted a comprehensive study and evaluated forest management practices, particularly clear-cutting or even-aged management, as applied by the United States Forest Service on national forest lands located in West Virginia; and

WHEREAS, The Forest Management Practices Commission submitted to the West Virginia Legislature, the Secretary of the United States Department of Agriculture, the Chief of the United States Forest Service and members of the West Virginia congressional delegation its report, which stated the multiple use, sustained yield concept was not being complied with and that even-aged management, i.e. clear-cutting, was being overused, and made fourteen recommendations to correct present problems, which to be complied with requires action of the United States Congress, the United States Department of Agriculture and the United States Forest Service; and

WHEREAS, The implementation of these fourteen recommendations is very important if the multiple use, sustained yield concept of forest management is to be complied with on national forest lands in West Virginia and the Forest Management Practices Commission recommended that a continuing special legislative interim commission be established to aid in the implementation of these fourteen recommendations, review national forest management policy, serve the public's interest, act as a forum for the expression of public opinion regarding use, operation and management of national forest lands in West Virginia and keep the West Virginians currently informed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That a continuing special interim commission to be known as the "Forest Management Review Commission," consisting of three members of the Senate, to be appointed by the Presi-

dent thereof, no more than two of whom shall be appointed from the same political party, one of whom the President shall designate as cochairman, and three members of the House of Delegates, to be appointed by the Speaker thereof, no more than two of whom shall be appointed from the same political party, one of whom the Speaker shall designate as cochairman, and three persons residing within the State who are knowledgeable in the fields of conservation and forestry who shall be appointed jointly by the President of the Senate and the Speaker of the House of Delegates, is hereby created to constantly review the multiple use, sustained yield management policy, or any other management policy, of the United States Department of Agriculture and the United States Forest Service on national forest lands located in West Virginia to determine if the objectives of the multiple use, sustained yield concept are being complied with, to counsel with the United States Department of Agriculture and the United States Forest Service and aid in the implementation of the recommendations made by the Forest Management Practices Commission and the coordination of management policy with state and local agencies and report any inadequacies or deficiencies along with any recommendations as periodically as necessary to the Joint Committee on Government and Finance, and to each session of the West Virginia Legislature, the West Virginia congressional delegation, the United States Department of Agriculture and the United States Forest Service; and, be it

*Further Resolved*, That the Commission is hereby authorized to meet with officials of the United States Department of Agriculture, United States Forest Service, West Virginia congressional delegation, state and local agencies, to personally survey national forests in West Virginia, to hold public hearings and to travel as necessary for these purposes; and, be it

*Further Resolved*, That the expenses necessary to conduct the study and to prepare a report be paid from legislative appropriations to the Joint Committee on Government and Finance, but no expenses whatever shall be incurred unless the approval of the Joint Committee on Government and Finance is first had and obtained by said commission; and, be it

*Further Resolved*, That the Clerk of the Senate be directed to cause copies of the resolution to be forwarded to the Secretary of the United States Department of Agriculture and the Chief of the United States Forest Service and to each member of the West Virginia congressional delegation.

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## SENATE CONCURRENT RESOLUTION NO. 8

(By Mr. Carrigan)

[Adopted March 3, 1971]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the laws relating to regulations and control of land use on areas adjoining state parks, state forests and state recreational facilities, with special emphasis upon the feasibility and desirability of establishing a statewide authority to augment existing controls.

WHEREAS, The West Virginia Legislature has over the years appropriated moneys and authorized the sale of revenue bonds for financing development of new state parks and recreation areas, representing a major investment by the people of West Virginia in outdoor recreation and tourism; and

WHEREAS, The proven potential of state parks, state forests and state recreational areas for attracting visitors from out of state, thus adding substantially to the state and local economy, has confirmed the wisdom of such investment; and

WHEREAS, The attractiveness of these facilities is due in large measure to their natural setting, including the sense of repose engendered by relative remoteness; and

WHEREAS, Certain commercial or urban developments tend to appear along the approaches to the more popular state facilities, bringing about deterioration of scenic values and lessening the attractiveness of these state facilities; and

WHEREAS, Existing planning agencies have generally lacked the necessary capability for restricting such urbanizing trends; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance be directed to make a comprehensive study of the law relating to land use controls on areas adjoining state parks, state forests and state recreational facilities, with special emphasis upon the feasibility and desirability of establishing a statewide authority to augment existing controls; and, be it

*Further Resolved*, That a report containing the results of such study and any recommendations and drafts of proposed legislation be submitted to the Legislature at its regular session, 1972; and, be it

*Further Resolved*, That the expenses necessary to conduct such study be paid from the legislative appropriations to the Joint Committee on Government and Finance.

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SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. McCourt, Mr. President, and Mr. Gainer)

[Adopted February 18, 1971]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the feasibility of the State of West Virginia acquiring and operating a scenic railroad for tourists, commonly referred to and known as the Webster-Randolph Scenic Railroad, approximately one hundred twenty miles in length, running from Webster Springs, West Virginia, to Elkins, West Virginia.

WHEREAS, Scenic beauty, natural and recreational areas abound in the State of West Virginia that should be made accessible to citizens of the State and the public at large for their enjoyment and use; and

WHEREAS, The proposed Webster-Randolph Scenic Railroad would open many of these now inaccessible areas to the public; and

WHEREAS, The Webster-Randolph Scenic Railroad would be a prime tourist attraction that would cause the State's economy, as well as that of the counties wherein the railroad is

located to expand and bring additional revenues into the state treasury; and

WHEREAS, The Webster-Randolph Scenic Railroad established and operated as an excursion train would perpetuate an important part of the heritage and history of the State and of America, enabling adults and children to ride on and observe in action the steam locomotive so important in welding this vast country and its people together; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance make a comprehensive study of the feasibility of the State of West Virginia acquiring and operating a scenic railroad for tourists, commonly referred to and known as the Webster-Randolph Scenic Railroad, approximately one hundred twenty miles in length, running from Webster Springs, West Virginia, to Elkins, West Virginia; ascertain the cost of acquisition and operation of the railroad; the approximate effect of its operation on local and state economy; and anticipated revenue to be derived by the local and state governments from its operation; and, be it

*Further Resolved,* That members of the Joint Committee on Government and Finance are expressly authorized to meet with officials of the Western Maryland Railroad, Mower Lumber Company and of other railroads, lumber companies, organizations and government as is necessary and proper to make this study and accomplish the purposes set forth in this resolution; and to personally survey the general area through which the proposed Webster-Randolph Scenic Railroad would run; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance complete its field survey, necessary travel and meetings with officials prior to November 1, 1971, and report its findings and recommendations, together with any drafts of any legislation to carry out its recommendations, to the Legislature at its regular session, 1972; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare its reports and to draft any proposed

legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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SENATE CONCURRENT RESOLUTION NO. 22

(By Mr. McCourt, Mr. President, and Mr. Carrigan)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to continue certain studies.

WHEREAS, Certain studies referred to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation by prior sessions of the Legislature have not been completed and require additional study; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the studies authorized by the following resolutions be continued:

1. House Concurrent Resolution No. 86, regular session, 1970, relating to banking.
2. Senate Concurrent Resolution No. 11, regular session, 1957, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to institutions of higher education.
3. Senate Concurrent Resolution No. 15, regular session, 1968, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to highway safety.
4. House Concurrent Resolution No. 6, first extraordinary session, 1970, relating to a homestead exemption.
5. House Concurrent Resolution No. 4, first extraordinary session, 1970, relating to a mental health complex.
6. House Concurrent Resolution No. 20, regular session, 1969, and continued by Committee Substitute for House Con-

current Resolution No. 80, regular session, 1970, relating to nonpublic school and college aid.

7. House Concurrent Resolution No. 8, regular session, 1968, and last continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to the Potomac River Basin Compact.

8. Senate Concurrent Resolution No. 52, regular session, 1970, relating to public employee relations.

9. House Concurrent Resolution No. 31, regular session, 1969, and continued by Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to the tax structure of West Virginia.

10. Committee Substitute for House Concurrent Resolution No. 80, regular session, 1970, relating to a water study; and, be it

*Further Resolved*, That all provisions of said concurrent resolutions be continued in force; and, be it

*Further Resolved*, That all reports, together with findings, conclusions, recommendations, and any proposed drafts of legislation, be made to the Legislature at its regular session, 1972.

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## SENATE CONCURRENT RESOLUTION NO. 24

(By Mrs. Leonard and Mr. Sharpe)

[Adopted March 11, 1971]

Expressing concern and sympathy to the families of West Virginians, and to the families of all Americans, held as prisoners of War in Southeast Asia.

WHEREAS, All captured American personnel held in Southeast Asia suffer privation and hardship; and

WHEREAS, Prisoners held in North Vietnam are existing under particularly harsh circumstances; and

WHEREAS, Many of these prisoners are confined in a primitive jungle environment in Vietnam, Laos or Cambodia; and

WHEREAS, These prisoners are primarily members of the United States Army, Navy, Air Force and Marine Corps; and

WHEREAS, These prisoners include American civilians; and

WHEREAS, The enemy's refusal to acknowledge publicly the presence of all prisoners in these areas, and the enemy's refusal to permit certain prisoners to correspond with their families, have increased the burden of anxiety and concern on the families of prisoners of war; and

WHEREAS, The government of West Virginia and the government of the United States are concerned with continuing efforts to bring national and world public opinion to bear in securing humane treatment for, and the release of, our beloved sons of West Virginia, and all captured American personnel; and

WHEREAS, The National League of Families of American Prisoners Missing in Southeast Asia, recognizes that the Prisoner of War issue is not a political issue, but a humanitarian issue; and

WHEREAS, The West Virginia State Coordinator of the National League of Families of American prisoners missing in Southeast Asia has received permission from a few families to furnish names of certain West Virginians who are prisoners of war; and

WHEREAS, Lieutenant Commander William Hardman, U. S. Navy, son of Mrs. Sadie M. Thompkins, St. Albans, West Virginia; Major Glenn H. Wilson, U. S. Air Force, son of Mr. and Mrs. Stanley Wilson, St. Albans, West Virginia; and Major Hubert Kelley Flesher, U. S. Air Force, nephew of Mrs. Charles Carson, Jane Lew, West Virginia, are prisoners in Hanoi; and

WHEREAS, Sergeant Albert H. Altizer, son of Mr. and Mrs. Kenneth W. Altizer, Squire, West Virginia, and Chief Warrant Officer Joseph A. Rose, U. S. Army, son of Mr. and Mrs. Joseph Rose, Morgantown, West Virginia, are believed to be prisoners of war in Southeast Asia; and

WHEREAS, There are more than fifteen hundred Americans known to be missing or prisoners; therefore, be it



*Resolved by the Legislature of West Virginia:*

That the members of the Legislature express their deep concern and sympathy for the families of all West Virginians held by hostile forces in Southeast Asia; and, be it

*Further Resolved*, That the members of the Legislature express their deep concern and sympathy for the families of all Americans held by hostile forces in Southeast Asia; and, be it

*Further Resolved*, That the members of the Legislature are mindful of the sacrifice of West Virginians and many Americans who have given their lives in the Vietnam War, and that the Legislature of West Virginia expresses sympathy to the families of those who will not return; and, be it

*Further Resolved*, That the Legislature of West Virginia urges humane treatment for communication with, and the release of, all prisoners of war; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the families of the West Virginians named herein who are prisoners of war or who are known to be missing and to The Honorable Richard M. Nixon, President of the United States, Washington, D. C.; The Honorable Ton Duc Thang, President, Democratic Republic of North Vietnam, Hanoi, North Vietnam; The Honorable David K. E. Bruce, U. S. Delegation to the Paris Meeting, U. S. Embassy, 2 Avenue Gabriel, Paris, France; Minister Xuan Thuy, 8 Avenue General Le Clerc, 94 Choisy-Le-Roi, Paris, France; Mme. Nguyen Thi Binh, 39 Avenue Georges Mandell, Paris 16, France; and Mrs. Bobby G. Vinson, National Coordinator, National League of Families of American Prisoners Missing in Southeast Asia, 1 Constitution Avenue, N. E., Washington, D. C.

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SENATE CONCURRENT RESOLUTION NO. 32

(By Mr. Gainer and Mr. Poffenbarger)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the need for, and

desirability of regulating timber management practices on privately-owned lands within the State.

WHEREAS, the preservation, protection and perpetration of forests and the tree covered lands, the conservation of all resources from these forests and lands and protection of the environment involved or influenced thereby for the equal and guaranteed use of present and future generations are of the utmost concern to the West Virginia Legislature; and

WHEREAS, It is in the public interest, and for the protection of the health and welfare of citizens of this State, for it to prescribe certain rules of forestry practice and silviculture to be observed and abided in the growing and harvesting of timber and utilizing of natural resources from forests and tree covered lands in this State; and

WHEREAS, Unregulated and mismanaged timbering operations can cause erosion, land slides, stream pollution and siltation, accumulation of stagnant water, increase likelihood of floods and slides, destroy the value of some lands for agricultural or recreational purposes, destroy aesthetic values, counteract efforts to conserve soil, water and other resources, and destroy and impair the health, safety, welfare and property rights of citizens of the State; and

WHEREAS, Bills regulating timber management practices on privately-owned lands were introduced in the Senate and House of Delegates of the West Virginia Legislature during its regular session, 1971, that are meritorious and should be given full and proper consideration; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance make a comprehensive study of the need for, and desirability of, regulating timber management practices on privately-owned lands within the State, giving particular consideration to all bills introduced regarding this proposition during the regular session of the Legislature, 1971, and present recommendations for adequate regulation; and, be it

*Further Resolved,* That the Joint Committee report its findings and recommendations, together with drafts of any legis-

lation needed to effect its recommendations, to the Legislature at its regular session, 1972; and, be it

*Further Resolved*, That the expenses necessary to conduct the study, to prepare its reports and any legislation proposed shall be paid from legislative appropriations to the Joint Committee on Government and Finance.

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### SENATE CONCURRENT RESOLUTION NO. 33

(By Mr. Holliday and Mr. Sharpe)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to make a study of the Department of Mental Health and its institutions; the office of the Commissioner of Public Institutions; the Department of Health; and all mental health, humane, penal and correctional institutions thereof; and of the programs, needs and laws relating thereto; providing for a special committee to make certain visits and inspections and to assist said Joint Committee on Government and Finance; and requiring the Joint Committee to prepare and submit a comprehensive plan to reorganize the entire mental health, health, correctional and charitable institutional structure and system to correct all problems revealed by the study.

WHEREAS, The many problems in the field of mental health, health and correctional systems and the problems with respect to the care and treatment of persons in state health, mental health, humane, penal and correctional institutions are of such magnitude as to demand full and adequate information for use by members of the Legislature in order for such members to evaluate intelligently the budgetary requests and other matters of interest pertaining to these areas of concern; and

WHEREAS, The time available during the session of the Legislature is inadequate for the members of the standing committees of both branches of the Legislature dealing with such departments and institutions to make detailed studies and

analyses thereof of the needs of said departments and institutions under their control and supervision, their practices, problems and needs, and to make adequate, constructive recommendations for the improvement of services and facilities in all such departments and institutions under their control; and

WHEREAS, The institutions, programs and practices of, and laws relating to, the Department of Mental Health, the office of the Commissioner of Public Institutions, the Department of Health and all units and divisions thereof, cover broad and complicated areas for legislative consideration and action which can best be conducted, investigated and analyzed between the current session of the Legislature and the next regular session thereof, to be held in January, 1972; and

WHEREAS, A full and complete study must be made and a comprehensive plan developed to correct existing problems in the mental health, health, correctional and charitable institutional structure in order to conserve revenues and to obtain from those expended maximum benefits for those under care or treatment and for citizens of this State; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance make a continuing study of the Department of Mental Health; the office of the Commissioner of Public Institutions; the Department of Health; and of all mental health, health, humane, penal and correctional institutions under their control and jurisdiction; of the programs, needs and laws relating thereto, with particular emphasis on the total programs, functions and needs of all mental health, health, humane, penal and correctional institutions in order to discover existing problems, how these should be corrected, how revenues can be conserved while maximizing the services and benefits derived from revenues expended; and that the Joint Committee prepare and submit a comprehensive plan to reorganize the entire mental health, health, correctional and charitable institutional structure and system to correct all problems revealed by the study at the regular session of the Legislature, 1972; and, be it

*Further Resolved*, That three members of the Senate Standing Committee on Public Institutions, to be designated by the

President of the Senate, and three members of the House of Delegates Standing Committee on Health and Welfare, to be designated by the Speaker of the House of Delegates, no more than two of those designated from each house to be of the same political party, hereinafter referred to as the "special committee", shall assist the Joint Committee on Government and Finance in making such study to the extent specified by the Joint Committee on Government and Finance. Any four members of the special committee shall constitute a quorum. In addition to assisting the Joint Committee on Government and Finance as above specified, the special committee shall be charged with the responsibility to visit the state health, humane, penal and correctional institutions of this State in order to inspect the condition thereof; to consult with the Director of the Department of Health, and of the Department of Mental Health, the Commissioner of Public Institutions, and the Director of the Division of Corrections, the superintendents of all such institutions and their staffs; and to report their findings, conclusions and recommendations to the Joint Committee on Government and Finance or any proper subcommittee thereof. No such visitations and inspections shall be made unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by said special committee; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, 1972, on its findings, conclusions and recommendations, together with drafts of legislation that shall be necessary to carry its recommendations into effect. Such report shall be distributed to each member of the West Virginia Legislature and a copy of such report shall be submitted to the Governor, the Director of the Department of Mental Health, the Director of Health, the Commissioner of Public Institutions, the Director of the Division of Corrections and the chief administrative officer of any other department or agency of state government under whose jurisdiction any such institution may be; and, be it

*Further Resolved*, That the members of the special committee, who are not members of the Joint Committee, participating in this study shall be reimbursed for their expenses

as provided for in Enrolled Senate Bill No. 326, regular session of the Legislature, 1971; and, be it

*Further Resolved*, That the expenses necessary to conduct the study and to prepare a report and drafts of proposed legislation be paid from the legislative appropriation to the Joint Committee on Government and Finance.

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SENATE CONCURRENT RESOLUTION NO. 37

(Originating in the Committee on Natural Resources)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the existing state laws relating to surface mining and proposed revisions in West Virginia's surface mining laws to correct problems and inadequacies discovered in those laws.

WHEREAS, The interest displayed in surface mining during this session of the Legislature indicates a great public awareness of surface mining and the environmental and economic effects thereof; and

WHEREAS, It is the opinion of the Legislature that the Legislature must be kept fully informed on what will be taking place in the surface mining industry in West Virginia during the remainder of the year 1971; and

WHEREAS, Bills have been introduced at this session of the Legislature to prohibit the surface mining of coal, which bills would have the Legislature find that the surface mining of coal causes ecological deterioration and destruction extending beyond the sites of the disturbed land, entailing economic and social costs to the state and its citizens in excess of the benefits derived therefrom; causes excessive and unacceptable waste, defacement and destruction of the surface of the land, which is a natural resource of the State that must be conserved in the interest of this and succeeding generations; depreciates drastically those qualities and amenities of the State that make it either a pleasant or acceptable place to live and work; will adversely affect the State's population as the level of the land's

despoilation becomes intolerable for living and employment opportunity; tends to debase the value of property for ad valorem tax purposes thereby depriving the counties, the county boards of education and municipalities of a revenue source essential to the support of their services and institutions; offends sensibilities, creates unsightliness, and will make the State an eyesore for the people now living here and for those who may otherwise be attracted to live and work in our State; adversely affects the long-range economic development, growth and tourist travel in many counties and regions of the State occasioned by its extreme impairment of land, water and aesthetic qualities; detrimentally affects the lands and properties of the state and federal government owned and held in public trust; destroys the grandeur and natural beauty of the country-side which contributes highly important factors to the public welfare of the State; causes soil erosion, landslides, destruction of forests and wildlife habitat, and leaves land isolated and hazardous; causes stream pollution, sedimentation and flooding of streams, the progressive deterioration of rivers and watercourses extending far beyond the lands disturbed by such mining, and threatens public and private water supplies; cannot be adequately regulated; disturbs considerably more acres each year, and causes or will cause the aforementioned undesirable effects to a far greater degree, than the surface mining of other minerals; and

WHEREAS, It has been asserted that a prohibition on the surface mining of coal would adversely affect employment and the economy, as well as the fulfillment of the State's and nation's energy requirements; and

WHEREAS, West Virginia is reported to have vast reserves of readily recoverable reserves of strippable coal located in forty of West Virginia's fifty-five counties; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance obtain and compile for the Legislature and the public all information relevant to the problems incident to the surface mining industry, the adequacy of surface-mining laws, the effect of such laws on the surface-mining industry, the adequacy of existing laws with respect to environmental and economic

effects of surface mining on the people of and the property in the State of West Virginia, whether laws related to the subject matter of surface mining are being fully implemented and whether any new or additional laws are necessary to properly protect the people and property in the State of West Virginia with respect to surface mining; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance give top priority to this study and commit the necessary resources and staff to the obtaining and compiling of comprehensive and in-depth information on the study subject matter including but not limited to the employment of independent objective experts as to the problems of surface mining and reclamation to aid and assist the committee; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance distribute to the members of the Legislature, make public through a news release, not later than forty-five days from the last day of the regular session of the Legislature, one thousand nine hundred seventy-one, an outline of the study which it intends to conduct or of the questions to which it will seek answers as directed by this resolution; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance complete its inquiry and report all information compiled by it which shall include but not be limited to findings, conclusions and recommendations together with drafts of proposed legislation necessary, to the members of the Legislature not later than the first day of January, one thousand nine hundred seventy-two; and, be it

*Further Resolved*, That expenses necessary to conduct such study, employ such staff and prepare and distribute such report be paid from the legislative appropriation to the Joint Committee on Government and Finance.

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SENATE CONCURRENT RESOLUTION NO. 39

(By Mr. McCourt, Mr. President)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to continue its study of the budget process.



WHEREAS, Adoption of the Modern Budget Amendment in 1968 has raised many uncertainties regarding the legislative power of budget making; and

WHEREAS, Changes may be needed in the statutes relating to the budget making process to resolve any inconsistencies between statutory and constitutional law; and

WHEREAS, The Joint Committee on Government and Finance initiated study of the budget making process on March 3, 1970, and this study has not yet been completed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to review, examine and study the budgetary process of this State and to make recommendation to the Legislature regarding the same; and, be it

*Further Resolved*, That the Committee report to the regular session of the Legislature, 1972, on its findings, conclusions and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

*Further Resolved*, That the expenses necessary to conduct such a study, to prepare a report and to draft proposed legislation be paid from legislative appropriation to the Joint Committee on Government and Finance.

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#### SENATE CONCURRENT RESOLUTION NO. 40

(By Mr. McCourt, Mr. President and Mr. Carrigan)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the physical needs of all health, humane, penal and correctional institutions under the control of the Commissioner of Public Institutions and all institutions under the control of the Department of Mental Health and to propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment or structure connected with such institutions.

effects of surface mining on the people of and the property in the State of West Virginia, whether laws related to the subject matter of surface mining are being fully implemented and whether any new or additional laws are necessary to properly protect the people and property in the State of West Virginia with respect to surface mining; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance give top priority to this study and commit the necessary resources and staff to the obtaining and compiling of comprehensive and in-depth information on the study subject matter including but not limited to the employment of independent objective experts as to the problems of surface mining and reclamation to aid and assist the committee; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance distribute to the members of the Legislature, make public through a news release, not later than forty-five days from the last day of the regular session of the Legislature, one thousand nine hundred seventy-one, an outline of the study which it intends to conduct or of the questions to which it will seek answers as directed by this resolution; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance complete its inquiry and report all information compiled by it which shall include but not be limited to findings, conclusions and recommendations together with drafts of proposed legislation necessary, to the members of the Legislature not later than the first day of January, one thousand nine hundred seventy-two; and, be it

*Further Resolved*, That expenses necessary to conduct such study, employ such staff and prepare and distribute such report be paid from the legislative appropriation to the Joint Committee on Government and Finance.

---

SENATE CONCURRENT RESOLUTION NO. 39

(By Mr. McCourt, Mr. President)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to continue its study of the budget process.

WHEREAS, Adoption of the Modern Budget Amendment in 1968 has raised many uncertainties regarding the legislative power of budget making; and

WHEREAS, Changes may be needed in the statutes relating to the budget making process to resolve any inconsistencies between statutory and constitutional law; and

WHEREAS, The Joint Committee on Government and Finance initiated study of the budget making process on March 3, 1970, and this study has not yet been completed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby directed to review, examine and study the budgetary process of this State and to make recommendation to the Legislature regarding the same; and, be it

*Further Resolved*, That the Committee report to the regular session of the Legislature, 1972, on its findings, conclusions and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

*Further Resolved*, That the expenses necessary to conduct such a study, to prepare a report and to draft proposed legislation be paid from legislative appropriation to the Joint Committee on Government and Finance.

---

SENATE CONCURRENT RESOLUTION NO. 40

(By Mr. McCourt, Mr. President and Mr. Carrigan)

[Adopted March 13, 1971]

Directing the Joint Committee on Government and Finance to conduct a study of the physical needs of all health, humane, penal and correctional institutions under the control of the Commissioner of Public Institutions and all institutions under the control of the Department of Mental Health and to propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment or structure connected with such institutions.

WHEREAS, There is great concern and awareness by the Legislature regarding the present physical condition of many institutions under the control of both the Commissioner of Public Institutions and the Department of Mental Health, as well as the pressing need to rebuild, repair or replace much equipment and many structures connected with such institutions; and

WHEREAS, The time available during the session of the Legislature is inadequate to properly survey and study all such institutions or to recommend a method or methods of financing any needed rebuilding, repairs or replacement of any equipment and structures connected with such institutions; and

WHEREAS, The Legislature finds that such a survey and study must be completed before any long-range decisions can be made regarding the physical needs of such institutions and the method or methods of financing any needed rebuilding, repairs or replacement and such survey and study can best be conducted between the current session of the Legislature and the next regular session thereof to be held in January, one thousand nine hundred seventy-two; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance make a survey and study of the physical needs of all health, humane, penal and correctional institutions under the control of the Department of Public Institutions and all institutions under the control of the Department of Mental Health to determine the nature and extent of the physical needs of all equipment and structures connected with such institutions, and to recommend and propose a method or methods of financing any needed rebuilding, repairs or replacement of any equipment and structures connected with any such institutions; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, one thousand nine hundred seventy-two, on its findings, conclusions and recommendations, together with drafts of any proposed legislation that shall be necessary to carry its recommendations into effect; and, be it

*Further Resolved,* That expenses necessary to conduct such study and to prepare any such report and drafts of proposed

legislation be paid from the legislative appropriation to the Joint Committee on Government and Finance.

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SENATE JOINT RESOLUTION NO. 3

(By Mr. Moreland)

[Adopted February 8, 1971]

Proposing an amendment to the Constitution of the State, amending section two, article fourteen thereof, relating to making amendments to the Constitution.

*Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-two, which proposed amendment is that section two, article fourteen thereof be amended to read as follows:

**ARTICLE XIV. AMENDMENTS.**

**§2. How amendments are made.**

Any amendment to the Constitution of the State may be proposed in either House of the Legislature at any regular or extraordinary session thereof; and if the same, being read on three several days in each House, be agreed to on its third reading, by two thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the Journals, and it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State for ratification or rejection, at a special election, or at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. If a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the same

time, the vote on the ratification or rejection shall be taken on each separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment. Whenever one or more amendments are submitted at a special election, no other question, issue or matter shall be voted upon at such special election, and the cost of such special election throughout the state shall be paid out of the state treasury.

# ACTS OF 1971

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## FIRST EXTRAORDINARY SESSION

(April 27–30, 1971)

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### CHAPTER 1

(House Bill No. 111—By Mr. Speaker, Mr. McManus)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Department of Agriculture, Account No. 510, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals \$368,-161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and,

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of \$7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

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

That Account No. 510, chapter 6, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

#### AGRICULTURE

##### 80—Department of Agriculture

##### Acct. No. 510

2	Other Personal Services .....	\$38,555.00
6	Total .....	\$38,555.00



## CHAPTER 2

(House Bill No. 128—Originating in the House Committee on Finance)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor

may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 6: Department of Finance and Administration, Information Systems Service Division, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$200,000.00.

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## CHAPTER 3

(House Bill No. 123—Originating in the House Committee on Finance)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed, March sixteenth, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this sec-

tion is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 3: Department of Mental Health, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$686,959.00 for the following purposes and accounts:

Acct. No. 410—Roney's Point	
Current Expenses _____	\$ 20,000.00
Acct. No. 410—Comprehensive Community Mental Health Center—Princeton _____	171,959.00
Acct. No. 419—Colin Anderson Center	
Current Expenses _____	125,000.00
Acct. No. 420—Weston State Hospital	
Current Expenses _____	200,000.00
Acct. No. 421—Spencer State Hospital	
Current Expenses _____	75,000.00
Acct. No. 422—Huntington State Hospital	
Current Expenses _____	50,000.00
Acct. No. 423—Lakin State Hospital	
Current Expenses _____	25,000.00
Acct. No. 424—Barboursville State Hospital	
Current Expenses _____	20,000.00

Any unexpended balance remaining in the appropriation for "Comprehensive Community Mental Health Center—Princeton" at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

## CHAPTER 4

(House Bill No. 126—Originating in the House Committee on Finance)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteenth, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may,

from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 5: Department of Natural Resources, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$403,656.00:

Acct. No. 565:

Park and recreation _____	\$205,925.00
Water resources _____	197,731.00

Any unexpended balance remaining in these appropriations at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

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## CHAPTER 5

(House Bill No. 125—Originating in the House Committee on Finance)

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[Passed April 29, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue, for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor trans-

mitted to the Legislature a revised statement of the state fund, general revenue for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 2. Early Childhood Education Demonstration Centers, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$550,000.00.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1970-71 is hereby reappropriated for expenditure during the fiscal year 1971-72.

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## CHAPTER 6

(House Bill No. 113—By Mr. Speaker, Mr. McManus)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-one,

to the Joint Expenses of the Legislature, Account No. 103, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the "Budget Bill."

WHEREAS, By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue for fiscal year 1970-71 will be \$302,458,234.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1970-71, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1970-71; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein supplemental appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of \$1,030,930.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

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

That Account No. 103, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

3—*Joint Expenses*

Acct. No. 103

	Fiscal Year 1970-71
1 To pay the cost of legislative printing .....	\$ 75,000.00
2 Commission on Interstate Cooperation .....	11,000.00
3 Joint Committee on Government and Finance .....	797,500.00

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## CHAPTER 7

(House Bill No. 112—By Mr. Speaker, Mr. McManus)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Attorney General, Account No. 240, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals \$368,161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash



balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget Bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of \$7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

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

That Account No. 240, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

LEGAL

17—Attorney General

Acct. No. 240

2	Other Personal Services .....	\$269,871.00
8	Total.....	\$269,871.00

## CHAPTER 8

(House Bill No. 110—By Mr. Speaker, Mr. McManus)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, to the Auditor, Account No. 150, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill."

WHEREAS, The estimated revenue in the state fund, general revenue, for the fiscal year 1971-72, substantiated by the "Executive Budget" prepared by the governor, communications from the governor and enacted legislation totals \$368,161,706.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a budget bill for the fiscal year 1971-72, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1971-72; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine

hundred seventy-two, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of \$7,373,138.00 during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

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

That Account No. 150, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

### FISCAL

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

Acct. No. 150

2	Other Personal Services	_____	\$25,003.00
3	Current Expenses	_____	7,500.00
6	Total	_____	\$32,503.00

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## CHAPTER 9

(House Bill No. 114—By Mr. Speaker, Mr. McMenus)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, to the Senate, Account No. 101, chapter five, acts of

the Legislature, regular session, one thousand nine hundred seventy, known as the "Budget Bill."

WHEREAS, By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue for fiscal year 1970-71 will be \$302,458,234.00; and

WHEREAS, In addition to the estimate of revenue provided by the governor, there existed available for appropriation cash balances from the previous fiscal year and anticipated expirations; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the governor and the available cash balance and estimated expirations, enacted a Budget Bill for the fiscal year 1970-71, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of all revenues available for appropriation for the fiscal year 1970-71; and

WHEREAS, The governor, pursuant to his constitutional authority, disapproved and reduced items or parts of items contained in Enrolled Committee Substitute for Senate Bill No. 142, acts of the Legislature, regular session, one thousand nine hundred seventy-one (now chapter 6, acts of the Legislature of 1971), known as the Budget Bill, wherein supplemental appropriations were made to certain designated accounts to be expended within the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, the governor by his action reduced the amounts appropriated and thereby made additional revenue available for supplemental appropriations; and

WHEREAS, There now remains unappropriated a balance in the total general revenue available for further appropriation of \$1,030,930.00, during the fiscal year ending June thirtieth, one thousand nine hundred seventy-one, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

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

That Account No. 101, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill, be supplemented by adding thereto the following sums to each of the designated line items:

LEGISLATIVE

1—Senate

Acct. No. 101

Fiscal Year  
1970-71

2 Compensation and per diem of officers and	
3 attaches .....	\$68,430.00



## CHAPTER 10

(House Bill No. 127—Originating in the House Committee on Finance)

[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted

to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 7: State Tax Department, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$104,666.00:

Acct. No. 180:

Current expenses .....\$104,666.00

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## CHAPTER 11

(House Bill No. 122—Originating in the House Committee on Finance)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT making supplementary appropriations of surplus public money out of the treasury.

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

That notwithstanding, and in addition to, section three-a of an act of the Legislature, Enrolled Committee Substitute for Senate Bill No. 142, known as the Budget Bill for 1971-72, passed March sixteen, one thousand nine hundred seventy-one and signed into law by the governor, the same being supplemental to chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill for 1970-71, the item set forth below in this section is appropriated from the state fund, general revenue for fiscal year 1970-71, subject to the terms and conditions set forth in this section. By Executive Message No. 16, dated March fifteen, one thousand nine hundred seventy-one, the governor transmitted to the Legislature a revised statement of the state fund, general revenue, for fiscal year 1970-71, revised as of March fifteen, one thousand nine hundred seventy-one, in which it is stated that the estimated revenue in the state fund, general revenue, for fiscal year 1970-71, will be \$302,458,234.00. Therefore, the governor shall continue to review the revenue in the state fund, general revenue from the first day of July, one thousand nine hundred seventy, to the date the appropriation under this section is expected to be made available for expenditure and determine whether, in his opinion, the revenue in the state fund, general revenue then in prospect or on hand will be sufficient to meet all appropriations from the state fund, general revenue under the budget bill for fiscal year 1970-71, and make a finding with respect thereto. In the event that such findings shall show sufficient revenue in prospect or on hand to meet all other appropriations made from the state fund, general revenue under the budget bill for fiscal year 1970-71, the governor may, from any excess over and above the amount required to meet all such appropriations, release the following item, if available funds will permit:

Item No. 1: West Virginia Board of Regents, to the extent of any surplus in excess of said sum of \$302,458,234.00, up to a maximum surplus of \$592,710.00.

## CHAPTER 12

(House Bill No. 130—Originating in the House Committee on Finance)

[Passed April 29, 1971; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriations for certain state spending units as appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the "Budget Bill."

WHEREAS, Certain spending units have indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending units; and,

WHEREAS, Such transfers are necessary in order to protect or to increase the efficiency of the service by each of such spending units; therefore,

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

That items of the total appropriations of Account No. 373, Account No. 380, Account No. 426, and Account No. 430, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, be transferred so as to read as follows:

39—*West Virginia Forestry Camp—(Leckie)*

Acct. No. 373

3 Repairs and Alterations .....	\$	7,400.00
4 Equipment .....		11,300.00

43—*West Virginia Children's Home*

Acct. No. 380

1 Personal Services .....	\$	70,464.00
2 Current Expenses .....		40,130.00

57—*Welch Emergency Hospital*

Acct. No. 426

1 Personal Services .....	\$	356,720.00
2 Current Expenses .....		185,920.00
3 Repairs and Alterations .....		29,750.00
4 Equipment .....		10,500.00

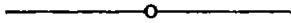


58—*Hopemont State Hospital*

Acct. No. 430

1 Personal Services .....	\$1,206,600.00
2 Current Expenses .....	327,800.00

The foregoing constitute transfers of amounts from one item of appropriation to another item of appropriation within the total appropriation of each designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-one shall be available for expenditure upon the effective date of this act.



## CHAPTER 13

(Senate Bill No. 8—By Mr. Carrigan)



[Passed April 28, 1971; In effect July 1, 1971. Approved by the Governor.]



AN ACT to amend and reenact section four, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum and maximum compensation limits of elected county officials for each class of county.

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

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

**§7-7-4. Minimum and maximum compensation limits of elected county officials for each class of county.**

- 1 For the purpose of determining the compensation to
- 2 be paid to the elected county officials of each county, the
- 3 following minimum and maximum compensation limits
- 4 for each county office by class are hereby established
- 5 and shall be used by each county court in determining

6 the compensation of each of their county officials in-  
7 cluding compensation of members of the county court:

	County Court	Sheriff	County Clerk
10	Class I .....\$ 9,600-12,800	\$ 9,000-12,000	\$13,800-18,400
11	Class II ----\$ 6,000- 9,000	\$ 7,800-11,700	\$10,000-15,000
12	Class III ---\$ 4,400- 6,600	\$ 7,800-11,700	\$ 8,000-12,000
13	Class IV ---\$ 2,800- 4,200	\$ 6,600- 9,900	\$ 6,600- 9,900
14	Class V ---\$ 1,600- 2,400	\$ 4,800- 7,200	\$ 4,800- 7,200
15	Class VI ---\$ 1,400- 2,100	\$ 4,400- 6,600	\$ 4,400- 6,600
16	Class VII ..\$ 600- 900	\$ 3,600- 5,400	\$ 2,400- 3,600
17	Circuit		Prosecuting
18	Clerk	Assessor	Attorney
19	Class I .....\$13,800-18,400	\$ 9,000-15,000	\$20,000-26,000
20	Class II ----\$10,000-15,000	\$ 9,000-13,500	\$12,000-18,000
21	Class III ---\$ 8,000-12,000	\$ 7,800-11,700	\$ 9,000-13,500
22	Class IV ---\$ 6,600- 9,900	\$ 6,600- 9,900	\$ 7,200- 9,600
23	Class V ----\$ 4,800- 7,200	\$ 4,800- 7,200	\$ 4,800- 7,200
24	Class VI ---\$ 4,400- 6,600	\$ 4,400- 6,600	\$ 4,400- 6,600
25	Class VII ..\$ 1,800- 2,700	\$ 3,000- 4,500	\$ 1,800- 2,700

26 When the classification of a county is changed as pro-  
27 vided in this article, the compensation of each elected  
28 county official of that county for each fiscal year there-  
29 after shall be set within the minimum and maximum  
30 compensation limits established for each elected county  
31 official in that class until the classification again changes.

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## CHAPTER 14

(House Bill No. 115—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed April 29, 1971; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to definitions; creating public employees insurance

board as a body corporate; effective date of insurance program; composition of board, powers and duties, expenses; chairman of board, executive secretary; authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, and group life and accidental death insurance plan, rules and regulations for administration of plans, what plans may provide; conditions of insurance plans; authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance, limitations, awarding of contracts, reinsurance, certificates for covered employees, discontinuances of contracts; contract provisions for retiring employees, their spouses and dependents; payment of benefits; coverage for employee's dependents; payment of costs by the state, special funds created and duties of treasurer; employee's share, disposition of funds; expense fund; defining offenses and providing criminal penalties; permissive participation in the insurance program and exemptions therefrom; rules and regulations; and providing a severability clause.

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

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

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

- §5-16-1. Short title.
- §5-16-2. Definitions.
- §5-16-3. Public employees insurance board created and established; body corporate.
- §5-16-4. First meeting of board; effective date of program.
- §5-16-5. Composition of board; powers and duties of board generally; expenses.
- §5-16-6. Chairman of board; executive secretary.
- §5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide.
- §5-16-8. Conditions of insurance plans.

- §5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuances of contracts.
- §5-16-10. Contract provisions for group hospital and surgical, group major medical, and group life and accidental death insurance for retiring employees, their spouses and dependents.
- §5-16-11. To whom benefits paid.
- §5-16-12. Payment of costs by employer and employee; coverage for employee's dependents generally.
- §5-16-13. Payment of costs by the state as employer; special funds created; duties of treasurer with respect thereto.
- §5-16-14. Authorization to take advantage of acts of Congress, accept gifts, grants and matching funds.
- §5-16-15. Expense fund.
- §5-16-16. No member or employee of the board shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.
- §5-16-17. Permissive participation; exemptions.
- §5-16-18. Rules and regulations for administration of article.
- §5-16-19. Severability.

**§5-16-1. Short title.**

- 1 The short title by which this article may be referred
- 2 to is "West Virginia Public Employees Insurance Act."

**§5-16-2. Definitions.**

- 1 The following words and phrases as used in this article,
- 2 unless a different meaning is clearly indicated by the
- 3 context, shall have the following meanings:
- 4 (1) "Board" means the public employees insurance
- 5 board created by this article.
- 6 (2) "Employee" means any person, including elected
- 7 officers, who works regularly full time in the service of
- 8 the state. Any matters of doubt as to who is an employee
- 9 within the meaning of this article shall be decided by
- 10 the board.
- 11 (3) "Retired employee" shall mean an employee of
- 12 the state who retires after the effective date of this article.
- 13 (4) "Employer" means the state of West Virginia, its
- 14 boards, agencies, commissions, departments, institutions
- 15 or spending units; except the following: The national
- 16 guard, the board of regents and political subdivisions.

**§5-16-3. Public employees insurance board created and established; body corporate.**

1 The West Virginia public employees insurance board  
2 is hereby created and established to provide group hos-  
3 pital and surgical insurance, group major medical insur-  
4 ance, and group life and accidental death insurance for  
5 all employees of the state as hereinafter provided. The  
6 board shall constitute a body corporate. All business of  
7 the board shall be transacted in the name of the West  
8 Virginia public employees insurance board.

**§5-16-4. First meeting of board; effective date of program.**

1 The board shall meet as soon as possible after the  
2 effective date of this article for the purpose of negotiating  
3 and contracting to provide group insurance for those  
4 employees herein made eligible, such insurance coverage  
5 to be effective July one, one thousand nine hundred  
6 seventy-one, or as soon thereafter as practicable.

**§5-16-5. Composition of board; powers and duties of board generally; expenses.**

1 The board shall consist of:

- 2 (a) The auditor of the state by virtue of his office;
- 3 (b) The workmen's compensation commissioner;
- 4 (c) The treasurer of the state by virtue of his office;
- 5 (d) Two members appointed by the governor from the  
6 state board of insurance of West Virginia, one from each  
7 political party, whose terms shall be concurrent with that  
8 of the governor.

9 The board shall hold a meeting at least twice each year  
10 and shall designate the time and place. Three board mem-  
11 bers shall constitute a quorum at any meeting of the  
12 board. Each board member shall be entitled to one vote  
13 on each question before the board. A majority of the  
14 quorum present shall be required for a decision by the  
15 board at its meetings. The board shall adopt its own rules  
16 of procedure and shall keep a record of its proceedings.

17 The board shall be responsible for the administration  
18 and management of the public employees insurance sys-  
19 tem as provided for in this article and in connection there-  
20 with shall have the power and authority to make all rules

21 and regulations necessary to effectuate the provisions of  
22 this article, except as is otherwise specifically provided in  
23 this article.

24 No member of the board shall receive any compensation  
25 for serving as such; however, each member of the board  
26 shall be reimbursed for all reasonable and necessary ex-  
27 penses actually incurred by him in carrying out his duties  
28 as a member of the board.

**§5-16-6. Chairman of board; executive secretary.**

1 The board shall elect from its own number a chairman  
2 who shall serve for one year, or until a successor is elected.

3 The board shall appoint an executive secretary of the  
4 West Virginia employees insurance board, and said execu-  
5 tive secretary shall be the chief administrative officer of  
6 the board. He shall perform such duties as are required  
7 of him under the provisions of this article and as the  
8 board shall delegate to him from time to time. The com-  
9 pensation of the executive secretary shall be fixed by the  
10 board. The executive secretary shall, with the approval  
11 of the board, employ such administrative, technical and  
12 clerical employees as shall be required for the proper  
13 administration of the insurance program herein provided.

**§5-16-7. Authorization to establish group hospital and surgical  
insurance plan, group major medical insurance plan  
and group life and accidental death insurance plan;  
rules and regulations for administration of plans;  
what plans may provide.**

1 The board is hereby empowered and authorized to  
2 establish a group hospital and surgical insurance plan  
3 or plans, a group major medical insurance plan or plans,  
4 and a group life and accidental death insurance plan or  
5 plans for employees of the state, and to establish and  
6 promulgate rules and regulations for the administration  
7 of such plans, subject to the limitations contained in this  
8 article. Such plans may provide for group hospital and  
9 surgical and group major medical insurance against the  
10 financial cost of hospitalization, surgical and medical  
11 treatment and care, and may also include, among other  
12 things, prescribed drugs, medicines, prosthetic appliances,

13 hospital inpatient and outpatient service benefits, and  
14 medical expenses and indemnifying benefits, and group  
15 life and accidental death insurance, and such other cover-  
16 age and benefits deemed appropriate and desirable by  
17 the board.

**§5-16-8. Conditions of insurance plans.**

1 The insurance plans herein provided for shall be de-  
2 signed by the board:

3 (1) To provide a reasonable relationship between the  
4 hospital, surgical and medical benefits to be included  
5 and the expected hospital, surgical and medical expenses  
6 to be incurred by the affected employee, his spouse and  
7 his dependents.

8 (2) To include reasonable controls which may include  
9 deductible and coinsurance provisions applicable to some  
10 or all of the benefits.

11 (3) To prevent unnecessary utilization of the various  
12 hospital, surgical and medical services available.

13 (4) To provide reasonable assurance of stability in  
14 future years for the plans.

15 (5) To provide major medical insurance for said em-  
16 ployees.

17 (6) To provide certain group life and accidental death  
18 insurance for the employees covered under this article.

19 (7) To include provisions for the coordination of bene-  
20 fits payable by the terms of such plans with the bene-  
21 fits to which such employee, or his spouse or his de-  
22 pendents may be entitled by the provisions of any other  
23 group hospital, surgical or medical or group major medi-  
24 cal insurance or any combination thereof.

**§5-16-9. Authorization to execute contracts for group hospi-  
tal and surgical insurance, group major medical  
insurance, and group life and accidental death in-  
surance; limitations; awarding of contracts; rein-  
surance; certificates for covered employees; dis-  
continuances of contracts.**

1 The board is hereby given exclusive authorization to  
2 execute such contract or contracts as are necessary to

3 carry out the provisions of this article and to provide  
4 the plan or plans of group hospital and surgical insurance  
5 coverage, group major medical insurance coverage, and  
6 group life and accidental death insurance coverage se-  
7 lected in accordance with the provisions of this article,  
8 such contract or contracts to be executed with one or  
9 more agencies, corporations, insurance companies or ser-  
10 vice organizations licensed to sell group hospital and  
11 surgical insurance, group major medical insurance, and  
12 group life and accidental death insurance in this state.

13 The group life and accidental death insurance herein  
14 provided for shall not exceed an amount equal to the  
15 annual salary of the employee to the nearest one thou-  
16 sand dollar multiples and under no circumstances shall  
17 the amount of the group life and accidental death insur-  
18 ance exceed ten thousand dollars for any one employee.  
19 The amount of the group life and accidental death in-  
20 surance to which an employee would otherwise be en-  
21 titled shall be reduced by fifty percent upon such em-  
22 ployee attaining age sixty-five.

23 All of the insurance coverage to be provided for under  
24 this article may be included in one or more similar con-  
25 tracts issued by the same or different carriers.

26 The provisions of article three, chapter five-a of this  
27 code, relating to the division of purchases of the depart-  
28 ment of finance and administration, shall not apply to  
29 any contracts for any insurance coverage authorized to  
30 be executed under the provisions of this article; however,  
31 before entering into any contract for any insurance cover-  
32 age, as herein authorized, said board shall invite com-  
33 petent bids from all qualified and licensed insurance  
34 companies or carriers, who may wish to offer plans for  
35 the insurance coverage desired. The board shall deal di-  
36 rectly with insurers in presenting specifications and re-  
37 ceiving quotations for bid purposes. No commission or  
38 finder's fee, or any combination thereof, shall be paid to  
39 any individual or agent. The board shall award  
40 such contract or contracts on a competitive basis. In  
41 awarding the contract or contracts the board shall take  
42 into account the experience of the offering agency, cor-  
43 poration, insurance companies or service organization in



44 the group hospital and surgical insurance field, group  
45 major medical insurance field, and group life and acci-  
46 dental death insurance field, and its facilities for the  
47 handling of claims. In evaluating these factors, the board  
48 may employ the services of impartial, professional in-  
49 surance analysts or actuaries or both. Any contract ex-  
50 ecuted by the board with a selected carrier shall be a  
51 contract to govern all eligible employees subject to the  
52 provisions of this article. Nothing contained in this article  
53 shall prohibit any insurance carrier from soliciting em-  
54 ployees covered hereunder to purchase additional hos-  
55 pital and surgical, major medical or life and accidental  
56 death insurance coverage.

57 The board may authorize the carrier with whom a  
58 primary contract is executed to reinsure portions of such  
59 contract with other carriers which elect to be a reinsurer  
60 and who are legally qualified to enter into a reinsurance  
61 agreement under the laws of this state.

62 Each employee who is covered under any such contract  
63 or contracts shall receive a certificate setting forth a fee  
64 schedule of the hospital, surgical or medical benefits to  
65 which such employee, his spouse and his dependents are  
66 entitled hereunder, to whom such benefits shall be pay-  
67 able, to whom claims shall be submitted, and a summary  
68 of the provisions of any such contract or contracts as they  
69 affect the employee, his spouse and his dependents.

70 The board may at the end of any contract period dis-  
71 continue any contract or contracts it has executed with  
72 any carrier and replace the same with a contract or  
73 contracts with any other carrier or carriers meeting the  
74 requirements of this article.

**§5-16-10. Contract provisions for group hospital and surgical,  
group major medical, and group life and accidental  
death insurance for retiring employees, their  
spouses and dependents.**

1 Any contract or contracts entered into hereunder may  
2 provide for group hospital and surgical, group major  
3 medical, and group life and accidental death insurance  
4 for retiring employees and their spouses and dependents

5 as defined by rules and regulations of the board, and on  
6 such terms as the board may deem appropriate.

7 In the event the board provides the above benefits for  
8 retiring employees, their spouses and dependents, the  
9 board shall adopt rules and regulations prescribing the  
10 conditions under which retiring employees may elect to  
11 participate in or withdraw from the plan or plans. Any  
12 contract or contracts herein provided for shall supple-  
13 ment any hospital, surgical, major medical or health  
14 insurance plan administered by the United States de-  
15 partment of health, education, and welfare to which the  
16 employee, spouse or dependent may be eligible under  
17 any law or regulation of the United States.

**§5-16-11. To whom benefits paid.**

1 Any benefits payable under any group hospital and  
2 surgical and group major medical plan or plans may  
3 be paid either directly to the attending physician,  
4 hospital, medical group, or other person, firm, association  
5 or corporation furnishing the service upon which the  
6 claim is based, or to the insured upon presentation of  
7 valid bills for such service, subject to such provisions  
8 designed to facilitate payments as may be made by the  
9 board.

**§5-16-12. Payment of costs by employer and employee;  
coverage for employee's dependents generally.**

1 The board is hereby authorized to provide under any  
2 contract or contracts entered into under the provisions  
3 of this article that the costs of any such group hospital  
4 and surgical insurance, group major medical insurance,  
5 group life and accidental death insurance benefit plan or  
6 plans may be paid by the employer and employee. In  
7 addition, each employee shall be entitled to have his  
8 spouse and dependents, as defined by the rules and reg-  
9 ulations of the board, included in any group hospital and  
10 surgical insurance or group major medical insurance  
11 coverage provided upon agreeing to pay the costs of  
12 such coverage for such spouse and dependents. The board  
13 shall adopt rules and regulations governing the discon-  
14 tinuance and resumption of any employee's coverage for  
15 his spouse and dependents.

**§5-16-13. Payment of costs by the state as employer; special funds created; duties of treasurer with respect thereto.**

1 The state as an employer shall pay a sum for all in-  
2 surance coverage provided hereunder as set by the board  
3 not less than twelve dollars per month for each employee  
4 electing to receive dependent accident and sickness in-  
5 surance coverage, and for each employee electing to re-  
6 ceive individual accident and sickness insurance coverage  
7 only, a monthly sum not less than fifty percent of the  
8 monthly sum paid by the state for each employee elect-  
9 ing to receive dependent coverage.

10 The Legislature shall appropriate to the board annually  
11 from the general revenue fund such sums as may be  
12 required to pay the state's proportionate share of the  
13 premium costs of those spending units operating from the  
14 general revenue fund, and each spending unit operating  
15 from special revenue funds, or federal funds, or both,  
16 shall pay to the board their proportionate share of  
17 premium costs from their personal services budget.

18 The portion of the premium or cost attributable to all  
19 insurance coverage provided hereunder and not paid by  
20 the state shall be paid by the state employee.

21 The state employee's proportionate share of the pre-  
22 mium or cost shall be withheld or deducted by the state  
23 from such employee's salary or wages as and when paid  
24 and such sums shall be forwarded to the board with such  
25 supporting data as the board may require.

26 All moneys received by the board shall be deposited  
27 in a special fund or funds as are necessary in the state  
28 treasury and the treasurer of the state shall be custodian  
29 of such fund or funds and shall administer such fund  
30 or funds in accordance with the provisions of this article  
31 or as the board may from time to time direct. The  
32 treasurer shall pay all warrants issued by the state auditor  
33 against such fund or funds as the board may direct  
34 in accordance with the provisions of this article.

**§5-16-14. Authorization to take advantage of acts of Congress, accept gifts, grants and matching funds.**

1 The board is authorized to take full advantage of the  
2 benefits and provisions of any acts of Congress and to ac-  
3 cept any and all gifts, grants and matching funds, whether  
4 in the form of money or services.

**§5-16-15. Expense fund.**

1 The Legislature shall annually appropriate such sums:  
2 as may be necessary to pay the proportionate share of  
3 the administrative costs for the state as an employer,  
4 and each division, agency, board, commission or depart-  
5 ment of the state which operates out of special revenue  
6 funds or federal funds or both shall pay its proportionate  
7 share of the administrative costs of the insurance plan or  
8 plans authorized under the provisions of this article.

**§5-16-16. No member or employee of board shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.**

1 No elected or appointed official of the state of West Vir-  
2 ginia; nor any member, officer, or employees of the Legis-  
3 lature; nor any officer, agent, servant or employee in the  
4 executive branch of state government shall have any in-  
5 terest, direct or indirect, in the gain or profits arising from  
6 any contract or contracts provided for in this article. Any  
7 such person who shall gain, directly or indirectly, from  
8 any contract or contracts herein provided for, except as  
9 an insured beneficiary thereof, shall be guilty of a mis-  
10 demeanor, and, upon conviction thereof, shall be punished  
11 by a fine not exceeding one thousand dollars, or by im-  
12 prisonment in the county jail for a period not exceeding  
13 one year, or by both, in the discretion of the court.

**§5-16-17. Permissive participation; exemptions.**

1 The provisions of this article shall not be mandatory  
2 upon any employee, and nothing contained in this article.

3 shall be construed so as to compel any employee to enroll  
4 in or subscribe to, any insurance plan authorized by the  
5 provisions of this article.

6 Those employees enrolled in the insurance program  
7 authorized under the provisions of article two-b, chapter  
8 twenty-one-a of this code shall not be required to enroll  
9 in or subscribe to an insurance plan or plans authorized  
10 by the provisions of this article, and the employees of  
11 any department which has an existing insurance pro-  
12 gram for its employees to which the government of the  
13 United States contributes any part or all of the premium  
14 or cost thereof may be exempted from the provisions  
15 of this article. Any employee exempted under the pro-  
16 visions of this paragraph may enroll in any insurance  
17 program authorized by the provisions of this article at  
18 any time, to the same extent as any other qualified em-  
19 ployee, but any such employee shall not remain enrolled  
20 in both such programs. The provisions of articles four-  
21 teen, fifteen and sixteen, chapter thirty-three of the code,  
22 relating to group life insurance, accident and sickness  
23 insurance, and group accident and sickness insurance,  
24 shall not be applicable to the provisions of this article  
25 whenever the provisions of said articles and chapter are  
26 in conflict with or contrary to any provision set forth  
27 herein.

**§5-16-18. Rules and regulations for administration of article.**

1 The board shall promulgate such rules and regulations  
2 as may be required for the effective administration of  
3 the provisions of this article. All rules and regulations  
4 promulgated by the board and all hearings held by the  
5 board shall be promulgated and held in accordance with  
6 the provisions of chapter twenty-nine-a of the code.

**§5-16-19. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held unconstitutional  
3 or invalid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of the article, and  
5 to this end the provisions of this article are declared to  
6 be severable.

## CHAPTER 15

(House Bill No. 107—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

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[Passed April 29, 1971; in effect July 1, 1971. Approved by the Governor.]

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AN ACT to amend and reenact chapter one hundred forty, acts of the Legislature, regular session, one thousand nine hundred seventy-one, authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Roads Development Amendment of 1968, in an amount not exceeding ninety million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representa-

tive to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, 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.

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

#### **ISSUANCE AND SALE OF ROAD BONDS.**

- §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. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor; redemption of bonds.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

#### **§1. Road bonds; amount; when may issue.**

1 Bonds of the state of West Virginia, under authority  
2 of the Roads Development Amendment of 1968, of the  
3 par value not to exceed ninety million dollars during  
4 the fiscal year ending June thirty, one thousand nine  
5 hundred seventy-two, are hereby authorized to be issued  
6 and sold for the sole purpose of raising funds for the  
7 building and construction of free state roads and high-  
8 ways as provided for by the constitution and the laws  
9 enacted thereunder. Such bonds may be issued by the  
10 governor in such amounts, in coupons or registered  
11 form, in such denominations, at such time, bearing such  
12 date or dates, as the governor may determine, based upon  
13 an examination of the West Virginia department of high-  
14 ways' yearly program which justifies the issuance by the  
15 governor of said bonds, and shall become due and payable  
16 serially, annually or semiannually, in such amounts and

17 mature in such years as the governor may determine:  
18 *Provided*, That such bonds shall mature within and not  
19 exceeding twenty-five years from their date: *Provided*  
20 *further*, That the governor shall not offer for sale more  
21 than thirty million dollars of bonds at any one time:  
22 *Provided further*, That the Governor must offer said  
23 bonds for competitive bids from recognized financial in-  
24 vestment institutions before said bonds may be sold.

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized  
2 to arrange for the transfer of registered bonds and for  
3 each such transfer a fee of fifty cents shall be charged  
4 by and paid to the state of West Virginia, to the credit  
5 of the state road sinking fund. Bonds taken in exchange  
6 shall be cancelled by the auditor and treasurer and be  
7 carefully preserved by the treasurer. The treasurer shall  
8 make provisions for registering "payable to bearer" bond  
9 and for each bond registered a fee of fifty cents shall  
10 likewise be charged by and paid to the state of West  
11 Virginia, to the credit of the state road sinking fund. All  
12 such bonds shall be payable at the office of the trea-  
13 surer of the state of West Virginia, or, at the option of the  
14 holder, at a bank in the city of New York to be desig-  
15 nated by the governor, or, at the option of the holder  
16 at such other bank or banks, within the state, as  
17 may be designated or approved by the governor.  
18 The bonds shall bear interest, payable semiannually,  
19 to bearer, at the office of the treasurer of the  
20 state of West Virginia, at the capitol of the state, or  
21 at the banks designated and approved by the governor,  
22 upon presentation and surrender of interest coupons,  
23 then due, in the case of coupon bonds. For the payment  
24 of interest on registered bonds, the treasurer of the  
25 state of West Virginia shall requisition a warrant from  
26 the auditor of the state to be drawn on the state trea-  
27 surer, and shall mail such warrant to the registered  
28 owner at the address as shown by the record of regis-  
29 tration. Both the principal and interest of the bonds  
30 shall be payable in lawful money of the United States





34 centum per annum from the date, payable semiannually  
 35 in like lawful money of the United States of America  
 36 at the treasurer's office or banks aforesaid, on the first  
 37 day of \_\_\_\_\_ and the first day of \_\_\_\_\_  
 38 of each year (and in the case of coupon bonds) according  
 39 to the tenor of the annexed coupons bearing the fac-  
 40 simile signature of the treasurer of the state of West  
 41 Virginia, upon surrender of such coupons. This bond  
 42 (in case of a coupon bond) may be exchanged for a  
 43 registered bond of like tenor upon application to the  
 44 treasurer of the state of West Virginia.

45 (Redemption provisions, if any, to be inserted here)

46 To secure the payment of the principal and interest of  
 47 this bond, the state of West Virginia covenants and  
 48 agrees with the holder as follows: (1) That this bond  
 49 shall constitute a direct and general obligation of the  
 50 state of West Virginia; (2) that the full faith and credit  
 51 of the state is pledged to secure the payment of the  
 52 principal and interest of this bond; (3) that an annual  
 53 state tax shall be collected in an amount sufficient to  
 54 pay as it may accrue the interest on this bond and the  
 55 principal thereof; and (4) that such tax shall be levied  
 56 in any year only to the extent that the moneys in the  
 57 state road fund irrevocably set aside and appropriated  
 58 for and applied to the payment of the interest on and  
 59 principal of this bond becoming due and payable in such  
 60 year are insufficient therefor.

61 This bond is hereby made exempt from any taxation  
 62 by the state of West Virginia, or by any county, dis-  
 63 trict, or municipal corporation thereof.

64 In testimony whereof, witness the manual or facsimile  
 65 signature of the treasurer of the state of West Virginia,  
 66 and the manual or facsimile countersignature of the  
 67 auditor of the state, hereto affixed according to law,  
 68 dated the \_\_\_\_\_ day of \_\_\_\_\_, one  
 69 thousand nine hundred \_\_\_\_\_, and  
 70 the seal of the state of West Virginia or a facsimile  
 71 thereof.

72

73

74 (SEAL)

\_\_\_\_\_  
 Treasurer of the State of West Virginia

75 Countersigned:

76 \_\_\_\_\_

77 Auditor of the State of West Virginia

**§4. Form of coupon.**

1 The form of coupon shall be substantially as follows,  
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. \_\_\_\_\_ Coupon No. \_\_\_\_\_

5 On the first day of \_\_\_\_\_, 19\_\_\_\_\_,  
6 the state of West Virginia will pay to the bearer, in  
7 lawful money of the United States of America, at the  
8 office of the treasurer of the state, or, at \_\_\_\_\_  
9 bank in the city of New York, or, at \_\_\_\_\_,  
10 at the option of the holder, the sum of \_\_\_\_\_  
11 dollars, the same being semiannual interest on Road  
12 Bond No. \_\_\_\_\_.

13 \_\_\_\_\_

14 Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall  
16 be by his facsimile signature and the coupons shall be  
17 numbered in the order of their maturity, from number  
18 one consecutively. The bonds and coupons may be signed,  
19 as provided in this act, by the present treasurer and  
20 auditor, or by any of their respective successors in office,  
21 and the bonds signed by the persons now in the office  
22 may be sold by the governor or his successor in office  
23 without being signed by the successor in office of the  
24 present treasurer or auditor.

**§5. Listing by auditor.**

1 All coupons and registered bonds issued under this  
2 act shall be separately listed by the auditor of the state  
3 in books provided for the purpose, in each case giving  
4 the date, number, character and amount of obligations  
5 issued, and in case of registered bonds, the name and  
6 post-office address of the person, firm or corporation reg-  
7 istered as the owner thereof.

**§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.**

1 Into the state road sinking fund there shall be paid

2 all money from any and all appropriations made by the  
3 state from the state road fund for the purpose of paying  
4 the interest on such bonds or paying off and retiring  
5 the bonds, from transfer and registration fees as herein  
6 provided, and from any other source whatsoever which  
7 is made liable by law for the payment of the principal  
8 of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a  
10 separate account, under the designation aforesaid, and  
11 all moneys belonging to the fund shall be deposited in  
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the  
14 state first to the payment of the semiannual interest on  
15 such bonds as it shall become due as herein provided.  
16 The remainder of the fund shall be turned over by  
17 the state treasurer to the state sinking fund commission,  
18 whose duty it shall be to invest the same in obligations  
19 of the government of the United States, bonds of the  
20 state of West Virginia, or any political subdivision  
21 thereof: *Provided*, That bonds or other obligations so  
22 purchased by the state sinking fund commission shall  
23 mature so as to provide sufficient money to pay off all  
24 bonds herein provided to be issued as they become due;  
25 and the money so paid into the state road sinking fund  
26 under the provisions of this act shall be expended for  
27 the purpose of paying the interest and principal of the  
28 bonds hereby provided for as they severally become  
29 due and payable and for no other purpose except that  
30 the fund may be invested until needed, as herein pro-  
31 vided.

#### §7. Covenants of state.

1 The state of West Virginia covenants and agrees with  
2 the holders of the bonds issued pursuant hereto as fol-  
3 lows: (1) That such bonds shall constitute a direct  
4 and general obligation of the state of West Virginia;  
5 (2) that the full faith and credit of the state is hereby  
6 pledged to secure the payment of the principal and in-  
7 terest of such bonds; (3) that an annual state tax shall  
8 be collected in an amount sufficient to pay as it may  
9 accrue the interest on such bonds and the principal

10 thereof; and (4) that such tax shall be levied in any  
11 year only to the extent that the moneys in the state  
12 road fund irrevocably set aside and appropriated for  
13 and applied to the payment of the interest on and prin-  
14 cipal of said bonds becoming due and payable in such  
15 year are insufficient therefor.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized  
2 at such time or times as he may determine necessary to  
3 provide funds for the building and construction of free  
4 state roads and highways, as herein provided, upon the  
5 recommendation of the West Virginia commissioner of  
6 highways, and after reviewing the program of the West  
7 Virginia department of highways and subject to the limi-  
8 tations contained in this act. All sales shall be at not less  
9 than par and accrued interest. All interest coupons be-  
10 coming payable prior to the sale date shall be cancelled  
11 by the treasurer and rendered ineffective, before the  
12 delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund;  
expenditures.**

1 The proceeds of all sales of bonds herein authorized  
2 shall be paid into a separate and distinct account in the  
3 state road fund and shall be used and appropriated solely  
4 for the building and construction of free state roads  
5 and highways provided for by the state constitution and  
6 the laws enacted thereunder. Except for such sums  
7 necessary for current operating balances, such account  
8 shall be invested and reinvested in short-term obliga-  
9 tions of the United States treasury: *Provided*, That no  
10 such investment or reinvestment shall adversely affect  
11 the current operating balances of such account.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the  
2 bonds authorized by this act are produced or made shall  
3 be the property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

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

**§12. Interim certificates.**

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

**§13. State treasurer to be financial advisor; redemption of bonds.**

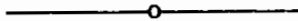
1 The state treasurer shall serve as financial advisor to  
2 the governor for the issuance and sale of such bonds.

**§14. Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal rep-  
2 resentative, shall serve as bond counsel and shall be  
3 responsible for the issuance of a final approving opinion  
4 regarding the legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses ap-  
2 proved by the attorney general, incurred in the execution  
3 of this act shall be paid out of state road fund on war-  
4 rants of the auditor of the state drawn on the state  
5 treasurer.



## CHAPTER 16

(House Bill No. 108—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed April 29, 1971; in effect July 1, 1971. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred forty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-one, authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under

authority of the Better Roads Amendment of 1964, in an amount not exceeding twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-two, for the sole purpose of raising funds for the building and construction of state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district, or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, 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.

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

**ISSUANCE AND SALE OF ROAD BONDS.**

- §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. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures.
- §10. Plates, etc., property of state.
- §11. Auditor to be custodian of unsold bonds.
- §12. Interim certificates.
- §13. State treasurer to be financial advisor; redemption of bonds.
- §14. Attorney general or his duly appointed legal representative to serve as bond counsel.
- §15. Approval and payment of all necessary expenses.

**§1. Road bonds; amount; when may issue.**

1 Bonds of the state of West Virginia, under authority  
2 of the Better Roads Amendment of 1964, of the par  
3 value not to exceed twenty million dollars during the  
4 fiscal year ending June thirty, one thousand nine hun-  
5 dred seventy-two, are hereby authorized to be issued  
6 and sold for the sole purpose of raising funds for the  
7 building and construction of state roads and high-  
8 ways as provided for by the constitution and the laws  
9 enacted thereunder. Such bonds may be issued by the  
10 governor in such denominations, at such time, bearing  
11 such date or dates as the governor may determine,  
12 based upon an examination of the West Virginia  
13 department of highways' yearly program which jus-  
14 tifies the issuance by the governor of said bonds, and  
15 shall become due and payable serially, annually  
16 or semiannually, in such amounts and mature in  
17 such years as the governor may determine: *Provided,*  
18 *That such bonds shall mature within and not exceed-*  
19 *ing twenty-five years from their date: Provided further,*  
20 *That the Governor must offer said bonds for competitive*  
21 *bids from recognized financial investment institutions be-*  
22 *fore said bonds may be sold.*

**§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.**

1 The auditor and the treasurer are hereby authorized  
2 to arrange for the transfer of registered bonds and for  
3 each such transfer a fee of fifty cents shall be charged  
4 by and paid to the state of West Virginia, to the credit



5 of the state road sinking fund. Bonds taken in exchange  
6 shall be cancelled by the auditor and treasurer and be  
7 carefully preserved by the treasurer. The treasurer  
8 shall make provisions for registering "payable to bearer"  
9 bonds, and for each bond registered a fee of fifty cents,  
10 shall likewise be charged by and paid to the state of  
11 West Virginia, to the credit of the state road sinking  
12 fund. All such bonds shall be payable at the office of  
13 the treasurer of the state of West Virginia, or, at the  
14 option of the holder, at a bank in the city of New York  
15 to be designated by the governor, or, at the option  
16 of the holder at such other bank or banks, within the state,  
17 as may be designated or approved by the governor. The  
18 bonds shall bear interest, payable semiannually, to bearer,  
19 at the office of the treasurer of the state of West Virginia,  
20 at the capitol of the state, or at the banks designated and  
21 approved by the governor, upon presentation and surren-  
22 der of interest coupons then due, in the case of coupon  
23 bonds. For the payment of interest on registered bonds, the  
24 treasurer of the state of West Virginia shall requisition a  
25 warrant from the auditor of the state to be drawn on the  
26 state treasurer, and shall mail such warrant to the regis-  
27 tered owner at the address as shown by the record of regis-  
28 tration. Both the principal and interest of the bonds shall  
29 be made payable in lawful money of the United States  
30 of America and the bonds shall be exempt from taxation  
31 by the state of West Virginia, or by any county, dis-  
32 trict, or municipality thereof, which facts shall appear  
33 on the face of the bonds as part of the contract with  
34 the holder thereof.

### §3. Form of bond.

1 The bonds shall be executed on behalf of the state  
2 of West Virginia, by the manual or facsimile signature of  
3 the treasurer thereof, under the great seal of the state or  
4 a facsimile thereof, and countersigned by the manual or  
5 facsimile signature of the auditor of the state: *Provided*,  
6 That one of said signatures on said bonds shall be a man-  
7 ual signature and said bonds shall be in the following form  
8 or to the following effect, as nearly as may be, namely:

9

## COUPON ROAD BOND

10

(Or registered road bond, as the case may be)

11

OF THE

12

STATE OF WEST VIRGINIA

13

\$ \_\_\_\_\_

No. \_\_\_\_\_

14

15 The state of West Virginia, under and by virtue of  
16 authority of an amendment to the constitution, which  
17 was proposed by House Joint Resolution No. 10, adopted  
18 the seventh day of March, one thousand nine hundred  
19 sixty-three, and was ratified by a vote of the people  
20 at the general election on the third day of November,  
21 one thousand nine hundred sixty-four, which is here-  
22 by made a part hereof as fully as if set forth at length  
23 herein, acknowledges itself to be indebted to and hereby  
24 promises to pay to the bearer hereof (in case of a coupon  
25 bond) or to \_\_\_\_\_ or assigns (the owner  
26 of record, in case of registered bonds) on the \_\_\_\_\_ day  
27 of \_\_\_\_\_, 19\_\_\_\_, in lawful money of the  
28 United States of America at the office of the treasurer  
29 of the state of West Virginia at the capitol of said state,  
30 or, at \_\_\_\_\_ bank in the city of  
31 New York, or, at \_\_\_\_\_ bank, at the  
32 option of the holder, the sum of \_\_\_\_\_ dollars,  
33 with interest thereon at \_\_\_\_ per centum per annum  
34 from the date, payable semiannually in like lawful money  
35 of the United States of America at the treasurer's office  
36 or banks aforesaid, on the first day of \_\_\_\_\_ and  
37 the first day of \_\_\_\_\_ of each year (and in  
38 the case of coupon bonds) according to the tenor of  
39 the annexed coupons bearing the facsimile signature  
40 of the treasurer of the state of West Virginia, upon sur-  
41 render of such coupons. This bond (in case of a coupon  
42 bond) may be exchanged for a registered bond of like  
43 tenor upon application to the treasurer of the state of  
44 West Virginia.

44 (Redemption provisions, if any, to be inserted here)

45

46 To secure the payment of the principal and interest  
47 of this bond, the state of West Virginia covenants and  
48 agrees with the holder as follows: (1) That this bond  
48 shall constitute a direct and general obligation of the

49 state of West Virginia; (2) that the full faith and credit  
 50 of the state is pledged to secure the payment of the  
 51 principal and interest of this bond; (3) that an annual  
 52 state tax shall be collected in an amount sufficient to  
 53 pay as it may accrue the interest on this bond and the  
 54 principal thereof; and (4) that such tax shall be levied in  
 55 any year only to the extent that the moneys in the  
 56 state road fund irrevocably set aside and appropriated  
 57 for and applied to the payment of the interest on and  
 58 principal of this bond becoming due and payable in such  
 59 year are insufficient therefor.

60 This bond is hereby made exempt from any taxa-  
 61 tion by the state of West Virginia, or by any county,  
 62 district, or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile  
 64 signature of the treasurer of the state of West Virginia,  
 65 and the manual or facsimile countersignature of the  
 66 auditor of the state, hereto affixed according to law,  
 67 dated the \_\_\_\_\_ day of \_\_\_\_\_, one thousand  
 68 nine hundred \_\_\_\_\_, and the seal of the state of  
 69 West Virginia or a facsimile thereof.

70

71

\_\_\_\_\_  
 Treasurer of the State of West Virginia

72 (SEAL)

73 Countersigned:

74

\_\_\_\_\_  
 Auditor of the State of West Virginia

#### §4. Form of coupon.

1 The form of coupon shall be substantially as follows,  
 2 to wit:

3

STATE OF WEST VIRGINIA

4 Bond No. \_\_\_\_\_

Coupon No. \_\_\_\_\_

5 On the first day of \_\_\_\_\_, 19\_\_\_\_, the state  
 6 of West Virginia will pay to the bearer, in lawful money  
 7 of the United States of America, at the office of the  
 8 treasurer of the state, or, at \_\_\_\_\_ bank  
 9 in the city of New York, or, at \_\_\_\_\_, at the  
 10 option of the holder, the sum of \_\_\_\_\_

11 dollars, the same being semiannual interest on Road  
12 Bond No. \_\_\_\_\_.

13

14

\_\_\_\_\_  
Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall  
16 be by his facsimile signature and the coupons shall be  
17 numbered in the order of their maturity, from number  
18 one consecutively. The bonds and coupons may be  
19 signed, as provided in this act, by the present treasurer  
20 and auditor, or by any of their respective successors  
21 in office, and the bonds signed by the persons now in  
22 the office may be sold by the governor or his successor  
23 in office without being signed by the successor in office  
24 of the present treasurer or auditor.

**§5. Listing by auditor.**

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

**§6. State road sinking fund sources used to pay bonds and  
interest; investment of remainder.**

1 Into the state road sinking fund there shall be paid  
2 all money from any and all appropriations made by  
3 the state from the state road fund for the purpose of  
4 paying the interest on such bonds or paying off and  
5 retiring the bonds, from transfer and registration fees  
6 as herein provided, and from any other source what-  
7 soever which is made liable by law for the payment  
8 of the principal of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a  
10 separate account, under the designation aforesaid, and  
11 all money belonging to the fund shall be deposited in  
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the  
14 state first to the payment of the semiannual interest  
15 on such bonds as it shall become due as herein pro-

16 vided. The remainder of the fund shall be turned over  
17 by the state treasurer to the state sinking fund com-  
18 mission, whose duty it shall be to invest the same in  
19 obligations of the government of the United States,  
20 bonds of the state of West Virginia, or any political  
21 subdivision thereof: *Provided*, That bonds or other obli-  
22 gations so purchased by the state sinking fund commis-  
23 sion shall mature so as to provide sufficient money to  
24 pay off all bonds herein provided to be issued as they  
25 become due; and the money so paid into the state road  
26 sinking fund under the provisions of this act shall be  
27 expended for the purpose of paying the interest and  
28 principal of the bonds hereby provided for as they  
29 severally become due and payable and for no other  
30 purpose except that the fund may be invested until  
31 needed, as herein provided.

**§7. Covenants of state.**

1 The state of West Virginia covenants and agrees with  
2 the holders of the bonds issued pursuant hereto as fol-  
3 lows: (1) That such bonds shall constitute a direct and  
4 general obligation of the state of West Virginia; (2) that  
5 the full faith and credit of the state is hereby pledged  
6 to secure the payment of the principal and interest  
7 of such bonds; (3) that an annual state tax shall be  
8 collected in an amount sufficient to pay as it may accrue  
9 the interest on such bonds and the principal thereof;  
10 and (4) that such tax shall be levied in any year only  
11 to the extent that the moneys in the state road fund  
12 irrevocably set aside and appropriated for and applied  
13 to the payment of the interest on and principal of said  
14 bonds becoming due and payable in such year are in-  
15 sufficient therefor.

**§8. Sale by governor; minimum price.**

1 The governor shall sell the bonds herein authorized  
2 at such time or times as he may determine necessary  
3 to provide funds for the building and construction of  
4 state roads and highways, as herein provided, upon the  
5 recommendation of the West Virginia commissioner of  
6 highways, and after reviewing the program of the West

7 Virginia department of highways and subject to the limi-  
8 tations contained in this act. All sales shall be at not less  
9 than par and accrued interest. All interest coupons becom-  
10 ing payable prior to the sale date shall be cancelled  
11 by the treasurer and rendered ineffective, before the  
12 delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund;  
expenditures.**

1 The proceeds of all sales of bonds herein authorized  
2 shall be paid into a separate and distinct account in  
3 the state road fund and shall be used and appropri-  
4 ated solely for the building and construction of state  
5 roads and highways provided for by the state consti-  
6 tution and the laws enacted thereunder. Except for  
7 such sums necessary for current operating balances,  
8 such account shall be invested and reinvested in short-  
9 term obligations of the United States treasury: *Provided,*  
10 That no such investment or reinvestment shall adversely  
11 affect the current operating balances of such account.

**§10. Plates, etc., property of state.**

1 The plates, casts, dies or other forms from which the  
2 bonds authorized by this act are produced or made shall  
3 be the property of the state of West Virginia.

**§11. Auditor to be custodian of unsold bonds.**

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

**§12. Interim certificates.**

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

**§13. State treasurer to be financial advisor; redemption of  
bonds.**

1 The state treasurer shall serve as financial advisor to  
2 the governor for the issuance and sale of such bonds.

**§14. Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal  
2 representative, shall serve as bond counsel and shall be  
3 responsible for the issuance of a final approving opinion  
4 regarding the legality of the sale of such bonds.

**§15. Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses ap-  
2 proved by the attorney general, incurred in the execu-  
3 tion of this act shall be paid out of state road fund on  
4 warrants of the auditor of the state drawn on the state  
5 treasurer.

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## CHAPTER 17

(Senate Bill No. 1—By Mr. McCourt, Mr. President, and Mr. Carrigan)

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[Passed April 28, 1971; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to relocation assistance to and replacement housing costs for persons dislocated by highway construction.

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

That section twenty, article two-a, 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 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-20. Relocation assistance to and replacement housing costs for persons dislocated by highway construction.**

1 The payment of relocation costs and replacement hous-  
2 ing costs to persons dislocated by highway construction

3 is hereby declared to be a cost of highway construction  
4 and may be paid from the state road fund, subject to the  
5 provisions of this section. The commissioner of highways  
6 shall make the payments authorized by this section to  
7 reduce hardships to persons so dislocated. In addition, the  
8 commissioner shall render advisory assistance to persons  
9 affected and shall call upon and coordinate the services  
10 of such other agencies of state and local government as  
11 may be capable of rendering such assistance to reduce  
12 hardships to persons affected and to reduce delays in  
13 highway construction. In rendering such advisory as-  
14 sistance, the commissioner may accumulate and maintain  
15 lists of various kinds of properties available to which per-  
16 sons affected may be relocated, and acquire and file such  
17 other information and take such other action as may be  
18 necessary to render such advisory assistance. With re-  
19 spect to persons dislocated by federal-aid highway  
20 projects, the commissioner shall provide a relocation as-  
21 sistance program which will comply with and implement  
22 the federal laws and regulations relating to relocation  
23 assistance to displaced persons.

24 Any individual, family, business concern (including the  
25 operation of a farm) or nonprofit organization to be dis-  
26 placed by a highway construction project shall be com-  
27 pensated consistent with the provisions and limitations of  
28 this section for reasonable and necessary costs to be in-  
29 curred in consequence of being so displaced. When a  
30 family is displaced, no additional payments shall be made  
31 to individuals who are members of such family; but, if  
32 two or more displaced families occupy the same dwelling  
33 or comprise a single household, each family within such  
34 dwelling or household may receive relocation costs as  
35 provided in this section. Payments under this section  
36 are subject to the following limitations and to any rules  
37 and regulations made by the commissioner as herein  
38 authorized:

39 (1) With respect to state highway projects not on the  
40 federal-aid highway system:

41 (a) Payments shall not exceed two hundred dollars in  
42 the case of a family or an individual, or three thousand



43 dollars in the case of a business concern (including the  
44 operation of a farm) or nonprofit organization.

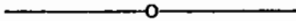
45 (b) In the case of a business concern (including the  
46 operation of a farm) and in the case of a nonprofit  
47 organization, the allowable expense for transportation  
48 under this section shall not exceed the reasonable and  
49 necessary cost of moving fifty miles from the point from  
50 which such business or organization is being displaced  
51 and no expenses shall be allowed if a substantial portion  
52 of such business or organization is to be relocated outside  
53 the state.

54 (2) With respect to federal-aid highway projects, the  
55 commissioner shall have authority to make such payments  
56 for relocation costs, replacement housing costs, including  
57 the increased interest costs which the displaced person  
58 is required to pay for financing the acquisition of a com-  
59 parable replacement dwelling, and reasonable expenses  
60 incurred by such displaced person for evidence of title,  
61 recording fees, and other closing costs incident to the  
62 purchase of the replacement dwelling, and expenses inci-  
63 dental to the transfer of property as are authorized by  
64 the federal laws and regulations relating to relocation  
65 payments to displaced persons.

66 The commissioner shall establish by rules and regula-  
67 tions a procedure for the payment of relocation costs  
68 within the limits of and consistent with the policies of  
69 this section. Such rules and regulations may authorize  
70 lump sum payments to individuals or families, in lieu of  
71 their respective provable costs, based upon the size of  
72 the dwelling being vacated or the number of persons  
73 being affected or any other reasonable basis. The com-  
74 missioner may authorize the obligations of or payment of  
75 relocation costs in advance of expenditure for relocation  
76 by any person, firm or organization eligible to receive  
77 such payment where such advance obligation or payment  
78 would speed the clearance of highway construction sites  
79 or reduce hardships.

80 With respect to federal-aid highway projects, the com-  
81 missioner shall also have authority to comply with the  
82 federal laws and regulations relating to providing re-  
83 placement housing.

84 Nothing contained in this section or in the federal laws  
85 and regulations relating to relocation assistance and pay-  
86 ments to displaced persons shall be construed as creating  
87 in any condemnation proceedings brought under the  
88 power of eminent domain, any element of damages not  
89 in existence on the effective date of this section or of the  
90 federal laws and regulations relating to relocation assist-  
91 ance and payments to displaced persons.



## CHAPTER 18

(Senate Bill No. 21—Originating in the Senate Committee on Finance)

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[Passed April 29, 1971; in effect ninety days from passage.  
Approved by the Governor.]

---

AN ACT transferring an amount between items of the total appropriation of a state spending unit as appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, known as the "Budget Bill".

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

That an item of the total appropriation of Account No. 670, chapter six, acts of the Legislature, regular session, one thousand nine hundred seventy-one, be transferred so as to read as follows:

### 109—State Department of Highways

Acct. No. 670

#### TO BE PAID FROM STATE ROAD FUND

1 Out of the above appropriations there shall be trans-  
2 ferred from Line Item 10, Nonfederal Aid Construction  
3 an amount of \$900,000.00 which shall be expended for  
4 the replacement of Bridge No. 1406 on Alternate Route  
5 Three, spanning the New River at Hinton, West Vir-  
6 Virginia, Summers County.

# CHAPTER 19

(Senate Bill No. 4—By Mr. Carrigan)

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[Passed April 28, 1971; in effect ninety days from passage.  
Approved by the Governor.]

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AN ACT to amend and reenact sections two, three, seven and eight, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred forty-seven; and to further amend said chapter by adding thereto a new section, designated section ten, all relating to University high school, erected on the grounds of West Virginia University in Morgantown, Monongalia county, West Virginia, and providing that the West Virginia board of regents is authorized to transfer the property used for said high school to the board of education of the county of Monongalia for continued use for school purposes if the board of education should agree to assume all the duties, obligations and responsibilities of the board of regents in regard to said high school.

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

That sections two, three, seven and eight, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred forty-seven, be amended and reenacted; and that said chapter be further amended by adding thereto a new section, designated section ten, all to read as follows:

## UNIVERSITY HIGH SCHOOL.

- §2. Selection of name.
- §3. Control and supervision.
- §7. Payment for maintenance and instruction.
- §8. Levy for buildings.
- §10. Lease of property; transfer of duties and responsibilities.

### §2. Selection of name.

- 1 The name of the said high school shall be selected joint-
- 2 ly by the West Virginia board of regents and the board of
- 3 education of the county of Monongalia.

**§3. Control and supervision.**

1 The board of regents and any other controlling authori-  
2 ties of the university, as provided by law, shall have  
3 general control and supervision of the said high school  
4 as a part of West Virginia University.

**§7. Payment for maintenance and instruction.**

1 The board of education of the county of Monongalia  
2 shall pay for maintenance and instruction of pupils en-  
3 rolled in the said high school a tuition fee of one half of  
4 the average per capita cost for instruction and mainte-  
5 nance, exclusive of transportation costs, in high schools of  
6 West Virginia, as determined by the last preceding report  
7 of the state superintendent of schools of West Virginia.  
8 The board of regents and any other authorities of the uni-  
9 versity, as provided by law, shall provide the remainder  
10 of the cost of maintenance and instruction.

**§8. Levy for buildings.**

1 With the approval of the board of regents and any other  
2 authorities provided by law, the board of education of  
3 the county of Monongalia shall have the right to lay a levy  
4 for the erection of such additions and buildings as may be  
5 deemed necessary by all parties concerned to provide  
6 adequate facilities for said high school.

**§10. Lease of property; transfer of duties and responsibilities.**

1 The board of regents and the board of education of  
2 the county of Monongalia are hereby authorized to enter  
3 into an agreement, not to become effective prior to July  
4 one, one thousand nine hundred seventy-two, whereby  
5 the board of regents shall lease for a term not to exceed  
6 fifty years all of the property, real, personal and mixed,  
7 used in the operation of said high school to the board of  
8 education of the county of Monongalia in exchange for  
9 the promise of the board of education to assume by the  
10 end of two years all the duties, obligations and responsi-  
11 bilities of the board of regents in regard to said high school  
12 during the term of such lease.

13 If such an agreement is made by the two boards, the  
14 board of regents is hereby authorized to execute all deeds

15 of lease and other instruments necessary to lease said  
16 high school property. In case of any such lease, the as-  
17 sumption of the duties, obligations and responsibilities by  
18 the board of education shall include the obligation without  
19 any contribution from the board of regents after two  
20 years, to continue to use said property as and for a high  
21 school, or other school purposes in Monongalia county for  
22 the term of the lease unless it should later be of the  
23 opinion that it is not in the best interests of the citizens of  
24 such county to continue such use.

25 In case of any such lease and transfer of duties, obliga-  
26 tions and responsibilities, the principal, teachers and  
27 members of the clerical and custodial staffs of said high  
28 school shall become the employees of the board of educa-  
29 tion and shall have the same rights in regard to such em-  
30 ployment, tenure and retirement benefits that they would  
31 have had if they had been employed by the board of edu-  
32 cation at the time they were employed by the board of  
33 regents or its predecessors. For the purpose of computing  
34 state aid for the board of education of the county of  
35 Monongalia for the fiscal year beginning after any such  
36 lease and transfer of duties, obligations and responsi-  
37 bilities, the state board of school finance shall count all  
38 instructional personnel in said high school as if they had  
39 been employed solely by said board of education during  
40 the preceding fiscal year.

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## RESOLUTION

### HOUSE JOINT RESOLUTION NO. 1

(By MR. SPEAKER, MR. McMANUS, and MR. SEIBERT)

[Adopted April 28, 1971.]

Ratifying the proposed amendment to the Constitution of the  
United States extending the right to vote to citizens  
eighteen years of age or older.

WHEREAS, The Ninety-second Congress of the United States  
of America at its first session by a constitutional two-thirds vote  
in both Houses adopted a Joint Resolution proposing an amend-

ment to the Constitution of the United States, which Joint Resolution is in the following words:

## JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States extending the right to vote to citizens eighteen years of age or older.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

## ARTICLE \_\_\_\_\_

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of the State of West Virginia hereby ratifies this proposed amendment to the Constitution of the United States; and, be it

*Resolved further,* That the Secretary of State of the State of West Virginia notify the Administrator of General Services, Washington, D. C., the President of the Senate of the United States and the Speaker of the House of Representatives of the United States of this action by forwarding to each of them a certified copy of this Joint Resolution adopted by the West Virginia Legislature.

**ACTS OF 1970**  
**SECOND EXTRAORDINARY SESSION**  
**(July 28 – August 22, 1970)**

**CHAPTER 1**

(Senate Bill No. 11—Originating in the Senate Committee on Finance)

[Passed August 21, 1970; in effect from passage. Approved by the Governor.]

AN ACT transferring amounts between items of the total appropriation for the West Virginia alcohol beverage control account, as appropriated by chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, known as the Budget Bill.

WHEREAS, The alcohol beverage control commissioner has indicated a need to transfer specific amounts between items of appropriation heretofore made by the Legislature for such spending unit; and

WHEREAS, Such transfers are necessary in order to protect or to increase the efficiency of the service of such spending unit; therefore,

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

That items of the total appropriation of Account No. 837, chapter five, acts of the Legislature, regular session, one thousand nine hundred seventy, be transferred so as to read as follows:

129—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1 Other Personal Services.....	\$ 3,922,000.00
2 Current Expenses .....	1,024,098.00

3	Equipment .....	138,000.00
4	The foregoing constitute transfers of amounts	
5	from one item of appropriation to another	
6	item of appropriation within the total appro-	
7	priation of the designated spending unit;	
8	the amounts as itemized for expenditure	
9	during the fiscal year one thousand nine	
10	hundred seventy shall be available for ex-	
11	penditure upon the effective date of this act.	

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## CHAPTER 2

(House Bill No. 7—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

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[Passed August 21, 1970; in effect from passage. Approved by the Governor.]

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AN ACT to repeal sections thirty-two, thirty-five, thirty-six, thirty-seven and thirty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said article by adding thereto six new sections, designated sections thirty-two, thirty-five, thirty-six, thirty-seven, thirty-eight and forty-seven, relating to the purchasing division of the department of finance and administration; relating to the furnishing of paper stock to contractor for state printing and prohibiting the furnishing of paper stock unless all bidders are notified in advance of the prices at which the state will supply such stock and prohibiting the furnishing of paper stock for other than state work under contract; prohibiting the commissioner of such department and the employees of such department from having any financial interest or any beneficial personal interest in the purchase of any commodities or printing or in any vendor furnishing them; prohibiting the commissioner of such department and the employees of such department from accepting or receiving any money or other thing of value, or any promise, obligation or contract for future reward, or compensation; expressly making bribery statute applicable; prohibiting the obtaining from the state under any contract made under the article by false pretense, token or



representation, or by delivery of inferior commodities, with intent to defraud, any money, goods or other property; prohibiting corrupt combinations, collusions or conspiracies in connection with the purchasing or supplying of commodities or printing; making various violations unlawful; and providing criminal penalties.

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

That sections thirty-two, thirty-five, thirty-six, thirty-seven and thirty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that said article be amended by adding thereto six new sections, designated sections thirty-two, thirty-five, thirty-six, thirty-seven, thirty-eight and forty-seven, to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

§5A-3-32. Furnishing paper stock to contractor for state printing.

§5A-3-35. Financial interest of commissioner, etc.; receiving reward from interested party; penalty; application of bribery statute.

§5A-3-36. Penalty for violation of article.

§5A-3-37. Obtaining money and property under false pretenses or by fraud from state; penalties.

§5A-3-38. Corrupt combinations, collusions or conspiracies prohibited; penalties.

§5A-3-47. Severability.

**§5A-3-32. Furnishing paper stock to contractor for state printing.**

1 Paper stock, if furnished by the state to the contractor,  
2 shall be billed at the current market price for the grade  
3 furnished in the quantity furnished. It shall be unlawful  
4 and discriminatory for the director to furnish the con-  
5 tractor with paper for any state work, unless all bidders  
6 are notified in advance of placing their bids of the prices  
7 at which the state will supply such stock. It shall also  
8 be unlawful for the director to furnish to the contractor  
9 any paper for other than the state work under contract.

**§5A-3-35. Financial interest of commissioner, etc.; receiving reward from interested party; penalty; application of bribery statute.**

1 Neither the commissioner, nor any employee of the de-  
2 partment of finance and administration, shall be finan-  
3 cially interested, or have any beneficial personal interest,  
4 directly or indirectly, in the purchase of any commodities  
5 or printing, nor in any firm, partnership, corporation or  
6 association furnishing them. Neither the commissioner  
7 nor any employee of said department shall accept or  
8 receive directly or indirectly from any person, firm or  
9 corporation, known by such commissioner or employee  
10 to be interested in any bid, contract or purchase, by  
11 rebate, gift or otherwise, any money or other thing of  
12 value whatsoever, or any promise, obligation or contract  
13 for future reward, or compensation.

14 A person who violates this section shall be guilty of a  
15 misdemeanor, and, upon conviction thereof, shall be con-  
16 fined in jail not less than three months nor more than  
17 one year, or fined not less than fifty nor more than one  
18 thousand dollars, or both, in the discretion of the court:  
19 *Provided*, That any person who violates any of the pro-  
20 visions of the last sentence of the first paragraph of this  
21 section under circumstances constituting the crime of  
22 bribery under the provisions of section three, article  
23 five-a, chapter sixty-one of this code, shall, upon con-  
24 viction of bribery, be punished as provided in said article  
25 five-a.

**§5A-3-36. Penalty for violation of article.**

1 Any person who violates a provision of this article,  
2 except where another penalty is prescribed, shall be  
3 guilty of a misdemeanor, and, upon conviction thereof,  
4 shall be confined in jail not less than ten days nor more  
5 than one year, or fined not less than ten nor more than  
6 five hundred dollars, or both, in the discretion of the  
7 court.

**§5A-3-37. Obtaining money and property under false pretenses or by fraud from state; penalties.**

1 It shall be unlawful for any person to obtain from the  
2 state under any contract made under the provisions of  
3 this article, by false pretense, token or representation,  
4 or by delivery of inferior commodities, with intent to  
5 defraud, any money, goods or other property, and upon  
6 violation thereof, such person shall be guilty of a felony,  
7 and, upon conviction thereof, shall be confined in the  
8 penitentiary not less than one year nor more than five  
9 years, and be fined not exceeding one thousand dollars.

**§5A-3-38. Corrupt combinations, collusions or conspiracies prohibited; penalties.**

1 It shall be unlawful for any person to corruptly com-  
2 bine, collude or conspire with one or more other persons  
3 with respect to the purchasing or supplying of commo-  
4 dities or printing to the state under the provisions of this  
5 article if the purpose or effect of such combination, col-  
6 lusion or conspiracy is either to (1) lessen competition  
7 among prospective vendors, or (2) cause the state to  
8 pay a higher price for such commodities or printing than  
9 would be or would have been paid in the absence of such  
10 combination, collusion or conspiracy, or (3) cause one  
11 prospective vendor or vendor to be preferred over one or  
12 more other prospective vendors or vendors. Any person  
13 who violates any provision of this section shall be guilty  
14 of a felony, and, upon conviction thereof, shall be con-  
15 fined in the penitentiary not less than one nor more than  
16 five years, and be fined not exceeding five thousand  
17 dollars.

**§5A-3-47. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held invalid, such in-  
3 validity shall not affect other provisions or applications  
4 of the article, and to this end the provisions of this article  
5 are declared to be severable.

## CHAPTER 3

(Com. Sub. for House Bill No. 8—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

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[Passed August 22, 1970; in effect from passage. Approved by the Governor.]

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AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to bribery and other corrupt practices; adopting a bribery and corrupt practices act; defining certain words and phrases used in said act; specifying and defining the crime of bribery in official and political matters; prohibiting pecuniary benefit for past behavior of any public servant; prohibiting threats in official and political matters; prohibiting gifts or gratuities to public servants under certain circumstances; interrelating section thirty-five, article three, chapter five-a of said code; providing certain exceptions with respect to the prohibition against such gifts or gratuities; prohibiting trading in public office; specifying matters not to constitute defense; providing criminal penalties; disqualifying one for office or for a position of honor, trust or profit upon conviction; providing a six-year statute of limitations for misdemeanor offenses under said article five-a; providing a rule of construction to make it clear that certain other code provisions shall not be affected by said article five-a; specifying that the enactment of said article five-a shall not affect offenses committed under sections four, five, six and seven, article five, chapter sixty-one of said code; and providing a severability clause.

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

That chapter sixty-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 five-a, to read as follows:

**ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.**

§61-5A-1. Short title.

§61-5A-2. Definitions.

§61-5A-3. Bribery in official and political matters.

§61-5A-4. Unlawful rewarding for past behavior.

§61-5A-5. Threats in official and political matters.

§61-5A-6. Gifts or gratuities to public servants prohibited; exceptions.

§61-5A-7. Trading in public office.

§61-5A-8. Certain matters not to constitute defense.

§61-5A-9. Penalties; disqualification to hold office; statute of limitations for misdemeanor offenses.

§61-5A-10. Construction; certain other code provisions not affected; article not to affect offenses committed under other statutory provisions.

§61-5A-11. Severability.

**§61-5A-1. Short title.**

- 1 This article shall be known and may be cited as the
- 2 "Bribery and Corrupt Practices Act".

**§61-5A-2. Definitions.**

1 The following words and phrases when used in this  
2 article shall have the meanings respectively ascribed  
3 to them in this section unless the context clearly requires  
4 a different meaning:

5 (1) "Government" includes the state, the state or  
6 any county board of education, or any county or mu-  
7 nicipality of the state;

8 (2) "Public servant" means any officer (whether  
9 executive, judicial, legislative or ministerial, and whether  
10 elected or appointed) or employee of the state, or of the  
11 state or any county board of education, or of any county  
12 or municipality of the state, including without in any  
13 way limiting the generality of the foregoing, commis-  
14 sioners of a court, justices of the peace, law-enforcement  
15 officers, and any person participating as juror; or any  
16 candidate for election to any state, county or local public  
17 office; but the term does not include witnesses;

18 (3) "Party official" means (i) a person who holds  
19 an office or position in a political party or political party

20 committee, whether by election, appointment or other-  
21 wise, by virtue of which he directs or conducts, or par-  
22 ticipates in directing or conducting party affairs at any  
23 level of responsibility (including, but not limited to, a  
24 treasurer of a political party committee), or (ii) a com-  
25 mittee or any member thereof advancing the interests  
26 of any political party or candidate for election to any  
27 state, county or local public office (including, but not  
28 limited to, a financial agent as that term is now defined  
29 in chapter three of this code) or working for or against  
30 the approval of a public question by the voters at any  
31 election;

32 (4) "Administrative proceeding" means any adver-  
33 sary proceeding before any public servant, involving  
34 the exercise of administrative authority, and said term  
35 shall not be construed as including any legislative pro-  
36 ceeding;

37 (5) "Judicial proceeding" means (i) any proceeding  
38 before any court or commissioner thereof or justice of  
39 the peace, or (ii) any quasi-judicial proceeding before  
40 a board, commission or public servant, the outcome of  
41 which is required to be based on a record or documenta-  
42 tion prescribed by law;

43 (6) "Legislative proceeding" means any proceeding  
44 before the Legislature or either house or any committee  
45 thereof;

46 (7) "Official action" means a decision, award of con-  
47 tract, judgment, opinion, report, recommendation, vote,  
48 or other exercise of discretion;

49 (8) "Benefit" means a gain or advantage, or any-  
50 thing regarded, or which might reasonably be regarded,  
51 by the beneficiary as a gain or advantage, including a  
52 gain or advantage to any other person; and "pecuniary  
53 benefit" means a benefit in the form of money, tangible  
54 or intangible property, commercial interests or anything  
55 else the primary significance of which is economic gain;  
56 but the terms "benefit" and "pecuniary benefit" shall  
57 not be construed so as to include (a) salary, fees and  
58 other compensation and expenses paid by the govern-  
59 ment or political party or political party committee in  
60 behalf of which the official action or legal duty is per-

61 formed, or (b) concurrence in official action in the course  
62 of legitimate compromise among public servants, or (c)  
63 wages, salary or fees or other compensation paid to a  
64 public servant when the reason for such payment is not  
65 to affect his official impartiality;

66 (9) "Harm" means loss to a person, physical injury  
67 of a person or injury to the property of a person, including  
68 loss to, physical injury of or injury to the property of any  
69 other person in whose welfare he is interested;

70 (10) "Approval" means recommendation, failure to  
71 disapprove, or any other manifestation of favor or acqui-  
72 escence; and

73 (11) "Disapproval" means failure to approve, or any  
74 other manifestation of disfavor or nonacquiescence.

#### §61-5A-3. Bribery in official and political matters.

1 A person is guilty of bribery under the provisions of  
2 this section if he offers, confers or agrees to confer to or  
3 upon another, or solicits, accepts or agrees to accept  
4 from another, directly or indirectly:

5 (1) Any pecuniary benefit as consideration for the  
6 recipient's official action as a public servant or party  
7 official; or

8 (2) Any benefit as consideration for the recipient's  
9 official action as a public servant in an administrative  
10 or judicial proceeding; or

11 (3) Any benefit as consideration for a violation of a  
12 legal duty as a public servant or party official.

13 A person is also guilty of bribery under the provisions  
14 of this section if he agrees to render or not to render  
15 official action as a public servant or party official as  
16 consideration for a pecuniary benefit being offered or  
17 conferred to or upon, or as consideration for a promise  
18 that a pecuniary benefit shall be offered or conferred  
19 to or upon, another person or a party official or a political  
20 party.

#### §61-5A-4. Unlawful rewarding for past behavior.

1 (a) It shall be unlawful for any person to solicit,  
2 accept or agree to accept, directly or indirectly, a pecu-  
3 niary benefit for:

4 (1) Having engaged in official action as a public  
5 servant; or

6 (2) Having violated a legal duty as a public servant.

7 (b) It shall also be unlawful for any person to offer,  
8 confer or agree to confer, directly or indirectly, a pecu-  
9 niary benefit, the receipt of which is prohibited by sub-  
10 section (a) of this section.

**§61-5A-5. Threats in official and political matters.**

1 It shall be unlawful for any person to threaten harm  
2 to another with intent to influence the official action  
3 of a public servant in a pending or prospective adminis-  
4 trative or judicial proceeding before such public servant,  
5 or with intent to influence a public servant or party  
6 official to violate his legal duty as a public servant or  
7 party official.

**§61-5A-6. Gifts or gratuities to public servants prohibited;  
exceptions.**

1 (a) It shall be unlawful:

2 (1) For any public servant in any department, agency,  
3 division, board, bureau or commission of government  
4 exercising regulatory functions, or conducting inspec-  
5 tions or investigations, or carrying on civil or criminal  
6 litigation on behalf of the government, or having cus-  
7 tody of prisoners, to solicit, accept or agree to accept,  
8 directly or indirectly, any gift or gratuity from a person  
9 known by such public servant to be subject to such  
10 regulation, inspection, investigation or custody, or against  
11 whom such litigation is known by such public servant  
12 to be pending or contemplated; or

13 (2) For any public servant (except an officer or  
14 employee of the department of finance and administra-  
15 tion who shall be subject to the prohibitions contained  
16 in section thirty-five, article three, chapter five-a of this  
17 code) having any official action to perform in connec-  
18 tion with bids, contracts, purchases, claims or other  
19 pecuniary transactions of the government to solicit, ac-  
20 cept or agree to accept, directly or indirectly, any gift  
21 or gratuity from any person known by such public  
22 servant to be interested in any such bid, contract, pur-  
23 chase, claim or transaction; or



24 (3) For any public servant having administrative or  
25 judicial authority and for any public servant employed  
26 by or in an agency or court or other body having such  
27 authority, or participating in the enforcement of its  
28 decisions, to solicit, accept or agree to accept, directly  
29 or indirectly, any gift or gratuity from a person known  
30 by such public servant to be interested in any matter  
31 before such public servant or an agency, court or body  
32 with which he is associated; or

33 (4) For any public servant in the legislative branch  
34 of government to solicit, accept or agree to accept, di-  
35 rectly or indirectly, any gift or gratuity from any person  
36 known by such public servant to be interested in a bill,  
37 transaction or proceeding before the Legislature or either  
38 house thereof or any agency or committee thereof;  
39 or

40 (5) For any person to offer, give, or agree to give  
41 any gift or gratuity prohibited by the provisions of sub-  
42 divisions (1), (2), (3) or (4) of this subsection (a).

43 (b) The prohibitions contained in subsection (a) of  
44 this section shall not apply to (1) gifts or gratuities  
45 conferred on account of kinship or other personal, pro-  
46 fessional or business relationship independent of the  
47 official status of the recipient; or (2) trivial gifts or  
48 gratuities involving no substantial risk of affecting official  
49 impartiality; or (3) social, professional or business enter-  
50 tainment involving no substantial risk of affecting official  
51 impartiality. The prohibitions contained in subdivisions  
52 (1), (2), (3) and (4) of subsection (a) of this section  
53 shall not apply to campaign contributions made for use  
54 in meeting campaign expenses by any public servant  
55 by or for whom a certificate of candidacy has been filed  
56 for election to the same or another public office for  
57 which such campaign is to be conducted, if such cam-  
58 paign contributions are made after the filing of such  
59 certificate of candidacy, if no part of such campaign  
60 contributions inures to the private financial gain of any  
61 public servant, and, when the provisions of article eight,  
62 chapter three of this code are applicable to the public  
63 office being sought, if such campaign contributions are  
64 within the limits specified in said article eight, are

65 reported as campaign contributions pursuant to the pro-  
66 visions of said article eight, and are not otherwise pro-  
67 hibited by said chapter three. The prohibitions contained  
68 in subdivision (5) of subsection (a) of this section  
69 shall not apply to campaign contributions made for use  
70 in meeting campaign expenses by any public servant  
71 by or for whom a certificate of candidacy has been filed  
72 for election to the same or another public office for  
73 which such campaign is to be conducted, if such cam-  
74 paign contributions are made after the filing of such  
75 certificate of candidacy, if the person offering, giving  
76 or agreeing to give such campaign contributions does not  
77 intend that any part of such campaign contributions  
78 inure to the private financial gain of any public servant,  
79 and, when the provisions of article eight, chapter three  
80 of this code are applicable to the public office being  
81 sought, if such campaign contributions are within the  
82 limits specified in said article eight, are not otherwise  
83 prohibited by said chapter three and if the person offering,  
84 giving or agreeing to give such campaign contributions  
85 does not intend that such contributions not be reported  
86 as campaign contributions pursuant to said article eight.

**§61-5A-7. Trading in public office.**

1 It shall be unlawful for any person to solicit, accept  
2 or agree to accept, or agree that any political party or  
3 political party committee or other person shall accept,  
4 or offer, confer or agree to confer, any pecuniary benefit  
5 as consideration for approval or disapproval by a public  
6 servant or party official of a person for appointment,  
7 employment, advancement or retention as a public  
8 servant or for nomination as a candidate for public  
9 office.

**§61-5A-8. Certain matters not to constitute defense.**

1 It shall be no defense to any prosecution under the  
2 provisions of section three or section five of this article  
3 that a person whom the actor sought to influence or  
4 otherwise affect or deal with was not qualified to act  
5 in the desired way, whether because he was a candidate  
6 for office, or had not yet assumed office or his position

7 of employment, or lacked authority or jurisdiction, or  
8 the matter was not yet before him, or for any other  
9 reason was not qualified to act in the desired way.

**§61-5A-9. Penalties; disqualification to hold office; statute of limitations for misdemeanor offenses.**

1 (a) Any person who violates any of the provisions  
2 of section three of this article shall be guilty of a felony,  
3 and, upon conviction thereof, shall be punished, if an  
4 individual, by imprisonment in the penitentiary not less  
5 than one nor more than ten years, and, if a corporation,  
6 by a fine of not exceeding fifty thousand dollars. Any  
7 person convicted of violating any of the provisions of  
8 section three of this article shall also be forever dis-  
9 qualified from holding any office or position of honor,  
10 trust or profit of government in this state.

11 (b) Any person who violates any of the provisions  
12 of section four of this article shall be guilty of a mis-  
13 demeanor, and, upon conviction thereof, shall be punished  
14 by confinement in jail not less than three months nor  
15 more than one year or by a fine of not exceeding five  
16 thousand dollars or, in the discretion of the court, by  
17 both such confinement and fine.

18 (c) Any person who violates any of the provisions  
19 of section five of this article shall be guilty of a mis-  
20 demeanor, and, upon conviction thereof, shall be pun-  
21 ished by confinement in jail not less than three months  
22 nor more than one year or by a fine of not exceeding  
23 five thousand dollars or, in the discretion of the court,  
24 by both such confinement and fine, unless such person  
25 threatened to commit a crime or made a threat with  
26 the purpose to influence an administrative or judicial  
27 proceeding, in which event, he shall, upon conviction  
28 thereof, be guilty of a felony and shall be punished as  
29 specified in subsection (a) of this section for a violation  
30 of any of the provisions of section three of this article.

31 (d) Any person who violates any of the provisions  
32 of section six or section seven of this article shall be  
33 guilty of a misdemeanor, and, upon conviction thereof,  
34 shall be punished by confinement in jail not less than  
35 three months nor more than one year or by a fine of

36 not less than fifty nor more than one thousand dollars  
37 or, in the discretion of the court, by both such confine-  
38 ment and fine.

39 (e) Notwithstanding the provisions of section nine,  
40 article eleven of this chapter or any other provision of  
41 law to the contrary, a prosecution for a misdemeanor  
42 under the provisions of this article shall be commenced  
43 within six years after the offense was committed.

**§61-5A-10. Construction; certain other code provisions not  
affected; article not to affect offenses committed  
under other statutory provisions.**

1 Under no circumstances whatever shall this article be  
2 construed as superseding or in any way affecting the  
3 provisions of (1) chapter three of this code dealing with  
4 bribery and other corrupt practices and criminal offenses  
5 in connection with elections, election officials, voters or  
6 voting in elections; (2) sections seventeen and eighteen,  
7 article two, chapter fifteen of this code; (3) section nine,  
8 article two-a, chapter eighteen of this code; and (4) sec-  
9 tions fifteen and twenty-two, article ten of this chapter  
10 sixty-one; and the specific types of bribery, corrupt  
11 practices and criminal offenses covered by the statutory  
12 provisions referred to in this section shall continue to be  
13 governed by such statutory provisions and not by this  
14 article.

15 The provisions of this article shall govern and control  
16 as to any offenses committed in violation thereof on and  
17 after the effective date of this article, and the provisions  
18 of sections four, five, six and seven, article five of this  
19 chapter, shall govern and control as to any offenses com-  
20 mitted in violation of said sections four, five, six and  
21 seven prior to the effective date of this article five-a,  
22 with like effect as to such prior offenses as if this article  
23 five-a had not been enacted.

**§61-5A-11. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held invalid, such in-  
3 validity shall not affect other provisions or applications  
4 of the article, and to this end the provisions of this  
5 article are declared to be severable.

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**ERRATA**

Page 977, §23-4-6, line 38, the second "and" should be "or."