

ACTS
and
RESOLUTIONS
of the
FORTY-SECOND
LEGISLATURE
of
WEST VIRGINIA

Regular Session 1935



NOTE BY THE CLERK OF THE HOUSE OF DELEGATES

This volume contains all the Acts of the 1935 regular session of the forty-second Legislature, including municipal charters. It also contains all Senate and House Joint and Concurrent resolutions adopted, as well as all the Senate and House resolutions adopted by the respective bodies.

List of Members and Officers of the Legislature of West Virginia 1935

SENATE OFFICERS

President—CHARLES E. HODGES, Morgantown
Clerk—CHARLES LIVELY, Weston
Sergeant-at-Arms—FRED D. WOLFE, Ripley
Doorkeeper—G. W. TRIPLETT, Huntington

DISTRICT	MEMBERS	POST OFFICE
First.....	James Paull, Jr. (D).....	Wellsburg
	*C. Lee Spillers (D).....	Wheeling
Second.....	*Frank A. Young (R).....	Sistersville
	Harry Elbin (D).....	Cameron
Third.....	Dan B. Fleming (D).....	St. Marys
	*Clinton L. Howard (D).....	Parkersburg
Fourth.....	*L. O. Curtis (R).....	Spencer
	Ray E. Ritchie (R).....	Ravenswood
Fifth.....	J. T. Garrett (D).....	Hurricane
	*J. Patrick Beacom (D).....	Huntington
Sixth.....	C. Frank Millender (D).....	Wayne
	*John H. Greene (D).....	Williamson
Seventh.....	Grover C. Mitchell (D).....	Union
	*O. C. Canterbury (D).....	Beckley
Eighth.....	Luther R. Jones (D).....	Madison
	*Alvin J. Barnhart (D).....	Charleston
Ninth.....	Perry N. Wiseman (D).....	Summersville
	*F. W. Tuckwiller (D).....	Lewisburg
Tenth.....	A. G. Mathews (D).....	Grantsville
	*G. C. Belknap (D).....	Gassaway
Eleventh.....	Earl H. Smith (D).....	Fairmont
	*Chas. E. Hodges (D).....	Morgantown
Twelfth.....	Louis A. Henderson (D).....	West Union
	*Byron B. Randolph (D).....	Clarksburg
Thirteenth.....	Lee J. Sandridge (D).....	Philippi
	*G. O. Young (R).....	Buckhannon
Fourteenth.....	A. L. Helmick (R).....	Thomas
	*E. Bunker Reynolds (R).....	Keyser
Fifteenth.....	J. E. Helsley (D).....	Berkeley Springs
	*M. O. Rouss (D).....	Charles Town

*Holdover Senators, who will serve in the 1937 session.

24—Democrats
6—Republicans

Standing Committees of the Senate

ON RULES

Messrs. Hodges (Mr. President) (*Chairman ex officio*), Jones, Fleming, Paull and Helmick.

ON PRIVILEGES AND ELECTIONS

Messrs. Jones (*Chairman*), Sandridge, Howard, Garrett, Paull, Tuckwiller, Mathews, Reynolds and Young (of Upshur).

ON THE JUDICIARY

Messrs. Paull (*Chairman*), Barnhart, Helsley, Spillers, Fleming, Beacom, Canterbury, Greene, Jones, Mathews, Smith, Henderson, Belknap, Randolph, Reynolds, Young (of Tyler), Curtis and Ritchie.

ON FINANCE

Messrs. Jones (*Chairman*), Fleming, Wiseman, Tuckwiller, Mathews, Smith, Henderson, Sandridge, Rouss, Paull, Elbin, Howard, Millender, Mitchell, Garrett, Helmick, Reynolds and Young (of Upshur).

ON EDUCATION

Messrs. Smith (*Chairman*), Paull, Elbin, Fleming, Wiseman, Barnhart, Garrett, Reynolds and Ritchie.

ON COUNTIES AND MUNICIPAL CORPORATIONS

Messrs. Mathews (*Chairman*), Jones, Spillers, Howard, Randolph, Sandridge, Greene, Helmick and Young (of Tyler).

ON ROADS AND NAVIGATION

Messrs. Henderson (*Chairman*), Mitchell, Paull, Elbin, Howard, Beacom, Millender, Canterbury, Barnhart, Wiseman, Tuckwiller, Belknap, Sandridge, Mathews, Helsley, Ritchie and Helmick.

ON BANKS AND CORPORATIONS

Messrs. Wiseman (*Chairman*), Paull, Elbin, Howard, Greene, Henderson, Mathews, Young (of Tyler) and Young (of Upshur).

ON PUBLIC BUILDINGS AND HUMANE INSTITUTIONS

Messrs. Tuckwiller (*Chairman*), Henderson, Elbin, Beacom, Millender, Mitchell, Barnhart, Belknap, Rouss, Helmick and Ritchie.

ON THE PENITENTIARY

Messrs. Millender (*Chairman*), Spillers, Elbin, Belknap, Smith, Henderson, Jones, Helmick and Ritchie.

ON RAILROADS

Messrs. Rouss (*Chairman*), Sandridge, Spillers, Howard, Garrett, Canterbury, Jones, Reynolds and Helmick.

ON MILITIA

Messrs. Beacom (*Chairman*), Randolph, Tuckwiller, Smith, Canterbury, Helsley, Millender, Ritchie and Young (of Tyler).

ON FEDERAL RELATIONS

Messrs. Belknap (*Chairman*), Millender, Barnhart, Wiseman, Sandridge, Rouss, Beacom, Curtis and Ritchie.

ON INSURANCE

Messrs. Garrett (*Chairman*), Helsley, Mitchell, Barnhart, Mathews, Henderson, Paull, Ritchie and Young (of Upshur).

ON AGRICULTURE

Messrs. Mitchell (*Chairman*), Tuckwiller, Millender, Garrett, Belknap, Rouss, Sandridge, Helmick and Curtis.

ON MINES AND MINING

Messrs. Sandridge (*Chairman*), Canterbury, Smith, Wiseman, Jones, Millender, Beacom, Reynolds and Young (of Upshur).

ON MEDICINE AND SANITATION

Messrs. Spillers (*Chairman*), Belknap, Elbin, Garrett, Canterbury, Henderson, Rouss, Reynolds and Young (of Upshur).

ON LABOR

Messrs. Greene (*Chairman*), Jones, Spillers, Fleming, Garrett, Wiseman, Randolph, Reynolds and Curtis.

ON CLAIMS AND GRIEVANCES

Messrs. Randolph (*Chairman*), Barnhart, Rouss, Paull, Fleming, Beacom, Millender, Helmick and Young (of Tyler).

ON FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Elbin (*Chairman*), Howard, Greene, Barnhart, Belknap, Smith, Henderson, Reynolds and Young (of Upshur).

ON PUBLIC PRINTING

Messrs. Canterbury (*Chairman*), Beacom, Spillers, Fleming, Jones, Helsley, Smith, Young (of Tyler) and Curtis.

ON PUBLIC LIBRARY

Messrs. Helsley (*Chairman*), Sandridge, Smith, Tuckwiller, Canterbury, Greene, Howard, Reynolds and Young (of Upshur).

TO EXAMINE THE CLERK'S OFFICE

Messrs. Randolph (*Chairman*), Rouss and Garrett.

ON TEMPERANCE

Messrs. Garrett (*Chairman*), Mathews, Fleming, Greene, Wiseman, Randolph, Helsley, Reynolds and Curtis.

ON FORESTRY AND CONSERVATION

Messrs. Barnhart (*Chairman*), Mitchell, Paull, Beacom, Millender, Tuckwiller, Randolph, Helsley, Reynolds and Young (of Upshur).

ON REDISTRICTING

Messrs. Fleming (*Chairman*), Jones, Spillers, Greene, Smith, Randolph, Sandridge, Helmick and Curtis.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE SENATE

Messrs. Howard (*Chairman*), Wiseman, Rouss, Greene and Reynolds.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE SENATE

Messrs. Hodges (*President*), Jones and Helmick.

House Of Delegates

OFFICERS

Speaker—JOHN J. PELTER, Dehue*Clerk*—JOHN S. HALL, Williamson*Sergeant-at-Arms*—HAL DEPUE, Charleston*Doorkeeper*—J. N. FINLEY, Chester

COUNTY	MEMBERS	POSTOFFICE
Barbour.....	William Janes (R).....	Philippi
Berkeley.....	Charles R. Beard (R).....	Martinsburg
Boone.....	Arnold G. Breedlove (D).....	Danville
Braxton.....	Claude R. Linger (D).....	Burnsville
Brooke.....	Glen B. Wade (R).....	Wellsburg
Cabell.....	Joe G. Gentry (D).....	Huntington
	W. D. Kelster (D).....	Huntington
	A. M. Martin (D).....	Barboursville
	Ed. V. Perry (D).....	Huntington
	William W. Roberts (D).....	Huntington
Calhoun.....	J. A. Morford (D).....	Grantsville
Clay.....	E. Ray Reed (R).....	Clay
Doddridge.....	Howard H. Jones (R).....	Smithburg
Fayette.....	Mrs. S. W. Price (D).....	Scarbro
	C. N. Proctor (D).....	Clifftop
	Arnold M. Vickers (D).....	Montgomery
Gilmer.....	Emmett O. Wiseman (D).....	Fayetteville
	E. E. Cottrill (D).....	Sand Fork
Grant.....	Arch J. Welton (R).....	Petersburg
Greenbrier.....	W. H. Gum (D).....	White Sul. Spgs.
	Harry L. Van Sickler (D).....	Lewisburg
Hampshire.....	J. Burr Saville (D).....	Romney
Hancock.....	John W. Hertnick (R).....	Weirton
Hardy.....	J. D. Chitpley (D).....	Moorefield
Harrison.....	Stanley C. Butler (D).....	Wolf Summit
	John H. Clifford (D).....	Clarksburg
	James L. Gaylord (D).....	Clarksburg
	Edgar E. Righter (D).....	Shinnston, Rt. 2
	Charles F. Ong (R).....	Ripley
Jackson.....	U. S. Martin (D).....	Shepherdstown
Kanawha.....	John E. Amos (D).....	Charleston
	W. T. (Suey) Brotherton (D).....	Charleston
	Carl C. Calvert (D).....	Chelyan
	J. Hornor Davis, II (D).....	Charleston
	Ernest K. James (D).....	Charleston
	Roy F. Jimison (D).....	Kayford
	Howard Kuhn (D).....	Charleston
	James Kay Thomas (D).....	Charleston
Lewis.....	Hurvey A. Hall (R).....	Weston
Lincoln.....	Watson Adkins (D).....	Hart
Logan.....	Hugh Paul (D).....	Logan
	John J. Pelter (D).....	Dehue
	Paul C. Winter (D).....	Chapmanville
Marion.....	Fred L. Doring (D).....	Fairmont
	Robert L. McCoy (D).....	Fairmont
	Howard E. Woodward (D).....	Fairmont

HOUSE OF DELEGATES

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COUNTY	MEMBERS	POSTOFFICE
Marshall.....	Will F. Crow (R).....	Glen Easton
	Allen Simmons (R).....	Moundsville
Mason.....	George A. Rairden (R).....	Leon
Mercer.....	J. A. Douglas Bailey (D).....	Bluefield
	W. Broughton Johnston (D).....	Princeton
	H. Dennis Wright (D).....	Montcalm
Mineral.....	Geo. F. Parrish (D).....	Keyser
Mingo.....	Hlram Phillips (D).....	Sprigg
	Mark Russell, Jr. (D).....	Williamson
Monongalia.....	Charles B. Morris (D).....	Morgantown
	Junius M. Strouss (D).....	Morgantown
Monroe.....	William M. LaFon (D).....	Union
Morgan.....	Harvey D. Beeler (R).....	Berkeley Springs
McDowell.....	J. R. Anderson (D).....	Northfork
	A. C. Dickerson (D).....	Raysal
	Lewis E. Fite (D).....	War
	R. H. Inscore (D).....	Jenkljones
	Fleming A. Jones, Jr. (D).....	Welch
Nicholas.....	J. A. Neal (D).....	Fenwick
Ohio.....	Jack R. Adams (D).....	Wheeling
	Carl B. Galbralth (D).....	Wheeling
	Geo. W. Oldham (D).....	Wheeling
	Stephen J. Russek (D).....	Wheeling
Pendleton.....	R. M. Hiner (D).....	Franklin
Pleasants.....	B. A. Dotson (D).....	St. Marys
Pocahontas.....	Stanley J. Rexrode (R).....	Marlinton
Preston.....	Clarence B. Blshoff (R).....	Manheim
Putnam.....	Harry W. Bayer (R).....	Winfield
Raleigh.....	T. E. Bibb (D).....	Beckley
	J. R. Gilmore (D).....	Beckley
	A. D. Preston (D).....	Beckley
Randolph.....	J. Buhl Shahan (D).....	Elkins
Ritchie.....	A. H. Lawson (R).....	Harrisville
Roane.....	Harry Holswade (D).....	Spencer
Summers.....	W. Carthon Haythe (D).....	Hinton
Taylor.....	Dallas Wolfe (R).....	Grafton
Tucker.....	Lloyd Erhard (D).....	Davis
Tyler.....	I. M. Underwood (R).....	Middlebourne
Upshur.....	Henj. L. Beall (R).....	Buckhannon
Wayne.....	Rufus Lester (D).....	Fort Gay
	Oscar Watts (D).....	Huntington
Webster.....	William S. Wysong (D).....	Webster Springs
Wetzel.....	L. E. Lantz (D).....	Jacksonburg
Wirt.....	J. Wamsley Vandall (R).....	Creston
Wood.....	Ben H. Butcher (D).....	Parkersburg
	Forbes R. Hiehle (D).....	Parkersburg
	George Sheddan (R).....	Parkersburg
Wyoming.....	Ward Wylie (D).....	Mullens

(D)—Democrats..... 72
 (R)—Republicans..... 22
 —————
 Total..... 94

Standing Committees of the House of Delegates

AGRICULTURE

Messrs. Chipley (*Chairman*), Brotherton (*Vice Chairman*), Bailey, Butler, Cottrill, Davis, Gum, Holswade, Keister, Lester, Martin (of Jefferson), Neal, Mrs. Price, Messrs. Righter, Bayer, Crow, Hall and Ong.

ARTS, SCIENCE, AND GENERAL IMPROVEMENTS

Messrs. Cottrill (*Chairman*), Preston (*Vice Chairman*), Anderson, Breedlove, Chipley, Doring, Gilmore, Gum, Jimison, Martin (of Cabell), Righter, Shahan, Vickers, Watts, Beall, Butler, Ong and Simmons.

BANKS AND CORPORATIONS

Messrs. Lantz (*Chairman*), McCoy, (*Vice Chairman*), Amos, Anderson, Breedlove, Clifford, Dotson, Galbraith, Hiner, James, LaFon, Martin (of Jefferson), Paul, Preston, Wright, Wysong, Beeler, Crow, Hertnick, Janes and Reed.

CLAIMS AND GRIEVANCES

Messrs. Roberts (*Chairman*), Lester (*Vice Chairman*), Adams, Adkins, Brotherton, Doring, Fite, Gaylord, Gum, Jimison, Linger, Martin (of Jefferson), Morris, Perry, Phillips, Saville, Wright, Beall, Bishoff, Lawson and Shedan.

COUNTIES, DISTRICTS AND MUNICIPAL CORPORATIONS

Messrs. Clifford (*Chairman*), Johnston (*Vice Chairman*), Bailey, Brotherton, Dickerson, Doring, Jimison, Martin (of Cabell), McCoy, Perry, Righter, Russek, Strouss, Van Sickler, Vickers, Winters, Wiseman, Beard, Hall, Simmons and Underwood.

EDUCATION

Messrs. Strouss (*Chairman*), Butler (*Vice Chairman*), Adams, Adkins, Amos, Anderson, Bailey, Calvert, Cottrill, Galbraith, Jones (of McDowell), Lester, Linger, Martin (of Cabell), Parrish, Mrs. Price, Messrs. Shahan, Winter, Wiseman, Rairden, Rexrode, Simmons, Vandall and Wolfe.

ELECTIONS AND PRIVILEGES

Messrs. Galbraith (*Chairman*), Hiehle (*Vice Chairman*), Bailey, Bibb, Breedlove, Clifford, Dickerson, Erhard, Fite, Haythe, James, Keister, Morford, Oldham, Bishoff, Janes and Welton.

EXECUTIVE OFFICES AND LIBRARY

Messrs. Martin (of Jefferson) (*Chairman*), Adkins (*Vice Chairman*), Adams, Breedlove, Butcher, Calvert, Doring, Dotson, Erhard, Fite, Gilmore, Haythe, Holswade, Inscore, Kuhn, Beard and Crow.

FEDERAL RELATIONS

Messrs. Butcher (*Chairman*), Fite (*Vice Chairman*), Clifford, Johnston, Jones (of McDowell), Lester, Linger, Martin (of Cabell), Morris, Neal, Paul, Preston, Russell.

FORESTRY AND CONSERVATION

Messrs. Proctor (*Chairman*), Gaylord (*Vice Chairman*), Adams, Adkins, Bailey, Butcher, Erhard, Gilmore, Hiehle, Linger, Righter, Russell, Shahan, Wiseman, Beall, Rexrode, Simmons and Wolfe.

FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Wysong (*Chairman*), Amos (*Vice Chairman*), Cottrill, Gum, Hiner, Kuhn, Oldham, Parrish, Paul, Roberts, Saville, Watts, Woodward, Rairden, Reed, Sheddan and Vandall.

GAME AND FISH

Messrs. Calvert (*Chairman*), Watts (*Vice Chairman*), Amos, Bibb, Brotherton, Chipley, Cottrill, Galbraith, Gilmore, Lantz, Morford, Righter, Roberts, Saville, Shahan, Vickers, Wright, Beeler, Lawson, Wade and Wolfe.

HUMANE INSTITUTIONS AND PUBLIC BUILDINGS

Mrs. Price (*Chairman*), Messrs. Phillips (*Vice Chairman*), Dotson, Gaylord, Hiehle, Holswade, Keister, Linger, Preston, Righter, Roberts, Russek, Wylie, Bayer, Bishoff, Hall and Wade.

INSURANCE

Messrs. Parrish (*Chairman*), Davis (*Vice Chairman*), Amos, Breedlove, Clifford, Galbraith, Gaylord, Inscore, Keister, Martin

(of Cabell), McCoy, Woodward, Wylie, Hertnick, Jones (of Doddridge), Lawson and Underwood.

JUDICIARY

Messrs. LaFon (*Chairman*), Wysong (*Vice Chairman*), Amos, Butcher, Clifford, Davis, Galbraith, Haythe, Hiner, James, Johnston, Jones (of McDowell), Preston, Proctor, Roberts, Russell, Van Sickler, Vickers, Woodward, Bayer, Janes, Shedan and Underwood.

LABOR

Messrs. Woodward (*Chairman*), Dickerson (*Vice Chairman*), Adams, Anderson, Breedlove, Butcher, Butler, Erhard, Gentry, Gilmore, Inscore, Morris, Neal, Perry, Phillips, Roberts, Thomas, Watts, Winter, Wiseman, Wright, Beard, Hertnick and Wade.

MEDICINE AND SANITATION

Messrs. Wylie (*Chairman*), Morford (*Vice Chairman*), Butler, Chipley, Haythe, James, Jones (of McDowell), Kuhn, Morris, Mrs. Price, Messrs. Wiseman, Woodward, Wysong, Crow, Hertnick, Jones (of Doddridge) and Underwood.

MILITARY AFFAIRS

Messrs. Holswade (*Chairman*), Doringer (*Vice Chairman*), Adams, Anderson, Bailey, Calvert, Gentry, Inscore, Jones (of McDowell), Perry, Preston, Woodward, Wylie, Beall, Hertnick, Jones (of Doddridge), Ong, Simmons and Wolfe.

MINES AND MINING

Messrs. Bibb (*Chairman*), Paul (*Vice Chairman*), Breedlove, Dickerson, Erhard, Fite, Gilmore, Jimison, Kuhn, Morris, Perry, Phillips, Proctor, Shahan, Strouss, Thomas, Winter, Wiseman, Woodward, Wright, Wylie, Beard, Reed and Simmons.

PENITENTIARY

Messrs. Preston (*Chairman*), Perry (*Vice Chairman*), Bibb, Butler, Davis, Fite, Gentry, Hiehle, Hiner, Lester, Phillips, Russek, Wylie, Beeler, Bishoff, Crow and Underwood.

PRINTING AND CONTINGENT EXPENSES

Messrs. Gentry (*Chairman*), Anderson (*Vice Chairman*), Inscore, Russek, Van Sickler, Vickers, Watts, Janes, Jones (of Doddridge), Vandall and Welton.

RAILROADS

Messrs. Jimison (*Chairman*), Haythe (*Vice Chairman*), Adams, Adkins, Butler, Calvert, Gentry, Hiner, McCoy, Morris, Oldham, Parrish, Paul, Proctor, Russell, Watts, Beard, Crow, Ong and Rairden.

REDISTRICTING

Messrs. Doringer (*Chairman*), Russell (*Vice Chairman*), Adkins, Calvert, Chipley, Cottrill, Davis, Hiner, Inscore, Johnston, Keister, Lester, Oldham, Parrish, Saville, Van Sickler, Winter, Beeler, Hall, Lawson and Rairden.

ROADS

Messrs. Van Sickler (*Chairman*), Proctor (*Vice Chairman*), Adkins, Bibb, Chipley, Davis, Dickerson, Dotson, Erhard, Gaylord, Johnston, Lantz, Linger, Martin (of Jefferson), Morford, Phillips, Russek, Saville, Winter, Bishoff, Lawson, Rexrode and Wade.

RULES

Messrs. Speaker (*Chairman ex officio*), Gentry, Hiner, James, LaFon, Strouss, Underwood and Welton.

STATE BOUNDARIES

Messrs. Neal (*Chairman*), Keister (*Vice Chairman*), Butcher, Dotson, Gum, Haythe, Hiehle, Holswade, Inscore, Jones (of McDowell), Kuhn, Mrs. Price, Messrs. Shahan, Strouss, Vickers, Shedan, Vandall and Welton.

TAXATION AND FINANCE

Messrs. Thomas (*Chairman*), Righter (*Vice Chairman*), Anderson, Bibb, Brotherton, Dotson, Gaylord, Gentry, Hiehle, Holswade, James, Lantz, McCoy, Morford, Oldham, Parrish, Paul, Proctor, Russek, Strouss, Wylie, Hall, Rairden, Reed and Welton.

TEMPERANCE

Messrs. Saville (*Chairman*), Gum (*Vice Chairman*), Adams, Brotherton, Dickerson, Fite, Lantz, McCoy, Neal, Parrish, Proctor, Russek, Winter, Hertnick, Jones (of Doddridge), Rexrode and Wade.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE HOUSE

Messrs. Vickers (*Chairman*), Hiehle, Shahan, Winter and Beeler.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE HOUSE

Messrs. Speaker (*Mr. Pelter*), Hiner and Underwood.

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LEGISLATURE OF WEST VIRGINIA

ACTS OF 1935

REGULAR SESSION

CHAPTER 1

(Senate Bill No. 78—By Mr. Fleming)

AN ACT permitting persons, associations, partnerships or corporations of the state of West Virginia to borrow funds from production credit associations, regional agricultural credit corporations, the reconstruction finance corporation, banks for cooperatives, or the government of the United States or any department, agency or officer thereof, federal intermediate credit banks or any institution which has made arrangements to discount therewith or to procure funds therefrom on the security of the obligation of the borrower and providing a means of securing said loans on chattels and crops.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Persons or cooperative associations may borrow funds from federal agencies and give chattel deed of trust on personal property, including crops, to secure repayment; lien of deed of trust.
2. When lien of chattel deed of trust on crops has priority; exceptions.
3. Deed of trust may secure future advances to be made within

Sec.

- three years; lien of future advances.
4. Deed of trust may include replacements or increase of livestock; permitted use of hay, grain, etc. covered by deed of trust, for livestock.
5. Acknowledgment of deed of trust.
6. (a) Filing and docketing by county clerk of deed of trust.

Sec.		Sec.	
	(b) Filing and docketing by county clerk of assignment of deed of trust.	11.	Lien of deed of trust not impaired by removal of encumbered property to another county.
7.	Fees of county clerk.	12.	When trustee may take possession of the encumbered property.
8.	Deed of trust invalid after five years; how lien of, extended.	13.	How deeds of trust foreclosed.
9.	Assignment of deed of trust, how made, indexed and filed.	14.	Act to be liberally construed; provisions of act separable.
10.	Release of deed of trust, how made, indexed and filed.		

Be it enacted by the Legislature of West Virginia:

Section 1. Any person may enter into an agreement with, 2 and borrow funds from, a production credit association organ- 3 ized under the farm credit act of one thousand nine hundred 4 thirty-three, a regional agricultural credit corporation, the 5 reconstruction finance corporation, or the government of the 6 United States or any department, agency or officer thereof, a 7 federal intermediate credit bank, or any institution which has 8 made arrangements to discount therewith, or to procure funds 9 therefrom on the security of, the obligations of the borrower, 10 and any cooperative association or corporation composed of 11 agricultural producers and/or purchasers may enter into an 12 agreement with, and borrow from, any bank for cooperatives 13 organized under said farm credit act of one thousand nine 14 hundred thirty-three and/or from any federal intermediate 15 credit bank, and the repayment of any funds so borrowed, 16 and/or of any then existing indebtedness to any such institu- 17 tion may be secured by chattel deed of trust upon personal 18 property of any kind, character or description owned at the 19 time of the execution of the chattel deed of trust, or property 20 of the same class as is covered by the chattel deed of trust or 21 mortgage if acquired by the grantor subsequent to the execu- 22 tion of the chattel deed of trust, and prior to its extinguish- 23 ment, or upon any crop or crops, annual or perennial, including 24 fruit crops, grown or growing, either already planted or to be 25 planted and/or maturing within one year from the execution 26 of such chattel deed of trust. Such chattel deed of trust shall 27 be a lien upon the property therein described from the time of 28 the docketing of such chattel deed of trust as provided for 29 herein, which lien shall be good and valid against, and superior 30 to all rights of subsequent creditors, purchasers, mortgagees, 31 and other lienors and encumbrancers, and any of them. For 32 the purposes of this act, all such property shall be deemed to

33 be personal property and encumberable and mortgageable as
34 such.

Sec. 2. The lien of any chattel deed of trust on crops executed in pursuance of the provisions of this act shall be superior to any mortgages, deeds of trust, or judgments upon the land upon which any such crop has been so seeded and/or may be growing, and any sale made under any mortgage, deed of trust, or judgment upon such land before said crop has been severed shall be made subject to any lien on said crops acquired as provided for in this act: *Provided, however,* That the provisions of this act shall not in any manner whatever affect any deed of trust, mortgage, or judgment upon the land, recorded or docketed prior to the approval of this act: *Provided further,* That nothing in this act shall be construed to affect in any manner the rights of a landlord to his proper share of rents or his rights of distress or attachment for the same, unless such landlord shall expressly waive such rights in writing.

Sec. 3. Any such deed of trust or mortgage may secure future advances to be made by the beneficiary, at its option, within a period of three years from the execution of such deed of trust, but not to exceed in the aggregate an amount stated in such deed of trust; and all advances so made shall be secured by such deed of trust equally and to the same extent as the amount originally advanced on the security of such deed of trust; and all such future advances shall be a lien upon the property therein described from the time of the docketing of such deed of trust, good and valid against and superior to all rights of subsequent creditors, purchasers, mortgagees and other subsequent lienors and encumbrancers and any of them.

Sec. 4. Such chattel deed of trust may include replacements of any of the encumbered property therein described and all increase of animals and livestock of all kinds. No chattel deed of trust of livestock and hay, grain or other food stuffs shall be invalid in any particular because provision is contained therein, or the beneficiary consents, that the grantor may use and consume food, forage and/or fodder crops in preserving and preparing for market the livestock covered thereby.

Sec. 5. Any chattel deed of trust given under and pursuant to this act shall be executed by the grantor and need not be

3 sealed or witnessed, but shall be acknowledged in the same
4 manner as deeds of trust on real property.

Sec. 6. (a) Any chattel deed of trust given under and
2 pursuant to this act, or instrument intended to operate as such,
3 shall be filed in the office of the clerk of the county court for
4 the county in which the chattels or crops are located at the
5 time of the execution of such deed of trust. The county court
6 clerk shall docket such instrument when presented to him for
7 that purpose, in a well bound book to be known as the "Fed-
8 eral Farm Credit Lien Book", and shall alphabetically index
9 same therein, setting forth the date of the lien, the name of
10 the grantor, the trustee and beneficiary, the amount advanced
11 and the limit thereof, and a brief description of the chattels
12 described therein and/or the crops affected, and the property
13 on which said chattels and/or crops are located.

14 (b) Every assignment made of any instrument executed un-
15 der and pursuant to this act shall be filed in the office of the
16 clerk of the county court where the original instrument is
17 docketed; and when any such assignment is presented for filing,
18 the said clerk of the county court shall enter upon the margin
19 of the page on which is docketed the original instrument, the
20 names of the assignor and assignee and the addresses of each,
21 the amount of the debt or the date of the assignment, the date
22 of the execution of the assignment and the date of filing thereof.

Sec. 7. The county court clerks are entitled to receive a fee
2 of fifty cents for the docketing and entering of chattel deed of
3 trust filed and docketed under and pursuant to this act, and a
4 fee of twenty-five cents for each assignment and each release
5 filed and indexed pursuant to this act.

Sec. 8. A chattel deed of trust executed under and pursuant
2 to this act shall be invalid as against creditors, purchasers,
3 mortgagees, and other lienors and encumbrancers after the ex-
4 piration of a period of five years, reckoning from the time of
5 the docketing of said chattel deed of trust, unless before the
6 expiration of such term the beneficiary or someone on behalf
7 of the beneficiary shall file a statement containing the names
8 of the parties to the deed of trust, the time and place where
9 docketed, and the amount then due thereon for principal and
10 interest, in which case the lien of the deed of trust shall be

11 extended for five years from and after the date of the filing of
12 said statement. The officer filing the statement shall enter the
13 same in the "Federal Farm Credit Lien Book" and shall be
14 entitled to the same fee as in the case of the docketing and
15 entry of a chattel deed of trust under this act.

Sec. 9. Any deed of trust executed under and pursuant to
2 this act may be assigned by an instrument in writing, signed
3 and acknowledged by the beneficiary, its agent or assignee,
4 and upon presentation of such assignment to the county court
5 clerk in the office in which the original deed of trust is docketed,
6 such assignment shall be by such county court clerk indexed
7 and filed and the fact thereof shall be noted on the margin of
8 the page in which the original deed of trust is docketed, and
9 such assignment shall, except as to the parties thereto, take
10 effect and be valid only from the time of filing and noting as
11 herein provided.

Sec. 10. Any chattel deed of trust executed under and
2 pursuant to this act may be released by an instrument in writ-
3 ing signed and acknowledged by the beneficiary, or its as-
4 signee, or the duly authorized agent of such beneficiary, or
5 assignee, and upon presentation of such release in the office
6 of the clerk of the county court, where the original chattel
7 deed of trust is docketed, the clerk of the county court shall
8 index and file the same and shall note such release and the date
9 thereof on the margin of the page of the book where the original
10 chattel deed of trust is docketed, and when so noted such re-
11 lease shall fully and effectually release the lien of said chattel
12 deed of trust.

Sec. 11. The lien of the deed of trust shall not be ex-
2 tinguished or impaired by the removal of the encumbered
3 property from the county in which the deed of trust is dock-
4 eted.

Sec. 12. Upon default in any of the terms and provisions of
2 any deed of trust executed in accordance with the provisions of
3 this act, the trustee shall have the right, without process of law,
4 immediately to take possession of the encumbered property
5 and do all things necessary to preserve same, and any expense
6 incurred in connection therewith shall be included in and se-
7 cured by the lien of said deed of trust.

Sec. 13. In addition to any other methods of foreclosing
 2 chattel deeds of trust under the laws of this state, chattel deeds
 3 of trust executed under and pursuant to this act may be fore-
 4 closed in the manner provided for in said chattel deed of trust.
 5 Where such chattel deed of trust contains a power of sale, the
 6 same may be foreclosed upon compliance with the provisions
 7 of sale as set out in said chattel deed of trust: *Provided*, That
 8 all sales are made at public auction.

Sec. 14. This act shall be liberally construed to effectuate
 2 the purposes hereof and substantial compliance herewith shall
 3 be sufficient hereunder. The provisions of this act, so far as the
 4 same are applicable, shall govern and control chattel deeds of
 5 trust given under and pursuant hereto. If any provision of
 6 this act, or the application thereof to any person or circum-
 7 stances, is held invalid, the remainder of the act, and the appli-
 8 cation of such provisions to other persons or circumstances,
 9 shall not be affected thereby. All laws or clauses of laws in
 10 conflict herewith are hereby repealed.

—c—

CHAPTER 2

(Senate Bill No. 79—By Mr. Fleming)

AN ACT to amend and reenact section eighteen, article eleven,
 chapter thirty-eight of the code of West Virginia, one thou-
 sand nine hundred thirty-one, as amended by chapter seventy-
 four, acts of the Legislature, second extraordinary session, one
 thousand nine hundred thirty-three, relating to advances made
 for crops.

[Passed March 9, 1935; in effect from passage. Became a law without the
 approval of the Governor.]

Sec. 18. Lien of advances for crops; how secured; filing and docketing;		Sec. itemized statement to sheriff; how validity contested.
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Be it enacted by the Legislature of West Virginia:

That section eighteen, article eleven, chapter thirty-eight of the
 code of West Virginia, one thousand nine hundred thirty-one, as

last amended by chapter seventy-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 18. If any person makes advances, either in money
2 or supplies, or other thing of value, to anyone who is engaged
3 in, or is about to engage in, the cultivation or cropping of
4 land, the person so making such advances shall have a lien on
5 the crops which may be made or seeded, or fruit and/or other
6 crops maturing during the year upon the lands in or about the
7 cultivation or cropping of which the advances so made have
8 been or were intended to be expended, to the extent of such
9 advances made for the cultivation, cropping, harvesting and/or
10 marketing of such crops; but the person making such advances
11 shall not have the benefit of the liens given in this section,
12 unless there is an agreement, in writing, signed by both parties,
13 in which there is specified the amount advanced, or a limit to
14 be fixed beyond which any advances, made from time to time
15 during the year, shall not go, and a description of the land
16 cultivated or cropped, or to be cultivated or cropped, sufficient
17 to identify it, and a description of the crops to be cultivated,
18 cropped, harvested and/or marketed, and such agreement be
19 filed in the office of the clerk of the county court of the county
20 in which such land so cultivated or cropped or to be cultivated
21 or cropped, lies, in a well-bound book to be known as "Crop
22 Lien Book", and alphabetically indexed therein. by such clerk,
23 setting forth the date of the lien, a brief description of the
24 land so cultivated or cropped, or to be cultivated or cropped
25 sufficient to identify the same as stated in the writing, the
26 name of the lienor and the lienee, the amount advanced or the
27 limit thereof, and of the crops to be cultivated, cropped, har-
28 vested and/or marketed; and from the time such lien is so filed
29 it shall have the same force and effect as a duly recorded trust
30 deed, and shall be valid as to purchasers without notice from,
31 and the creditors of, the parties or party obtaining such ad-
32 vances; and in the event of a sale, under a trust deed or mort-
33 gage, of the land upon which any such crop has been so seeded
34 and/or may be growing, and before such crop has been severed,
35 such sale shall be made subject to such crop lien: *Provided*,
36 That whenever the crops are subject to a lien of a fieri facias
37 or attachment, whether a levy be actually made or not, it shall
38 be the duty of the person claiming a lien under this section,

39 upon the request of the sheriff, or any party in interest, to
 40 render to the sheriff of the county wherein the crops are grown
 41 a complete and itemized statement, under oath, of the claims
 42 for advances, showing the nature of the claims, the dates of
 43 advancement and the respective amounts. And in case the
 44 person claiming the advances fails to render to the sheriff of
 45 such county the verified itemized statement above provided for
 46 within ten days after request has been made, he shall forever
 47 lose the benefit of the lien on the crops for advances granted
 48 him under this section: *Provided further*, That if the execution
 49 creditor or attachment creditor desires to contest the validity
 50 of the claims for advances, he may cause the clerk of the circuit
 51 court of the county in which such crops are grown to summon
 52 the person claiming such lien to appear before such court and
 53 show to the satisfaction of the court that such money, supplies,
 54 and other things of value were advanced for the purpose of, and
 55 were actually used in and about the cultivation, production,
 56 harvesting and/or marketing of the crops upon which the lien
 57 is claimed. For the services of the clerk in recording a crop
 58 lien under this section, he shall receive a fee of fifty cents.

CHAPTER 3

(Senate Bill No. 80—By Mr. Fleming)

AN ACT to permit certain cooperative associations to give deeds of trust or chattel mortgages on rotating stocks of goods to secure loans from banks for cooperatives, organized under the farm credit act of one thousand nine hundred thirty-three, or from federal intermediate credit banks, organized under the agricultural credits act of one thousand nine hundred twenty-three.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1.	Cooperative associations may give chattel deeds of trust on stocks of goods or inventories to secure certain loans to	Sec.	them; lien of deed of trust to attach to articles replacing encumbered articles.
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Be it enacted by the Legislature of West Virginia:

Section 1. Any cooperative association or corporation, organized under the laws of this state, or under the laws of the

3 United States, or qualified to do business in this state, and
 4 qualified as a cooperative association under the laws of this
 5 state and/or under the laws of the United States, may give as
 6 security for any loan or loans obtained from any bank for
 7 cooperatives, organized under the act of congress known as
 8 the "Farm Credit Act" of one thousand nine hundred thirty-
 9 three, or for any loan or loans obtained from any federal in-
 10 termediate credit bank, organized under an act of congress
 11 known as the "Agricultural Credits Act" of one thousand nine
 12 hundred twenty-three, a chattel mortgage or deed of trust
 13 covering stocks of goods or inventories, or other things in bulk,
 14 but changing in specifics, in which case the lien of such mort-
 15 gage or deed of trust shall be lost as to all articles disposed of
 16 by the mortgagor prior to the extinguishment of such mortgage,
 17 but shall attach to any articles purchased to supply their places.

*CHAPTER 4

(House Bill No. 119—By Mr. Pelter, by request)

AN ACT repealing chapter sixty, as amended, of the code of West Virginia, one thousand nine hundred thirty-one, and enacting in lieu thereof a new chapter sixty providing for state control of alcoholic liquors, and repealing all acts or parts of acts inconsistent herewith.

[Passed February 22, 1935; in effect March 1, 1935. Approved by the Governor.]

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*Amended by chapter five, acts of this session.

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Be it enacted by the Legislature of West Virginia:

That chapter sixty, as amended, of the code of West Virginia, one thousand nine hundred thirty-one, is hereby repealed; and a new chapter sixty providing for the state control of alcoholic liquors is hereby enacted to read as follows:

ARTICLE I.

Section 1. The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the prohibition amendment; and to assure the greatest degree of personal freedom that is consistent with the health, safety and good morals of the people of the state. To these ends the police power of the state is pledged to the sound control and the temperate use of alcoholic liquors.

Sec. 2. A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

Sec. 3. Subject to the provisions of this chapter, alcoholic liquors, in this state:

(1) Shall be sold only in sealed packages.

(2) Shall not be sold for consumption on the premises where sold.

(3) Shall be manufactured only by persons licensed under the provisions of this chapter.

(4) Shall not be consumed or sold for consumption in a public place.

Sec. 4. Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the West Virginia Liquor Control Commission, or its retail agencies.

Sec. 5. For the purposes of this chapter:

“Alcohol” shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.

“Beer” shall mean any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more than five per cent of alcohol by weight.

“Non-intoxicating beer” shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar product or substitute, and containing not more than five per cent of alcohol by weight.

“Wine” shall mean any alcoholic beverage obtained by the

13 fermentation of the natural content of fruits, or other agri-
14 cultural products, containing sugar.

15 "Spirits" shall mean any alcoholic beverage obtained by
16 distillation and mixed with potable water and other substances
17 in solution, and includes brandy, rum, whiskey, cordials and
18 gin.

19 "Alcoholic liquor" shall include alcohol, beer, wine and
20 spirits, and any liquid or solid containing more than five per
21 cent of alcohol by weight and capable of being used as a bev-
21-a erage.

22 "Original package" shall mean any closed or sealed con-
23-29 tainer or receptacle used for holding alcoholic liquor.

30 "Sale" shall mean any transfer, exchange, or barter in any
31 manner or by any means, for a consideration, and shall include
32 all sales made by principal, proprietor, agent or employee.

33 "Selling" shall include solicitation or receipt of orders; pos-
34 session for sale; and possession with intent to sell.

35 "Person" shall mean an individual, firm, partnership, cor-
36 poration or voluntary association.

37 "Manufacture" means to distill, rectify, ferment, brew, make,
38 mix, concoct, process, blend, bottle, or fill an original package
39 with any alcoholic liquor.

40 "Manufacturer" shall mean any person engaged in the manu-
41 facture of any alcoholic liquor, and among others includes a
42 distiller, a rectifier, a wine maker, and a brewer.

43 "Brewery" shall mean an establishment where beer is manu-
44 factured or in any way prepared.

45 "Winery" shall mean an establishment where wine is manu-
46 factured or in any way prepared.

47 "Distillery" shall mean an establishment where alcoholic
48 liquor other than wine or beer is manufactured or in any way
49 prepared.

50 "Public place" shall mean any place, building or convey-
51 ance to which the public has, or is permitted to have access,
52 including restaurants, soda fountains, and hotel dining rooms
53 and lobbies, and corridors of hotels, and any highway, street,
54 lane, park or place of public resort or amusement.

55 "State Liquor Store" shall mean a store established and op-
56 erated by the commission under this chapter for the sale of
57 alcoholic liquor in the original package for consumption off
58 the premises.

59 "An agency" shall mean a drug store, grocery store or gen-
60 eral store designated by the commission as a retail distributor
61 of alcoholic liquor for the West Virginia Liquor Control Com-
62 mission.

63 "Department" shall mean the organization through which
64 the commission exercises powers imposed upon it by this
65 chapter.

66 "Commission" shall mean the West Virginia Liquor Control
67 Commission.

Sec. 6. This chapter may be cited as the "Liquor Control
2 Act".

Sec. 7. The provisions of this act do not apply to non-
2 intoxicating beer except as is otherwise specifically provided.

ARTICLE II.

Section 1. To accomplish the purposes of this chapter there
2 is hereby created the "West Virginia Liquor Control Commis-
3 sion," which shall be a corporation, and, as such, may sue and
4 be sued, contract and be contracted with, and it shall have a
5 common seal.

Sec. 2. The commission shall consist of three members to be
2 appointed by the governor, with the advice and consent of the
3 senate. The commissioners shall devote their entire time to the
4 duties of the office.

Sec. 3. The term of office of members of the commission shall
2 be four years, except the governor, upon the adoption of this
3 act, shall appoint the members of the commission upon the fol-
4 lowing basis: One member for a term of two years, one member
5 for a term of three years, and one member for a term of four
6 years. As these appointments expire, subsequent appointments
7 shall be made for four-year terms.

8 Any appointment to fill a vacancy shall be for the unexpired
9 term.

Sec. 4. The members of the commission shall be selected with
2 special reference to their ability and fitness to perform the
3 duties required of them by this chapter.

4 Not more than two of the commission shall be members of the
5 same political party.

Sec. 5. A member of the commission shall not be a candidate for or hold any public office other than that of member of the commission; nor shall he be a member of any committee of a political party. In case a member becomes a candidate for or is appointed to any public office or political committee, his office as member of the commission shall be automatically vacated.

Sec. 6. A member of the commission shall have no personal interest in or derive any gain from an enterprise or industry engaged in the manufacture, sale or use of alcoholic liquor.

Sec. 7. Before entering upon their duties, members of the commission shall each take and subscribe to the oath prescribed by section five, article four of the constitution of this state, and shall give bond in the penalty of twenty-five thousand dollars, to be approved by the governor and conditioned upon the faithful performance of his duties and the accounting for and payment into the treasury of all moneys coming into his custody by virtue of his office. The bond and oath shall be filed with the secretary of state.

Sec. 8. The governor shall designate one member of the commission as the chairman, who shall be the presiding officer, and the members shall choose one of their own members secretary. A majority of the members shall constitute a quorum for the conduct of official business.

Sec. 9. Each member of the commission shall receive a salary of six thousand dollars per annum and his actual and necessary traveling expenses incurred in the performance of his duties.

Sec. 10. The offices of the commission shall be maintained at the state capitol and shall be the regular place of meeting of the commission.

Sec. 11. The state liquor commission shall have the following powers and duties and any and all other powers and duties reasonably necessary and convenient for the purposes of this act:

(1) Exercise general supervision of, and make rules and regulations for the management of its department;

7 (2) Sign and execute in the name of the commission any
8 contract or agreement authorized by this chapter;

9 (3) Supervise the fiscal affairs and responsibilities of the
10 department;

11 (4) Obtain by lease or agreement, after receiving competi-
12 tive bids, lands and buildings required for the purposes of this
13 chapter; but nothing herein contained shall empower the com-
14-15 mission to acquire title to any real estate. But all such leases
16 and/or agreements shall contain a condition whereby such
17 leases or agreements shall terminate and all liability to the com-
18 mission thereunder shall cease and determine, should the sale
19 of alcoholic liquors be prohibited under the provisions of article
20 five of this chapter.

21 (5) Keep a complete and accurate record of all proceedings,
22 record and file all bonds and contracts taken or entered into,
23 and assume responsibility for the custody and preservation of
24 all papers and documents pertaining to the commission;

25 (6) Purchase or lease as provided by law all equipment
26 necessary for the conduct of the department;

27 (7) Report to the governor each year all information rela-
28 tive to the operation and functions of the department. They
29 shall make such other reports and recommendations as may be
30 required by the governor;

31 (8) Exercise any other power that may be necessary or
32 proper for the orderly conduct of the business and the effective
33 discharge of the duties of the commission;

34 (9) Invoke any legal or equitable remedies for the en-
35 forcement of the orders of the commission or the provisions of
36 this chapter;

37 (10) All writings required to be executed on behalf of the
38 commission shall be signed by the chairman and attested by the
39 secretary, except that in the absence of the chairman such writ-
40 ings may be executed by the other two members.

Sec. 12. The commission shall appoint or employ such as-
2 sistants and employees as may be necessary to the efficient oper-
3 ation of the department and fix their salaries. All assistants
4 and employees shall be appointed or employed to serve during
5 the will and pleasure of the commission.

Sec. 13. The commission shall require every employee who
2 collects fees or handles funds or who has custody of equipment

3 and supplies belonging to the state to take the oath prescribed
4 by section five, article four of the state constitution and give
5 an official bond. The bond shall be properly conditioned upon
6 the faithful performance of the employee's duties and the ac-
7 counting for and payment into the state treasury as required
8 by this chapter of all moneys coming into his custody by virtue
9 of this chapter, and signed by sufficient sureties in a sum to be
10 fixed by the commission, which bond shall be approved by the
11 commission and filed in the office of the secretary of state.

Sec. 14. The commission shall have the authority to grant
2 and revoke licenses as provided in article four of this chapter.

Sec. 15. The commission shall prescribe regulations gov-
2 erning the advertising of alcoholic liquors in this state. The
3 regulations shall prohibit advertising that encourages intem-
4 perance, induces minors to purchase, or tends to deceive or mis-
5 represent.

Sec. 16. The commission shall have the power to prescribe
2 rules and regulations to give effect to the powers vested in it
3 by this chapter. Rules and regulations shall be recorded in a
4 book especially kept for that purpose, and in its discretion may
5 be published for general circulation. All other records and
6 entries necessary to show the official conduct of the commission
7 shall be preserved and shall be public records and open for in-
8 spection during business hours.

Sec. 17. All powers and duties vested in the commission, ex-
2 cept the power to sign contracts, may be exercised by the ap-
3 pointees or employees of the commission under its direction;
4 but the commission shall be responsible for their acts.

Sec. 18. In all hearings and proceedings before the com-
2 mission, the evidence of witnesses and the production of docu-
3 mentary evidence may be required. Summons may be issued by
4 it for appearance at any designated place of hearing. In case
5 of disobedience to a summons or other process, the commission
6 or any party to the proceedings before the commission may in-
7 voke the aid of any circuit court in requiring the evidence and
8 testimony of witnesses and the production of papers, b'

9 documents. Upon proper showing, the court shall issue an
10 order requiring witnesses to appear before the commission,
11 produce all books and papers, and give evidence touching the
12 matter in question. Any person failing to obey the order may
13 be punished by the court as for contempt. A claim that evi-
14 dence may tend to incriminate the person giving the evidence
15 shall not excuse him from testifying, but he shall not be prose-
16 cuted for any offense concerning which he is compelled to
17 testify.

Sec. 19. The attorney general and the prosecuting attorneys
2 of the several counties shall render to the commission, without
3 addiitonal compensation, such legal services as it may require
4 of them in the discharge of its duties under the provisions of
5 this chapter.

Sec. 20. The members of the commission shall not be civilly
2 responsible for any act done or omitted in good faith in the
3 discharge of duties imposed upon them by this chapter.

Sec. 21. At the close of each fiscal year, the state tax com-
2 missioner shall audit the affairs of the West Virginia depart-
3 ment of liquor control and report the results of the audit to the
4 governor. The cost of the audit shall be paid from the oper-
5 ating fund.

ARTICLE III.

Section 1. The sale of alcoholic liquors at wholesale and
2 retail in this state shall be a state monopoly. Alcoholic liquors
3 shall be sold at retail only through the state stores and the
4 agencies of the West Virginia Liquor Control Commission.

5 The commission may sell such liquors at wholesale to per-
6 sons licensed to purchase at wholesale as provided in this
7 chapter.

Sec. 2. The commission shall establish state stores and
2 agencies at places throughout the state so as to serve adequately
3 and reasonably the demand for the sale at retail of alcoholic
4 liquors, subject only to the limitations imposed by article five
5 of this chapter. It may discontinue a store or agency when
6 in its opinion it is advisable to do so.

7 A store or agency shall not be located in the immediate vicin-
8 ity of a church or school.

Sec. 3. The commission shall establish and manage as
2 many warehouses as may be necessary, but not more than
3 four, for the storage of alcoholic liquors and the supply of
4 state stores and agencies.

Sec. 4. The commission shall appoint a manager for and
2 assign employees to each state store. The manager shall be
3 responsible to the commission for the conduct and operation
4 of the store.

Sec. 5. The commission shall issue appropriate rules and
2 regulations to govern the conduct of state stores and agencies.

Sec. 6. A state agency shall procure stocks of alcoholic
2 liquor for sale at retail only from the commission. Sales at
3 retail in agencies shall be made in the same manner as sales
4 in state stores.

Sec. 7. The commission shall classify state agencies into
2 not more than three groups with respect to volume of business.
3 An agent shall be compensated in a fixed sum, uniform within
4 each group, and in an amount to be fixed by the commission,
5 but not more than one thousand dollars in any one year.
6 Each agent shall give bond in an amount fixed by the com-
7 mission conditioned upon the faithful observance of the
8 provisions of this chapter, compliance with the rules and regu-
9 lations of the commission, and the accounting for and paying
10 over of all moneys coming into his custody by virtue of his
11 agency. An agent shall not, at any time, have on hand a stock
12 of alcoholic liquors greater in value than the amount of his
13 bond.

Sec. 8. An agent shall make no profit from the sale of alco-
2 holic liquors, nor shall he receive compensation for the per-
3 formance of his duties as agent other than that paid him by
4 the commission.

Sec. 9. The commission shall, from time to time, fix uniform
2 prices for each variety, class and brand of alcoholic liquors
3 offered for sale in state stores. Alcoholic liquors shall be sold
4 in state stores and agencies only at the uniform prices fixed by
5 the commission.

6 The commission shall prepare price lists showing the price
7 of each variety, class or brand. Price lists shall be posted

8 prominently in each store and shall be available for distribu-
9 tion and inspection in every state store and agency.

Sec. 10. The commission shall install a uniform system of
2 records and accounts for state stores and agencies. It shall
3 require a daily report of sales and stock inventory, and shall
4 audit the accounts and check the stock inventory of each store
5 and agency at least once in every thirty days.

Sec. 11. The commission shall prescribe a method of stock
2 or inventory control that will show the amount of each variety,
3 class and brand of alcoholic liquor on hand in each state store,
4 agency, and warehouse at any time.

Sec. 12. The commission shall fix the days on which state
2 stores shall be open and the hours of opening and closing, and
3 the hours during which agencies shall sell alcoholic liquors.
4 Stores shall not be open nor shall agencies sell alcoholic liquors
5 on:

- 6 (1) Sundays;
- 7 (2) Legal holidays;
- 8 (3) Any general or special election day.

Sec. 13. A store or agency shall not display any alcoholic
2 liquor or display or distribute any advertising matter, nor
3 shall a person employed in a state store or agency advertise,
4 display or recommend any type, class or brand of alcoholic
5 liquors, nor shall he discuss or comment upon the relative merits
6 of any such liquors.

Sec. 14. The commission shall acquire by purchase or lease
2 equipment, materials, supplies and other property necessary
3 for the operation of state stores in the manner required for
4 the purchase or lease of property by other state departments.
5 This requirement shall not apply to the purchases of alcoholic
6 liquor for sale or to the leasing of premises for state stores
7 or warehouses.

8 The commission shall require a sworn statement with the
9 delivery of alcoholic liquors purchased by it that the goods
10 are as represented, and do not contain any impure or de-
11 leterious matter. The commission shall by frequent chemical
12 analysis determine that liquors offered for sale in state stores
13 and agencies are pure, potable, and not misrepresented.

Sec. 15. In order to avoid the accumulation of excessive
2 stocks in warehouses and stores, the commission shall so
3 plan its purchases of alcoholic liquors for sale in state stores
4 and agencies that the stock on hand at any time does not
5 exceed the estimated requirements for sixty days' sales.

6 The commission may, with the consent of the governor,
7 contract for the manufacture of alcoholic liquors for sale in
8 state stores and agencies. Such liquors shall bear a special
9 designation as a "state brand".

Sec. 16. Alcoholic liquors shall be sold only in sealed
2 packages, bearing such seals and labels as the commission
3 may require.

4 A manufacturer of liquor offered for sale in state stores
5 and agencies shall attach to each bottle a special label bearing
6 an accurate description of the contents of the bottle in such
7 form and detail as the commission may require.

Sec. 17. The commission, with the approval of the gover-
2 nor and the state treasurer, shall prescribe regulations for the
3 handling and depositing of all moneys collected by the commis-
4 sion. All receipts shall be remitted promptly to the state
5 treasury.

Sec. 18. The following funds are created in the state treasury
2 for the purposes of this chapter:

3 (1) The operating fund, which shall be a revolving fund
4 from which all expenses of operation and administration shall
5 be paid except those authorized to be paid from the reserve
6 fund.

7 (2) The reserve fund, which shall be a reserve for con-
8 tingencies and depreciation. This fund may be used for
9 (a) the purchase of equipment and other property having a
10 useful life of more than one year from date of purchase, and
11 (b) transfer to the operating fund to meet unusual require-
12 ments arising in the course of business.

13 Transfers from the reserve fund to the operating fund shall
14 be made as follows: The commission shall recommend such
15 transfer to the governor and the governor shall draw the requi-
16 sition if he approves the transfer. Moneys in the reserve fund
17 not needed for cash reserve shall, with the approval of the gov-
18 ernor, be invested by the Board of Public Works in obligations

19 of the United States, of the State of West Virginia, or any of
20 its subdivisions.

Sec. 19. All moneys collected by the commission shall be
2 credited to the operating fund until that fund reaches an
3 amount sufficient for the current, and routine requirements of
4 the department, this amount to be fixed by the commission
5 with the approval of the governor. The receipts in excess of the
6 requirements of the operating fund shall be paid into the
7 reserve fund until the amount of the reserve fund equals one
8 million dollars. Receipts in excess of the requirements of the
9 operating and reserve funds shall be transferred monthly into
10 the general fund of the state treasury upon requisition of the
11 governor.

Sec. 20. The sale of alcoholic liquors in state stores and in
2 state agencies shall be for cash only.

Sec. 21. Not more than one gallon of alcoholic liquor shall
2 be sold to a person at one time; but a sale in excess of one
3 gallon may be made to a person licensed to purchase at whole-
4 sale, and to a religious organization purchasing wine for sac-
5 ramental purposes.

Sec. 22. Alcoholic liquors shall not be sold to a person who
2 is:

- 3 (1) Less than twenty-one years of age;
- 4 (2) An habitual drunkard;
- 5 (3) Intoxicated;
- 6 (4) Addicted to the use of narcotic drugs;
- 7 (5) Mentally incompetent.

Sec. 23. A person, while on the premises of a state store or
2 agency, shall not:

- 3 (1) Break the seal upon any package of alcoholic liquors;
- 4 (2) Consume alcoholic liquor;
- 5 (3) Loiter.

Sec. 24. An appointee or employee of the commission shall
2 have the authority of a peace officer, to arrest a person for an
3 act committed on or about the premises of a state warehouse,
4 state store, or agency, and in his presence, which amounts to:

- 5 (1) A violation of a provision of this chapter;

6 (2) Disorderly conduct.

7 The commission shall furnish its appointees and employees
8 with an official badge as evidence of this authority.

ARTICLE IV.

3 be issued and renewed for the period of the calendar year.

Section 1. The commission shall grant and revoke licenses
2 in accordance with the provisions of this article. Licenses shall

Sec. 2. The commission may grant licenses for the manu-
2 facture of alcoholic liquors. Separate licenses shall be issued
3 to the following classes of manufacturing establishments:

4 (1) Distilleries, in which only alcoholic liquors other than
5 wine or beer shall be manufactured;

6 (2) Wineries, in which only wines shall be manufactured;

7 (3) Breweries, in which beer shall be manufactured;

8 (4) Bottling plants, in which beer only shall be bottled.

9 Licenses for manufacture shall authorize the manufacture
10 and sale of alcoholic liquors as provided by this chapter.

Sec. 3. A person who is licensed to manufacture alcoholic
2 liquors in this state may sell such liquors in this state only to the
3 West Virginia Liquor Control Commission, and to wholesalers
4 and retailers licensed as provided in this chapter. A manu-
5 facturer may sell alcoholic liquors outside of the state for use or
6 resale outside of the state.

Sec. 4. The commission may grant to wholesale druggists
2 licenses to purchase alcoholic liquors at wholesale from or
3 through the West Virginia Liquor Control Commission for the
4 purpose of resale in this state to licensed druggists for com-
5 pounding and sale at retail in accordance with the provisions
6 of this chapter. A person holding a license issued under the
7 authority of this section may sell to druggists outside of this
8 state for compounding and resale outside of this state.

Sec. 5. The commission may grant licenses to persons to
2 purchase alcoholic liquors at wholesale from or through the
3 West Virginia Liquor Control Commission for industrial, or
4 scientific uses, or for use in institutions as provided in article
5 six, section five of this chapter.

6 The commission may issue special permits authorizing trans-
7 actions at wholesale for industrial purposes only.

Sec. 6. The commission may issue licenses to druggists to
2 sell alcoholic liquors upon prescription as provided in this
3 chapter.

Sec. 7. The commission shall license without fee a still
2 used solely for laboratory purposes in an educational institu-
3 tion and a still used solely for pharmaceutical purposes.

Sec. 8. The commission shall license a still used by a com-
2 mercial chemist for laboratory purposes only, and not used for
3 the purpose of the manufacture of alcoholic liquors for resale,
4 at a fee of five dollars.

Sec. 9. Each separate place of business shall require a
2 separate license. Licenses shall not be transferable but, with
3 the approval of the commission in such form and manner as
4 the commission may prescribe, may be amended to change the
5 location of the business licensed.

Sec. 10. A person who desires to apply for a license autho-
2 rized by the provisions of this chapter shall, not more than thirty
3 nor less than ten days before the filing of formal application,
4 give notice of his intention. He shall give notice by posting
5 a statement of his intention in such form as the commissioner
6 may require at the front door or principal entrance of the place
7 where the business is to be conducted. He shall also publish
8 notice, in such form as the commission may require, at least
9 once in a newspaper published or having a general circulation
10 in the county and municipality in which he intends to do busi-
11 ness: *Provided, however,* That retail druggists desiring to sell
12 alcoholic liquors on prescriptions shall not be subject to the
13 provisions of this section: *Provided further,* That such retail
14 druggists shall file formal application in writing with the com-
15 mission and shall pay the license fee.

Sec. 11. Not less than ten days after giving notice of his in-
2 tention, a person desiring to apply for a license shall file formal
3 application, in writing, with the commission and shall pay
4 the license fee.

Sec. 12. Within fifteen days after the filing of formal ap-

2 plication for a license the commission shall either grant or
3 refuse the license.

4 If the commission refuses to grant the license it shall re-
5 fund the license fee.

Sec. 13. The commission shall refuse the license if it finds
2 that:

3 (1) The applicant is not a suitable person;

4 (2) The place to be occupied by the applicant is not a suit-
5 able place;

6 (3) A sufficient number of licenses have already been issued.

Sec. 14. A person possessing a license issued under the pro-
2 visions of this chapter shall pay the fee annually on or before
3 the first day of January of each year. If the license fee is not
4 paid on that day, the license shall be automatically revoked,
5 unless the commission shall, for good cause, grant an extension
6 in writing for not more than ten days.

Sec. 15. A person to whom a license is issued under the pro-
2 visions of this chapter shall pay, annually, to the commission
3 a license fee as follows, for:

4 (1) Distilleries, five hundred dollars;

5 (2) Wineries, two hundred and fifty dollars;

6 (3) Breweries, two hundred and fifty dollars;

7 (4) Bottling plants, one hundred dollars;

8 (5) Wholesale druggists, fifty dollars;

9 (6) Institutions, ten dollars;

10 (7) Industrial use, fifty dollars;

11 (8) Retail wine, twenty-five dollars;

12 (9) Retail druggists, ten dollars.

Sec. 16. The commission shall prescribe records to be kept
2 by licensees and shall require regular reports at least every
3 thirty days of the amounts and kinds of alcoholic liquors manu-
4 factured, sold, or kept in stock under the authority of a license
5 issued according to the provisions of this article.

6 Records which the licensee is required to keep shall be open
7 at all reasonable times to inspection by the commission or its
8 agents.

Sec. 17. The commission shall have the authority to pre-
2 scribe such rules and regulations and to require the reporting

3 of such information by licensees as may be necessary for the
4 effective administration of the provisions of this chapter.

Sec. 18. A municipal corporation shall not impose a fee or a
2 special tax as a condition upon the exercise of a license issued
3 under the provisions of this chapter.

Sec. 19. The commission shall revoke a license issued by
2 it if it shall find that:

- 3 (1) The licensee is not a suitable person ;
- 4 (2) The place occupied by the licensee is not a suitable place ;
- 5 (3) The licensee has violated a provision of this chapter or
6 a regulation made by the commission under the authority of
7 this chapter ;
- 8 (4) The licensee has failed to comply with the spirit and
9 intent of this chapter by encouraging intemperance, the un-
10 lawful consumption of alcoholic liquors, or otherwise.

Sec. 20. Before revoking a license issued under the authority
2 of this chapter, the commission shall give at least ten days
3 notice to the licensee. Notice shall be in writing, shall state the
4 reason for revocation and shall designate a time and place when
5 the licensee may show cause why the license should not be re-
6 voked. Notice shall be sent by registered mail to the address
7 for which the license was issued. The licensee may, at the time
8 designated for the hearing, produce evidence in his behalf and
9 be represented by counsel. On the final revocation of a license
10 or licenses the commission shall immediately take over the stocks
11 of liquors possessed by the licensee, and pay to the licensee the
12 amount paid by him to the state for such stocks less the amount
13 necessary to defray the costs incurred by the commission in the
14 revocation proceedings.

Sec. 21. A decision of the commission granting or revoking,
2 or refusing to grant or to revoke a license authorized by this
3 chapter shall be subject to judicial review upon the appeal of a
4 licensee and applicant for a license, a resident of the com-
5 munity in his own behalf or in behalf of the community, or an
6 interested party who is dissatisfied with the decision of the com-
7 mission in granting, refusing to grant, revoking or refusing
8 to revoke a license authorized by this chapter, but in any such
9 judicial review only the legality of the decision of the commis-

10 sion under the constitution and laws of this state and the
11 United States shall be determined.

ARTICLE V.

Section 1. A county, or any municipality may in an election
2 held especially for the purpose, determine whether the sale of al-
3 coholic liquors for beverage purposes shall be permitted within
4 that county or municipality.

5 A local option election shall not be held within sixty days of
6 a general or municipal election.

Sec. 2. The county court, or the governing body of the
2 municipality, as the case may be, shall call a special "local
3 option election" upon the filing of a petition signed by not less
4 than twenty-five per cent of the qualified voters within the
5 county or municipality.

Sec. 3. The petition shall be in the following form :

2 Petition for Local Option Election

3 We, the undersigned legally qualified voters, resident within
4 the county (municipality) of, do hereby
5 petition that a special election be held within the county (city,
6 town) of on the day of
7, 19....., upon the following question :

8 Shall the sale of alcoholic beverages under the West Virginia
9 Liquor Control Commission be permitted in.....?

10	Name	Address	Date
11	(Post office or street and number)		

Sec. 4. The county court or governing body of the munici-
2 pality shall give notice of the special "local option election" by
3 publication in two newspapers of opposite politics and of gen-
4 eral circulation in the area in which the election is held. Notice
5 shall be given at least once each week for two successive weeks,
6 prior to the election, and printed copies of the order shall be
7 posted at each place of voting at least ten days before the elec-
8 tion. If there is only one newspaper published in the county or
9 municipality, the publication shall be made therein. The election
10 shall be held not more than ninety nor less than sixty days from
11 the filing of the petition. The regular election officers of the
12 county or municipal corporation shall open the polls and con-
13 duct the election in the same manner provided for general elec-
14 tions.

Sec. 5. On the ballot shall be printed the following:

2 Shall the sale of alcoholic beverages under the West Virginia
3 Liquor Control Commission be permitted in..... ?

4 Yes.

5 No.

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

Sec. 6. The ballots shall be counted, returns made and can-
2 vassed as in general elections, and the results certified by the
3 commissioners of election to the county court of the county, or
4 the governing body of the municipality, as the case may be.
5 The county court or governing body shall without delay certify
6 the result of the election to the commission.

Sec. 7. Within thirty days after a "local option election" in
2 which a majority has voted "No," the commission shall close
3 all state stores and discontinue all agencies situated within the
4 county or municipality.

Sec. 8. When a "local option election" has been held in a
2 county or municipality, another such election shall not be held
3 for a period of two years; except that an election may be held
4 within a municipality without regard to an election held in or
5 the time limit applicable to the county within which the muni-
6 cipality, or a part thereof, is located.

ARTICLE VI.

Section 1. The provisions of this chapter shall not prevent:

2 (1) A person from keeping and possessing alcoholic liquors
3 in his residence for the personal use of himself, his family, his
4 servants or his guests if such alcoholic liquors shall have been
5 lawfully acquired by him;

6 (2) A person, his family, or servants from giving or serving
7 such alcoholic liquors to guests in said residence, when such gift
8 or service is not for the purpose of evading the provisions of
9 this chapter.

Sec. 2. The provisions of this chapter shall not prevent:

2 (1) A person from manufacturing wine at his residence for
3 consumption at his residence as permitted by section one of this
4 article;

5 (2) A person from manufacturing and selling unfermented
6 cider;

7 (3) A person from manufacturing and selling cider made
8 from apples produced by him within this state, to persons
9 holding distillery licenses, but such manufacture and sale shall
10 be under the supervision and regulation of the commission;

11 (4) A person from manufacturing and selling wine made
12 from fruit produced by him within this state to persons holding
13 winery licenses, but such manufacture and sale shall be under
14 the supervision and regulation of the commission.

Sec. 3. The provisions of this chapter do not apply to ethyl
2 alcohol used:

3 (1) For scientific, chemical, mechanical or industrial pur-
4 poses.

5 (2) By those authorized to procure ethyl alcohol tax-free
6 under the acts of Congress and regulations thereunder.

7 (3) In the manufacture of denatured alcohol produced and
8 used as provided by the acts of Congress and regulations there-
9 under.

10 (4) In the manufacture of scientific, chemical, mechanical
11 and industrial preparations or products unfit for beverage
12 purposes.

Sec. 4. The provisions of this chapter shall not prevent a
2 person from manufacturing, selling, delivering or shipping:

3 (1) Any medicine containing sufficient medication to pre-
4 vent its use as a beverage;

5 (2) Any medicinal preparation manufactured in accordance
6 with formulas prescribed by the United States Pharmacopeia,
7 and National Formulary, patent and proprietary preparations,
8 and other bona fide medicinal and technical preparations, which
9 are manufactured and sold to be used exclusively as medicine
10 and not as beverages, and the sale of which does not now require
11 the payment of a United States liquor dealer's tax;

12 (3) Toilet, medicinal and antiseptic preparations not in-
13 tended for internal human use nor for beverage purposes;

14 (4) Any food products known as flavoring extracts manu-
15 factured and sold for cooking and culinary purposes only and
16 not for beverage purposes.

Sec. 5. The provisions of this chapter shall not prevent:

2 (1) A physician from prescribing the use of alcoholic liquors
3 when necessary for a bona fide patient;

4 (2) A druggist from selling, upon a prescription properly
5 issued by a physician, alcoholic liquors for medicinal purposes;

6 (3) A physician, dentist, or veterinarian, in the legitimate
7 practice of his profession, from using and administering alco-
8 holic liquors;

9 (4) Hospitals, sanitariums, or that division of any institu-
10 tion which is regularly conducted as a hospital, dispensary or
11 infirmary, from using or administering alcoholic liquors to bona
12 fide patients. Institutions and the divisions thereof provided in
13 this section may carry a stock of alcoholic liquors sufficient for
14 this purpose;

15 (5) Religious organizations from using wine for sacramental
16 purposes.

Sec 6. The provisions of this chapter shall not prevent a
2 person from bringing into or transporting in this state, in his
3 possession or in his baggage, and not for resale, alcoholic liquor
4 in a quantity not to exceed one gallon.

Sec. 7. A person shall not:

2 (1) Manufacture or sell in this state without a license any
3 alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic li-
5 quor without a license except as permitted by this article;

6 (3) Sell without a license any alcoholic liquor other than
7 permitted by this article;

8 (4) Adulterate any alcoholic liquor by the addition of any
9 drug, methyl alcohol, crude, unrectified or impure form of
10 ethyl alcohol, or other foreign or deleterious substance or liquid;

11 (5) Refill, with alcoholic liquor, any bottle or other con-
12 tainer in which alcoholic liquor has been sold at retail in this
13 state;

14 (6) Advertise any alcoholic liquor in this state except in
15 accordance with the rules and regulations of the commission;

16 (7) Distribute, deal in, possess, or use crowns, stamps or
17 seals required under the authority of this chapter, except in
18 accordance with the rules and regulations prescribed by the
19 commission.

20 A person who violates any provision of this section shall be
21 guilty of a misdemeanor and upon conviction shall be fined not
22 less than fifty nor more than five hundred dollars, or confined in
23 jail not less than thirty days nor more than one year or both
24 such fine and imprisonment, for the first offense. Upon con-
25 viction of a second or subsequent offense, the court may in its
26 discretion impose a penalty of confinement in the penitentiary
27 for a period not to exceed three years.

Sec. 8. A licensed person shall not:

- 2 (1) Sell alcoholic liquors of a kind other than that which
3 such license or this act authorizes him to sell;
- 4 (2) Sell beer to which wine, spirits, or alcohol has been
5 added;
- 6 (3) Sell wine to which other alcoholic spirits have been
7 added, otherwise than as required in the manufacture thereof
8 under regulations of the commission;
- 9 (4) Sell alcoholic liquors to a person specified in section
10 twenty-two, article three of this chapter;
- 11 (5) Sell alcoholic liquors except as authorized by his license;
- 12 (6) Sell any alcoholic liquor when forbidden by the pro-
13 visions of this chapter;
- 14 (7) Keep on the premises covered by his license alcoholic
15 liquor other than that which he is authorized to sell by such
16 license or by this act.

17 A person who violates any provision of this section shall be
18 guilty of a misdemeanor and upon conviction shall be fined not
19 less than fifty nor more than five hundred dollars, or confined
20 in jail not less than thirty days nor more than one year, or
21 both such fine and imprisonment for the first offense. Upon
22 conviction of a second or subsequent offense, the court may in
23 its discretion impose a penalty of confinement in the peniten-
24 tiary for a period not to exceed three years.

Sec. 9. A person shall not:

- 2 (1) Appear in a public place in an intoxicated condition;
- 3 (2) Drink alcoholic liquor in a public place;
- 4 (3) Drink alcoholic liquor in a motor vehicle on any high-
5 way, street, alley, or in a public garage;
- 6 (4) Tender a drink of alcoholic liquor to another person in
7 a public place;

8 (5) Buy alcoholic liquor from a person whom he knows or
9 should know to be unauthorized by the provisions of this
10 chapter to sell alcoholic liquor;

11 (6) Possess alcoholic liquor which he knows or should know
12 was acquired in violation of this chapter.

13 A person who violates any provision of this section shall be
14 guilty of a misdemeanor and upon conviction shall be fined not
15 less than five nor more than one hundred dollars, or confined
16 in jail not more than sixty days, or both such fine and imprison-
17 ment.

Sec. 10. A person who unlawfully owns, operates, or main-
2 tains a plant for the manufacture of distilled spirits, or aids or
3 abets in the operation or maintenance of such a plant shall be
4 guilty of a felony, and upon conviction shall be fined not less
5 than one hundred nor more than one thousand dollars or con-
6 fined in the penitentiary not less than one nor more than five
7 years.

Sec. 11. A person who, while engaged in the unlawful
2 manufacture, transportation or sale of alcoholic liquors, or
3 while aiding or assisting in any of such acts, has in his actual or
4 constructive possession a firearm or other lethal weapon, shall
5 be guilty of a felony, and upon conviction shall be confined in
6 the penitentiary not less than one nor more than ten years.

Sec. 12. A person who, without authorization under this
2 chapter, transports alcoholic liquors for the purpose of sale,
3 shall be guilty of a misdemeanor, and upon conviction shall
4 be fined not less than fifty nor more than five hundred dollars
5 or confined in jail not less than sixty days nor more than
6 one year for the first offense. Upon conviction of a second
7 or subsequent offense, the court may in its discretion impose
8 a penalty of confinement in the penitentiary for a period not
9 to exceed three years.

Sec. 13. Except as permitted by section six of this article,
2 a person shall not import into, or transport in this state any
3 alcoholic liquor unless it is:

4 (1) Consigned to the commission;

5 (2) Transported or shipped upon the direction of the com-
6 mission directly to persons licensed to receive alcoholic
7 liquors at wholesale; or

8 (3) Transported or shipped to persons outside the state for
9 sale or delivery outside the state. A common carrier may trans-
10 port through this state in a locked compartment alcoholic
11 liquors which are kept as a part of its commissary.

Sec. 14. Transportation of alcoholic liquors in a quantity
2 in excess of one gallon, except under authority of sections
3 two, three, and thirteen of this article, shall be prima facie
4 evidence of transportation for the purpose of sale, unless prior
5 to transportation of a greater quantity a permit shall be pro-
6 cured from the department of public safety.

Sec. 15. A person who violates any order, rule or regulation
2 of the commission made under the authority of this chapter,
3 or who violates any provision of this chapter for which punish-
4 ment has not been specifically provided, shall be guilty of a
5 misdemeanor and upon conviction shall be fined not less than
6 ten nor more than five hundred dollars or confined in jail not
7 less than five days nor more than six months, or by both such
8 fine and imprisonment.

9 If, by the provisions of this chapter, conflicting penalties
10 are prescribed for an offense, the section providing for the
11 heavier penalty shall control.

Sec. 16. A place where alcoholic liquor is manufactured,
2 sold, stored, possessed, given away, or furnished contrary to
3 law shall be deemed a common and public nuisance. Boats,
4 cars (including railroad and traction passenger cars operating
5 in this state), automobiles, wagons, water and air craft, beasts
6 of burden, or vehicles of any kind shall be deemed places
7 within the meaning of this section and may be proceeded
8 against under the provisions of section seventeen of this arti-
9 cle. A person who shall maintain, or shall aid or abet or
10 knowingly be associated with others in maintaining such com-
11 mon and public nuisance shall be guilty of a misdemeanor,
12 and upon conviction thereof shall be punished by a fine of
13 not less than one hundred nor more than five hundred dollars,
14 or by confinement in jail not less than sixty days nor more
15 than six months for each offense, and judgment shall be given
16 that such nuisance be abated or closed as a place for the manu-
17 facture, sale, storage, possession, giving away, or furnishing
18 contrary to law of alcoholic liquor, as the court may determine.

Sec. 17. The commission, its agents, the attorney general,
2 the prosecuting attorney, or a citizen of the county or municipi-

3 pality where a nuisance as defined in section sixteen of this
4 article is located, may maintain a suit in equity in the name
5 of the state to abate and perpetually enjoin the same. Courts
6 of equity shall have jurisdiction thereof. The injunction may
7 be granted at the commencement of the suit and no bond shall
8 be required. On the finding that the material allegations of
9 the bill are true, the court or judge thereof in vacation shall
10 order the injunction for such period of time as it or he may
11 think proper, with the right to dissolve the injunction upon
12 the application of the owner of the place, if a proper case is
13 shown for such dissolution.

14 The continuance of the injunction as provided in this section
15 may be ordered, although the place complained of may not at
16 the time of hearing be unlawfully used.

Sec. 18. If there be complaint on oath or affirmation sup-
2 ported by affidavit or affidavits setting forth the facts for such
3 belief that alcoholic liquors are being manufactured, sold, kept,
4 stored or in any manner held, used or concealed in a particular
5 house or other place in violation of law, the justice of the peace,
5-a circuit, criminal or intermediate court, or the judge thereof
6 in vacation, or the mayor of any city, town or village, to
7 whom such complaint is made, if satisfied that there is a
8 probable cause for such belief, shall issue a warrant to search
9 such house or other place for alcoholic liquors. Such warrants,
10 except as herein otherwise provided, shall be issued, directed
11 and executed in accordance with the laws of West Virginia
12 pertaining to search warrants.

13 Warrants issued under this act for the search of any auto-
14 mobile, boat, conveyance or vehicle, or for the search of any
15 trunk, grip or other article of baggage, for alcoholic liquor,
16 may be executed in any part of the state where the same is
17 overtaken, and shall be made returnable before any justice of
18 the peace, circuit, criminal or intermediate court, or the judge
19 thereof in vacation, or the mayor of any city, town or village
20 within whose jurisdiction such automobile, boat, conveyance,
21 vehicle, trunk, grip or other article of baggage, or any of them,
22 were transported or attempted to be transported contrary to
23 law.

24 An officer charged with the execution of a warrant issued

25 under this section, may, whenever it is necessary, break open
26 and enter a house, or other place herein described.

Sec. 19. All stills and distilling apparatus and material for
2 the manufacture of the same, and all alcoholic liquors, and
3 materials used in the manufacture of alcoholic liquors, and all
4 containers in which alcoholic liquors may be found, which are
5 kept, stored, possessed or in any manner used in violation of
6 the provisions of this chapter shall be deemed contraband and
7 shall be forfeited to the state.

Sec. 20. A motor vehicle or vehicles of any kind used for
2 transportation of alcoholic liquors for purposes of sale in
3 violation of section twelve of this article shall be deemed
4 contraband and shall be forfeited to the state and proceeded
5 against in the manner provided for confiscation by section
6 twenty-one of this article.

7 All vehicles forfeited to the state under the provisions of
8 this section shall be turned over to the commission which may
9 retain the same for public use in the administration and en-
10 forcement of this chapter. If it has no need for the vehicle,
11 it may order its destruction or sale unless the department
12 of public safety requests it, in which case the commission
13 shall turn it over to the said department.

14 The net proceeds of sales made under this section shall be
15 paid into the state treasury in the manner prescribed for
16 receipts from state stores and agencies.

Sec. 21. Proceedings for confiscation of articles declared
2 contraband and forfeited to the state under section twenty
3 of this article shall be as follows:

4 (1) When such articles have been seized under or without
5 a warrant provided for in section eighteen of this article, by
6 an officer charged with the enforcement of this chapter, the
7 officer shall produce the articles and the person in whose
8 possession they were found, if any, and if no person be found
9 in possession the return shall so state. A copy of the warrant
10 shall be posted on the door of the place where the articles
11 were found, or if there be no door, then in any conspicuous
12 place upon the premises;

13 (2) Upon the return of the warrant, the justice of the
14 peace, circuit, criminal, or intermediate court, or judge thereof

15 in vacation, or the mayor of any city, town or village, shall
16 fix a time not less than ten nor more than thirty days there-
17 after for hearing of the return, at which hearing it shall be
18 determined whether or not the articles seized were used or
19 in any manner possessed in violation of this chapter. If no
20 claimant appear, the justice of the peace, circuit, criminal or
21 intermediate court, or judge thereof in vacation, or the mayor
22 of the city, town or village shall declare the articles seized
23 forfeited to the state, and if such articles be not necessary as
24 evidence in any proceeding, shall turn the same over to the
25 commission. At such hearing a person claiming any interest
26 in an article seized may appear and file a written claim setting
27 forth particularly the character and extent of his interest,
28 whereupon, if the trial be before a justice of the peace or
29 mayor he shall forthwith certify the warrant, the articles
30 seized and the claim filed to the circuit court or other court
31 having jurisdiction which court shall docket the case, and
32 shall hear and determine the validity of such claim. If, upon
33 hearing, the evidence warrants, the court shall enter a judg-
34 ment of forfeiture and order the articles turned over to the
35 commission. Action under this section and the forfeiture
36 of articles thereunder shall not bar prosecution under any
37 other provisions of this chapter;

38 (3) Articles forfeited to the state and turned over to the
39 commission in accordance with the provisions of this section
40 shall be destroyed or sold as the commission deems proper.
41 The net proceeds of sales made under this section shall be paid
42 into the state treasury in the manner prescribed by this chapter
43 for receipts from state stores.

Sec. 22. No action shall be maintained to recover the price
2 of alcoholic liquor sold in violation of the provisions of this
3 chapter, except that the state or the commission may recover
4 from any person the price of any alcoholic liquor purchased by
5 him in violation of this chapter, and from any person who may
6 have sold alcoholic liquors in violation of the provisions of this
7 chapter, the consideration received by him therefor.

Sec. 23. If any article, a section or part of an article or sec-
2 tion of this chapter is for any reason declared unconstitutional,
3 or otherwise invalid, the decision of the court shall not affect the
4 validity of any remaining article, section or part of an article
5 or section thereof.

* CHAPTER 5

(Senate Bill No. 294—By Mr. Jones, by request)

AN ACT to amend section twenty-one, article two, sections four and six, article four and section thirteen, article six of an act known as house bill number one hundred nineteen, enacted February twenty-fifth, at the regular session of the Legislature of West Virginia, one thousand nine hundred thirty-five, relating to the state control of alcoholic liquors.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

ARTICLE II.

Sec.

21. Yearly audit by tax commissioner of the affairs of the West Virginia Liquor Control Commission; cost paid from operating fund of commission.

ARTICLE IV.

Sec.

4. Licenses to wholesale druggists to purchase alcoholic liquors

Sec.

- and ethyl alcohol for resale.
6. Licenses to retail druggists to purchase alcoholic liquors and ethyl alcohol for resale.

ARTICLE VI.

Sec.

13. When importation of alcoholic liquors into, or transportation in, state permitted.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two, sections four and six, article four and section thirteen, article six of an act known as house bill number one hundred nineteen, enacted February twenty-fifth, at the regular session of the Legislature of West Virginia, one thousand nine hundred thirty-five, be amended to read as follows:

ARTICLE II

Section 21. At the close of each fiscal year the state tax
2 commissioner shall audit the affairs of the West Virginia liquor
3 control commission and report the results of the audit to the
4 governor. The cost of the audit shall be paid from the
5 operating funds.

*Amending chapter four, acts of this session.

ARTICLE IV.

Section 4. The commission may grant to wholesale drug-
2 gists, licenses to purchase alcoholic liquors at wholesale from
3 or through the West Virginia liquor control commission for
4 the purpose of resale outside this state. Notwithstanding any
5 other provisions of the act known as house bill number one
6 hundred nineteen, the commission may grant to wholesale drug-
7 gists licenses to purchase ethyl alcohol for non-beverage pur-
8 poses, at wholesale from their usual sources of supply, upon
9 orders for same first approved by the West Virginia liquor
10 control commission for sale, either within or without the state,
11 to retail druggists or to persons licensed to purchase ethyl
12 alcohol from said commission under the provisions of said
13 act.

Sec. 6. The commission may issue licenses to retail drug-
2 gists to sell, upon prescription, and for the purposes provided
3 for in this chapter, alcoholic liquor purchased from the West
4 Virginia liquor control commission. Notwithstanding any other
5 provisions of the act known as house bill number one hundred
6 nineteen, the commission may also issue licenses to retail drug-
7 gists to purchase ethyl alcohol for non-beverage purposes from
8 wholesale druggists within or without the state, or from their
9 usual sources of supply, upon orders first approved by the
10 commission.

ARTICLE VI

Section 13. Except as permitted by section six of this
2 article, a person shall not import into, or transport in this
3 state any alcoholic liquor unless it is:

4 (1) Consigned to the commission;

5 (2) Transported or shipped upon the direction of the com-
6 mission directly to persons licensed to receive alcoholic liquors
7 at wholesale;

8 (3) Transported or shipped to persons outside the state for
9 sale or delivery outside the state; or

10 (4) Transported or shipped to persons who are duly author-
11 ized salesmen of recognized brokers, distributors, or distillers
12 for the purpose of being used solely as sample products for
13 negotiating sales with the commission, provided the authority
14 of the commission in writing be first had.

CHAPTER 6

(House Bill No. 177—By Mr. LaFon, by request)

AN ACT to amend and reenact section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, and to amend article twelve, chapter eleven of the code by enacting and adding thereto thirteen additional sections to be numbered ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three; to provide for the raising of additional public revenue by a license tax on the business of selling non-intoxicating beer; to define non-intoxicating beer; to classify sales thereof, and to provide for the collection of such tax, and to repeal chapter twenty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and all other acts and parts of acts, general and special, in conflict with this act or the purpose thereof.

[Passed February 28, 1935; in effect March 1, 1935. Approved by the Governor.]

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|--|---|
| <p>Sec. 1. For what businesses and purposes state licenses are required.</p> <p>91. Definition of non-intoxicating beer; alcoholic content.</p> <p>92. Definition of retailer, manufacturer or brewer, and distributor; sales in state by non-resident manufacturer to be through licensed wholesaler or distributor; sales by wholesaler or distributor of draught beer to consumers.</p> <p>93. Annual license tax on retailers, manufacturers or brewers and distributors; additional tax on bottled beer; by whom paid; tax to be paid for each place of business; license tax on social, etc., clubs; license tax on dining, etc., cars.</p> <p>94. When unlawful for manufacturer, etc., to furnish, give, rent or sell equipment, etc., or to offer prizes, gifts, etc.; manufacturer or wholesale distributor to have no interest in sales under retail license.</p> | <p>Sec. 95. License year same as fiscal year; when computed quarterly.</p> <p>96. Licenses issued by tax commissioner; when he may refuse a renewal; what application for license to show; surety bond of manufacturer, brewer or distributor; reports to tax commissioner by manufacturers, brewers and distributors.</p> <p>97. Collection of unpaid license tax by distraint or other legal proceedings; revocation of license for non-payment.</p> <p>98. Manufacturer, brewer and distributor to keep and preserve records, etc., required by tax commissioner; inspection and production of records; assessment of unpaid tax and penalty; revocation of license for non-payment; appeal by licensee from assessment.</p> <p>99. What application for retail license to show.</p> <p>100. Rules and regulations of tax commissioner; grounds for revocation of license; penalty for</p> |
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<p>Sec. false statement in application for license or renewal; municipalities may enact ordinances for enforcement of act.</p> <p>101. Limitation on amount of municipal license taxes.</p> <p>102. Revenue collected to be credited</p>	<p>Sec. to state fund general revenue.</p> <p>103. Provisions of act separable; chapter twenty, acts of the Legislature, first extraordinary session, 1933, and all inconsistent acts repealed.</p>
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Be it enacted by the Legislature of West Virginia:

That section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and the same is hereby amended and reenacted, and article twelve, chapter eleven of said code be and the same is hereby amended by enacting and adding thereto thirteen additional sections to be numbered sections ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three, which sections shall read as follows:

- Section 1. No person without a state license therefor, shall
- 2 (a) Keep a hotel, eating house, or restaurant; or
- 3 (b) Keep, for public use or resort, a bowling alley, pool
- 4 table, billiard table, bagatelle table, or any table of like
- 5 kind; or
- 6 (c) Sell at wholesale or retail patent or proprietary medi-
- 7 cines in incorporated cities and towns; or
- 8 (d) Exhibit any circus, menagerie, circus and menagerie
- 9 combined, theatrical performance, street or other carnival, or
- 10 public show, to which admission is obtained for money or re-
- 11 ward, except for the benefit or under the auspices of a vol-
- 12 unteer fire department; or
- 13 (e) Run or operate, for profit, a merry-go-round, or roller
- 14 coaster, or scenic railway, or like device, or keep for public
- 15 use or resort, a shooting gallery, a skating rink; or run, or
- 16 operate a cane rack, doll baby rack, knife rack, striking ma-
- 17 chine, jingle board, punch board, artful dodger, candy wheel,
- 18 or other scheme or device by which merchandise or other
- 19 things of value are disposed of by game of chance, or like de-
- 20 vice, or human laundry device, or dip device; or
- 21 (f) Act as a hawker or peddler; but bona fide farmers
- 22 vending farm products shall not be required to have a license;
- 23 or
- 24 (g) Act as an auctioneer; or
- 25 (h) Practice the business of real estate agent, stockbroker,

26 or other broker, by buying or selling for others, stocks, se-
27 curities, or any other property for a commission or reward; or

28 (i) Practice the business of money broker, buying or sell-
29 ing undercurrent or depreciated money or funds; or ex-
30 changing one kind of money or funds for another, for bene-
31 fit or reward; or

32 (j) Practice the business of pawnbroker by lending money
33 or other things for profit, for or on account of personal
34 property deposited with the lender in pledge; or

35 (k) Sell, or barter, or offer, or expose, for sale or barter,
36 any patent right; or

37 (l) Sell, offer, or expose for sale, to merchants, trading
38 stamps, premium stamps or certificates of like nature or char-
39 acter, or undertake with merchants to redeem such stamps or
40 certificates in money or goods; or

41 (m) Being a traveling agent, canvasser or salesman, or
42 itinerant vendor, sell any sewing machines, pianos, organs,
43 victrolas, phonographs, talking machines, or similar musical
44 instruments, or, sell or contract to sell any books, maps, prints,
45 pamphlets, and periodicals, except such books, pamphlets
46 and periodicals that be of a religious or ethical nature, whether
47 manufactured within or without the state; or

48 (n) Sell, offer or expose for sale, or solicit, or receive or-
49 ders for manufactured tobacco, snuff, cigars, cigarettes, or
50 other preparations of tobacco, or cigarette paper or wrapper,
51 at wholesale or retail; or

52 (o) Carry on the business of junk dealer, or act as agent, so-
53 licitor, canvasser, or salesman, for any junk dealer; or

54 (p) Sell pistols, revolvers, or weapons of like kind; or

55 (q) Maintain or occupy any house boat, or like structure or
56 vessel, upon or along the bed, banks or shores of any navigable
57 stream; or

58 (r) Maintain any slot machine, or other automatic device,
59 which, for the same profit or reward, in each case and with-
60 out any violation of the law, furnishes music, or exhibits pic-
61 tures, or provides facilities for weighing, or supplies any
62 merchandise or other thing or renders any service; but no slot
63 machine or other automatic device with respect to which, or its
64 operation, service, or supplies, there is any element of chance
65 (being a gaming table, within the meaning of section one,

66 article ten, chapter sixty-one of this code), shall be protected
67 by any license; or

68 (s) Being a corporation, heretofore or hereafter chartered
69 under the laws of this state, whether its principal place of
70 business or chief works be within or without the state, do,
71 or attempt to do, any business by virtue of its charter or cer-
72 tificate of incorporation; or

73 (t) Being a corporation chartered or organized under the
74 laws of any other state or country, hold property or transact
75 business in this state; or being a corporation, hold more than
76 ten thousand acres of land in this state; or

77 (u) Solicit, carry on or practice the business of a collection
78 agency, or association, whether it be a person, firm or corpor-
79 ation; or

80 (v) Keep or maintain, a public park, admission to which is
81 obtained for money or reward; or

82 (w) Carry on the business of a labor agency; or

83 (x) Manufacture, sell or distribute, either at retail or
84 wholesale, any and all preparations of every kind, character
85 or nature, such as are prepared, mixed and sold at soda foun-
86 tain, and all such preparations as bevo, pablo, milo, moxie, gin-
87 ger ale, near beer, coca cola, pop, and all other preparations of
88 like nature and character commonly known as soft drinks; or

89 (y) Keep or maintain, for public use or resort, a taxi-cab
90 stand or any place of like character; or

91 (z) Manufacture, sell or distribute, either at retail or
92 wholesale, cereal malt beverage or products of the brewing
93 industry, as defined in section ninety-one of this act.

94 Nothing in this article contained, and no license or payment
95 under the provisions hereof, shall be taken to legalize any
96 act which otherwise may be in violation of law, or exempt any
97 person from any penalty prescribed for such violation.

Sec. 91. The words "non-intoxicating beer", as used in
2 this act shall be construed to embrace all cereal malt bever-
3 ages or products of the brewing industry, which same are com-
4 monly referred to as beer, lager beer, ale and all other mix-
5 tures and preparations produced by the brewing industry, and
6 containing not more than five per cent of alcohol by weight,
7 which are hereby declared to be non-intoxicating; and the
8 word "liquor" as used in chapter sixty of the code of West

9 Virginia shall not be construed to include or embrace any
10 cereal malt beverage or product of the brewing industry or any
11 other mixtures or preparations of like nature containing not
12 more than five per cent of alcohol by weight.

Sec. 92. The word "retailer" as used in this act, shall
2 mean and include any person, firm, association, partnership or
3 corporation selling, serving, delivering or otherwise dispensing
4 non-intoxicating beer, whether in glass bottles or on draught,
5 at his, its or their established and licensed place of busi-
6 ness.

7 The words "manufacturer or brewer" as used in this act,
8 shall mean and include any person, firm, association, partner-
9 ship or corporation manufacturing non-intoxicating beer for
10 sale at wholesale: *And provided further*, That no manufacturer
11 or brewer whose chief place of business is without the state
12 of West Virginia, shall offer his or their products for sale
13 in the state of West Virginia except through a duly licensed
14 wholesaler or distributor operating under the provisions of
15 this act, and no manufacturer or brewer whose chief place of
16 business is without the state of West Virginia, shall be con-
17 nected either directly or indirectly with a wholesaler or dis-
18 tributor.

19 The word "distributor" as used in this act, shall mean and
20 include any person, firm, association, partnership, corporation,
21 manufacturer or brewer, whose chief place of business is with-
22 in the state of West Virginia, jobbing or distributing non-
23 intoxicating beer to a retailer at wholesale: *Provided, however*,
24 That a wholesaler or distributor may sell to a consumer, for
25 personal use and not for resale, draught beer in quantities of
26 one-eighth, one quarter and one-half barrels in the original
27 container.

Sec. 93. There is hereby levied and imposed upon retail
2 dealers as herein defined an annual license tax of one hundred
3 dollars per year. There is hereby levied and imposed upon
4 manufacturers or brewers, as herein defined, manufacturing
5 non-intoxicating beer, as defined in section ninety-one of this
6 act, within this state an initial license tax of five hundred dol-
7 lars per year, and whether such non-intoxicating beer be kept
8 or sold in barrels or other containers, an additional tax of one
9 dollar on each barrel of thirty-one gallons, and in like ratio on

10 each part barrel so manufactured in this state for sale within
11 this state. There is hereby levied and imposed upon distribu-
12 tors, as herein defined, an initial license tax of two hundred
13 fifty dollars per year, and an additional tax of one dollar on
14 each barrel, and in like ratio on each part barrel of non-intoxi-
15 cating beer whether distributed in barrels or other containers,
16 so distributed in this state: *Provided, however,* That the barrel
17 tax herein levied shall, as to non-intoxicating beer made in
18 West Virginia, be paid by the manufacturer or brewer, and
19 the barrel tax on non-intoxicating beer made outside of West
20 Virginia shall be paid by the original consignee thereof with-
21 in this state, who shall be deemed the distributor for the pur-
22 poses of this act, and required to take out a license as such,
23 and the issuance of such distributor's license shall operate as a
24 forfeiture of any retail dealer's license held by him; and no
25 non-intoxicating beer manufactured, sold or distributed in
26 West Virginia shall be subject to more than one barrel tax.

27 Each such retail dealer, manufacturer or brewer and dis-
28 tributor being engaged in the business of selling, delivering
29 or otherwise distributing non-intoxicating beer, and having
30 more than one place of business within the state of West
31 Virginia, shall pay the full amount of the initial tax hereby
32 imposed for each such place of business: *Provided further,*
33 That any social, fraternal or business clubs not operating for
34 profit, and having been in continuous operation for five years
35 or more prior to the enactment of this law, shall pay an annual
36 license tax of fifty dollars, as retailers hereunder; *And pro-*
37 *vided further,* That railroads operating in this state may dis-
38 pense non-intoxicating beer upon payment of an annual license
39 tax of ten dollars for each dining, club or buffet car in which
40 it is dispensed.

Sec. 94. It shall be unlawful for any manufacturer or
2 brewer, wholesaler or distributor, to furnish, give, rent or
3 sell any equipment, fixtures, or supplies, directly or indirectly,
4 or through a subsidiary or affiliate, or by any officer, director,
5 or firm member of the industry, to any person engaged in sell-
6 ing products of the brewing industry for consumption on the
7 premises where sold or to offer any prize, premium, gift, or
8 other similar inducement, except advertising novelties of nomi-
9 nal value, to either trade or consumer buyers.

10 No person, firm or corporation having an interest in the man-
11 ufacture or wholesale distribution of non-intoxicating beer
12 shall be permitted, either directly or indirectly, to be connected
13 with, or have an interest in the sale or dispensing of non-in-
14 toxicating beer under a retail license.

Sec. 95. Licenses for the sale of non-intoxicating beer shall
2 be for the term of one year commencing on the first day of
3 July of each year and ending on the thirtieth day of June
4 of the following year. If granted for a less period than one
5 year the initial state tax thereon shall be computed quarterly
6 from the annual tax in proportion to such time as the license
7 has to run.

Sec. 96. All licenses under this act for manufacturers,
2 brewers, distributors and retail dealers shall be issued by the
3 tax commissioner upon the filing of the application herein
4 required, except that such tax commissioner shall not be re-
5 quired to renew the licenses of any such manufacturer, brewer,
6 distributor or retail dealer who shall have failed and refused
7 to comply with any of the provisions of this act, or any law-
8 ful regulation of the tax commissioner with relation to such
9 business, during the time when any such applicant shall have
10 operated under any license theretofore issued to him.

11 Every such retail dealer, on or before the first day of July
12 of any year, shall make out and deliver to the state tax com-
13 missioner, on the blank to be furnished by the commissioner
14 for that purpose, a statement showing the name of such retail
15 dealer, a brief and accurate description of the place or places
16 where his business as such retail dealer is conducted and by
17 whom owned. Such statement shall be signed and sworn to
18 before a notary public or other officer empowered to administer
19 oath.

20 Every manufacturer, brewer and distributor applying for
21 license under this act shall, in addition to furnishing the in-
22 formation required in the last preceding section, furnish a
23 bond in some solvent surety company to be approved by the
24 tax commissioner, payable to the state of West Virginia, in
25 the minimum amount of one thousand dollars, and, within the
26 discretion of the tax commissioner, in the maximum amount of
27 ten thousand dollars, conditioned for the payment of any and

28 all additional taxes accruing during the period of such license.
29 On or before the tenth day of each calendar month during
30 the license period, every such manufacturer, brewer or distrib-
31 utor shall make a report in writing under oath to the tax com-
32 missioner, in such form as may be required by the tax commis-
33 sioner, showing the number of barrels of non-intoxicating
34 beer manufactured or distributed by such manufacturer,
35 brewer or distributor for the preceding calendar month, or
36 part thereof during which such manufacturer, brewer or dis-
37 tributor was engaged in business and at the same time pay the
38 tax thereon levied by this act. Within thirty days after the
39 end of any license tax year each manufacturer or brewer and
40 distributor shall make report in writing, under oath, to the tax
41 commissioner, in such form as may be required by him, show-
42 ing the number of barrels of non-intoxicating beer manufac-
43 tured or distributed by such manufacturer or brewer or dis-
44 tributor for the preceding license tax year, or part thereof.
45 during which such manufacturer or brewer or distributor was
46 engaged in business.

Sec. 97. If any manufacturer or brewer or distributor
2 whose report to the tax commissioner provided for in the next
3 preceding section hereof shows him, it or them to be liable
4 for any unpaid license taxes shall fail to pay the same to the
5 tax commissioner as provided therein, the tax commissioner
6 shall be authorized to distrain immediately therefor, or col-
7 lect the amount thereof in any appropriate legal proceeding
8 instituted in the circuit court of the county wherein the seat
9 of government is located, and in addition the state shall have
10 a lien on all the property of such manufacturer or brewer or
11 distributor for the full amount of the unpaid tax; and in ad-
12 dition the tax commissioner may revoke the license of any such
13 manufacturer or brewer or distributor so failing to pay any
14 such tax.

Sec. 98. Every manufacturer or brewer and distributor
2 shall maintain and keep and preserve for a period of two
3 years such record or records of non-intoxicating beer
4 manufactured, sold or distributed in this state, together with
5 such invoices, records, receipts, bills of lading and other per-
6 tinent papers as may be required by the tax commissioner, and

7 the tax commissioner shall have authority by himself or
8 through his duly designated agent to inspect the books, ac-
9 counts, records and memoranda of any manufacturer, brewer or
10 distributor licensed under the provisions of this act, and to ex-
11 amine under oath any officer, agent or employee of any manu-
12 facturer or brewer and distributor. The tax commissioner
13 may require the production, within this state at such time and
14 place as he may designate, of any books, accounts, papers or
15 records kept within or without the state, or verified copies in
16 lieu thereof, in order that an examination thereof may be made
17 by the tax commissioner or his duly designated agents. If as the
18 result of such examination it shall be found that any non-intoxi-
19 cating beer subject to the payment of a license tax, has been
20 manufactured or brewed, sold or distributed, by any manufac-
21 turer or brewer or distributor, upon which the tax has not been
22 paid, the tax commissioner shall make an assessment of the
23 amount of the tax so found to be due, and in addition there-
24 to and as a part thereof shall assess a penalty of fifty per cent
25 of the amount of such tax and shall notify such manufacturer
26 or brewer or distributor of the additional amount due. If
27 the same remains unpaid for a period of thirty days the tax
28 commissioner shall have authority to revoke any license held
29 at the time by the licensee and in addition thereto to collect
30 the amount found to be due by an appropriate legal proceed-
31 ing in the circuit court of the county in which the seat of
32 government is located, unless an appeal is taken from the action
33 of the tax commissioner as hereinafter provided.

34 Within thirty days after the receipt of notice of any addi-
35 tional amount claimed to be due by any brewer or manufac-
36 turer or distributor as shown by an examination by the tax
37 commissioner, the licensee shall have the right to an appeal
38 from his findings to the circuit court of the county in which
39 the seat of government is located and such appeal shall be
40 heard by the said circuit court de novo. Whether the find-
41 ing of the tax commissioner is affirmed or reversed the cir-
42 cuit court shall enter an order accordingly and either party
43 shall then have the right of appeal to the supreme court of
44 appeals of the state.

Sec. 99. A license shall be issued by the authorities so em-
2 powered in this act to any person, firm, association, partnership

3 or corporation, who applies for a retail license and who submits
4 a written application for a license, which application shall state
5 under oath:

6 As to individuals:

7 (a) That he has been a resident of the state for five years
8 or more and the name, and residence address of the applicant,
9 and the length of time he has lived at such address;

10 (b) That he is a citizen of the United States;

11 (c) The place of birth of the applicant, and if the applicant
12 is a naturalized citizen, the time and place of such naturaliza-
13 tion;

14 (d) That the applicant has never been convicted of a felony;

15 As to all applicants:

16 (a) The location of the place or building where the appli-
17 cant intends to operate;

18 (b) The name of the owner of the building and if such
19 owner is not the applicant, that such applicant is the actual
20 lessee of the premises;

21 (c) That the place or building where he intends to operate
22 reasonably conforms to all laws and health and fire regula-
23 tions, applicable thereto, and is a safe and proper place or
24 building;

Sec. 100. The state tax commissioner shall have the power
2 and authority to adopt and promulgate, repeal, rescind and
3 amend, in the manner herein required, rules, regulations, stan-
4 dards, requirements and orders necessary to carry out the pro-
5 visions of this act including the following:

6 (a) Rules and regulations with reference to permits; and
7 issuance of the same.

8 (b) Rules and regulations determining the nature and form
9 of all packages and bottles to be used as containers for cereal
10 malt beverages or products of the brewing industry to be kept or
11 sold under this act.

12 (c) Rules and regulations pertaining to the branding or label-
13 ing of packages or containers used in the sale of cereal malt bev-
14 erages or products of the brewing industry.

15 (d) Rules and regulations governing the placing of all ex-
16 terior advertising with reference to the sale of cereal malt bev-
17 erages or products of the brewing industry, upon premises where
18 permits have been granted for the sale of the same at retail.

19 And *provided further*, That the tax commissioner may revoke

20 the license of any licensee, subject to an appeal of any licensee
21 to a court of competent jurisdiction whenever any licensee is
22 aggrieved:

23 (1) When disorderly or immoral practices or other viola-
24 tions of the law are permitted or intoxicating liquor is possessed
25 or sold unlawfully on the premises;

26 (2) Where the word "saloon" is printed, painted or placed
27 upon the door, window or in any other public place on or about
28 the premises or when the word "saloon" is used in any adver-
29 tisement by the licensee;

30 (3) When circumstances happen or become known to the
31 properly empowered authorities under this act, which had they
32 happened or been known at the time of the application for the
33 license would have legally justified such authorities in refusing
34 the license;

35 (4) Where any retail dealer shall sell or dispense non-intoxi-
36 cating beer purchased from any other person other than a li-
37 censed distributor under the laws of this state, without having
38 first paid the barrel tax therefor herein imposed;

39 (5) When such licensee shall violate any of the provisions of
40 of this act or any lawful rule or regulation promulgated by the
41 tax commissioner under authority of this act.

42 Any person who violates any provisions of this act or who
43 makes a false statement concerning any material fact in submit-
44 ting an application for a license or for a renewal of a license or
45 in any hearing concerning the revocation thereof, shall be pun-
46 ished for each offense by a fine of not less than twenty-five dol-
47 lars nor more than five hundred dollars or imprisonment in the
48 county jail for not less than thirty days or more than six months
49 or both such fine and imprisonment.

50 Any person (other than parent or guardian) firm, associa-
51 tion, partnership or corporation holding a license under this
52 act who shall sell or give any non-intoxicating beer to any per-
53 son under the age of eighteen years, knowing, or having reason
54 to believe, that such person is under the age of eighteen years,
55 shall be guilty of a misdemeanor, and upon conviction thereof
56 shall be fined by the court not less than twenty-five nor more
57 than one hundred dollars.

58 Cities and incorporated towns are hereby specifically em-
59 powered to enact ordinances for the enforcement of this act
60 in conformity with the provisions of this act.

Sec. 101. Municipal corporations in this state shall have au-

2 thority to levy a license tax under the provisions of this act
 3 upon any retail dealer, manufacturer or brewer and distrib-
 4 utor of non-intoxicating beer; but the amount of the license
 5 tax levied by such municipal corporation shall in no event
 6 exceed one-half the amount fixed herein to be levied by the
 7 state as an annual license tax upon retail dealers and an initial
 8 license tax per year upon manufacturers and brewers and dis-
 9 tributors.

Sec. 102. All taxes imposed and collected under the provi-
 2 sions of this act from non-intoxicating beer shall be paid to the
 3 treasurer of the state in the manner now provided by law, and
 4 credited to the state fund, general revenue.

Sec. 103. The sections of this act and every part of such
 2 sections are hereby declared to be independent sections and parts
 3 of sections, and the holding of any section or any part thereof to
 4 be void or ineffective shall not affect any other section or part of
 5 section: *Provided further*, That chapter twenty, acts of the legis-
 6 lature, first extraordinary session, one thousand nine hundred
 7 thirty-three, being house bill number eight of that session, all
 8 other acts and parts of acts, general or special, coming within
 9 the purview of this act and inconsistent therewith are hereby
 10 repealed.

CHAPTER 7

(House Bill No. 524—By Mr. Wiseman)

AN ACT providing for the refunding of the purchase price of
 stamps required to be affixed to spirituous liquors under the
 provisions of subsection (e), section five, chapter twenty-one of
 the acts of the Legislature, first extraordinary session, one
 thousand nine hundred thirty-three.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec.	1. Owners and holders of stamps required to be used in sale of spirituous liquors to have re-	Sec.	fund of face value of unused stamps; how amount of refund ascertained and paid.
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Be it enacted by the Legislature of West Virginia:

Section 1. That the owners and holders of stamps required
 2 to be used in the sale of spirituous liquors, under the provisions

3 of subsection (e), section five, chapter twenty-one, acts of the
4 Legislature, first extraordinary session, one thousand nine hun-
5 dred thirty-three, shall, on and after the first day of March, one
6 thousand nine hundred thirty-five, be entitled to be paid the face
7 value of any such stamps, and the same shall be cancelled. The
8 amount of any such stamps outstanding, on said date, shall
9 be ascertained by the state tax commissioner, and the payment
10 to the owner thereof shall be made by requisition, to be made
11 on the state treasury by the tax commissioner, and the auditor
12 shall draw his warrant on the state treasury therefor. The
13 amount and ownership of such stamps outstanding may be
14 established by the presentation of such stamps to the tax com-
15 missioner, or, where that can not be done, through such proof
16 as said tax commissioner may require.

17 All acts and parts of acts in conflict herewith are hereby
18 repealed.

CHAPTER 8

(Senate Bill No. 210—By Mr. Hodges, by request)

AN ACT to appropriate money out of the treasury for the purpose
of granting relief, in cooperation with the federal government,
to the needy citizens of the state for the remainder of the
current fiscal year.

[Passed March 8, 1935; In effect from passage. Approved by the Governor.]

Sec.

1. Appropriation of one million dol-
lars from state general revenue
for relief of needy of state, for
remainder of fiscal year ending
June 30, 1935; payments to be

Sec.

made as directed by the gov-
ernor, but not to exceed two
hundred fifty-thousand dollars
in any one month.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from the statement of the revenues
2 of the current fiscal year and of the appropriations therefor
3 that there remains in the general revenue for the current fiscal
4 year, unappropriated, an amount in excess of the amount
5 appropriated by this act, there is hereby appropriated to the
6 governor, in order to afford relief to the needy citizens of the

7 state, and to gain the advantages of federal cooperation, for
8 the remainder of the current fiscal year ending June thirtieth,
9 one thousand nine hundred thirty-five, the sum of one million
10 dollars, to be paid as the governor shall direct, but not to
11 exceed the sum of two hundred fifty thousand dollars in any
12 one month.

CHAPTER 9

(Com. Sub. House Bill No. 257—Originating in the Committee on
Taxation and Finance)

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

[Passed March 11, 1935; in effect from passage. No action on bill by Governor required.]

TITLE I.

Sec.

1. Purpose of act; duties of board of public works.
2. Definitions.
3. Purposes for which appropriations may be expended.
4. Manner in which appropriations may be expended.
5. Expenditure for each item limited to specific amount appropriated; how transfers of amounts between items authorized.

TITLE II.

Sec.

1. Appropriations from state fund, general revenue for fiscal years 1936 and 1937 to legislative, judicial, executive, fiscal, legal, educational and other state departments, institutions, bureaus, boards and commissions; appropriations for relief of the needy and to supplement the general school fund.
2. Miscellaneous, supplemental and deficiency appropriations.
3. Appropriation to meet principal and interest of bonded obligations of state, other than road bonds.
4. Appropriations made by general law from special revenue not paid into state fund, general revenue.

Sec.

5. Unexpended appropriation for spending unit for fiscal year 1936 may be revived and expended in fiscal year 1937 by order of board of public works.
6. When specific payment of definite sum is required by general law, such sum to be paid from proper item of appropriation.
7. Funds or collection accounts dedicated to specific uses.
8. Refunding moneys erroneously paid into state treasury.
9. Expenditure of contingent funds; exception as to governor's civil contingent and legislative contingent funds.
10. Appropriation to state sinking fund commission to meet failure of taxing districts to remit necessary funds; repayment by commission.
11. Appropriation from forfeitures and license fees collected by tax commissioner of expenses of collections, attorneys' fees, etc.
12. Appropriation to counties, etc., taxes due them and paid into state treasury.
13. Cost of printing, binding and stationery to be paid from current expense appropriation for spending unit.
14. Payment to hospital for charity cases.

<p>Sec. 15. Expenditure of appropriation for only a total sum.</p> <p>16. Appropriation of any balance of proceeds of general school fund.</p> <p>TITLE III.</p> <p>Sec.</p> <p>1. Conditions attached to expenditure of appropriations, except for legislative and judicial branches of state government; requisitions through the director of the budget.</p> <p>2. Board of public works to control fiscal methods of spending units.</p> <p>3. Board of public works to examine progress of collection of state revenue.</p> <p>4. How board of public works may reduce appropriations.</p> <p>5. Reduction of appropriations to prevent overdraft or deficit in the general fund.</p> <p>6. Reduction of appropriation from certain funds.</p> <p>7. Classification of appropriations and reduction by percentages.</p> <p>8. Director of the budget, appointment, duties and salary.</p> <p>9. Director of the budget may require certain duties from the board of control.</p> <p>10. Board of public works to make personnel classifications of offices and employments in state government and agencies; ex-</p>	<p>Sec.</p> <p>ceptions personnel classifications by state board of education, board of governors of West Virginia University and board of control.</p> <p>11. Board of public works to install accrual accounting system; to prescribe uniform records, accounts and forms.</p> <p>12. Executive officer of spending unit to submit to board of public works detailed plan of expenditure for fiscal year; what plan to show.</p> <p>13. If approved, plan to govern expenditures unless appropriations reduced by board, or plan altered.</p> <p>14. Request to board by executive officer of spending unit for quarterly allotment of funds.</p> <p>15. Quarterly allotments not to be exceeded; if not expended allotment carries over to any succeeding year.</p> <p>16. Record of receipts, etc. to be kept by director of the budget.</p> <p>17. Expenditure of excess collections of spending unit; expenditure without approval of board of public works unlawful.</p> <p>18. Transfer by board of public works of amounts between items of total appropriation for spending unit.</p> <p>19. Duties of spending unit.</p> <p>20. Provisions of other acts in conflict with act suspended.</p> <p>21. Provisions of act separable.</p>
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Be it enacted by the Legislature of West Virginia:

TITLE I—GENERAL PROVISIONS

Section 1. The purpose of this act is to appropriate money
2 necessary for economical and efficient discharge of the duties
3 and responsibilities of the state and its agencies during the
4 fiscal years one thousand nine hundred thirty-six and one thou-
5 sand nine hundred thirty-seven. To give effect to this pur-
6 pose, the board of public works shall supervise the fiscal pol-
7 icy, control the assumption of obligations, and regularize the
8 expenditures of the agencies of the state.

Sec. 2. For the purpose of this act:

2 "Board" shall mean the board of public works;
3 "Spending unit" shall mean the department, agency or in-
4 stitution to which an appropriation is made.

Sec. 3. An appropriation for:

2 "Personal services" shall be expended only for the payment

3 of salaries, wages, fees, and other compensation for skill, work,
4 or employment;

5 "Current expenses" shall be expended only for operating
6 costs other than personal services or capital outlay. Repairs
7 and improvements that do not increase the capital asset shall
8 be paid for out of current expenses;

9 "Capital outlay" shall be expended only for buildings, land,
10 and equipment;

10-a "Buildings" shall include construction and alteration of
10-b structures and the improvement of lands and shall include
10-c shelter, support, storage, protection, or the improvement of
10-d a natural condition;

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

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

16 The "fiscal year one thousand nine hundred thirty-six" shall
17 mean the period from July first, one thousand nine hundred
18 thirty-five through June thirtieth, one thousand nine hundred
19 thirty-six; and the "fiscal year one thousand nine hundred
20 thirty-seven" shall mean the period from July first, one thou-
21 sand nine hundred thirty-six through June thirtieth, one thou-
22 sand nine hundred thirty-seven;

23 "From collections" shall mean the amount of the total ap-
24 propriation which must be collected by the spending unit to be
25 available for expenditure. If the authorized amount of collec-
26 tions is not collected, the total appropriation for the spending
27 unit shall be reduced automatically by the amount of the
28 deficiency in the collection. If the amount collected exceeds
29 the amount designated "from collections" the excess shall be
30 set aside in a special surplus fund and may be expended for
31 the purposes of the spending unit as provided by section
32 seventeen of Title III of this act.

Sec. 4. Money appropriated by this act, unless otherwise
2 specifically directed, shall be appropriated and expended ac-
3 cording to the provisions of article three, chapter twelve of the
4 code of one thousand nine hundred thirty-one or according
5 to any law detailing a procedure specifically limiting that
6 article.

Sec. 5. The expenditure of money appropriated by this act shall be limited to the specific amount appropriated to each item. There shall be no transfer of amounts between items of the appropriation of the spending unit without prior authorization by the board of public works, as provided by section 6 eighteen, Title III of this act.

TITLE II—APPROPRIATIONS

Section 1. "Governmental Appropriations." From the state fund, general revenue, except as otherwise provided, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Title III of this act, the following amounts, as itemized, for expenditures during the fiscal years one thousand nine hundred thirty-six and one thousand nine hundred thirty-seven:

LEGISLATURE

	<i>Fiscal Year</i>	
<i>Spending Unit</i>	<i>1936</i>	<i>1937</i>
<i>Acct. No. 1—Senate</i>		
1 Personal Services (salaries).....\$	15,000.00	\$ 15,000.00
2 Current Expenses	<i>Fiscal Year 1935</i>	
3 Mileage of members.....	917.50	
4 President of the Senate, \$2.00 per		
5 day, as presiding officer for sixty		
6 days	120.00	

Compensation and Per Diem of Other Elective Officers

1 Compensation of the Clerk of the		
2 Senate	1,200.00	
3 Compensation of the Sergeant-at-		
4 Arms	600.00	
5 Compensation of the Doorkeeper..	600.00	

Compensation of Presidential Appointees

1 Nine floor stenographers.....	3,780.00
2 Three committee stenographers.....	1,260.00
3 Two clerks.....	840.00
4 Two committee clerks-at-large.....	1,200.00
5 One clerk to Committee on Finance	600.00

6	One clerk to Committee on the	
7	Judiciary	600.00
8	One clerk to Sergeant-at-Arms.....	420.00
9	One secretary to the Minority.....	720.00
10	One clerk to the Minority Leader..	540.00
11	One secretary to the President.....	720.00
12	One messenger to the President.....	240.00
13	One chaplain.....	300.00
14	Four assistant doorkeepers.....	1,680.00
15	One night watchman.....	360.00
16	Five pages.....	1,200.00
17	Two cloakroom attendants.....	480.00

Clerk's Appointees

1	Two assistant clerks.....	1,440.00
2	Five assistant clerks.....	2,700.00
3	Seven assistant clerks.....	3,360.00
4	Two assistant clerks.....	840.00
5	Seven assistant clerks	2,520.00
6	Superintendent of Capitol Build-	
7	ing and Grounds and six assist-	
8	ants	1,560.00
9	Contingent fund of the Senate.....	45,000.00
10	To pay Charles Lively for editing,	
11	compiling and publishing the	
12	"West Virginia Blue Book",	
13	formerly known as the "West	
14	Virginia Legislative Hand Book	
15	and Manual and Official Regis-	
16	ter" under the same provisions	
17	as to distribution as were	
18	adopted in the session of one	
19	thousand nine hundred and	
20	twenty-one, including all ex-	
21	enses incurred in the employ-	
22	ment of contributors, prepara-	
23	tion of matter, clerical hire,	
24	stenographic services and proof	
25	reading, and for shipping	
26	charges in connection with the	

27 distribution of the book; which
 28 distribution shall include seven-
 29 ty-five copies each to members
 30 of the Legislature;
 31 For the fiscal year ending June
 32 thirty, one thousand nine hun-
 33 dred and thirty-six.....\$ 10,000.00
 34 For the fiscal year ending June
 35 thirty, one thousand nine hun-
 36 dred and thirty-seven..... \$ 8,000.00
 37 After the distribution provided for
 38 in the acts of one thousand nine
 39 hundred and twenty-one above
 40 referred to, or by further resolu-
 41 tion of the Legislature, the re-
 42 mainder of the edition shall be
 43 sold by the superintendent of
 44 public printing to persons desir-
 45 ing to purchase the same at the
 46 price of three dollars per vol-
 47 ume.
 48 The Clerk of the Senate is author-
 49 ized to draw his warrants upon
 50 the Auditor, payable out of the
 51 contingent fund of the Senate,
 52 for any bills for supplies and
 53 services that may have been in-
 54 curred by the Senate and not in-
 55 cluded in the appropriation bill,
 56 and for bills for supplies and
 57 services incurred after adjourn-
 58 ment, the requisition for same
 59 to be accompanied by bills to be
 60 filed with the Auditor.

	<i>Fiscal Year</i>	
<i>Spending Unit</i>	<i>1936</i>	<i>1937</i>

Acct. No. 2—House of Delegates

1 Personal Services (salaries).....\$	47,300.00	\$ 47,300.00
2 Current Expenses		<i>Fiscal Year 1935</i>
3 Mileage	\$	2,711.90

4	Personal Services (salaries).....	605.00
5	Compensation and per diem of	
6	officers and attaches.....	56,800.00
7	Contingent Fund.....	85,000.00
8	The Clerk of the House of Dele-	
9	gates, with the approval of the	
10	Speaker of the House, is author-	
11	ized to draw his warrants upon	
12	the Auditor, payable out of the	
13	contingent fund, for any bills	
14	for supplies and services that	
15	may have been incurred by the	
16	House of Delegates and not in-	
17	cluded in this appropriation	
18	bill, for bills for supplies and	
19	services incurred after adjourn-	
20	ment, the requisition for same to	
21	be accompanied by a bill to be	
22	filed with the Auditor, but no	
23	payment shall be made to	
24	attaches under this paragraph.	

Acct. No. 3—*Legislative Printing*

1	To pay the cost of legislative	
2	printing and stationery, the ap-	
3	propriation to be available for the	
4	year ending June thirty, one thou-	
5	sand nine hundred thirty-five. If	
6	this work is not completed prior	
7	to June thirty, one thousand nine	
8	hundred thirty-five then the ap-	
9	propriation shall continue in effect	
10	until completed	\$ 75,000.00

		<i>Fiscal Year</i>	
	<i>Spending Unit</i>	1936	1937

JUDICIAL

Acct. No. 6—*Supreme Court of Appeals*

1	Personal Services	\$ 79,320.00	\$ 79,320.00
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2	Current Expenses	9,000.00	9,000.00
3	Total	\$ 88,320.00	\$ 88,320.00

Acct. No. 7—Circuit Courts

1	Personal Services	\$ 157,000.00	\$ 157,000.00
2	Current Expenses	19,000.00	19,000.00
3	Total	\$ 176,000.00	\$ 176,000.00

Acct. No. 7-A—Criminal Charges

1	Total	\$ 125,000.00	\$ 125,000.00
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*Acct No. 9—Compensation of Special Judges
of the Circuit Courts*

1	Personal Services	\$ 2,000.00	\$ 2,500.00
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Acct. No. 10—State Law Library

1	Personal Services	\$ 4,587.00	\$ 4,587.00
2	Current Expenses	714.00	714.00
3	Equipment	2,500.00	2,500.00
4	Total	\$ 7,801.00	\$ 7,801.00

EXECUTIVE

Fiscal Year

<i>Spending Unit</i>	<i>1936</i>	<i>1937</i>
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Acct. No. 120—Governor's Office: Executive

1	Personal Services	\$ 12,430.00	\$ 12,430.00
2	Civil Contingent Fund	20,000.00	20,000.00
3	Total	\$ 32,430.00	\$ 32,430.00

Acct. No. 120-A—Governor's Office: Emergency Fund

1	Total	\$ 125,000.00	\$ 125,000.00
2	Of which \$25,000 may be ex-		
3	pended each year for such research		
4	and technical service as the gov-		
5	ernor may require.		

Acct. No. 121—*Governor's Office: Custodial*

1	Total	\$	9,000.00	\$	9,000.00
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Acct. No. 122—*Pardon Attorney*

1	Personal Services	\$	4,830.00	\$	4,830.00
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2	Current Expenses		500.00		500.00
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3	Total	\$	5,330.00	\$	5,330.00
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FISCAL

Fiscal Year

	<i>Spending Unit</i>	<i>1936</i>	<i>1937</i>
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Acct. No. 150—*Auditor's Office:**General Administration*

1	Personal Services	\$	13,430.00	\$	13,830.00
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2	Current Expenses		5,710.00		5,060.00
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3	Total	\$	19,140.00	\$	18,890.00
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Acct. No. 151—*Auditor's Office:**Accounting Department*

1	Personal Services	\$	6,520.00	\$	6,520.00
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2	Current Expenses		190.00		190.00
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3	Equipment		1,200.00		700.00
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4	Total	\$	7,910.00	\$	7,410.00
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Acct. No. 152—*Auditor's Office:**Claims Department*

1	Personal Services	\$	9,740.00	\$	9,740.00
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2	Current Expenses		1,200.00		1,200.00
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3	Equipment		145.00		
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4	Total	\$	11,085.00	\$	10,940.00
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Acct. No. 153—*Auditor's Office:**Criminal Claims Department*

1	Personal Services	\$	1,320.00	\$	1,320.00
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2	Current Expenses		375.00		375.00
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3	Equipment		290.00		
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4	Total	\$	1,985.00	\$	1,695.00
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Acct. No. 154—*Auditor's Office:**Corporation Department*

1	Personal Services	\$ 4,600.00	\$ 4,600.00
2	Current Expenses	865.00	865.00
3	Equipment	350.00	385.00
4	Total	\$ 5,815.00	\$ 5,850.00

Acct. No. 155—*Auditor's Office:**Taxation Department*

1	Personal Services	\$ 8,400.00	\$ 8,400.00
2	Current Expenses	715.00	715.00
3	Equipment	405.00	400.00
4	Total	\$ 9,520.00	\$ 9,515.00

Acct. No. 156—*Auditor's Office:**Land Department*

FROM THE GENERAL SCHOOL FUND:

1	Personal Services	\$ 26,800.00	\$ 26,800.00
2	Current Expenses	3,200.00	3,200.00
3	Equipment	1,585.00	875.00
4	Total	\$ 31,585.00	\$ 30,875.00

5 In addition to the total appro-
 6 priation, for the auditor's office,
 7 land department, there is appro-
 8 priated a sum sufficient to pay the
 9 costs of publication required by
 10 section eight, article three, chap-
 11 ter thirty-seven of the code of
 12 West Virginia, one thousand nine
 13 hundred thirty-one, as amended.

Acct. No. 157—*Auditor's Office:**Public Land Corporation*

FROM THE GENERAL SCHOOL FUND:

1	Personal Services	\$ 10,000.00	\$ 10,000.00
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Acct. No. 62—*Auditor's Office:**Securities Department*

1	Personal Services.....	\$ 7,272.00	\$ 7,272.00
2	Current Expenses.....	2,180.00	2,180.00
3	Equipment	85.00	40.00
4	Total	\$ 9,537.00	\$ 9,492.00
5	From Collections	6,237.00	6,192.00

Acct. No. 63—*Auditor's Office:**Insurance Department*

1	Personal Services	\$ 12,040.00	\$ 12,040.00
2	Current Expenses	2,370.00	2,190.00
3	Equipment	290.00	470.00
4	Total	\$ 14,700.00	\$ 14,700.00

Acct. No. 16—*Treasurer's Office:*

1	Personal Services	\$ 27,800.00	\$ 27,800.00
2	Current Expenses	4,525.00	4,850.00
3	Equipment	3,425.00	3,470.00
4	Total	\$ 35,750.00	\$ 36,120.00

Acct. No. 17—*State Sinking Fund Commission:*

1	Personal Services	\$ 8,500.00	\$ 8,500.00
2	Current Expenses	500.00	500.00
3	Total	\$ 9,000.00	\$ 9,000.00

Acct. No. 180—*Tax Commissioner:*

GENERAL ADMINISTRATION:

1	Personal Services	\$ 30,205.80	\$ 30,205.80
2	Current Expenses	34,690.11	34,690.11
3	Equipment	970.00	970.00
4	Total	\$ 65,865.91	\$ 65,865.91

Acct. No. 181—*Tax Commissioner:**Revenue Department*

1	Personal Services	\$ 132,000.00	\$ 132,000.00
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2	Current Expenses	52,977.00	52,977.00
3	Equipment	2,000.00	2,000.00
4	Total	\$ 186,977.00	\$ 186,977.00

Acct. No. 182—*Tax Commissioner:**Accounting Department*

1	Personal Services	\$ 20,260.00	\$ 20,260.00
2	Current Expenses	3,560.00	3,560.00
3	Equipment	2,000.00	2,000.00
4	Total	\$ 25,820.00	\$ 25,820.00

Acct. No. 183—*Tax Department:**Gasoline Tax*

FROM THE ROAD FUND

1	Personal Services	\$ 9,400.00	\$ 9,400.00
2	Current Expenses	4,100.00	4,100.00
3	Equipment	2,000.00	2,000.00
4	Total	\$ 15,500.00	\$ 15,500.00

Acct. No. 19—*Board of Control:*

1	Personal Services	\$ 32,786.00	\$ 32,786.00
2	Current Expenses	6,797.00	6,797.00
3	Equipment	600.00	700.00
4	Total	\$ 40,183.00	\$ 40,283.00

Acct. No. 20—*Board of Public Works:**Director of the Budget*

1	Personal Services	\$ 24,000.00	\$ 18,000.00
2	Current Expenses	4,000.00	3,000.00
3	Equipment	12,000.00	9,000.00
4	Total	\$ 40,000.00	\$ 30,000.00

LEGAL

*Fiscal Year**Spending Unit 1936 1937*Acct. No. 26—*Attorney General's Office*

1	Personal Services	\$ 29,811.00	\$ 29,811.00
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2	Current Expenses	4,439.00	4,439.00
3	Equipment	750.00	750.00
4	Contingent Fund.....	4,000.00	4,000.00
<hr/>			
5	Total	\$ 39,000.00	\$ 39,000.00

RECORDING

		<i>Fiscal Year</i>	
		<i>Spending Unit 1936</i>	<i>1937</i>
<i>Acct. No. 29—Secretary of State's Office</i>			
1	Personal Services	\$ 16,940.00	\$ 16,940.00
2	Current Expenses	2,210.00	2,647.00
3	Equipment		73.00
<hr/>			
4	Total	\$ 19,150.00	\$ 19,660.00

CUSTODIAL AND SERVICE

		<i>Fiscal Year</i>	
		<i>Spending Unit 1936</i>	<i>1937</i>
<i>Acct. No. 31—Capitol Building and Grounds</i>			
1	Personal Services	\$ 49,140.00	\$ 49,140.00
2	Current Expenses	58,924.00	28,924.00
3	Equipment	12,000.00	
<hr/>			
4	Total	\$ 120,064.00	\$ 78,064.00
<i>Acct. No. 32—Mailing Department</i>			
1	Personal Services	\$ 7,740.00	\$ 7,740.00
2	Current Expenses	73,874.00	75,844.00
3	Equipment	1,980.00	10.00
<hr/>			
4	Total	\$ 83,594.00	\$ 83,594.00
<i>Acct. No. 33—Purchasing Department</i>			
1	Personal Services	\$ 35,000.00	\$ 35,000.00
2	Current Expenses	5,000.00	5,000.00
3	Equipment	620.00	620.00
<hr/>			
4	Total	\$ 40,620.00	\$ 40,620.00

5 In addition to the above appro-
 6 priation, a Revolving Fund to
 7 maintain printing, binding and
 8 stationery inventories\$ 15,000.00

EDUCATIONAL

Fiscal Year
Spending Unit 1936 *1937*

Acct. No. 36—*State Board of Education*

1 FROM THE GENERAL SCHOOL FUND:
 2 Personal Services\$ 31,805.10 \$ 31,805.10
 3 *Provided, however, That no part of this decrease shall be de-*
 4 *ducted from the appropriation for rehabilitation work, voca-*
 5 *tional education, or for the legal services of Price, Smith and*
 6 *Spillman.*
 3 Current Expenses 31,266.00 29,716.00
 4 Equipment 300.00 250.00

5 Total\$ 63,371.10 \$ 61,771.10
 6 From the total appropriated for
 7 each year the following sums are
 8 allocated for the purpose of co-
 9 operating with the federal gov-
 10 ernment:
 11 For rehabilitation work \$14,000
 12 For vocational educa-
 13 tion 30,000
 14 From the total appropriations
 15 above, pay the firm of Price,
 16 Smith and Spillman for legal serv-
 17 ices rendered in 1931-32.....\$1,500
 18 State aid for Negro students,
 19 \$7,000.00 for each year.

Acct. No. 37—*Department of Education*

1 FROM THE GENERAL SCHOOL FUND:
 2 Personal Services\$ 113,440.00 \$ 111,940.00
 3 Current Expenses 39,935.00 38,745.00

4 Equipment	1,100.00	925.00
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5 Total	\$ 154,475.00	\$ 151,610.00
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6 Of the total amount appropri-
7 ated for personal services \$60,000
8 shall be expended each year for
9 the salaries of county superin-
10 tendents.

11 *Provided, however,* That no part
12 of the above appropriation shall be
13 used for state physical director,
14 or state school architects.

Acct. No. 38—*West Virginia University*

1 Personal Services	\$ 908,765.00	\$ 908,765.00
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2 Current Expenses	202,049.00	202,049.00
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3 Equipment	151,560.00	68,686.00
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4 Lands	2,000.00	2,000.00
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5 Total	\$ 1,264,374.00	\$ 1,181,500.00
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6 <i>From Collections</i>	300,000.00	300,000.00
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7 The Board of Governors of
8 West Virginia University and the
9 Board of Control are specially
10 authorized to expend directly
11 \$68,000 of the amount appropri-
12 ated for equipment for the year
13 1936, to equip the new dormitor-
14 ies at West Virginia University,
15 known as P.W.A. project No. 465.

Acct No. 400—*Marshall College*

1 Personal Services	\$ 228,500.00	\$ 228,500.00
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2 Current Expenses	63,300.00	63,300.00
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3 Equipment	8,550.00	2,700.00
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4 Total	\$ 300,350.00	294,500.00
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5 <i>From Collections</i>	120,000.00	120,000.00
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Acct. No. 400A—*Fairmont State Teachers College*

1 Personal Services	\$ 116,200.00	\$ 116,200.00
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2	Current Expenses	20,150.00	20,150.00
3	Equipment	4,050.00	4,050.00
4	Total	\$ 140,400.00	\$ 140,400.00
5	<i>From Collections</i>	45,000.00	45,000.00

Acct. No. 401—*Glenville State Teachers College*

1	Personal Services	\$ 59,000.00	\$ 59,000.00
2	Current Expenses	18,000.00	18,000.00
3	Equipment	2,000.00	2,000.00
4	Total	\$ 79,000.00	\$ 79,000.00
5	<i>From Collections</i>	25,000.00	25,000.00
6	In addition to the total appro-		
7	priated, \$2,500 may be expended		
8	for the purchase of farm land and		
9	equipment from special revenue:		
10	Board and room fund.		

Acct. No. 402—*West Liberty State Teachers College*

1	Personal Services	\$ 52,000.00	\$ 52,000.00
2	Current Expenses	15,000.00	15,000.00
3	Equipment	4,000.00	
4	Total	\$ 71,000.00	\$ 67,000.00
5	<i>From Collections</i>	20,000.00	20,000.00

Acct. No. 403—*Shepherd State Teachers College*

1	Personal Services	\$ 49,000.00	\$ 49,000.00
2	Current Expenses	16,000.00	16,000.00
3	Equipment	1,000.00	1,000.00
4	Total	\$ 66,000.00	\$ 66,000.00
5	<i>From Collections</i>	20,000.00	20,000.00

Acct. No. 404—*Concord State Teachers College*

1	Personal Services	\$ 82,000.00	\$ 82,000.00
2	Current Expenses	17,500.00	17,500.00
3	Equipment	1,500.00	1,500.00
4	Total	\$ 101,000.00	\$ 101,000.00
5	<i>From Collections</i>	40,000.00	40,000.00

Acct. No. 405—*Potomac State School*

1	Personal Services	\$ 45,810.00	\$ 45,810.00
2	Current Expenses	12,265.00	12,265.00
3	Equipment	2,850.00	2,850.00
4	Total	\$ 60,925.00	\$ 60,925.00
5	From Collections	12,000.00	12,000.00

Acct. No. 406—*New River State College*

1	Personal Services	\$ 61,400.00	\$ 61,400.00
2	Current Expenses	26,921.64	18,000.00
3	Equipment	4,500.00	4,000.00
4	Total	\$ 92,821.64	\$ 83,400.00
5	From Collections	20,000.00	20,000.00
6	Of the amount appropriated for		
7	current expenses, 1936, \$8,921.64		
8	is allocated for the payment of a		
9	claim for paving bonds held by		
10	the estate of Dr. C. H. Martin.		

Acct. No. 407—*West Virginia State College*

1	Personal Services	\$ 120,000.00	\$ 120,000.00
2	Current Expenses	45,000.00	45,000.00
3	Equipment	4,000.00	2,000.00
4	Building	21,000.00	21,000.00
5	Total	\$ 190,000.00	\$ 188,000.00
6	From Collections	35,000.00	35,000.00

Acct. No. 408—*Bluefield State Teachers College*

1	Personal Services	\$ 45,500.00	\$ 45,500.00
2	Current Expenses	12,000.00	12,000.00
3	Equipment	1,500.00	1,500.00
4	Total	\$ 59,000.00	\$ 59,000.00
5	From Collections	12,000.00	12,000.00

Acct. No. 409—*Storer College*

1	Total	\$ 12,000.00	\$ 12,000.00
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Acct. No. 410—*West Virginia School
for the Deaf and Blind*

1	Personal Services	\$ 85,000.00	\$ 85,000.00
2	Current Expenses	60,000.00	60,000.00
3	Equipment	23,000.00	23,000.00
4	Total	\$ 168,000.00	\$ 168,000.00
5	From Collections	2,500.00	2,500.00

Acct. No. 411—*West Virginia School
for the Colored Deaf and Blind*

1	Personal Services	\$ 13,500.00	\$ 13,500.00
2	Current Expenses	12,000.00	12,000.00
3	Equipment	2,000.00	1,000.00
4	Total	\$ 27,500.00	\$ 26,500.00

Acct. No. 43—*Department of Archives and History*

1	Personal Services	\$ 9,500.00	\$ 9,500.00
2	Current Expenses	1,330.00	1,330.00
3	Equipment	1,580.00	1,000.00
4	Total	\$ 12,410.00	\$ 11,830.00

Acct. No. 460—*West Virginia Industrial School for Boys*

1	Personal Services	\$ 42,140.00	\$ 42,140.00
2	Current Expenses	46,038.00	44,320.50
3	Buildings	13,800.00	
4	Equipment	6,825.00	2,625.00
4-a	Total	\$ 108,803.00	\$ 89,085.50
5	From Collections	17,000.00	17,000.00
6	Out of the appropriations for per-		
7	sonal services to pay Lelia Ar-		
8	nett, widow of U. G. Arnett,		
9	killed by an inmate while in line		
10	of duty, to be paid in monthly		
11	installments	600.00	600.00
12	Out of the appropriation for per-		
13	sonal services, to pay George A.		

14	Barnard, employee, permanent-		
15	ly, totally disabled by an in-		
16	mate while in line of duty, to		
17	be paid in monthly install-		
18	ments	600.00	600.00
19	Out of the total appropriation for		
20	current general expense to pay		
21	the heirs of Hazel Woodward,		
22	deceased, for land rental ac-		
23	cruing since January 1, 1910,		
24	the sum of	\$ 1,355.24	

Acct. No. 461—*West Virginia Industrial School for Colored Boys*

1	Personal Services	\$ 8,500.00	\$ 8,500.00
2	Current Expenses	15,000.00	15,300.00
3	Equipment	1,076.00	441.00
4	Total	\$ 24,576.00	24,241.00
5	From Collections	4,000.00	4,000.00

Acct. No. 462—*West Virginia Industrial Home for Girls*

1	Personal Services	\$ 19,000.00	\$ 19,000.00
2	Current Expenses	21,481.00	21,481.00
3	Buildings	400.00	400.00
4	Equipment	1,715.00	1,065.00
5	Total	\$ 42,596.00	41,946.00
6	From Collections	9,000.00	9,000.00

Acct. No. 463—*West Virginia Industrial Home for Colored Girls*

1	Personal services	\$ 4,716.00	\$ 4,716.00
2	Current Expenses	7,360.00	7,310.00
3	Equipment	1,470.00	1,470.00
4	Total	\$ 13,546.00	\$ 13,496.00
5	From Collections	1,500.00	1,500.00

Acct. No. 464—*Florence Crittendon Home*

1	Total	\$ 4,000.00	\$ 4,000.00
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Acct. No. 465—*Colored Day Nursery and Child's Shelter*

1	Total	\$ 2,000.00	\$ 2,000.00
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- 2 To be expended upon the requisition of the matron of the Colored Day Nursery and Child's Shelter for the purpose of liquidating the indebtedness now existing against the property of said Shelter.

Acct. No. 470—*West Virginia Children's Home*

1 Personal Services	\$ 8,397.00	\$ 8,559.00
2 Current Expenses	26,888.60	25,358.60
3 Equipment	2,700.00	2,250.00
4 Total	\$ 37,985.60	\$ 36,167.60
5 From Collections	6,500.00	6,500.00

Acct. No. 471—*West Virginia Colored Children's Home*

1 Personal Services	\$ 3,697.50	\$ 3,697.50
2 Current Expenses	8,231.55	8,231.55
3 Building	680.00	680.00
4 Equipment	202.30	220.15
5 Total	\$ 12,811.35	12,829.20
6 From Collections	2,500.00	2,500.00
7 To be expended upon the order of the Board of Control.		

Acct. No. 472—*Home for the Aged and Infirm Colored*

1 Personal Services	\$ 5,222.40	\$ 5,222.40
2 Current Expenses	10,972.60	10,973.45
3 Equipment	153.00	
4 Total	\$ 16,348.00	\$ 16,195.85
5 From Collections	7,848.00	7,669.00

Acct. No. 473—*West Virginia Training School*

1 Personal Services	\$ 13,800.00	\$ 13,400.00
2 Current Expenses	17,375.00	17,025.00
3 Buildings	8,375.00	
4 Equipment	3,892.00	2,260.00
5 Total	\$ 43,442.00	\$ 32,685.00

6	<i>From Collections</i>	3,800.00	\$ 3,800.00
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Acct. No. 48—West Virginia Penitentiary

1	Personal Services	\$ 130,815.00	\$ 130,815.00
2	Current Expenses	187,000.00	187,000.00
3	Equipment	34,000.00	34,000.00

4	Total	\$ 351,815.00	\$ 351,815.00
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5	Out of appropriation for personal		
6	services, to pay Ray Estep, per-		
7	manently injured while em-		
8	ployed in penitentiary coal mine	240.00	240.00
9	Any balance remaining unex-		
10	pended at the close of the fiscal		
11	year, one thousand nine hun-		
12	dred thirty-five, in the appro-		
13	priation for a new wall is re-		
14	appropriated for expenditure		
15	during the fiscal years, one		
16	thousand nine hundred thirty-		
17	six and one thousand nine hun-		
18	dred thirty-seven.		

Acct. No. 50—Emergency Hospital Service

1	Total	\$ 25,000.00	\$ 25,000.00
2	This appropriation to be expended		
3	according to the provisions of		
4	section fourteen of this title.		

*Acct. Nos. 520; 521—State Health Department
and Public Health Council*

1	Personal Services	\$ 78,580.00	\$ 78,700.00
2	Current Expenses	36,702.00	36,582.00
3	Equipment	4,993.00	4,993.00

4	Total	\$ 120,275.00	\$ 120,275.00
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5	<i>From Collections</i>	10,800.00	10,800.00
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Acct. No. 522—State Water Commission

1	Personal Services	\$ 3,500.00	\$ 3,500.00
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2	Current Expenses	500.00	500.00
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3	Total	\$ 4,000.00	\$ 4,000.00
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Acct. No. 523—State Committee of Barbers and Beauticians

1	Personal Services	\$ 10,800.00	\$ 10,800.00
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2	Current Expenses	11,320.00	11,320.00
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3	Total	\$ 22,120.00	\$ 22,120.00
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4	From Collections	22,120.00	22,120.00
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Acct. No. 530—Department of Public Welfare

1	Personal Services	\$ 42,180.00	\$ 40,680.00
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2	Current Expenses	149,270.00	148,008.00
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3	Equipment	2,550.00	550.00
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4	Total	\$ 194,000.00	\$ 189,238.00
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Acct. No. 531—Bureau of Negro Welfare and Statistics

1	Personal Services	\$ 4,620.00	\$ 4,620.00
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2	Current Expenses	1,080.00	1,280.00
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3	Equipment	300.00	100.00
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4	Total	\$ 6,000.00	\$ 6,000.00
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Acct. No. 540—Weston State Hospital

1	Personal Services	\$ 105,518.00	\$ 105,518.00
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2	Current Expenses	149,688.00	148,040.00
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3	Equipment	6,552.00	3,950.00
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4	Total	\$ 261,758.00	\$ 257,508.00
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5	From Collections	21,500.00	21,500.00
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Acct. No. 541—Spencer State Hospital

1	Personal Services	\$ 42,500.00	\$ 42,500.00
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2	Current Expenses	80,521.00	79,666.00
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3	Building	7,400.00	
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4	Equipment	15,000.00	15,000.00
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5	Total	\$ 145,421.00	\$ 137,166.00
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6	From Collections	25,000.00	25,000.00
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Acct. No. 542—*Lakin State Hospital*

1 Personal Services	\$ 23,964.00	\$ 23,964.00
2 Current Expenses	40,148.00	40,148.00
3 Equipment	1,275.00	1,275.00
4 Total	\$ 65,387.00	\$ 65,387.00
5 From Collections	7,500.00	7,500.00

Acct. No. 543—*Welch Emergency Hospital*

1 Personal Services	\$ 13,304.00	\$ 13,304.00
2 Current Expenses	21,426.00	21,426.00
3 Equipment	1,290.00	1,290.00
4 Total	\$ 36,020.00	\$ 36,020.00
5 From Collections	20,300.00	20,300.00

Acct. No. 544—*McKendree Emergency Hospital*

1 Personal Services	\$ 13,860.00	\$ 13,860.00
2 Current Expenses	19,203.00	18,332.00
3 Equipment	2,660.00	2,660.00
4 Total	\$ 35,723.00	\$ 34,852.00
5 From Collections	22,100.00	22,200.00

Acct. No. 545—*Fairmont Emergency Hospital*

1 Personal Services	\$ 14,856.00	\$ 14,036.00
2 Current Expenses	21,289.00	17,525.00
3 Equipment	2,544.00	2,252.00
4 Total	\$ 38,689.00	\$ 33,813.00
5 From Collections	12,750.00	12,750.00

Acct. No. 546—*Hopemont Sanitarium*

1 Personal Services	\$ 115,412.00	\$ 112,812.00
2 Current Expenses	160,000.00	160,000.00
3 Equipment	24,333.00	18,800.00
4 Total	\$ 299,745.00	\$ 291,612.00
5 From Collections	135,000.00	135,000.00

Acct. No. 547—*Denmar Sanitarium*

1	Personal Services	\$ 17,180.00	\$ 17,180.00
2	Current Expenses	21,484.00	20,784.00
3	Equipment	1,650.00	360.00
4	Total	\$ 40,314.00	\$ 38,324.00
5	From Collections	15,000.00	15,000.00

Acct. No. 548—*Pinecrest Sanitarium*

1	Personal Services	\$ 44,700.00	\$ 44,700.00
2	Current Expenses	53,875.00	51,975.00
3	Building	17,000.00	2,000.00
4	Equipment	23,350.00	6,700.00
4-a	Total	\$ 138,925.00	\$ 105,375.00
5	From Collections	50,000.00	50,000.00
6	From the amount appropriated for		
7	current expenses for the year		
8	1936, \$3,000.00 is allocated to		
9	pay the State Compensation		
10	Commission for an X-ray machine.		

Acct. No. 549—*Berkeley Springs Sanitarium*

1	Personal Services	\$ 3,500.00	\$ 3,500.00
2	Current Expenses	4,900.00	4,900.00
3	Buildings	2,500.00	2,500.00
4	Total	\$ 10,900.00	\$ 10,900.00
5	From Collections	5,900.00	8,400.00

Acct. No. 550—*Huntington State Hospital*

1	Personal Services	\$ 58,478.00	\$ 58,543.00
2	Current Expenses	85,737.00	85,901.00
3	Equipment	7,932.00	7,232.00
4	Total	\$ 152,147.00	\$ 151,676.00
5	From Collections	60,100.00	60,100.00

Acct. No. 551—*Tuberculosis Clinics*

1	Total	\$ 7,500.00	\$ 7,500.00
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Acct. No. 552—*Treatment of Tuberculosis*

1	Total	\$ 17,500.00	\$ 23,500.00
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Acct. No. 553—*Wayside Farm Preventorium*

1	Total	\$ 3,500.00	
2	To be expended upon the requis-		
3	tion of the Board of Control.		

BUSINESS AND INDUSTRIAL RELATIONS

Fiscal Year

	<i>Spending Unit 1936</i>	<i>1937</i>
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Acct. No. 57—*Bureau of Labor and Department of Weights and Measures*

1	Personal Services	\$ 21,500.00	\$ 21,500.00
2	Current Expenses	11,050.00	11,000.00
3	Equipment	900.00	800.00
4	Total	\$ 33,450.00	\$ 33,300.00

Acct. No. 570—*Bureau of Labor:
West Virginia Employment Service*

1	Personal Services	\$ 5,000.00	\$ 5,000.00
2	Current Expenses	2,000.00	2,000.00
3	Total	\$ 7,000.00	\$ 7,000.00

Acct. No. 58—*Department of Mines*

1	Personal Services	\$ 119,000.00	\$ 119,000.00
2	Current Expenses	40,700.00	40,700.00
3	Equipment	5,970.00	5,970.00
4	Total	\$ 165,670.00	\$ 165,670.00
5	From Collections	1,062.00	1,062.00

Acct. No. 59—*Compensation Commission*

FROM THE COMPENSATION FUND:

1	Personal Services	\$ 148,183.00	\$ 158,183.00
2	Current Expenses	66,417.00	66,417.00
3	Equipment	11,400.00	11,400.00
4	Total	\$ 226,000.00	\$ 236,000.00

Acct. No. 59-A—*Workmen's Compensation Commission:*
Silicosis

Payable From the Silicosis Fund Created by House Bill No. 331.

1	Total	\$ 40,000.00	\$ 30,000.00
2	<i>From Collections</i>	40,000.00	30,000.00
3	To administer the Workmen's		
4	Compensation silicosis fund as		
5	provided in House Bill No.		
6	331, regular session, 1935, and		
7	to pay premium on bond of the		
8	state treasurer as custodian of		
9	the fund.		

Acct. No. 60—Public Service Commission

1	Personal Services	\$ 181,960.00	\$ 181,960.00
2	Current Expenses	50,020.00	50,020.00
3	Equipment	5,020.00	5,020.00
4	Total	\$ 237,000.00	\$ 237,000.00

1 Of the amount appropriated for personal services \$15,000 for
2 the salaries of the members of the public service commission shall
3 be paid from the general fund: The balance of the total amount
4 appropriated shall be paid from the collection of special license
5 fees from public service corporations, as authorized by section
6 six, article three, chapter twenty-four of the code, as amended
7 and reenacted by Senate Bill No. 146, of the Acts of the Legis-
8 lature of West Virginia, regular session, 1935. Of the above
9 appropriation, not more than \$800 may be expended annually for
10 the maintenance of the office of the General Solicitor of the
11 National Association of Railroad and Utilities Commissioners,
12 and for representation in matters before the Interstate Com-
13 merce Commission and other Federal Departments, at Washing-
14 ton, D. C.

Acct. No. 61—*Department of Banking*

1	Personal Services	\$ 24,080.00	\$ 24,200.00
2	Current Expenses	23,950.00	23,950.00
3	Total	\$ 48,030.00	\$ 48,150.00
4	<i>From Collections</i>	4,250.00	4,250.00

Acct. No. 64—*Racing Commission*

1	Total	\$	3,250.00	\$	3,250.00
2	From Collections		3,250.00		3,250.00

HIGHWAYS

	<i>Fiscal Year</i>	
<i>Spending Unit</i>	1936	1937
Acct. No. 67— <i>State Road Commission</i>		

FROM THE ROAD FUND :

1	General Administration and En-				
2	gineering	\$	580,600.00	\$	580,600.00
3	The proceeds of the receipts of				
4	the road fund, except as herein				
5	after provided, are appropriated				
6	in accordance with the provisions				
7	of article three, chapter seventeen				
8	of the code of one thousand nine				
9	hundred thirty-one, as amended.				
10	For the maintenance, construction				
11	and reconstruction of second-				
12	ary roads, each of the two				
13	years of the biennium, all of				
14	the receipts to the road fund				
15	arising under the operation of				
16	House Bill No. 472, regular				
17	session, 1935, are hereby ap-				
18	propriated.				

FROM THE GENERAL FUND :

19	For maintenance, construction				
20	and reconstruction of secondary				
21	roads, to be transferred to the				
22	Road Fund upon the requisition				
23	of the governor		2,000,000.00		2,000,000.00
24					

AGRICULTURE

	<i>Fiscal Year</i>				
<i>Spending Unit</i>	1936	1937			
Acct. No. 70— <i>Department of Agriculture</i>					
1	Personal Services	\$	74,650.00	\$	74,650.00
2	Current Expenses		48,000.00		48,400.00

3	Equipment	2,195.00	2,195.00
4	To be expended for the eradica-		
5	tion of bovine diseases.....	15,000.00	15,000.00
6	The appropriation of this item		
7	is contingent upon the granting		
8	of an equal amount of funds to		
9	this state by the Federal Govern-		
10	ment for the same purpose.		
11	Total	\$ 139,845.00	\$ 140,245.00
12	From Collections	45,472.00	45,656.00

Acct. No. 71—*Agricultural Fairs and Associations*

1	Current Expenses	\$ 5,000.00	\$ 5,000.00
2	Awards	1,500.00	1,500.00
3	4-H Jubilee and State Fair to		
4	be expended for the encourage-		
5	ment of 4-H activities at the state		
6	or any regional fair; to be expend-		
7	ed on the approval of the governor		
8	and the commissioner of agricul-		
9	ture.		

CONSERVATION AND DEVELOPMENT

		<i>Fiscal Year</i>	
		<i>Spending Unit 1936</i>	<i>1937</i>
Acct No. 73— <i>Extension Division of West Virginia University:</i> <i>County Agricultural Agents</i>			

1	Total	\$ 60,000.00	\$ 60,000.00
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Acct. No. 730—*Geological Survey*

1	Personal Services	\$ 17,100.00	\$ 17,100.00
2	Current Expenses	\$ 15,250.00	\$ 15,250.00
3	Equipment	950.00	950.00
4	Total	\$ 33,300.00	\$ 33,300.00
5	From Collections	1,000.00	1,000.00

Acct. No. 732—*Conservation Commission*

1	Personal Services	\$ 197,408.00	\$ 197,408.00
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2	Current Expenses	42,382.00	102,630.00
3	Lands	104,660.00	15,360.00
4	Total	\$ 344,450.00	\$ 315,398.00
5	From Collections	219,850.00	219,850.00

Acct. No. 770—Department of Public Safety

1	Personal Services	\$ 420,000.00	\$ 420,000.00
2	Current Expenses	80,000.00	80,000.00
3	Equipment	80,000.00	80,000.00
4	Total	\$ 580,000.00	\$ 580,000.00

5 Of the total amount appropri-
6 ated \$30,000 shall be paid out of
7 the Road Fund to assist in defray-
8 ing the cost of the enforcement of
9 traffic, permit and license laws, to
10 be paid upon the requisition of
11 the Department of Public Safety
12 and the Board of Control.

*Acct. No. 772—Adjutant General:
State Militia*

1	Personal Services	\$ 45,000.00	\$ 45,000.00
2	Current Expenses	51,000.00	51,000.00
3	Equipment	4,000.00	4,000.00
4	Total	\$ 100,000.00	\$ 100,000.00

Acct. No. 774—Fire Marshal's Office

1	Personal Services	\$ 18,568.00	\$ 18,568.00
2	Current Expenses	7,432.00	7,432.00
3	Equipment	1,000.00	1,000.00
4	Total	\$ 27,000.00	\$ 27,000.00
5	From Collections	27,000.00	27,000.00

Acct. No. 7800—State Board of Examiners of Accounts

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

<i>Acct. No. 7821—Aviation Field—4-H Camp</i>		
1	Total	\$ 4,000.00 \$ 4,000.00
<i>Acct. No. 7830—State Board of Law Examiners</i>		
1	Total	\$ 1,000.00 \$ 1,000.00
<i>Acct. No. 7840—Board of Examiners for Registered Nurses</i>		
1	Total	\$ 3,000.00 \$ 3,000.00
2	<i>From Collections</i>	3,000.00 3,000.00
<i>Acct. No. 7841—State Board of Dental Examiners</i>		
1	Total	\$ 1,000.00 \$ 1,000.00
2	<i>From Collections</i>	1,000.00 1,000.00
<i>Acct. No. 7842—State Board of Pharmacy</i>		
1	Total	\$ 5,000.00 \$ 5,000.00
2	<i>From Collections</i>	5,000.00 5,000.00
<i>Acct. No. 7843—State Board of Osteopathy</i>		
1	Total	\$ 500.00 \$ 500.00
2	<i>From Collections</i>	500.00 500.00
<i>Acct. No. 7844—State Board of Examiners in Optometry</i>		
1	Total	\$ 1,500.00 \$ 1,500.00
2	<i>From Collections</i>	1,500.00 1,500.00
<i>Acct. No. 7845—State Board of Embalmers and Funeral Directors</i>		
1	Total	\$ 5,000.00 \$ 5,000.00
2	<i>From Collections</i>	5,000.00 5,000.00
<i>Acct. No. 7850—State Board of Registration for Professional Engineers</i>		
1	Total	\$ 3,000.00 \$ 3,000.00
2	<i>From Collections</i>	3,000.00 3,000.00
<i>Acct. No. 7851—State Board of Examiners for Architects</i>		
1	Total	\$ 2,000.00 \$ 2,000.00
2	<i>From Collections</i>	2,000.00 2,000.00
<i>Acct. No. 7860—State Veterinary Examining Board</i>		
1	Total	\$ 500.00 \$ 500.00
2	<i>From Collections</i>	500.00 500.00

FEDERAL RELIEF

- 1 For the purpose of cooperating
- 2 with the Federal government in

3	relief of needy persons, to be ex-		
4	pended at a rate of not more than		
5	\$250,000 per month upon the		
6	requisition of the governor.....	3,000,000.00	3,000,000.00
7	To supplement the General		
8	School Fund to pay teachers sal-		
9	aries for eight months and for		
10	equalization fund purposes	\$10,500,000.00	\$10,500,000.00

Sec 2. "General Appropriations." There is hereby appropriated for the fiscal year one thousand nine hundred thirty-six, and for the fiscal year one thousand nine hundred thirty-seven, from the state fund, general revenue, the following items, and these items shall be appropriated conditionally upon the fulfillment of the provisions set forth in Title III of this act :

		<i>Fiscal Year</i>	
		<i>Spending Unit 1936</i>	<i>1937</i>
<i>Acct. No. 741—Droop Mountain Battlefield Commission</i>			
1	Total	\$ 100.00	\$ 100.00
<i>Acct. No. 743—Point Pleasant Battle Monument Commission</i>			
1	Total	\$ 1,000.00	\$ 1,000.00
<i>Acct. No. 744—Rumseyan Society</i>			
1	Total	\$ 100.00	\$ 100.00
<i>Acct. No. 745—Morgan Morgan Memorial</i>			
1	Total	\$ 25.00	\$ 25.00
<i>Acct. No. 746—Grafton G. A. R. Post</i>			
1	Total	\$ 500.00	\$ 500.00
			To be paid immediately if revenue is available
<i>West Virginia Training School</i>			
1	To supplement Current General		
2	Expense Fund for fiscal year		
3	1934-35		\$ 6,500.00
<i>Spencer State Hospital</i>			
1	To supplement Current General		

2	Expense Fund for fiscal year	
3	1934-35	9,832.00

West Virginia Children's Home

1	To supplement Current General	
2	Expense Fund for fiscal year	
3	1934-35 to permit purchase of	
4	equipment for new unit	6,214.00

West Virginia Industrial School for Boys

1	To pay outstanding obligations	
2	for food, clothing and miscellane-	
3	ous supplies purchased by institu-	
4	tion for fiscal year 1933-34	6,932.00
5	To supplement 1934-1935 Cur-	
6	rent General Expense for purchase	
7	of new boiler.....	1,400.00
8	To supplement 1934-35 Current	
9	General Expense Fund for pur-	
10	chase of seeds, fertilizer and other	
11	farm supplies.....	8,000.00
12	To supplement 1934-35 Current	
13	General Expense fund to build	
14	filtration plant, all unexpended	
15	balances in this account to be re-	
16	appropriated for fiscal year 1935-	
17	36	22,578.50
18	<i>Provided, however, That the</i>	
19	<i>appropriation of this item is con-</i>	
20	<i>tingent upon the granting of an</i>	
21	<i>equal or greater amount of funds</i>	
22	<i>to this state by the federal gov-</i>	
23	<i>ernment for the same purpose.</i>	

West Virginia University

1	Payment of the cost of research	
2	and technical services rendered	
3	to the state during the fiscal year	
4	1935	\$ 7,500.00

Hopemont Sanitarium

1 In the event the amount collect-

2 ed and paid into the treasury to	
3 the credit of the Current General	
4 Expense fund, payable out of col-	
5 lections, does not aggregate \$116,-	
6 000, by reason of the inability of	
7 counties or individuals to pay	
8 their accounts, then there is hereby	
9 authorized, payable out of general	
10 revenues of the state, an amount	
11 sufficient to cover the losses caused	
12 by either or both of the aforesaid	
13 contingencies, to supplement the	
14 appropriation for Current General	
15 Expense for the fiscal year ending	
16 June 30, 1935, Hopemont Sani-	
17 tarium.	
18 To pay the City of Morgantown	
19 amount advanced by said city	
20 for the paving of Beechurst Ave-	
21 nue, Hough Street and Hunt	
22 Street, abutting upon the property	
23 of the West Virginia University	
24 and its branches.....	17,397.85
25 To pay Fidelity National Bank	
26 and Trust Company of Kansas	
27 City for paving certificates issued	
28 by the city of Charleston for	
29 paving abutting on the State	
30 Capitol	5,427.03
31 To pay Mathews Lumber &	
32 Manufacturing Company account	
33 erroneous assessment of charter	
34 tax	280.00
35 To pay the Ohio County Farm-	
36 ers Cooperative Association ac-	
37 count erroneous assessment of	
38 charter tax	297.00
39 To pay Cass Gilbert, Architect,	
40 for State Capitol, balance in full	
41 on contract	449.95

42	The Tax Commissioner is here-	
43	by authorized to refund to the	
44	Gauley Coal Land Company, Gross	
45	Sales Taxes erroneously collected	
46	aggregating not to exceed.....	4,410.62
47	The Tax Commissioner is hereby	
48	authorized to refund to the Daily	
49	Telegraph and Printing Com-	
50	pany, Gross Sales Taxes errone-	
51	ously collected aggregating not to	
52	exceed	1,517.74

Payable Out of State Road Fund.

1	To pay 205 claims against the	
2	State Road Commission resulting	
3	from personal injury or property	
4	damages: This amount appropri-	
5	ated for the remainder of year	
6	ending June 30, 1935, and to re-	
7	main in effect until claims are paid.	16,491.78
8	To pay Mrs. Pearl Curd on ac-	
9	count of the death of her husband	
10	while performing his duties as an	
11	employee of the State Road Com-	
12	mission:	
13	For remainder of year ending	
14	June 30, 1935, including hospital	
15	and funeral expense.....	621.00
16	For year ending June 30, 1936	360.00
17	For year ending June 30, 1937	360.00
18	To pay claim of Jake Bennett,	
19	employee injured while in employ	
20	of State Road Commission:	
21	For remainder of year ending	
22	June 30, 1935, including hospital	1,137.00
23	For year ending June 30, 1936	642.00
24	For year ending June 30, 1937	312.00
25	Total	\$ 2,091.00
26	To pay William H. Shaver for	

27	loss and damage due to cancella-	
28	tion of contract with the State	
29	Road Commission	5,700.00
30	To pay Northern Bank Note	
31	Company for preparatory work on	
32	Hinton Bridge Bonds.....	225.00

Payable Out of the General Fund

1	To pay unpaid claims for steno-	
2	graphic work, stationery and post-	
3	age for the judges of the circuit	
4	courts	4,000.00
5	To refund to the estate of	
6	Frederick J. Knutti, excess pay-	
7	ment of inheritance and transfer	
8	taxes	168.17
9	To refund to the Northfork	
10	Coca-Cola Bottling Works for ex-	
11	cess payments under the gross	
12	sales tax and surtax laws.....	264.82
13	To refund to the Wheeling Cor-	
14	rugating Company for excess pay-	
15	ments under the gross sales tax	
16	and surtax laws.....	281.88
17	To pay Potomac State College	
18	for building a wall, which expen-	
19	diture it was unable to meet from	
20	its appropriation of 1934-1935.....	1,200.00

Acct. No. 7810—State Athletic Commission

1	Total	\$2,500.00	\$	2,500.00
2	<i>From Collections</i>	2,500.00		2,500.00

West Virginia Liquor Control Commission

1 There is hereby appropriated from the general fund to be paid
 2 immediately the sum of \$500,000 to the West Virginia Liquor
 3 Control Commission. The general fund shall be reimbursed by
 4 this amount out of the first collections of the West Virginia
 5 Liquor Control Commission that accrue to the reserve fund in

6 accordance with section nineteen, article three, of House Bill 119,
7 enacted February 25, 1935.

8 There is appropriated for the fiscal years 1935, 1936 and 1937
9 the collections of the West Virginia Liquor Control Commission
10 for expenditure in accordance with the provisions of House Bill
11 119 enacted February 25, 1935.

West Virginia University

1 For the 4-H Camp of the Extension Division of the College
2 of Agriculture: To pay part cost of placement of the West Vir-
3 ginia Century of Progress Exhibit at Jackson's Mill. This ap-
4 propriation is contingent upon the sum of \$10,000.00 being
5 secured from sources other than the state.

6 Fiscal Year 1936..... \$6,500.00

Adjutant General: State Militia

1 Repair of the Huntington Armory,

2 Fiscal Year 1935..... \$1,500.00

Department of Mines

1 To meet additional personal
2 service expenditures ordered by
3 the West Virginia Supreme Court
4 of Appeals, fiscal year 1934-35.....

\$ 15,000.00

West Virginia State College

1 To reimburse Current General Expense, West Virginia State
2 College, for moneys used in connection with expenditures upon
3 FERA and PWA projects at that institution, not to exceed six
4 thousand dollars, from any surplus in the collections of that
5 institution for the fiscal year 1935.

Purchasing Department

1 Printing, binding and station-

2 ery for the fiscal year 1935..... \$ 12,500.00

Auditor's Office: Land Department

1 Salaries and current expenses
2 resulting from increased duties im-
3 posed upon the state auditor's
4 office by the enactment of chapter
5 eighteen, acts of the Legislature of
6 West Virginia, second extraordi-

7 nary session, 1933, fiscal year
 8 1934-1935 \$ 19,450.00

REIMBURSEMENTS

1 There is hereby appropriated from the general fund the fol-
 2 lowing items to reimburse spending units as follows for:

3 *Board of Control*
 4 Amounts advanced to the pur-
 5 chasing department during the fis-
 6 cal year 1935 \$6,000.00

CLAIMS AGAINST THE STATE

1 Harry E. Brown, the annual payments required by chapter
 2 seventeen, acts of the legislature of West Virginia, second ex-
 3 traordinary session, 1933:

4 Fiscal Year 1936..... \$720.00
 5 Fiscal Year 1937..... 720.00

Acct. No. 732-A—*The Conservation Commission of West Virginia*

1 Total\$ 45,000.00 \$ 45,000.00
 2 To qualify for federal reimbursement under the Clarks-
 3 McNary and Weeks Acts.

Morris Memorial Hospital

1 Total\$ 10,000.00 \$ 10,000.00
 2 This appropriation to be spent upon the authorization of the
 3 Board of Control.

Acct. No. 549-A—*West Virginia Foundation for Crippled Children*

1 Total\$ 6,500.00
 2 For the purchase of property at Berkeley Springs, for the
 3 treatment of crippled children, such money to be spent upon
 4 the authorization of the Board of Control.

Sec. 3. There is hereby appropriated out of the general
 2 fund an amount sufficient to meet the principal and interest re-
 3 quirements of the bonded obligations of the state other than
 4 road bonds.

Sec. 4. There is hereby appropriated for expenditure dur-
 2 ing the fiscal years one thousand nine hundred thirty-six and

3 one thousand nine hundred thirty-seven: Appropriations
4 made by general law from special revenue which is not paid
5 into the state fund as general revenue under the provisions
6 of section two, article two, chapter twelve of the code of West
7 Virginia, one thousand nine hundred thirty-one.

Sec. 5. A part of an appropriation to a spending unit that
2 remains unexpended at the end of the fiscal year one thousand
3 nine hundred thirty-six may, by order of the board of public
4 works, be revived and expended to meet unforeseen contingen-
5 cies arising during the fiscal year one thousand nine hundred
6 thirty-seven.

Sec. 6. Whenever the specific payment of a definite sum of
2 money is required by general law such sum shall be paid from
3 the proper item appropriated by this act.

Sec. 7. A fund or collections account, which by law is dedi-
2 cated to a specific use, is hereby appropriated in sufficient
3 amount to meet all lawful demands upon the fund or col-
4 lection account, and shall be expended according to the pro-
5 visions of article three, chapter twelve of the code of one thou-
6 sand nine hundred thirty-one.

Sec. 8. Money that has been erroneously paid into the
2 state treasury is hereby appropriated out of the fund into which
3 it was paid for refund to the proper person.

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

Sec. 9. A contingent fund may be expended as appropriated,
2 with the approval of the board of public works, when the
3 expenditure will improve the governmental service and care for
4 unexpected contingencies. A part of a contingent fund that
5 remains unexpended at the end of the first fiscal year shall
6 automatically become available for expenditure during the sec-
7 ond fiscal year.

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

Sec. 10. There is hereby appropriated to the board of public works a sufficient amount to meet a deficiency that may arise in the fund of the state sinking fund commission because of the failure of a local taxing district to remit funds necessary for the payment of interest and sinking fund requirements. The board of public works is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for this purpose.

The state sinking fund commission shall reimburse the board of public works from the first remittances collected from the local taxing district for which the board of public works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 11. There is hereby appropriated from all forfeitures and license fees collected by the state tax commissioner, all necessary salaries, expenses, commissions, and attorneys' fees authorized by law for the collection of such forfeitures and license fees. All such salaries, expenses, commissions, and attorneys' fees authorized by law shall be paid by the tax commissioner through the state treasury out of gross collections. Any part of such forfeitures that may be due the state or any county, district or municipality shall be distributed through the state treasury by the tax commissioner in the manner provided by law.

Sec. 12. There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district and municipal corporations and have been paid into the treasury:

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

Sec. 13. The cost of printing, binding, and stationery for each spending unit shall be paid from the current expense appropriation for the spending unit.

Sec. 14. A hospital, other than a state hospital, doing charity work, may file with the board of control on October first, one thousand nine hundred thirty-five, and every three months, thereafter, itemized bills for all charity cases treated during the preceding three months. The bills shall be made out on the forms and at the rates fixed by the board of con-

7 trol. Sixty days shall be allowed for filing the bills after which
8 time the board of control shall audit them and pay all proper
9 claims. If, however, the aggregate of all claims filed exceeds
10 one-fourth of the amount appropriated for the year then the
11 board shall apportion the said one-fourth appropriated so that
12 each claim will receive its pro rata share: *Provided, however,*
13 That no claim for treatment of a charity case shall be con-
14 sidered unless the board has received notice from the hos-
15 pital at the time of receiving the charity patient, said notice
16 to be on forms prescribed by and to contain such information
17 as may be required under rules and regulations of the board.
18 The board is authorized to limit the number of patients that
19 may be received as charity cases by any one hospital.

Sec. 15. Where only a total sum is appropriated to a
2 spending unit that total sum shall include personal services,
3 current expenses, and capital outlay.

Sec. 16. The balance of the proceeds of the general school
2 fund remaining after the payment of the appropriations made
3 by this act is appropriated for expenditure in accordance with
4 section six, article nine, chapter eighteen of the code of West
5 Virginia, one thousand nine hundred thirty-one, as amended.

TITLE III—ADMINISTRATION

Section 1. The expenditure of the appropriations made by
2 this act, except those appropriations made to the legislative
3 and judicial branches of the state government, are conditioned
4 upon the compliance by the spending unit with the requirements
5 of this act and the regulations and orders made under it.

6 A requisition for the expenditure of an appropriation made
7 by this act shall be presented to the auditor only through the
8 director of the budget.

Sec. 2. The board of public works shall control and super-
2 vise the fiscal methods of spending units of the state so as
3 to insure the expenditure of funds appropriated by this act in
4 accordance with a sound state fiscal policy and a planned pro-
5 gram of expenditure for the spending unit. The provisions
6 of this act shall not be construed to delegate to the board a
7 control over the policies and activities of agencies and institu-
8 tions that it does not already possess.

Sec. 3. The board shall examine and survey the progress of the collection of the revenue of the state and shall determine each quarter of the fiscal year the proportion which the amount actually collected bears to the collections estimated for that period. For this purpose the board shall have the authority to require all necessary estimates and reports from any office, department or other agency of state government.

Sec. 4. The board may reduce appropriations according to any of the plans which are set forth in sections five, six, and seven of this act.

Sec. 5. If the board determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or a deficit in the general fund, it may reduce equally and pro rata all appropriations out of general revenue in such a degree as may be necessary to prevent an overdraft or a deficit in the general fund.

Sec. 6. The board, in the manner prescribed in section five, may reduce appropriations from :

1. Funds supported by designated taxes or fees;
2. Fees or other collections set aside for the support of designated activities or services.

Each fund and each fee or collection account shall be treated separately, but appropriations from the same fund or account shall be treated equally and reduced pro rata.

Sec. 7. If the board determines that the reductions provided for in sections five and six of this title will dangerously impair the existence of the essential services of government, it may reduce the amount to be expended from separate appropriations in accordance with the following method :

1. The board shall first classify appropriations as follows :

Class One: For agencies collecting revenue and administering the fiscal operations of government, including the offices and departments of the tax commissioner, auditor, treasurer, and sinking fund commission.

Class Two: For agencies vested with the supervision, control, and direction of executive policy and law enforcement, including the governor's office, the attorney general's office, and the department of public safety.

15 Class Three: For state institutions, educational, charitable,
16 and corrective.

17 Class Four: For other departments and services of the state
18 government.

19 Class Five: For transfers from the general fund.

20 2. The board shall first reduce the appropriations from class
21 five and then if necessary reduce the appropriations for the other
22 classes in descending numerical order as follows: Class four.
23 class three, class two, class one. All reductions shall be in multi-
24 ples of five per cent, but a fixed relationship shall be maintained
25 between the classes which shall be measured by a difference of
26 five per cent in the rate of reduction. The maximum reduction
27 shall not exceed twenty-five per cent in class five and in the other
28 classes it shall be proportional according to the following table:

29 Classes	Five	Four	Three	Two	One
30 Per cent	(5%				
31 of reductions	(10%	5%			
32 from	(15%	10%	5%		
33 total	(20%	15%	10%	5%	
34 appropriations	(25%	20%	15%	10%	5%

Sec. 8. The governor, as chairman of the board of public
2 works, shall appoint a director of the budget who shall admin-
3 ister the budget under the direction of the board of public works.
4 The director of the budget shall hold office at the will and pleas-
5 ure of the chairman of the board and shall receive a salary to be
6 fixed by the chairman of the board, but not to exceed six thousand
7 dollars a year.

Sec. 9. In the control and supervision of the fiscal methods of
2 the institutions named in sections three and four, article one.
3 chapter twenty-five of the code of West Virginia, one thousand
4 nine hundred thirty-one, the board of control shall perform such
5 duties as the director of the budget may require.

Sec. 10. With the exception of those institutions under the
2 control of the state board of education, the board of governors of
3 West Virginia University and the board of control, the board of
4 public works shall classify the offices and employments in the
5 state government and its agencies, into a personnel classification
6 which reflects the differences in training, experience, ability and
7 responsibility required for different types or kinds of service or

8 employment, and shall establish uniform salary and wage scales
9 within each class.

10 The board shall require the state board of education, the board
11 of governors of West Virginia University, and the board of con-
12 trol to prepare and apply personnel classifications to the institu-
13 tions under their control.

Sec. 11. The board of public works shall install a system of
2 accrual accounting for the purpose of recording for each spend-
3 ing unit the collection of all income, the amounts available for
4 expenditure and obligations, encumbrances and disbursements.
5 The board shall prescribe uniform records, accounts and forms to
6 be used by spending units so far as may be necessary for the
7 efficient administration of the budget.

Sec. 12. Prior to the beginning of each fiscal year, the execu-
2 tive officer of a spending unit shall submit to the board of public
3 works a detailed plan of expenditure for the ensuing fiscal year.
4 The plan shall be submitted in such form and at such time as the
5 board may require.

6 The plan shall show :

- 7 1. A proposed monthly rate of expenditure for amounts appro-
8 priated for personal services.
- 9 2. A proposed quarterly rate of expenditure for amounts ap-
10 propriated for current expense.
- 11 3. A proposed yearly plan for expenditure of amounts appro-
12 priated for capital outlay.

Sec. 13. The board shall examine the plan of expenditure for
2 each spending unit, and if it finds that the plan conforms to the
3 requirements of this act and is in accordance with sound fiscal
4 methods it shall approve the plan. A plan approved by the
5 board shall control and govern the expenditures of the spending
6 unit, unless the board finds it necessary to reduce expenditures
7 from a fund in order to avoid a deficit in that fund, or the board
8 consents to an alteration of the plan, at the request of the execu-
9 tive officer of the spending unit, to increase the efficiency of the
10 service.

Sec. 14. At least thirty days prior to the beginning of each
2 quarter of the fiscal year the executive officer of a spending unit
3 shall submit to the board of public works a request for an allot-
4 ment of public funds sufficient to operate his unit during the en-

5 suing quarter in accordance with the approved plan of ex-
6 penditure.

7 The board shall examine the request and if the board approves
8 the request and finds that the collection of revenue warrants
9 the expenditure it shall order the allotment to be credited to the
10 account of the spending unit.

Sec. 15. The expenditures of a spending unit during a
2 quarter of the fiscal year shall not exceed the amount of the allot-
3 ment made by the board of public works, except upon the ap-
4 proval of the board of public works, but any amounts remaining
5 unexpended at the close of the quarter shall be available for
6 reallocation and expenditure during any succeeding quarter of
7 the same fiscal year.

Sec. 16. The director of the budget shall keep a record of re-
2 ceipts, accruals, and anticipated income from which appropria-
3 tions are expended in such form that he can determine at any
4 time whether the actual income of the state is sufficient to pay the
5 appropriations made by this act.

Sec. 17. If the amount actually collected by a spending unit
2 exceeds the amount which it is authorized to expend from collec-
3 tions, the excess of collections shall be set aside in a special sur-
4 plus fund for the spending unit. Expenditures from this fund
5 shall be made only in accordance with the following procedure:

6 The executive officer of the spending unit shall submit to the
7 board of public works:

8 1. A plan of expenditure showing the purposes for which the
9 surplus fund is to be expended, and

10 2. A justification statement showing the reasons why the ex-
11 penditure is necessary and desirable.

12 If the board is satisfied that the expenditure is required to de-
13 fray the additional costs of the service or activity of the spending
14 unit, the demand for which is reflected by the surplus of collec-
15 tions and that the expenditure is in accordance with sound fiscal
16 methods, the board may authorize the use of the surplus fund
17 during the current or next fiscal year.

18 An expenditure from a surplus fund without the approval of
19 the board of public works shall be an unlawful use of public
20 funds.

Sec. 18. The board of public works may, at the request of

2 the executive officer of a spending unit, transfer amounts between
3 items of the total appropriation for the spending unit in order
4 to protect or increase the efficiency of the service.

Sec. 19. A spending unit shall:

2 1. Keep and maintain records and accounts in the manner
2-a and on the forms prescribed by the board.

3 2. Transmit reports and estimates at such times as the board
4 shall direct.

5 3. Maintain such personnel classifications and uniform salary
6 scales as the board shall approve.

7 4. Keep its records and accounts open during business hours
8 for inspection by the budget officer or his representatives.

Sec. 20. A provision of another act, or of the code of West
2 Virginia, one thousand nine hundred thirty-one, as amended,
3 which is in conflict with the provisions of this act is hereby sus-
4 pended during the operation of this act.

Sec. 21. If any part of this act is declared unconstitutional
2 by a court of competent jurisdiction its decision shall not affect
3 any portion of this act which remains, but the remaining por-
4 tions shall be in full force and effect as if the portion declared
5 unconstitutional had never been a part of the act.

CHAPTER 10

(House Bill No. 533—By Mr. Thomas)

AN ACT to make a supplemental appropriation from the general
revenue to the general school fund.

[Passed March 9, 1935; in effect ninety days from passage. Approved by
the Governor.]

Sec.

1. Appropriation of one million dol-
lars for each of the fiscal years
1936 and 1937 from the treasury
to the general school fund to
insure a nine months school
term in all school districts: to

Sec.

be transferred upon requisition
of the Governor; state superin-
tendent of free schools to sub-
mit budget to board of public
works; basic salaries of teach-
ers.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from the budget for the fiscal years

2 one thousand nine hundred thirty-five—one thousand nine hun-
3 dred thirty-six and one thousand nine hundred thirty-six—
4 one thousand nine hundred thirty-seven, that there is sufficient
5 revenue available, there is hereby appropriated from the treas-
6 ury state fund general revenue to supplement the general
7 school fund to pay teachers' salaries for nine months and for
8 equalization purposes, to be transferred from the state fund
9 general revenue to the general school fund, upon the requisiti-
10 tion of the governor, at such times and in such amounts as, in
11 the judgment of the governor, the condition of the treasury
12 permits, for the fiscal year one thousand nine hundred thirty-
13 five—one thousand nine hundred thirty-six, one million dol-
14 lars, and for the fiscal year one thousand nine hundred thirty-
15 six—one thousand nine hundred thirty-seven, one million
16 dollars.

17 The purpose of this appropriation is to insure a school term
18 of nine months in all school districts of the state, and no part
19 of this appropriation shall be expended unless and until the
20 state superintendent of free schools shall submit to the board
21 of public works and the board of public works shall have ap-
22 proved a budget of all revenue available in the state for school
23 purposes, including both state revenue and the revenue of the
24 several districts, based upon the payment of basic teachers'
25 salaries, which basic salaries shall not be less than the basic
26 salaries set forth in chapter nine, acts of the Legislature of
27 West Virginia, first extraordinary session, one thousand nine
28 hundred thirty-three, and which basic salaries shall not be
29 greater than the basic salaries set forth in section two, article
30 seven, chapter eighteen of the code of West Virginia, one thou-
31 sand nine hundred thirty-one, which shall in each school dis-
32 trict make such a distribution of all school funds available for
33 such district, including funds available from district revenue,
34 the general school fund for teachers' salaries, and the equaliza-
35 tion fund, and including this appropriation, between teachers'
36 salaries and maintenance expenses as will enable the school to
37 be operated in such district for a school year of nine months.
38 The payment from the general school fund for teachers' salaries
39 shall be upon the basis of the basic salaries set forth in chapter
40 nine, acts of the Legislature of West Virginia, first extraor-
41 dinary session, one thousand nine hundred thirty-three, and
42 the basic salaries in each school district payable from state

43 funds or district funds, or both, shall be uniform throughout
 44 the district, but within the limitations hereinbefore set forth
 45 the basic salaries need not be uniform among the several dis-
 46 tricts depending upon the relative amounts of revenue avail-
 47 able to the several districts from the district revenues.

CHAPTER 11

(House Bill No. 534—By Mr. Thomas)

AN ACT to appropriate moneys from the treasury to further sup-
 plement the general school fund for the fiscal year one thou-
 sand nine hundred thirty-four--one thousand nine hundred
 thirty-five.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. Appropriation of seven hundred thousand dollars to general school fund to supplement payment of teachers' salaries

Sec.

for the ninth month of current school year to be transferred upon requisition of the governor.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from a statement of the revenues
 2 and appropriations for the fiscal year one thousand nine hun-
 3 dred thirty-four—one thousand nine hundred thirty-five, that
 4 there remains in the treasury, state fund general revenue, reve-
 5 nue in excess of the amount hereby appropriated, there is here-
 6 by appropriated from the state fund general revenue for the
 7 remainder of the current fiscal year one thousand nine hun-
 8 dred thirty-four—one thousand nine hundred thirty-five, to
 9 supplement the general school fund to pay on the account of
 10 teachers' salaries for the ninth month of the current school
 11 year, the sum of seven hundred thousand dollars to be trans-
 12 ferred from the state fund general revenue to the general school
 13 fund upon the requisition of the governor at such times and
 14 in such amounts as in his opinion the condition of the treasury
 15 warrants.

• CHAPTER 12

(House Bill No. 535—By Mr. Hiner)

AN ACT to appropriate funds out of the Workmen's Compensation Fund in order that the provisions of house bill number one hundred sixty, passed at this session of the Legislature, may be put into effect.

[Passed March 9, 1935: in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

1. Appropriation from Workmen's Compensation Fund of twenty thousand dollars for fiscal year 1935, and fifty thousand dollars for each of the fiscal

Sec.

years 1936 and 1937, to make effective the provisions of House Bill No. 160 enacted at the regular session, 1935.

Be it enacted by the Legislature of West Virginia:

Section 1. There is hereby appropriated out of funds in the Workmen's Compensation Fund a sum not to exceed twenty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-five, fifty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-six, and fifty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-seven, to provide the personnel and the salaries and expenses for putting into effect the provisions of house bill number one hundred sixty, enacted into law at the regular session, one thousand nine hundred thirty-five, and to make effective the provisions of said bill.

* See chapter seventy-eight, acts of this session.

CHAPTER 13

(Senate Bill No. 58—By Mr. Belknap)

AN ACT to amend and reenact chapter five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, relating to the appointment of conservators for, and the reorganization of and rehabilitation of banking institutions under the supervision of the banking commissioner.

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

ARTICLE VIII.

Sec.

43. Conservator of banking institution, appointment, bond, duties, rights and powers; legal relations same as if receiver had been appointed; sworn inventory of assets and list of liabilities of banking institution; filing of list; resumption of business by banking institution; payment to depositors and other creditors by conservator; provisions concerning deposits received by conserva-

Sec.

tor; approval by commissioner of banking of plan for reorganization of banking institution; how business of reorganized institution conducted; publication by conservator of notice of returning affairs of institution back to its board of directors; copies of notice to depositors; powers of governor or commissioner of banking not impaired; rules and regulations by commissioner of banking to carry out provisions of this section.

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted so as to read as follows:

ARTICLE VIII.

Section 43. Whenever the commissioner of banking shall
 2 deem it necessary, in order to conserve the assets of any
 3 banking institution for the benefit of the depositors and other
 4 creditors thereof, he may appoint a conservator for such
 5 banking institution. The conservator may be an employee of
 6 the department of banking, and may be required to give such
 7 bond and security as the commissioner deems proper.
 8 The conservator, under the direction of the commissioner
 9 of banking, shall take possession of the papers, books, records
 10 and assets of every description of such banking institution,
 11 and take such action as may be necessary to conserve such

12 assets pending further disposition of the business of such
13 institution.

14 The conservator shall have all the rights, powers and priv-
15 ileges now possessed by or hereafter given receivers of in-
16 solvent banking institutions and shall be subject to all the
17 liabilities, obligations and penalties, not inconsistent with the
18 provisions of this article, to which receivers are now or may
19 hereafter become subject.

20 During the period that such conservator remains in pos-
21 session of such banking institution, the legal relations of all
22 parties with respect thereto shall, subject to the other pro-
23 visions of this section, be the same as if a receiver had been
24 appointed therefor.

25 All expenses of any such conservatorship shall be paid out
26 of the assets of such banking institution and shall be a lien
27 thereon, which shall be prior to any other lien. The conserva-
28 tor shall receive a reasonable compensation for his services to
29 be fixed by the commissioner of banking, but in no event shall
30 such compensation exceed that paid to employees of the de-
31 partment of banking for similar services.

32 (a) Immediately upon taking charge of such banking in-
33 stitution, the conservator, in conjunction with a representative
34 of the bank designated by the directors thereof, shall make
35 in duplicate a complete inventory of all assets and an itemized
36 list of all liabilities of such institution. The original and
37 copy of such list shall be subscribed and sworn to by the
38 persons making the same and the original shall be filed with
39 the department of banking as soon as practicable, and the
40 copy shall be retained by the conservator.

41 (b) If the commissioner of banking becomes satisfied that
42 such a course of action may be pursued safely and that it will
43 be in the public interest, he may, in his discretion, terminate
44 the conservatorship and permit such banking institution to
45 resume the transaction of its business subject to such terms,
46 conditions, restrictions and limitations as he may prescribe.

47 (c) While such banking institution is in the hands of the
48 conservator, the commissioner of banking may require such
49 conservator to set aside and make available for withdrawal
50 by depositors and payment to other creditors, on a ratable
51 basis, such amounts as in the opinion of the commissioner may
52 be used safely for this purpose, subject to such priorities and

53 preferences as are provided by law. The commissioner may,
54 in his discretion, permit the conservator to receive deposits.
55 Such deposits shall not be subject to any limitation as to
56 payment or withdrawal. The deposits shall be segregated
57 and shall not be used either to liquidate any indebtedness of
58 such banking institution existing at the time that the conserv-
59 ator was appointed for it or any subsequent indebtedness
60 incurred for the purpose of liquidating any indebtedness of
61 such banking institution existing at the time such conservator
62 was appointed.

63 Deposits received while the banking institution is in the
64 hands of a conservator shall: (1) Be kept on hand in cash;
65 or, (2) be deposited with a federal reserve bank or deposited
66 with such banking institution organized under the United
67 States national bank act, or the law of this state as the com-
68 missioner of banking may, in his discretion, designate; or,
69 (3) be invested in the direct obligations of the United States
70 or the state of West Virginia or the funded obligations of
71 any political subdivision of this state approved by the com-
72 missioner of banking.

73 (d) In any reorganization of any banking institution under
74 a plan of a kind which, by its own terms or under existing
75 law, requires the consent, as the case may be, (a) of depositors
76 and other creditors; or (b) of stockholders; or (c) of both
77 depositors and other creditors, and stockholders, such reor-
78 ganization shall become effective only (1) when the commis-
79 sioner of banking shall be satisfied that the plan of reorgani-
80 zation is fair and equitable to all depositors, other creditors
81 and stockholders, and that the plan is in the public interest
82 and when he shall have approved the plan subject to such
83 conditions, restrictions and limitations as he may prescribe;
84 and (2) when, after reasonable notice of such reorganization,
85 as the case may require, (a) depositors and other creditors
86 of such banking institution representing at least seventy-five
87 per cent in amount of its total deposits and other liabilities;
88 or (b) stockholders owning at least two-thirds in amount of
89 its outstanding capital stock; or (c) both depositors and other
90 creditors representing at least seventy-five per cent in amount
91 of the total deposits and other liabilities and stockholders own-
92 ing at least two-thirds in amount of its outstanding capital
93 stock, shall, as the plan may require, have consented in writing

94 to the plan of reorganization. Claims of depositors or other
95 creditors which will be satisfied in full under the plan of
96 reorganization shall not be included among the total deposits
97 and other liabilities of said banking institution in determining
98 the seventy-five per cent thereof as above provided.

99 When such reorganization becomes effective, all books,
100 records, and assets of the bank shall be disposed of in accord-
101 ance with the provisions of the plan and the affairs of the
102 bank shall be conducted by its board of directors in the man-
103 ner provided by the plan and under the conditions, restric-
104 tions and limitations which may have been prescribed by the
105 banking commissioner. In any reorganization which shall have
106 been approved and shall have become effective as provided
107 herein, all depositors and other creditors and stockholders of
108 such bank, whether or not they shall have consented to such
109 plan of reorganization, shall be fully and in all respects sub-
110 ject to and bound by its provisions, and claims of all depositors
111 and other creditors shall be treated as if they had consented
112 to such plan of reorganization.

113 (e) Fifteen days after the affairs of a banking institution
114 shall have been turned back to its board of directors by the
115 conservator, either with or without a reorganization as pro-
116 vided in subsection (d) hereof, the provisions of subsection
117 (c) hereof shall no longer be effective. Before the conservator
118 shall turn back the affairs of the institution to its board of
119 directors he shall publish in a newspaper published in the
120 municipality or county in which such bank is located. and
121 if no newspaper is so published, then in a newspaper of gen-
122 eral circulation in the county in which the bank is located,
123 a notice in form approved by the commissioner, stating the
124 date on which the affairs of the banking institution will be
125 returned to its board of directors and that the said provisions
126 of subsection (c) will not be effective fifteen days after such
127 date. On the date of the publication of such notice the con-
128 servator shall send a copy of such notice by registered mail
129 to the last known address of every person who is a depositor
130 as shown by the records of the institution. The conservator
131 shall send similar notice in like manner to every person making
132 deposit in such institution under subsection (c) after the date
133 of such newspaper publication and before the time when the
134 affairs of the bank are returned to its directors.

135 (f) Nothing in this section shall be construed to impair in
136 any manner any powers of the governor or the commissioner
137 of banking.

138 (g) The commissioner of banking is hereby authorized to
139 prescribe such rules and regulations as he may deem necessary
140 in order to carry out the provisions of this section.

CHAPTER 14

(House Bill No. 254—By Mr. Martin, of Jefferson)

AN ACT to amend and reenact section eighteen, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to limitations on loans by banking institutions and to the valuation of securities purchased by them.

[Passed February 25, 1935; in effect from passage. Approved by the Governor.]

Sec.
18. Limitation on loans by banking institutions; renewal and reduction of existing loans; what not included in limitation; provisions as to obligations secured by warehouse receipts and limitations on same; certain federal and state obligations and obligations of corporation owning the building of the bank-

Sec. ing institution exempted from provisions of section; collection of obligations in excess of prescribed limitations; penalty for violation of section; loans to officers, directors, etc., of banking institution; securities purchased by bank, value as entered on books and for dividend purposes.

Be it enacted by the Legislature of West Virginia:

Section 18. The total liabilities to any banking institution
2 of any person, firm or corporation, for money borrowed by
3 note, bond, certificate of indebtedness or other device, including
4 in the liabilities of the firm, the liabilities of the several mem-
5 bers thereof, including in the liabilities of any corporation an
6 investment by such banking institution in the stock of such
7 corporation shall at no time exceed ten per cent of the unim-
8 paired capital stock, including debentures and surplus fund
9 of such banking institution: *Provided, however,* That such lia-

10 bilities to a banking institution in excess of the maximum herein
11 provided, outstanding at the date this act takes effect, but not
12 exceeding twenty per cent of the unimpaired capital stock, in-
13 cluding debentures and surplus fund of such banking institu-
14 tion, may be renewed, refunded or extended until December
15 thirty-first, one thousand nine hundred thirty-six; at such time
16 the limit of such liabilities to such banking institution shall be
17 reduced to fifteen per cent of such unimpaired capital stock,
18 debentures and surplus fund of such banking institution and
19 such limit may continue until December thirty-first, one thou-
20 sand nine hundred thirty-seven; after which time such limit
21 shall be reduced so that it will not exceed ten per cent of such
22 unimpaired capital stock, debentures and surplus fund of such
23 banking institution. But the discount of commercial or business
24 paper actually owned by the person, firm or corporation nego-
25 tiating the same shall not be considered as money borrowed
26 within the limitation of this section; and the obligations of any
27 person, firm or corporation, in the form of notes or drafts
28 secured by shipping documents, warehouse receipts or other such
29 documents transferring or securing title covering readily mar-
30 ketable nonperishable staples when such property is fully cov-
31 ered by insurance, if it is customary to insure such staples, shall
32 be considered money borrowed within the meaning of this section
33 but shall be subject to the exception that with respect thereto
34 the limitation of ten per cent of the unimpaired capital stock,
35 including debentures and surplus fund, to which reference has
36 hereinbefore been made, may be increased to twenty-five per cent
37 when the market value of such staples securing such obligations
38 is not at any time less than one hundred and fifteen per cent of
39 the face amount of such obligations, and may be increased up
40 to fifty per cent of such unimpaired capital stock, including
41 debentures and surplus fund, with a corresponding increase in
42 market value of such staples securing such obligation up to not
43 less than one hundred and forty per cent of the face amount of
44 such additional obligation, but this exception shall not apply to
45 obligations of any one person, firm or corporation arising from
46 the same transaction and/or secured upon the identical staples
47 for more than ten months. This section shall not apply to the
48 obligations of the United States or general obligations of any
49 state or of any political subdivisions thereof, or obligations is-

50 sued under authority of the Federal Farm Loan Act, as
51 amended, or issued by the Federal Home Loan Bank, or the
52 Home Owners Loan Corporation. Neither shall this section
53 apply to the obligations of a corporation owning the building
54 in which the banking institution is located, when such banking
55 institution has an unimpaired capital and surplus of not less
56 than one million dollars, or when approved in writing by the
57 commissioner of banking. Nothing herein shall be construed to
58 forbid the sale upon credit of a bank building owned by a
59 banking institution at the time this act takes effect.

60 Indebtedness to a banking institution in excess of the maxi-
61 mum prescribed in this section, outstanding at the date this act
62 takes effect, shall not be renewed, refunded or otherwise ex-
63 tended for a period longer than the limitation provided by this
64 section. Not later than May first, one thousand nine hundred
65 thirty-seven, every banking institution shall proceed to collect
66 such indebtedness by appropriate proceedings to enforce security
67 of personal liability. Violation of this section shall be a misde-
68 meanor and shall be punishable under the provisions of section
69 thirty-nine of this article.

70 No officer, director, clerk or other employee of any banking
71 institution or the commissioner of banking or any employee of
72 the department of banking shall borrow, directly or indirectly,
73 from the banking institution with which he is connected, or
74 is subject to his examination, any sum of money without the
75 written approval of a majority of the board of directors or
76 discount committee thereof filed in its office, or embodied in a
77 resolution adopted by a majority vote of such board, exclusive
78 of the director to whom the loan is made. If an officer, director,
79 clerk or other employee of any bank shall own or control a
80 majority of the stock of any other corporation, a loan to such
81 corporation shall, for the purpose of this section, constitute a
82 loan to such officer, director, clerk or other employee.

83 Securities purchased by a banking institution shall be entered
84 upon the books of the bank at actual cost but may be carried
85 thereafter at market value. For the purpose of calculating the
86 undivided profits applicable to the payment of dividends, securi-
87 ties shall not be estimated at a valuation exceeding their present
88 cost as determined by amortization; that is, by deducting from
89 the cost of a security purchased at a premium, and charging to

90 profit and loss a sum sufficient to bring it to par at maturity,
 91 or adding to the cost of a security purchased at a discount,
 92 and crediting to profit and loss a sum sufficient to bring it to
 93 par at maturity.

CHAPTER 15

(House Bill No. 301—By Mr. Lantz, by request)

AN ACT to exempt banking institutions from furnishing security
 for any deposits to the extent such deposits are insured under
 section twelve-(b) of the federal reserve act, as amended:

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

Sec.	1. Security for deposits insured under section twelve-(b) of the federal reserve act, as amended,		Sec.	not required. 2. Conflicting laws repealed.
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Be it enacted by the Legislature of West Virginia:

Section 1. Notwithstanding any provision of law of this
 2 state or of any political subdivision thereof requiring security
 3 for deposits in the form of collateral, surety bond or in any
 4 other form, security for such deposits shall not be required
 5 to the extent said deposits are insured under the provisions
 6 of section twelve-(b) of the federal reserve act, as amended, or
 7 any amendments thereto.

Sec. 2. All laws or parts of laws in conflict herewith are
 2 hereby repealed.

CHAPTER 16

(House Bill No. 302—By Mr. Lantz, by request)

AN ACT authorizing banking institutions to issue and sell capital
 notes or debentures; subordinating same to other claims;
 construing the term "capital" as used in the banking laws

to embrace the amount of capital notes and debentures outstanding and sold to the Reconstruction Finance Corporation; providing that the capital stock of a banking institution shall be deemed unimpaired when the amount of said capital notes or debentures as represented by cash or sound assets exceeds any impairment as found by the state banking commissioner; requiring any existing deficiency in capital to be paid in cash before retiring said capital notes or debentures; exempting them from assessment and the holders of same individually from any obligations of such institutions and from any assessments to restore impairment of their capital.

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. With approval of banking commissioner, directors of bank may sell its capital notes or debentures; subordinated to claims of depositors and may be subordinated to claims of other creditors; definition of "capital" and when deemed un-

Sec.

impaired; before capital notes paid existing deficiency of capital to be paid in cash; not subject to assessment; holders not individually responsible for debts, etc., of bank and not liable for assessments to restore impairment in capital.

Be it enacted by the Legislature of West Virginia:

Section 1. With the approval of the state banking commissioner any banking institution may at any time through action of its board of directors and without requiring any action of its stockholders issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

The term "capital" as used in the laws of this state relating to banking shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any banking institution and sold by it to the Reconstruction Finance Corporation. The capital stock of any such banking institution may be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the state banking commissioner. Before any such capital notes or debentures are retired or paid by the bank any existing deficiency of its capital (disregarding the notes or debentures to be re-

19 tired) must be paid in cash, to the end that the sound capital
20 assets shall at least equal the capital stock of the bank.

21 Such capital notes or debentures shall in no case be subject
22 to any assessment. The holders of such capital notes or de-
23 bentures shall not be held individually responsible as such
24 holders for any debts, contracts, or engagements of such in-
25 stitution, and shall not be held liable for assessments to restore
26 impairments in the capital of such institution.

Sec. 2. All laws or parts of laws in conflict herewith are
2 hereby repealed.

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CHAPTER 17

(House Bill No. 303—By Mr. Lantz, by request)

AN ACT to authorize any bank, trust company, bank and trust
company, banking association, stock savings bank or mutual
savings bank now or hereafter organized under the laws of
this state or the conservator, receiver or liquidator thereof, to
enter into such contracts, incur such obligations and generally
to do such acts as may be appropriate or necessary to take ad-
vantage of any and all memberships, loans, subscriptions,
contracts, grants, rights or privileges which may, at any time,
be available or inure to said banking institutions or their
depositors or stockholders, or their conservators, liquidators,
or receivers, by virtue of any acts or resolution of the Congress
of the United States to aid, regulate or safeguard banking in-
stitutions and depositors, including the act creating the Fed-
eral Deposit Insurance Corporation; to empower any such
banking institution to subscribe to and acquire any stock or de-
bentures or bonds or other types of securities of said cor-
poration and to comply with its regulations and requirements;
to authorize the appointment of the Federal Deposit Insurance
Corporation as receiver or liquidator of any such insured
closed banking institution, and to authorize said corporation
to do any and all things appropriate in the sale or acquirement

of the assets of such institutions and in the liquidation of same; to make loans to same and to its receivers and liquidators and the state banking commissioner therefor; to provide for the subrogation of said corporation to the rights against said closed institutions of all insured depositors, whose deposits have been paid, or for the payment of which funds have been made available; to recognize right of said corporation to make examinations of and to require reports from such institution, and the state banking commissioner to accept same in lieu of any examination or report authorized to be made to said official; to provide for disclosure by said state banking commissioner to said corporation of the condition and affairs of such insured institution and access to information regarding same; to provide for the vesting of title in said corporation of assets of such closed institutions and the right for the corporation, as receiver or liquidator, to enforce the individual liability of stockholders and directors thereof.

[Passed March 2, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <ol style="list-style-type: none"> 1. Banking institution defined. 2. State banking institution authorized to enter into such contracts, etc., necessary to take advantage of section twelve-(b), federal reserve act, as amended, etc. 3. When federal deposit insurance corporation may act, without bond, as receiver or liquidator of closed state banking institution; powers and duties as such receiver or liquidator. 4. When federal deposit insurance corporation subrogated to rights of owners of deposits insured and paid by it. 5. When examination and reports made by or to federal deposit insurance corporation may be accepted by state banking commissioner in lieu of state examinations or reports; copies 	<p>Sec.</p> <p>of state examinations may be furnished said corporation; section not to limit duties of banks, or powers of banking commissioner.</p> <ol style="list-style-type: none"> 6. Receiver or liquidator of state bank, with consent of banking commissioner may borrow from corporation and furnish assets of banks as security; when court order required; section not to limit present powers to pledge or sell assets. 7. When deposit insurance corporation is receiver, title to all assets of bank passes to it without execution of assignment, etc. 8. If provision of act invalid, other provisions not affected. 9. Conflicting laws repealed.
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Be it enacted by the Legislature of West Virginia:

Section 1. The term "banking institution", as used in this act shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this state.

6 Sec. 2. Any banking institution now or hereafter organized
7 under the laws of this state is hereby empowered, on the au-
8 thority of its board of directors, or a majority thereof, to enter
9 into such contracts, incur such obligations and generally to do
10 and perform any and all such acts and things whatsoever as
11 may be necessary or appropriate in order to take advantage of
12 any and all memberships, loans, subscriptions, contracts, grants,
13 rights or privileges, which may at any time be available or inure
14 to banking institutions or to their depositors, creditors, stock-
15 holders, conservators, receivers or liquidators, by virtue of those
16 provisions of section eight of the federal "Banking Act of one
17 thousand nine hundred thirty-three" (section twelve-(b) of the
18 federal reserve act, as amended,) which establish the Federal
19 Deposit Insurance Corporation and provide for the insurance
20 of deposits, or of any other provisions of that or of any other
21 act or resolution of Congress to aid, regulate or safeguard
22 banking institutions and their depositors, including any amend-
23 ments of the same or any substitutions therefor; also, to sub-
24 scribe for and acquire any stock, debentures, bonds or other types
25 of securities of the Federal Deposit Insurance Corporation and
26 to comply with the lawful regulations and requirements from
27 time to time issued or made by such corporation.

Sec. 3. The Federal Deposit Insurance Corporation created
2 by section eight of the federal "Banking Act of one thousand
3 nine hundred thirty-three" (section twelve-(b) of the federal
4 reserve act, as amended) is hereby authorized and empowered
5 to be and act without bond as receiver or liquidator of any
6 banking institution, the deposits in which are to any extent
7 insured by said corporation, and which shall have been closed
8 on account of inability to meet the demands of its depositors.
9 The appropriate state authority having the right to ap-
10 point a receiver or liquidator of a banking institution, may
11 in the event of such closing tender to said corporation the
12 appointment as receiver or liquidator of such banking institu-
13 tion, and if the corporation accepts said appointment, the
14 corporation shall have and possess all the powers and privi-
15 leges provided by the laws of this state with respect to a receiver
16 or liquidator respectively of a banking institution, its de-
17 positors and other creditors, and be subject to all the duties
18 of such receiver or liquidator, except in so far as such powers,
19 privileges or duties are in conflict with the provisions of

20 subsection one of section twelve-(b) of the federal reserve act,
21 as amended, (section eight of said "Banking Act of one thou-
22 sand nine hundred thirty-three").

Sec. 4. Whenever any banking institution shall have been
2 closed as aforesaid, and said Federal Deposit Insurance Cor-
3 poration shall pay or make available for payment the insured
4 deposit liabilities of such closed institution, the corporation,
5 whether or not it shall have become receiver or liquidator of
6 such closed banking institution, as herein provided, shall be
7 subrogated to all rights against such closed banking institution
8 of the owners of such deposits in the same manner and to the
9 same extent as subrogation of the corporation is provided
10 for in subsection (one) of section twelve-(b) of said federal re-
11 serve act, as amended (being section eight of said "Banking
12 Act of one thousand nine hundred thirty-three") in the case of
13 closing of a national bank: *Provided*, That the rights of de-
14 positors and other creditors of such closed institution shall
15 be determined in accordance with the applicable provisions
16 of the laws of this state.

Sec. 5. The state banking commissioner is authorized to
2 accept in his discretion in lieu of any examination authorized
3 by the laws of this state to be conducted by his department of a
4 banking institution the examination that may have been made
5 of same within a reasonable period by the Federal Deposit
6 Insurance Corporation provided a copy of said examination is
7 furnished to said state banking commissioner. Said state
8 banking commissioner may, also, in his discretion accept any
9 report relative to the condition of a banking institution which
10 may have been obtained by said corporation within a reason-
11 able period, in lieu of a report authorized by the laws of this
12 state to be required of such institution by his department, pro-
13 vided a copy of such report is furnished to said state banking
14 commissioner.

15 Said state banking commissioner may furnish to said cor-
16 poration, or to any official or examiner thereof, a copy or
17 copies of any or all examinations made of any such banking in-
17-a stitution and of any or all reports made by same, and shall give
18 access to and disclose to said corporation or any official or exam-

19 iner thereof any and all information possessed by the office of
20 said state banking commissioner with reference to the condi-
21 tions or affairs of any such insured institution.

22 Nothing in this section shall be construed to limit the duty
23 of any banking institution in this state, deposits in which are
24 to any extent insured under the provisions of section eight
25 of the "Banking Act of one thousand nine hundred thirty-
26 three" (section twelve-(b) of the federal reserve act, as
27 amended) or of any amendment of or substitution for the
28 same, to comply with the provisions of said act, its amend-
29 ments or substitutions, or the requirements of said corpora-
30 tion relative to examinations and reports, nor to limit the
31 powers of the state banking commissioner with reference to
32 examinations and reports under existing law.

Sec. 6. With respect to any banking institution, which is
2 now or may hereafter be closed on account of inability to meet
3 the demands of its depositors or by action of the state banking
4 commissioner or of a court or by action of its directors or in
5 the event of its insolvency or suspension, the state banking
6 commissioner and/or the receiver or liquidator of such in-
7 stitution with the permission of said state banking commis-
8 sioner may borrow from said corporation and furnish any part
9 or all of the assets of said institution to said corporation as
10 security for a loan from the same: *Provided*, That where said
11 corporation is acting as such receiver or liquidator, the order
12 of a court of record of competent jurisdiction shall be first
13 obtained approving such loan. Said state banking commis-
14 sioner upon the order of a court of record of competent juris-
15 diction, and upon a like order and with the permission of said
16 state banking commissioner the receiver or liquidator of any such
17 institution may sell to said corporation any part or all of the
18 assets of such institution.

19 The provisions of this section shall not be construed to limit
20 the power of any banking institution, the state banking com-
21 missioner or receivers or liquidators to pledge or sell assets
22 in accordance with any existing law.

Sec. 7. Upon the acceptance of the appointment of receiver
2 or liquidator aforesaid by said corporation, the possession of
3 and title to all the assets, business and property of such banking
4 institution of every kind and nature shall pass to and vest in

5 said corporation and without the execution of any instruments
6 of conveyance, assignment, transfer or endorsement.

Sec. 8. The validity of any provision or part of this act
2 shall not be dependent upon any other provision or part there-
3 of. If any provision or part thereof should for any reason
4 be held unconstitutional or invalid such decision shall not af-
5 fect the validity of any of the remaining provisions or parts
6 of this act.

Sec. 9. All laws or parts of laws in conflict herewith are
2 hereby repealed.

CHAPTER 18

(House Bill No. 443—By Mr. Lantz)

AN ACT to amend article one, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, relating to
state depositories, by adding thereto a new section fourteen
relating to the temporary investment of surplus funds and
the designation of out-of-state depositories for surplus funds.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec.

14. When state treasurer, with con-
sent of board of public works,
may invest temporary surplus
in state funds and sell such in-

Sec.

vestments; designation of de-
positories without the state for
state funds.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twelve of the code of West Virginia,
one thousand nine hundred thirty-one, be amended by adding there-
to section fourteen to read as follows:

Section 14. Whenever the receipts of the treasury shall ex-
2 ceed the ordinary demands thereon and shall create a temporary
3 surplus greater than one million dollars, and it appears that
4 such surplus will continue for as much as one month, the treas-
5 urer, with the approval in writing of the board of public works,
6 may invest such surplus in bonds or obligations of the United

7 States or for which both principal and interest are guaranteed
8 by the United States, or of the state of West Virginia, or of
9 any political subdivision thereof; and the treasurer may there-
10 after, with like approval of the board of public works, sell such
11 investments in whole or in part, whenever it appears that a
12 present need for such funds exists.

13 Whenever the funds in the treasury exceed the amount for
14 which depositories within the state have qualified, or the de-
15 positories within the state which have qualified are unwilling
16 to receive larger deposits, the board of public works may desig-
17 nate depositories without the state, and when such depositories
18 without the state shall have qualified by giving bond of the
19 character provided by clause (a) (surety company) or clause
20 (c) (collateral) as prescribed in section two of this article, the
21 treasurer may deposit funds therein in like manner as funds
22 are deposited in depositories within the state under this article.

CHAPTER 19

(House Bill No. 366—By Mr. Van Sickler)

AN ACT authorizing the issuance and sale of not exceeding ten million dollars of road bonds of the State of West Virginia to raise money for road construction purposes under and by virtue of the "Good Roads Amendment" to the constitution adopted at the general election held in November, one thousand nine hundred twenty; to provide for the distribution and expenditure of the proceeds of sale thereof, and to provide for the levy and collection of an annual state tax and other revenue sufficient to pay semi-annually the interest on said bonds and the principal thereof within twenty-five years.

[Passed March 7, 1935: in effect from passage. Approved by the Governor.]

Sec.

1. Issue of ten million dollars in state road bonds authorized in such amounts, denominations, etc., as the governor may determine; payable serially in equal

Sec.

- amounts from one to twenty-five years; not to issue until equal or greater amount of existing road bonds retired.
2. Transfer of registered bonds;

<p>Sec. fee: fee for registering payable to bearer bonds; place of payment and interest rate; payable in lawful money of United States; exempt from state, county, etc., taxes.</p> <p>3. Form of bonds.</p> <p>4. Form of coupons.</p> <p>5. Listing of bonds by auditor.</p> <p>6. State road sinking fund, sources; kept in separate account; how expended.</p> <p>7. When state tax may be levied to pay bonds and interest.</p> <p>8. Governor to determine when</p>	<p>Sec. bonds to be sold; sales at not less than par and accrued interest; interest coupon due before sale to be cancelled.</p> <p>9. Proceeds of sale of bonds paid into state road fund; how expended.</p> <p>10. Plates from which bonds engraved property of state.</p> <p>11. Auditor custodian of unsold bonds.</p> <p>12. Interim certificates.</p> <p>13. Expenses incurred in executing provisions of act payable from state treasury.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. That bonds of the state of West Virginia of 2 the par value of ten million dollars are hereby authorized to be 3 issued and sold for the purpose of raising funds for assisting 4 in building and constructing the system of state roads and 5 highways provided for by the constitution. Said bonds may 6 be issued by the governor in such amounts, in coupon or reg- 7 istered form, in such denominations, at such times and bearing 8 such date or dates as the governor may determine, and shall 9 become due and payable serially in equal amounts beginning 10 one year and ending twenty-five years from the date thereof: 11 *Provided, however,* That no bonds may be issued under the 12 provisions of this act until bonds authorized and issued under the 12-a provisions of the "Good Roads Amendment" to the constitu- 13 tion of said state, ratified at the general election held in No- 14 vember, one thousand nine hundred twenty, have been retired 15 and cancelled out of the state road sinking fund created by 16 section six, chapter one hundred thirteen, acts of the Legislature 17 of West Virginia, one thousand nine hundred twenty-one, in 18 an amount equal to or greater than the amount to be issued 19 hereunder at any one time.

Sec. 2. The auditor and treasurer are authorized to ar- 2 range for the transfer of registered bonds and for each 3 such transfer a fee of fifty cents shall be charged by and 4 paid to the state of West Virginia, to the credit of the state 5 road sinking fund. Bonds taken in exchange will be cancelled 6 by the auditor and treasurer and be carefully preserved by the 7 treasurer. The treasurer shall make provisions for registering 8 payable to bearer bonds and for each bond registered a fee of 9 fifty cents shall likewise be charged by and paid to the state

19 to be indebted to, and hereby promise to pay to the bearer
 20 hereof (in the case of a coupon bond) or to _____,
 21 or assigns, (the owner of record, in case of registered bonds)
 22 _____ years after the date of this bond, to-wit: On the
 23 day of _____, 19____, in lawful money of the United
 24 States of America at the office of the Treasurer of the State
 25 of West Virginia, at the capitol of said state, or at the option
 26 of the holder at _____ bank in the City of
 27 New York, the sum of _____ dollars, with interest
 28 thereon at _____ per cent per annum from date, payable
 29 semi-annually in like lawful money of the United States of
 30 America at the Treasurer's office or bank aforesaid, on the
 31 first day of _____ and the first day of _____
 32 of each year, (and in the case of coupon bonds) according to
 33 the tenor of the annexed coupons, bearing the engraved fac-
 34 simile signature of the Treasurer of the State of West Virginia,
 35 upon surrender of such coupons. This bond (in the case of a
 36 coupon bond) may be exchanged for a registered bond of like
 37 tenor upon application to the Treasurer of the State of West
 38 Virginia.

39 To secure the payment of this bond, principal sum and in-
 40 terest, when other funds and revenues sufficient are not avail-
 41 able for that purpose, it is agreed that, within the limits pre-
 42 scribed by the constitution, the board of public works of the
 43 State of West Virginia shall annually cause to be levied and col-
 44 lected an annual state tax on all property in the state, until said
 45 bond is fully paid, sufficient to pay the annual interest on said
 46 bond and the principal sum thereof within the time this bond
 47 becomes due and payable.

48 This bond is hereby made exempt from any taxation by the
 49 State of West Virginia, or by any county, district or municipal
 50 corporation thereof.

51 In testimony whereof, witness the signature of _____,
 52 Treasurer of the State of West Virginia, and the countersigna-
 53 ture of _____, the Auditor of said State hereto affixed
 54 according to law, dated the _____ day of _____, one thou-
 55 sand nine hundred _____, and the seal of the State
 56 of West Virginia.

57 (S E A L)

58

59

.....
 Treasurer of the State of West Virginia

60 Countersigned :

61

62 Auditor of West Virginia

Sec. 4. The form of coupons shall be substantially as follows, to-wit:

3 STATE OF WEST VIRGINIA

4 Bond No..... Coupon No.....

5 On the first day of , 19 , the State of West
6 Virginia will pay to the bearer, in lawful money of the United
7 States of America, at the office of the Treasurer of the State,
8 or at the option of the holder at
9 bank in the City of New York, the sum of

10 dollars, the same being semi-annual interest on Road Bond
11 No. , series of one thousand nine hundred .

12

13 Treasurer of the State of West Virginia

14 The signature of the treasurer to said coupon shall be by
15 his engraved facsimile signature and the coupons shall be
16 numbered in the order of their maturity, from number one con-
17 secutively. Said bonds and coupons may be signed by the
18 present treasurer and auditor, or by any of their respective
19 successors in office; and bonds signed by the persons now in
20 office may be sold by the governor or his successor in office with-
21 out being signed by the successor in office of the present treas-
22 urer or auditor.

Sec. 5. All coupon and registered bonds issued under this act
2 shall be separately listed by the auditor of the state in books
3 provided for the purpose, in each case giving the date, number,
4 character and amount of obligations issued, and in case of
5 registered bonds, the name and post office address of the person,
6 firm or corporation registered as the owner thereof.

Sec. 6. Into the state road sinking fund shall be paid all
2 moneys received from the annual state tax levy on the taxable
3 property in the state levied under the provisions of this act, from
4 any and all appropriations made by the state from other sources
5 for the purposes of paying the interest on said bonds or paying
6 off and retiring same, from fines, forfeitures and penalties, if
7 any made applicable by law for the payment of said bonds or
8 the interest thereon, from transfer fees as herein provided, and

9 from any source whatsoever, which is made liable by law for the
10 payment of the principal of said bonds or the interest thereon.

11 All such funds shall be kept by the treasurer in a separate
12 account, under the designation aforesaid, and all money be-
13 longing to said fund shall be deposited in the state treasury to
13-a the credit thereof.

14 Said fund shall be applied by the treasurer of the state, first to
15 the payment of the semi-annual interest on said bonds as it
16 shall become due as herein provided. The remainder of said
17 fund shall be turned over by the state treasurer to the state
18 sinking fund commission, whose duty it shall be to invest the
19 same in the bonds of the government of the United States, the
20 bonds of the state of West Virginia, or any political sub-
21 division thereof: *Provided, however,* That bonds so purchased
22 by the state sinking fund commission shall mature so as to pro-
23 vide sufficient money to pay off all bonds herein provided to be
24 issued as they may become due; and the money so paid into the
25 said state road sinking fund under the provisions of this act
26 shall be expended for the purpose of paying the interest and
27 principal of the bonds hereby provided for, and for no other
28 purpose except that said fund may be invested until needed,
29 as herein provided.

Sec. 7. In order to provide the revenue necessary for the pay-
2 ment of the principal and interest of said bonds, as hereinbefore
3 provided, the board of public works within the limits prescribed
4 by the constitution, is authorized, empowered and directed to
5 lay annually a tax upon all real and personal property subject
6 to taxation within this state, sufficient to pay interest on said
7 bonds accruing during the current year and one twenty-fifth of
8 the total issue (at par value) of said bonds, for such number
9 of years, not exceeding twenty-five, as may be necessary to pay
10 the interest thereon and to pay off the principal sum of said
11 bonds; and said taxes, when so collected, shall not be liable for
12 or applicable to any other purpose: *Provided, however,* That
13 if there be other funds in the state treasury, or in the state road
14 funds, in any fiscal year, not otherwise appropriated, or if other
15 sources of revenue be hereafter provided by law for the purpose,
16 the board of public works is authorized, empowered and directed
17 to set apart, in any year there be such funds, or other sources
18 of revenue provided for such purpose, a sum sufficient to pay

19 the interest on bonds accruing during the current year, and to
20 pay off and retire the principal of said bonds, or any part
21 thereof, at maturity.

22 The authority hereby vested in the board of public works shall
23 be in addition to the authority now vested in it by present
24 law.

Sec. 8. The governor shall sell all bonds herein mentioned at
2 such time or times as he may determine necessary to provide
3 funds for road construction purposes, as herein provided, upon
4 recommendation of the state road commission. All sales shall
5 be at not less than par and accrued interest. Registered bonds
6 shall bear interest only from the date of delivery. All interest
7 coupons becoming payable prior to said sale date shall be can-
8 celled by the treasurer and rendered ineffective before the
9 delivery of the bonds so sold.

Sec. 9. The proceeds of all sales of bonds herein authorized
2 shall be paid into the state road fund created by section one,
3 article three, chapter forty, acts of the Legislature, first extraor-
4 dinary session, one thousand nine hundred thirty-three;
5 and the proceeds from the sale of said bonds shall be expended
6 as provided by section six, article three, chapter forty, acts of
7 the Legislature, first extraordinary session, one thousand nine
8 hundred thirty-three.

Sec. 10. The plates from which the bonds authorized by this
2 act are engraved shall be the property of the state of West
3 Virginia.

Sec. 11. The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

Sec. 12. The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of said bonds to be
3 held by them in lieu of engraved bonds. When said interim
4 certificates are so issued, they shall become full and legal obliga-
5 tions of the state of West Virginia under all of the provisions
6 of this act just as fully and completely as the engraved and
7 permanent bonds.

Sec. 13. All necessary expenses incurred in the execution of
2 this act shall be paid out of any money in the treasury of the
3 state of West Virginia, not otherwise appropriated, on warrants
4 of the auditor of the state drawn on the state treasurer.

CHAPTER 20

(House Bill No. 394—By Mr. Thomas)

AN ACT authorizing the execution, issuance and sale of not exceeding two million nine hundred eighteen thousand dollars of bonds of the state of West Virginia for the purpose of refunding the outstanding bonds of the state of West Virginia issued for the payment of West Virginia's part of the public debt of the commonwealth of Virginia prior to the first day of January, one thousand eight hundred sixty-one, in accordance with chapter ten, acts of the Legislature of West Virginia, extraordinary session, one thousand nine hundred nineteen, which have become or are becoming due and payable, and for the discharge of which there are or will be when the bonds mature no funds or insufficient funds available, or which are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof; to provide for the application of the proceeds thereof, and to provide for the levy and collection of revenues sufficient to pay semi-annually the interest on said bonds and the principal thereof within four years.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. Issue of state bonds, not exceeding two million nine hundred eighteen thousand dollars, to refund Virginia debt bonds, authorized; dates of issue and payment, form and denominations to be determined by the Governor; payable serially 1936-1939; yearly amount payable.
2. Registration of payable to bearer bonds; fee; bonds exchanged to be cancelled; when payable; interest rate and payments; payable in lawful money of the United States; exempt from state, county, etc., taxes.
3. Form of bond.
4. Form of coupon.
5. Listing of bonds by auditor.
6. Sources of Virginia debt refunding bonds of 1935, sinking

Sec.

- fund.
7. When annual tax levied to pay bonds and interest.
8. Governor to determine when bonds to be sold; interest rate; proceeds credited to Virginia debt sinking fund and Virginia debt refunding bonds of 1935, sinking fund.
9. Interim certificates.
10. For what bonds are legal investments.
11. Plates from which bonds engraved property of state.
12. Treasurer custodian of unsold bonds.
13. Expenses of execution of act payable from state treasury.
14. If any provision of act invalid, remaining provisions not affected.

Be it enacted by the Legislature of West Virginia:

Section 1. That bonds of the state of West Virginia, in an

2 aggregate amount not exceeding two million nine hundred
3 eighteen thousand dollars, are hereby authorized to be issued
4 and sold for the purpose of refunding the outstanding bonds
5 of the state of West Virginia issued for the payment of West
6 Virginia's part of the public debt of the Commonwealth of
7 Virginia prior to the first day of January, one thousand eight
8 hundred sixty-one, in accordance with chapter ten, acts of the
9 Legislature of West Virginia, extraordinary session, one thou-
10 sand nine hundred nineteen, which have become or are becom-
11 ing due and payable, and for the discharge of which there are
12 or will be when the bonds mature no funds, or insufficient
13 funds, available; and in like manner such refunding bonds are
14 hereby authorized to be issued and sold for the purpose of re-
15 funding outstanding bonds not due when such outstanding
16 bonds are to be presented for payment before maturity by the
17 exercise of option provisions or by agreement with the holders
18 thereof. Said bonds shall be of the par value of not exceed-
19 ing two million nine hundred eighteen thousand dollars, dated
20 the first day of January, one thousand nine hundred thirty-
21 five, or such other date as the governor may determine, and
22 shall become due and payable serially beginning the first day
23 of July, one thousand nine hundred thirty-six, and ending the
24 first day of July, one thousand nine hundred thirty-nine, and
25-6 may be either coupon or registered bonds, in such denomina-
27 tions as the governor may determine. The amount payable in
28 each year may be so fixed that when the annual interest is added
29 to the principal amount to be paid the total amount payable
30 in each year in which part of the principal is payable shall be
31 as nearly equal as practicable, or, such bonds may be payable
32 in annual instalments beginning one year after the date thereof,
33 each instalment being as nearly equal in principal amount as
34 may be practicable. It shall be an immaterial variance if the
35 difference between the largest and smallest amounts or princi-
36 pal and interest for any year during the term of the bonds
37 shall not exceed three per cent of the total authorized issue.

Sec. 2. The treasurer shall make provisions for registering
2 coupon or "payable to bearer" bonds, and for each bond so
3 registered a fee of fifty cents shall be charged and paid to the
4 state of West Virginia to the credit of the "Virginia Debt Re-
5 funding bonds of one thousand nine hundred thirty-five, sink-

6 ing fund". Coupon bonds exchanged for registered bonds shall
7 be cancelled by the treasurer and auditor and be preserved
8 by the treasurer.

9 All bonds issued hereunder shall be payable at the office of
10 the treasurer of the state of West Virginia, or, at the option
11 of the holder, at some bank in the City of New York designated
12 by the governor. Said bonds shall bear interest at a rate not
13 exceeding three per cent per annum, payable semi-annually
14 on the first day of January and the first day of July of each
15 year, to bearer, at the office of the treasurer of the state of
16 West Virginia, at the capitol of said state, or at the bank in
17 the City of New York designated by the governor, and, in case
18 of coupon bonds, upon presentation and surrender of interest
19 coupons then due. In the case of registered bonds, the treas-
20 urer of the state shall issue his check for interest payments
21 when due on the first day of January and July of each year,
22 and mail the same to the registered owner at his address, as
23 shown by the record of the registration of said bond or bonds.

24 Both principal and interest of said bonds shall be payable in
25 lawful money of the United States. All said bonds shall be ex-
26 empt from taxation by the state of West Virginia, or by any
27 county, district or municipality thereof, which fact shall ap-
28 pear on the face of the bonds as part of the contract of the
29 holder thereof with the state.

Sec. 3. Said bonds and coupons shall be engraved, and the
2 bonds signed, on behalf of the state of West Virginia, by the
3 treasurer thereof, under the great seal of the state, and
4 countersigned by the auditor of the state, and shall be in the
5 following form or to the following effect, as nearly as may
6 be, namely:

7 COUPON REFUNDING BOND, SERIES OF 1935
8 (or Registered Refunding Bond, Series of 1935, as the case may
9 be) of the

10 STATE OF WEST VIRGINIA

11 \$ No.

12 KNOW ALL MEN BY THESE PRESENTS that the State
13 of West Virginia, under and by virtue of the authority vested
14 in said State by an Act of its Legislature, passed at a.....
15 session held in the year one thousand nine hundred thirty-five,
16 on the day of , one thousand nine

17 hundred thirty-five, and approved by the governor on the
18 day of _____, one thousand nine hundred thirty-
19 five, which said act is hereby made a part hereof, as fully as if
20 set forth at length herein, acknowledges herself to be indebted
21 to and hereby promises to pay to the bearer hereof (in the case
22 of a coupon bond) or to _____, or assigns (the owner
23 of record, in case of registered bonds), _____ years after
24 the date of this bond, to-wit: On the _____ day of _____,
25 one thousand nine hundred _____, in lawful money of the
26 United States of America, at the office of the treasurer of the
27 State of West Virginia, at the capitol of said state, or at the
28 option of the holder at _____ Bank in the
29 City of New York, the sum of _____ dollars, with
30 interest thereon at _____ per cent per annum from date, pay-
31 able semi-annually in lawful money of the United States of
32 America, at the treasurer's office, or bank aforesaid, on the
33 first day of January, and the first day of July of each year
34 (and in the case of coupon bonds), according to the tenor of
35 the annexed coupons, bearing the engraved facsimile signa-
36 ture of the treasurer of the state of West Virginia, upon sur-
37 render of such coupons. This bond (in the case of a coupon
38 bond) may be exchanged for a registered bond of like tenor
39 upon application to the treasurer of the state of West Virginia.
40 To secure the payment of this bond, principal sum and in-
41 terest, when other funds and revenues sufficient are not avail-
42 able for that purpose, it is agreed that the board of public
43 works of the State of West Virginia shall annually cause to be
44 levied and collected an annual state tax on all property in the
45 state, until said bond is fully paid, sufficient to pay the annual
46 interest on said bond and the principal sum thereof within the
47 time this bond becomes due and payable.
48 This bond is hereby made exempt from any taxation by the
49 state of West Virginia, or by any county, district or municipal
50 corporation thereof.
51 In testimony whereof, witness the signature of _____,
52 treasurer of the State of West Virginia, and the counter-signa-
53 ture of _____, the auditor of said state hereto affixed
54 according to law, dated the first day of _____, one
55 thousand nine hundred thirty-five, and the great seal of the
56 State of West Virginia.
57 (GREAT SEAL)

58
 59 Treasurer of the State of
 60 West Virginia.
 61 Countersigned :
 62
 63 Auditor of West Virginia.

Sec. 4. 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....., one thousand
 6 nine hundred, the state of West Virginia will pay to
 7 the bearer, in lawful money of the United States, at the office
 8 of the treasurer of the state, or at the option of the holder at
 9 bank in the city of New York, the sum of.....
 10 dollars, the same being semi-annual interest on bond number
 11, series of one thousand nine hundred thirty-five.
 12

13 Treasurer of the State of West Virginia
 14 The signature of the treasurer to said coupons shall be his
 15 engraved facsimile signature and the coupons shall be numbered
 16 in the order of their maturity, from number one, consecutively.

Sec. 5. All coupons and registered bonds issued under this
 2 act shall be listed by the auditor of the state in books provided
 3 for the purpose, in each case giving the date, number, character
 4 and amount of obligations issued, and in case of registered bonds,
 5 the name and postoffice address of the person, firm or corpora-
 6 tion registered as the owner thereof.

Sec. 6. Into a fund designated the "Virginia Debt Refund-
 2 ing Bonds of 1935, Sinking Fund" shall be paid all moneys
 3 received from the annual state tax levy on the taxable property
 4 in the state levied under the provisions of this act, all moneys
 5 received from any and all appropriations made by the state
 6 from other sources of revenue for the purpose of paying the
 7 interest on said bonds, or the principal thereof, as herein pro-
 8 vided, and from transfer fees as herein provided, and from any
 9 source whatsoever, which is made liable by law for the payment
 10 of the principal of said bonds or the interest thereon. All such
 11 funds shall be kept by the treasurer in a separate account, under

12 the designation aforesaid, and all moneys belonging to said
13 fund shall be deposited in the state treasury to the credit there-
14 of and used for no other purpose than as herein provided.

Sec. 7. In order to provide the revenue necessary for the
2 payment of the principal and interest of said bonds as herein
3 provided the board of public works is authorized, empowered
4 and directed, to lay annually a tax on all real and personal
5 property subject to taxation within the state, sufficient to pay
6 the interest on said bonds accruing and the principal of bonds
7 maturing during any current year, for such number of years
8 not exceeding four as may be deemed necessary to pay the
9 interest thereon and to pay off the principal sum of said bonds;
10 and said taxes, when so levied and collected, shall not be liable
11 for or applicable to any purpose other than paying the indebt-
12 edness of the state as herein provided: *Provided, however,* That
13 the board of public works is hereby authorized, empowered and
14 directed, and upon its failure so to do may be required by the
15 holder of any bond issued hereunder, or by any taxpayer, to set
16 apart in any current year funds collected for general revenue
17 purposes from whatsoever source of taxation derived, a sum suf-
18 ficient to pay the interest on bonds accruing during such current
19 year and to pay off and retire the principal of said bonds or any
20 part thereof, at maturity.

21 The authority hereby vested in the board of public works
22 shall be in addition to the authority now vested in it by present
23 law.

Sec. 8. The governor shall sell the bonds herein provided
2 for at such time or times as he may determine necessary, and
3 the rate of interest on the bonds shall be fixed at the time of
4 the sale thereof, not to exceed the rate hereinabove provided.
5 From the proceeds of the sale or sales of bonds authorized to be
6 issued and sold under the authority of this Act, there shall be
7 credited to the "Virginia Debt Sinking Fund" heretofore cre-
8 ated, an amount equal to the par value of all bonds so issued
9 and sold, and any balance remaining from any such sale shall
10 be credited to the "Virginia Debt Refunding Bonds of 1935,
11 Sinking Fund," herein provided.

Sec. 9. The governor may authorize the issuance of interim
2 certificates to the purchasers of said bonds to be held by them
3 in lieu of the engraved bonds until such time as the engraved

4 bonds shall be delivered. When said interim certificates are so
5 issued, they shall become full and legal obligations of the state
6 of West Virginia under all of the provisions of this act just
7 as fully and completely as the engraved and permanent bonds.

Sec. 10. The bonds issued hereunder shall be a legal invest-
2 ment for the workmen's compensation fund, the irreducible
3 school fund, and all fiduciary or other trust funds, and shall be
4 legal as deposit by any bank to secure deposits of state, county,
5 municipal, or other public funds, and shall be legal as security
6 or collateral for any kind and all bonds required by any court
7 or administrative board or officer of the state and shall be legal
8 as deposit by any insurance, casualty, annuity or like company,
9 with the auditor of the state of West Virginia or any other
10 officer or board of the state.

Sec. 11. The plates from which the bonds of this act are
2 engraved shall be and remain the property of the state of West
3 Virginia.

Sec. 12. The state treasurer shall be the custodian of all
2 unsold bonds issued pursuant to the provisions of this act.

Sec. 13. All necessary expenses incurred in the execution of
2 this act shall be paid out of any money in the treasury of the
3 state of West Virginia, not otherwise appropriated, on war-
4 rants of the auditor drawn on the state treasurer.

Sec. 14. The provisions of this act shall be considered
2 severally, and should any one or more provisions thereof be de-
3 clared unconstitutional, the remaining provisions, if capable of
4 operation when standing without such unconstitutional pro-
5 visions, shall be and remain in full force and effect.

CHAPTER 21

(House Bill No. 325—By Mr. Bibb)

AN ACT to amend and reenact section three, article one, chapter
thirteen of the code of West Virginia, one thousand nine
hundred thirty-one, prescribing the maximum amounts of
indebtedness for which bonds may be issued by a political
subdivision for various purposes; defining the term "sewer-
ing" as used in such section; authorizing and empowering the

county court of any county to negotiate and sell to the government of the United States and to other governmental agencies at private sale at not less than par, such bonds issued for the purpose of erecting and equipping a courthouse and/or jail.

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

3. Limitation on bond issues by political divisions; additional amounts for erection of school buildings, court houses and/or jails and for municipal corporations for grading, paving or

Sec.

sewering or improving streets and alleys; "sewering" defined; sale, by county court, to federal agency, of bonds to erect courthouse or other public building.

Be it enacted by the Legislature of West Virginia:

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

Section 3. No political division authorized by this article to
 2 issue bonds, shall, by any bond issue, become indebted to an
 3 amount, including all other indebtedness, exceeding two and
 4 one-half per cent of the value of the taxable property therein,
 5 as shown by the last assessment thereof, for state and county
 6 purposes, next prior to the issuing of such bonds: *Provided,*
 7 *however,* That any board of education for the acquisition of
 8 land and the erection and equipment of school buildings, and
 9 any county for the erection and equipment of a courthouse and/
 10 or jail for such county, with funds borrowed from the govern-
 11 ment of the United States or any governmental agency, federal
 12 or state, and any municipal corporation of three hundred in-
 13 habitants or more, for the purpose of grading, paving, sewer-
 14 ing, and otherwise improving or reimproving its streets and
 15 alleys, may become indebted and issue bonds in an additional
 16 sum not exceeding two and one-half per cent of the value of the
 17 taxable property therein, ascertained as aforesaid.

18 The term "sewering" as used herein shall be treated in a
 19 comprehensive sense, so as to include all mains, laterals, con-
 20 nections, traps, incinerating and disposal plants, and other
 21 necessary and convenient accessories to a modern, sanitary and
 22 efficient sewerage system, and shall include storm sewers.

23 The county court of any county is hereby authorized and

24 empowered to negotiate and sell to the government of the
 25 United States or to any governmental agency, federal or state,
 26 at private sale, at not less than par any bonds issued for the
 27 purpose of erecting and equipping a courthouse or other public
 28 buildings for such county, under and by virtue of article one,
 29 chapter thirteen of the code of West Virginia, without first
 30 offering them for sale at public auction, or to any other person
 31 or agency.

—o—

CHAPTER 22

(Senate Bill No. 225—By Mr. Fleming)

AN ACT to provide for the submission to the voters of the state of
 an amendment to the constitution of the state of West Vir-
 ginia, as follows: Amending article six by adding thereto
 section thirty-nine-(a).

[Passed March 9, 1935; in effect ninety days from passage. Became a law
 without the approval of the Governor.]

Sec.	Sec.
1. Ratification of proposed constitu- tional amendment submitted to voters, by adding section 39-(a).	4. Certificates of results by com- missioners and canvassers and by county court, as canvassers.
2. Proposed amendment to be known as "municipal home rule amend- ment."	5. Governor to ascertain and declare results from certificates; if rati- fied by voters, in force and effect.
3. Proposed amendment to be placed upon and at foot of official ballot; form of ballot; election, how conducted and returned.	6. Publication of proposed amend- ment by governor before elec- tion.

Be it enacted by the Legislature of West Virginia:

Section 1. The question of the ratification or rejection of an
 2 amendment to the constitution of West Virginia, proposed in
 3 accordance with the provisions of section two, article fourteen,
 4 of said constitution, shall be submitted to the voters of the
 5 state at the next general election, to be held in the year one
 6 thousand nine hundred thirty-six, which proposed amendment
 7 is as follows:

8 That article six of the constitution of West Virginia be

9 amended by adding section thirty-nine-(a) thereto, which is as
10 follows:

11 Section 39-(a). No local or special law shall hereafter be
12 passed incorporating cities, towns or villages, or amending their
13 charters. The legislature shall provide by general laws for the
14 incorporation and government of cities, towns and villages and
15 shall classify such municipal corporations, upon the basis of
16 population, into not less than two nor more than five classes.
17 Such general laws shall restrict the powers of such cities, towns
18 and villages to borrow money and contract debts, and shall
19 limit the rate of taxes for municipal purposes, in accordance
20 with section one, article ten of the constitution of the state of
21 West Virginia. Under such general laws, the electors of each
22 municipal corporation, wherein the population exceeds two
23 thousand, shall have power and authority to frame, adopt and
24 amend the charter of such corporation, or to amend an existing
25 charter thereof, and through its legally constituted authority,
26 may pass all laws and ordinances relating to its municipal
27 affairs: *Provided*, That any such charter or amendment thereto,
28 and any such law or ordinance so adopted, shall be invalid and
29 void if inconsistent or in conflict with this constitution or the
30 general laws of the state then in effect, or thereafter, from
31 time to time enacted.

Sec. 2. For convenience in referring to the said proposed
2 amendment and in the preparation of the form of the ballot
3 hereinafter provided for, said proposed amendment is hereby
4 designated as follows: To be known as the "Municipal Home
5 Rule Amendment."

Sec. 3. For the purpose of enabling the voters of the state
2 to vote on the question of said proposed amendment to the
3 constitution at the general election to be held in the year one
4 thousand nine hundred thirty-six, the board of ballot com-
5 missioners of each county is hereby required to place upon, and
6 at the foot of, the official ballots to be voted at said election,
7 the following:

8 Ballot on constitutional "Municipal Home Rule Amend-
9 ment," amending article six by adding section 39-(a).

10 For ratification of municipal home rule amendment.

11 Against ratification of municipal home rule amendment.

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

Sec. 4. As soon as the result is ascertained the commis-
2 sioners, or a majority of them, and the canvassers (if there be
3 any), or a majority of them, at each place of voting, shall make
4 out and sign two certificates thereof in the following form or
5 to the following effect: "We, the undersigned, who acted as
6 commissioners (or canvassers, as the case may be), of the
7 election held at precinct number, in the district
8 of....., in the county of, on the
9day of November, one thousand nine hundred thirty-six,
10 upon the question of the ratification or rejection of the pro-
11 posed constitutional amendment to article six, do hereby cer-
12 tify that the result of said election is as follows:

13 Amending article six:

14 For ratification of municipal home rule amendment.....
15 votes.

16 Against ratification of municipal home rule amendment
17votes.

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

20 The said two certificates shall correspond with each other in
21 all respects, and contain the full and true returns of said
22 election at each place of voting on said question. The said
23 commissioners, or any one of them (or said canvassers, or any
24 one of them, as the case may be), shall within four days, ex-
25 cluding Sunday, after that on which said election was held,

26 deliver one of said certificates to the clerk of the county court
27 of his county, together with the ballots, and the other to the
28 clerk of the circuit court of the county.

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

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

46 For ratification of municipal home rule amendment.....
47 votes.

48 Against ratification of municipal home rule amendment
49votes.

50 Given under our hands this.....day of.....,
51 one thousand nine hundred thirty-six."

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

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

9 shall be of force and effect from and after the time of such
10 ratification as part of the constitution of the state.

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

CHAPTER 23

(Senate Bill No. 298—By Mr. Barnhart)

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 thirty-five of article six thereof.

[Passed March 9, 1935; in effect ninety days from passage. Became a law
without the approval of the Governor]

<p>Sec.</p> <p>1. Proposed amendment to consti- tution submitted to voters.</p> <p>2. To be known as "garnishee amendment."</p> <p>3. To be placed upon, and at foot of official ballot; how election conducted.</p> <p>4. Certificates of results by com-</p>	<p>Sec.</p> <p>missioners or canvassers, and by county courts, as canvassers.</p> <p>5. Proclamation by governor of re- sults of election; if ratified by voters, in force and effect.</p> <p>6. Publication by governor of pro- posed amendment before elec- tion.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. That the question of the ratification or rejection
2 of an amendment to the constitution of West Virginia, proposed
3 in accordance with the provisions of section two, article fourteen
4 of said constitution, shall be submitted to the voters of the state
5 at the next general election, to be held in the year one thousand
6 nine hundred thirty-six, which proposed amendment is as fol-
7 lows:

PROPOSED AMENDMENT

Section 35. The state of West Virginia shall never be made defendant in any court of law or equity, except the state of West Virginia, including any subdivision thereof, or any municipality therein, or any officer, agent, or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.

Sec. 2. For convenience in referring to the said proposed amendment and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as follows: To be known as the "garnishee amendment".

Sec. 3. For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the general election to be held in the year one thousand nine hundred thirty-six, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballots to be voted at said election, the following:

Ballot on constitutional "garnishee amendment," amending section thirty-five, article six.

For ratification of garnishee amendment.

Against ratification of garnishee amendment.

The election on the proposed amendment, at each place of voting, shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election; and all of the provisions of law relating to general elections, including all duties to be performed by any officer or board, as far as applicable and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

Sec. 4. As soon as the result is ascertained the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and

4 sign two certificates thereof in the following form or to the fol-
5 lowing effect: "We, the undersigned, who acted as commis-
6 sioners (or canvassers, as the case may be), of the election held
7 at precinct number, in the district of,
8 in the county of, on the day of
9 November, one thousand nine hundred thirty-six, upon the ques-
10 tion of the ratification or rejection of the proposed constitutional
11 amendment to section thirty-five, article six, do hereby certify
12 that the result of said election is as follows:

13 Amending section thirty-five, article six:

14 For ratification of garnishee amendment votes.

15 Against ratification of garnishee amendment votes.

16 Given under our hands this day of November, one
17 thousand nine hundred thirty-six."

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

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

37 "We, the board of canvassers of the county of,
38 having carefully and impartially examined the returns of the
39 election held in said county, in each district thereof, on the
40 day of November, one thousand nine hundred thirty-
41 six, do certify that the result of the election in said county, on
42 the question of the ratification or rejection of the proposed con-

43 stitutional amendment to section thirty-five, article six, is as
44 follows:

45 For ratification of garnishee amendment votes.
46 Against ratification of garnishee amendment votes.
47 Given under our hands this day of,
48 one thousand nine hundred thirty-six.”

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

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

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

CHAPTER 24

(House Bill No. 438—By Mr. James)

AN ACT to amend and reenact section seventy, article one, chapter
thirty-one of the code of West Virginia, one thousand nine

hundred thirty-one, relating to the payment of dividends by corporations of this state so as to permit corporations engaged in the exploitation of wasting assets to determine net profits derived from the exploitation of such assets without taking into consideration the depletion thereof.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 70.	Dividends by corporations; dividends applied to corporate indebtedness of stockholder; de-		Sec. 70.	termination of net profits from exploitation of wasting assets.
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Be it enacted by the Legislature of West Virginia:

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

Section 70. The board of directors may, from time to time, 2 declare and pay dividends of so much of the net profits or 3 of any surplus arising from a reduction of capital pursuant to 4 section thirteen-(a) of this article, as they deem it prudent to 5 divide. If any stockholder be indebted to the corporation, his 6 dividend, or so much thereof as is necessary, may be applied 7 to the payment of such indebtedness if then due and payable. 8 Subject to any restrictions in its charter, the directors of 9 any corporation engaged in the exploitation of wasting assets 10 may determine the net profits derived from the exploitation 11 of such wasting assets without taking into consideration the de- 12 pletion of such assets resulting from lapse of time or from 13 necessary consumption of such assets incidental to their ex- 14 ploitation.

CHAPTER 25

(House Bill No. 439—By Mr. James)

AN ACT to amend and reenact section eleven, article one, chapter thirty-one of the code of West Virginia, one thousand nine

hundred thirty-one, relating to the amendment by corporations of this state of their charters.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

11. Amendment of charter by domestic corporation; limitation; aggregate amount of capital not to be changed by amendment

Sec.

changing shares having par value to shares without par value, etc.

Be it enacted by the Legislature of West Virginia:

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

Section 11. Every corporation of this state heretofore or 2 hereafter incorporated may, from time to time and in the 3 manner herein provided, when and as desired, amend its charter 4 by addition to its corporate powers and purposes, or diminution 5 thereof, or both; or by substitution of other powers and 6 purposes, in whole or in part, for those set forth in its charter; 7 or by increasing or decreasing its authorized capital stock or 8 classifying or reclassifying the same, by changing the number, 9 par value, designations, preferences, or relative, participating, 10 optional, or other special rights of the shares, or the qualifications, 11 limitations or restrictions of such rights, or by changing 12 shares with par value into shares without par value or shares 13 without par value into shares with par value either with or 14 without increasing or decreasing the number of shares; or by 15 changing its corporate name, or by making any other change 16 or alteration in its charter that may be desired; and any or all 17 such changes or alterations may be effected by one amendment: 18 *Provided*, That every charter as so amended, changed or altered, 19 shall contain only such provisions as it would be lawful 20 and proper to have in an original agreement of incorporation 21 made at the time of making such amendment.

22 Whenever issued shares having par value are changed into 23 the same or a greater or less number of shares without par 24 value, whether of the same or of a different class or classes of 25 stock, the aggregate amount of the capital of the corporation 26 represented by such shares without par value shall be the same

27 as the aggregate amount of capital represented by the shares
 28 so changed; and whenever issued shares without par value are
 29 changed into other shares without par value to a greater or
 30 lesser number, whether of the same or of a different class or
 31 classes, the amount of capital represented by the new shares
 32 in the aggregate shall be the same as the aggregate amount
 33 of capital represented by the shares so changed; and the amend-
 34 ment of the charter of the corporation effecting any such
 35 change shall set forth that the capital of the corporation will
 36 not be reduced under or by reason of such amendment.

CHAPTER 26

(House Bill No. 440—By Mr. James)

AN ACT to provide for the reduction of capital by corporations of this state by adding to article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, a new section to be designated section thirteen-(a).

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

13-(a). Reduction of capital by domestic corporation by resolution of stockholders; resolution certified to secretary of state; certificate of secretary of state, what to state and recordation; no reduction in capital unless remaining assets sufficient to pay debts; how reduction ef-

Sec.

fecting; when effected by retiring shares; publication of certificate of secretary of state; civil liability for failure to publish; when decrease of capital does not release liability of stockholder; where required publication to be made.

Be it enacted by the Legislature of West Virginia:

That there be added to article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, a new section to be designated section thirteen-(a) and to read as follows:

Section 13-(a). Every corporation of this state heretofore or
 2 hereafter incorporated may reduce its capital at any time and
 3 in the manner herein provided, by a resolution or resolutions
 4 adopted by a majority vote of all of the shares of capital stock
 5 of the corporation entitled to vote, at a meeting of the stock-

6 holders called for that purpose by notice given as provided by
7 the by-laws of the corporation, or in the absence of a provision
8 in the by-laws for such notice, in the manner provided in this
9 article. The president or a vice-president of the corporation,
10 under his signature and the seal of the corporation, shall certify
11 the resolution or resolutions and the fact and manner of the
12 adoption of the same, and of the assenting of all stockholders,
13 the consent of whom is required under this section for such re-
14 duction of capital, to the secretary of state, who shall issue his
15 certificate reciting such resolution, corporate action and facts
16 certified in like manner as an original certificate of incorpora-
17 tion and transmit the same to the corporation. Such certificate
18 or a certified copy thereof shall be recorded and received in evi-
19 dence as provided for the recordation and admission in evidence
20 of an original certificate of incorporation or a certified copy of
21 such original. Such certificate shall declare the reduction of
22 capital as in effect from the date thereof. No such reduction,
23 however, shall be made in the capital of the corporation unless
24 the assets of the corporation remaining after such reduction are
25 sufficient to pay any debts, the payment of which shall not have
26 been otherwise provided for and the certification of said pres-
27 ident or vice-president shall so state.

28 Such reduction of the capital of the corporation may be ef-
29 fected by retiring or reducing the outstanding shares of any
30 class or by drawing the necessary number of the outstanding
31 shares of any class by lot for retirement, or by the exchange by
32 the holders of outstanding shares of any class of the shares of
33 such class held by them for a decreased number of shares of
34 stock of the same or of a different class of stock, or by the ex-
35 change of shares having par value for shares having no par
36 value, or of shares without par value for shares with par value,
37 or by reducing (in conjunction with appropriate action under
38 section eleven of this article) the par value of the shares of any
39 class of stock having par value, or where the amount of capital
40 represented by shares of stock having par value exceeds such
41 par value, by reducing the amount of capital represented by
42 such shares by an amount not greater than such excess, or by
43 reducing the amount of capital represented by shares of stock
44 having no par value, or, in case the capital shall have been in-
45 creased by the transfer thereto from surplus and the transfer
46 shall not have been made in respect of any designated class or

47 classes of stock, by retransferring to surplus all or any part of
48 the amount by which capital shall have been so increased, or by
49 the purchase of shares for retirement, either pro rata from all
50 holders of shares of that class of stock or by purchasing such
51 shares from time to time in the open market or at private sale
52 in both cases at not exceeding such price or prices as may be
53 fixed or approved by the stockholders entitled to vote upon the
54 reduction of capital to be effected in that manner, or by retiring
55 shares owned by the corporation. If such reduction of capital
56 of the corporation be effected by retiring shares, then, if the
57 resolution or resolutions of stockholders above referred to shall
58 so provide, an amount not exceeding that part of the capital of
59 the corporation represented by such shares may be charged
60 against or paid out of the capital of the corporation in respect
61 of such shares.

62 When any corporation shall decrease the amount of its capital
63 as hereinbefore provided, the above-mentioned certificate of the
64 secretary of state shall be published by the corporation for three
65 weeks successively at least once in each week, in a newspaper
66 published in the county in which the principal office of the cor-
67 poration is located; the first publication to be made within
68 fifteen days after the issuance of such certificate, and in default
69 thereof the directors of the corporation shall be jointly and
70 severally liable to any creditors of the corporation who shall
71 suffer loss by reason of the non-compliance with the provisions
72 of this section and the stockholders shall be similarly liable up
73 to the amount of such sums as they may respectively receive of
74 the amount so reduced: *Provided*, That no such decrease of cap-
75 ital shall release the liability of any stockholder, whose shares
76 have not been fully paid, for debts of the corporation thereto-
77 fore contracted.

78 If the principal office of any corporation mentioned in this
79 section is not located within West Virginia, the notice provided
80 by the foregoing paragraph may be published in any county
81 in this state in which it has an office or does business; and if it
82 neither has any office nor does any business in any county in
83 this state, then such notice may be published in the county of
84 this state wherein the seat of government is located.

CHAPTER 27

(Senate Bill No. 76—By Mr. Beacom)

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section twenty-nine, creating a criminal identification bureau of fingerprints, records and statistics, within the department of public safety, conferring powers and duties upon the superintendent of said department, the officer in charge of, and the members of said criminal identification bureau, requiring peace officers and persons in charge of penal institutions, correctional institutions and jails to take fingerprints and make reports respecting crime and criminals and to furnish same to such bureau and providing certain penalties for violation of the provisions thereof and the destruction of the records therein.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Criminal identification bureau in department of public safety (state police) established; how conducted; cooperation with law enforcement officials in state and nation; (1) to be furnished fingerprints and photographs of inmates of state penal and correctional institutions and (2) of fugitives from justice, habitual criminals or persons arrested for certain crimes; re-

Sec.

port to bureau of final disposition of case held for court; (3) when fingerprints and/or photographs may be returned to one accused, but acquitted; (4) penalty for failure to make report required or for removal or mutilation of records of department of public safety; provision of act invalid, remaining provisions not affected.

Be it enacted by the Legislature of West Virginia:

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

Section 29. The superintendent of the department of public safety shall establish, equip and maintain at the offices of the department located at Charleston, a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs and other records pertaining to the investigation of

6 crime and the apprehension of criminals, as hereinafter pro-
7 vided. The superintendent shall appoint or designate a
8 regularly enlisted member of the department as officer in charge
9 of the criminal identification bureau and such officer shall be a
10 qualified fingerprint expert and shall be responsible to the
11 superintendent for the affairs of the bureau. Members of the
12 department assigned to the criminal identification bureau shall
13 classify and file fingerprints, compare the fingerprints of per-
14 sons arrested with those on file and notify the arresting officer
15 if it is found by comparison of fingerprints that any person
16 has a previous criminal record, or is a fugitive from justice.
17 They shall also cooperate with other members of the department
18 of public safety, and all state, county and city law enforcement
19 officials throughout the state in connection with the identifica-
20 tion and apprehension of criminals. Such members shall co-
21 operate with identification bureaus of other states and of the
22 United States, to develop and carry on a complete interstate,
23 national and international system of criminal identification.
24 They may furnish copies of the fingerprints of persons ar-
25 rested in this state to the identification bureau of the United
26 States government and to other states for the purpose of
27 ascertaining if such persons have been previously arrested or
28 convicted of crime.

29 (1) Persons in charge of any penal or correctional insti-
30 tution in this state shall take, or cause to be taken, the finger-
31 prints and description of all persons lawfully committed thereto
32 or confined therein and furnish the same in duplicate to the
33 criminal identification bureau, department of public safety at
34 Charleston. Such fingerprints shall be taken on forms approved
35 by the superintendent of the department of public safety. All
36 such officials as herein named may, when possible to do so,
37 furnish photographs to the criminal identification bureau of
38 such persons so fingerprinted.

39 (2) Members of the department of public safety, and all
40 other state law enforcement officials, sheriffs, deputy sheriffs,
41 constables, and each and every peace officer in this state, shall
42 take or cause to be taken the fingerprints and description of
43 all persons arrested or detained by them, charged with any
44 crime or offense in this state, in which the penalty provided
45 therefor is confinement in any penal or correctional institution,
46 or of any person who they have reason to believe is a fugitive

47 from justice or an habitual criminal, and furnish the same in
48 duplicate to the criminal identification bureau, department of
49 public safety, Charleston, on forms approved by the superin-
50 tendent of said department of public safety. All such officials
51 as herein named may, when possible to do so, furnish to the
52 criminal identification bureau, photographs of such persons
53 so fingerprinted. The arresting officer shall submit to the
54 criminal identification bureau, in duplicate, a report of final
55 disposition concerning any case held for court, or in any case
56 in which the disposition thereof has not been previously fur-
57 nished to said bureau (on the fingerprint record of the person
58 arrested). Such report of final disposition shall be made on
59 forms furnished or approved by the superintendent of the
60 department of public safety.

61 (3) Any person who has been fingerprinted or photographed
62 in accordance with the provisions of this act, who is acquitted
63 of the charges upon which he or she was arrested, and who has
64 no previous criminal record, may, upon the presentation of
65 satisfactory proof to the superintendent of the department of
66 public safety, have such fingerprints or photographs, or both,
67 returned to them.

68 (4) Neglect or refusal of any person mentioned in this act
69 to make the report required herein, or to do or perform any
70 act on his or her part to be done or performed in connection
71 with the operation of this act, shall constitute a misdemeanor,
72 and such person shall, upon conviction thereof, be punished by
73 a fine of not less than twenty-five nor more than two hundred
74 dollars, or by imprisonment in the county jail for a period of
75 not exceeding sixty days, or both, in the discretion of the
76 court. Such neglect shall constitute misfeasance in office and
77 subject such person to removal from office. Any person who
78 wilfully removes, destroys, or mutilates any of the records of
79 the department of public safety, shall be guilty of a misde-
80 meanor, and such person shall, upon conviction thereof, be
81 punished by a fine not exceeding one hundred dollars, or by
82 imprisonment in the county jail for a period of not exceeding
83 six months, or by both, in the discretion of the court.

84 (5) Should any of the provisions of this act be held uncon-
85 stitutional by any court of competent jurisdiction, the same
86 shall not affect the validity of the act as a whole or any part
87 thereof, other than the portion so held invalid.

CHAPTER 28

(Senate Bill No. 111—By Mr. Henderson)

AN ACT to amend and reenact sections twenty-seven and twenty-eight, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, providing for a death, disability, and retirement fund for the members of the department of public safety of West Virginia and dependent members of their families, and providing for pensions for retired or disabled members of the department of public safety or dependent members of their families and making provision for a pension fund board to control and disburse such fund.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

27. Death, disability and retirement fund in department of public safety (state police) created; sources of fund from fees, rewards, salaries of members, etc.; fund kept as separate account by auditor and treasurer; investment of fund by board of public works.

28. (a) Awards and rules and regulations by pension fund board; (b) amount of pension to members of department retired by reason of length of service and age; (c) amount of pension

Sec.

to members retired by reason of permanent disability received in performance of duty; (d) amount of pension to dependents of member losing life in performance of duty; pensions to widow to cease upon remarriage; (e) refund to member released from or severing connection with department after two or more years service; (f) how outstanding annuities paid; (g) reserves for future awards; (h) accounting system.

Be it enacted by the Legislature of West Virginia:

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

Section 27. There is hereby created a death, disability, and retirement fund for the benefit of members of the department of public safety, or any dependent of a member or former member thereof. Into such fund shall be paid such amounts as have heretofore been collected by the superintendent of the department of public safety on account of fees for arrests, rewards, or from any other source permitted by law. There

8 shall be paid into such fund such amounts arising in the future
9 from the above named or any other sources permitted by law,
10 designated by the superintendent of the department of public
11 safety, except that no part of any fine shall be paid thereinto.
12 There shall be deducted from the monthly payroll of each
13 member of the department of public safety four per cent
14 of the amount of his salary, and an additional four per cent
15 of the monthly salary of each member of the department of
16 public safety shall be paid by the state of West Virginia out of
17 the biennial appropriation for said department, which shall be
18 paid into such fund. Any money so collected by the superin-
19 tendent of the department of public safety shall be turned over
20 to the state treasury, and the treasurer and auditor shall keep a
21 separate account thereof on their books. Such funds shall be
22 invested by the state board of public works in bonds of the
23 government of the United States, the state of West Virginia, or
24 any political subdivision thereof.

Sec. 28 (a) The board of commissioners created by section
2 twenty, article two, chapter fifteen of the code of West Vir-
3 ginia, one thousand nine hundred thirty-one, and the super-
4 intendent of the department of public safety shall constitute
5 a pension fund board and shall have the power to make awards
6 or to revise awards previously made for such times and under
7 such terms and conditions as are hereinafter provided for, and
8 shall make all necessary rules and regulations regarding the
9 same not inconsistent with this act.

10 (b) Any member of the department of public safety who
11 has served in said department for a period of twenty years
12 and who has reached the age of fifty-five years, upon applica-
13 tion by said member to the superintendent of said department,
14 together with certificate of service and with the approval of
15 the board of commissioners, shall be retired and shall thereupon
16 receive annually, in monthly installments, from said pension
17 fund an amount equal to two per cent of the total salary
18 earned by him during his service in the department.

19 (c) Any member of said department of public safety who
20 has heretofore received or who may hereafter receive permanent
21 disability in the performance of his duty shall upon certificate
22 of disability of a physician designated for the purpose by the
23 board of commissioners, be retired upon an annual pension of

24 not less than one nor more than two per cent of twenty
25 years salary based on his average earnings while employed by
26 the department.

27 (d) The widow or children under the age of sixteen years,
28 or sole dependent parent of any member of the department
29 of public safety who shall have heretofore or shall hereafter
30 lose his life in the performance of his duty, or where death
31 results from injury received in the performance of duty, shall
32 receive an annual pension that shall not exceed two per cent
33 of twenty years' salary based on his average earnings while
34 employed by the department: *Provided*, That in case of a
35 widow and children such pension shall be for the widow and
36 the children and shall be paid to the widow, and in case there
37 are three or more children under the age of sixteen years and
38 no widow, the said children shall receive the pension in equal
39 shares until they attain the age of sixteen years, and in case
40 there are two children under the age of sixteen years and
41 widow, they shall be paid such pension, but not to exceed fifteen
42 dollars monthly each, until they attain the age of sixteen years,
43 and in the case of only one child and no widow, he or she shall
44 be paid such pension, but not to exceed fifteen dollars monthly,
45 until he or she attains the age of sixteen years: *Provided fur-*
46 *ther*, That in case there is no widow and no children under
47 the age of sixteen years then such pension shall be paid to the
48 parent or parents dependent upon the deceased member:
49 *Provided further*, That if any widow entitled to a pension
50 aforesaid dies or remarries, then such pensions shall cease to be
51 paid to such widow, or her estate, but shall be paid to each of
52 said children, or child, until they reach the age of sixteen years.
53 No such child shall receive more than fifteen dollars per month.

54 (e) Any member of the department of public safety who is
55 released or who severs his connection with the department of
56 public safety and who has served two full years or more with
57 the department, shall, upon request, be refunded all deductions
58 made from his salary, but without interest, on account of this
59 fund. But in the event that such refund is made, and such
60 member subsequently reenlists, no credit shall be allowed to
61 him for any former service. If any member is released or
62 severs his connection with the department before he has served

63 two full years, he shall forfeit his right to have refunded to
64 him any such deductions.

65 (f) All outstanding annuities shall be paid from the current
66 income to such fund and from the interest on or income from
67 an accumulated fund amounting to one hundred and seven
68 thousand dollars.

69 (g) All future awards from such fund shall be valued annu-
70 ally and reserves based on sound actuarial principles for their
71 payment shall be carried on the funds account as a liability
72 against the general fund.

73 (h) An adequate system of accounting shall be installed and
74 kept so as to insure a proper record of all transactions in a
75 detailed record of all contributions and refunds, dates of en-
76 listments, time served, and all releases of members.

CHAPTER 29

(House Bill No. 474—By Mr. LaFon)

AN ACT to amend and reenact sections nine and sixteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to standard uniform for members of the department of public safety and other equipment and supplies, and to prescribe penalty for impersonation of members of the department and for unlawful use of such standard uniform badge or other insignia adopted or used by said department.

[Passed March 9, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

9. Description of standard uniform of department of public safety (state police); uniforms, weapons, horses or other means of conveyance furnished members to remain property of state; local headquarters and quarters

Sec.

for members.
16. Penalty for unauthorized use of uniform, badge or other insignia of department or impersonation of member; definition of "person".

Be it enacted by the Legislature of West Virginia:

That sections nine and sixteen, article two, chapter fifteen of

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

Section 9. The standard uniform to be used by the department of public safety on and after the first day of July, one thousand nine hundred thirty-five, shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap; one inch black strip around sleeve, four inches from end of sleeve; forestry green breeches with one inch black strip down the side; trousers (slacks) with one inch black stripe down the side for officers and clerks regularly enlisted in the department; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; cordovan Sam Browne belt with holster; cordovan leggings and shoes; the officers' uniform will have one and one-quarter inch black stripe around the sleeve or blouse and mackinaw, four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant and one gold shoulder bar for second lieutenant. For non-commissioned officer the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

The superintendent shall provide the members of the department of public safety with suitable arms and weapons, and, when and where he shall deem it necessary, with suitably equipped horses and other means of conveyance. He shall also provide the standard uniforms for all members of the department, for officers, non-commissioned officers and privates herein provided for. All uniforms and all arms, weapons and other property furnished the members of the department of public safety by the state of West Virginia shall be and remain the property of the state.

The superintendent shall establish and maintain local headquarters at such places in West Virginia as are in his judgment suitable and proper to render the department of public safety most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superin-

39 tendent shall provide by lease or otherwise for housing and
40 quarters for the accommodation of the members of the depart-
41 ment of public safety, and shall provide all equipment and
42 supplies necessary for them in the performance of the duties
43 of their office.

Sec. 16. Every person is hereby prohibited and forbidden
2 directly or indirectly to wear, use or order to be used or worn,
3 copy or imitate in any respect or manner, the standard uniform
4 prescribed for members of the department of public safety by
5 this chapter; and any person not a member of said department
6 who shall violate the provisions of this chapter, for which no
7 other penalty is expressly provided, and any person who shall
8 falsely represent himself to be an officer or member of the
9 department of public safety, or to be under the order or direc-
10 tion of any officer or member of said department, or who shall,
11 unless an officer or member thereof, wear the standard uniform
12 prescribed for members of said department, or the badge or
13 other insignia adopted or used by said department, shall be
14 guilty of a misdemeanor, and, upon conviction thereof, shall be
15 fined not exceeding two hundred dollars, or imprisoned in
16 the county jail for a period of not exceeding six months, or
17 both fined and imprisoned, in the discretion of the court.

18 The term "person" as used in this chapter, unless otherwise
19 stated, shall include members of associations, corporations, its
20 agents and employees, and officers and officials of any town,
21 city or county.

*CHAPTER 30

(Com. Sub. for House Bill No. 56—Originating in the House Committee
on the Judiciary.)

AN ACT to amend chapter fifty of the code of West Virginia, one
thousand nine hundred thirty-one, by amending and reenact-
ing section one, article eighteen, relating to the criminal juris-
diction of justices, and by amending and reenacting section
eleven, article seventeen, as last amended by house bill num-
ber sixty-five, acts of the Legislature of West Virginia, regular

* Amending chapter thirty-two, acts of this session.

session, one thousand nine hundred thirty-five, relating to fees of justices in criminal cases, and by amending and re-enacting section fourteen, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, relating to recovery of justices' fees.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

ARTICLE XVIII.

Sec.

1. Criminal jurisdiction of justices of the peace.

ARTICLE XVII.

Sec.

11. Fees of justices of the peace in criminal cases; provision as to

Sec.

- fees earned prior to January 17, 1935.
14. How fees paid; executions for fines and costs and payment to sheriff; exception as to certain costs; claims for justices' fees to be submitted to prosecuting attorney for approval or disapproval.

Be it enacted by the Legislature of West Virginia:

That chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted by amending and reenacting section one, article eighteen; by amending and reenacting section eleven, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, and by amending and reenacting section fourteen, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, to read as follows:

ARTICLE XVIII.

- Section 1. A justice shall have jurisdiction of the following
2 offenses committed in his county, or on any river or creek ad-
3 joining thereto:
4 (a) In cases of assault and battery, unless the offense was
5 committed on a sheriff or other officer or justice, or riotously, or
6 with intent to commit a felony; and no compromise with the
7 party injured shall affect or prevent the trial of such offense
8 by the justice; and if a defendant be convicted of such offense
9 he shall be fined not less than five nor more than fifty dollars;
10 (b) In cases of trespass to personal property; and, if a de-

11 fendant be convicted of such offense, he shall be fined not less
12 than five nor more than fifty dollars;

13 (c) In cases for the violation of section fourteen, article six,
14 chapter sixty-one of this code; and, upon the conviction of a de-
15 fendant for a violation of any of the provisions of said section,
16 he shall be punished as therein provided;

17 (d) In cases of adultery and fornication; and, if a defen-
18 dant be convicted of such offense, he shall be fined twenty dol-
19 lars;

20 (e) In cases of petit larceny; and, if a defendant be con-
21 victed of such offense, he shall be fined not less than ten nor
22 more than thirty dollars, and may, at the discretion of the jus-
23 tice or jury trying the case, be imprisoned in the county jail not
24 exceeding thirty days;

25 (f) In cases for the violation of article seven, chapter sixty-
26 one of this code; and upon the conviction of a defendant for
27 a violation of any of the provisions of said section, he shall be
28 punished as therein provided;

29 (g) In any case where the punishment is limited to a fine not
30 exceeding ten dollars, or to imprisonment for not more than
31 ten days;

32 (h) In all misdemeanor cases for the violation of the pro-
33 visions of chapter sixty of said code as amended by house bill
34 number one hundred nineteen, acts of the Legislature of West
35 Virginia, regular session, one thousand nine hundred thirty-
36 five: *Provided, however,* That whenever a person has been
37 convicted in the municipal or police court of any incorporated
38 town or city, such conviction shall be a bar to any criminal pro-
39 ceeding before a justice for the same offense.

ARTICLE XVII.

Section 11. Every justice shall be entitled to a fee of three
2 dollars in each criminal case and proceeding before him, which
3 fee shall constitute his compensation for all official services per-
4 formed by him in connection with any single case, including
5 affidavit for warrant, warrant of arrest, trial, examination, re-
6 cognizance, issuing subpoenas and copies thereof, warrants sum-
7 moning and swearing a jury when required, swearing and cer-
8 tifying attendance of witnesses, entering judgment and taxing
9 costs, issuing execution and any return thereon, granting an
10 appeal, including the taking of bond or recognizance, and all

11 other acts in connection therewith. Except, that he shall be
12 allowed an additional fee of fifty cents for making and certify-
13 ing a transcript of his docket in any particular case and trans-
14 mitting the same to the clerk of the circuit court, the state road
15 commission, or any other office to which he may be by law re-
16 quired to certify such transcript. The fees herein provided
17 shall cover any particular case and all proceedings thereon,
18 whether there be one defendant or more than one defendant.
19 And no other fees shall be taxed or charged by any justice in
20 such cases and proceedings: *Provided, however,* That the pro-
21 visions of this section shall not apply to the fees of justices
22 earned by them prior to the seventeenth day of January, one
23 thousand nine hundred thirty-five, but the justices shall be
24 entitled to such fees theretofore earned as were authorized by
25 law at the time said fees were earned, and the prosecuting at-
26 torneys, county courts and sheriffs may approve and pay such
27 accrued costs in the same manner as was provided by the code
28 of West Virginia, one thousand nine hundred thirty-one, prior
29 to the enactment of house bills numbers sixty-four and sixty-
30 five, acts of the Legislature of West Virginia, regular session,
31 one thousand nine hundred thirty-five.

Sec. 14. In all cases and proceedings before a justice in re-
2 lation to both felonies and misdemeanors, not triable on the
3 merits of the case, the fees provided by section eleven shall be
4 audited and paid by the county court as other claims against
5 the county. Fees in misdemeanor cases, triable on the merits
6 thereof, may be paid as provided by section fifteen, article five,
7 chapter seven of the code.

8 The justice may issue executions for all fines and costs im-
9 posed by him in criminal proceedings which are not paid by
10 the parties, and shall deliver such executions to a constable of
11 his district of the county and such constable shall collect the
12 same by levy or otherwise if the same can be collected, and shall
13 return such executions to the justice issuing the same, show-
14 ing how he has executed the same, and the justice shall note
15 such returns on his docket. All costs collected by the justice
16 by executions or otherwise shall be paid by him to the sheriff
17 in like manner as the justice is required by section fifteen of
18 this article to pay to the sheriff all fines collected by him: *Pro-*
19 *vided, however,* That the justice need not pay to the sheriff but

20 may pay direct to any constable, any member of the depart-
 21 ment of public safety on account of the department of public
 22 safety, and to any witness such lawful fees as he may have col-
 23 lected on their behalf and which they are lawfully entitled to
 24 receive.

25 No payment of fees or costs shall be made to any justice as
 26 provided herein until the claim shall have been submitted to
 27 the prosecuting attorney and the approval or disapproval of the
 28 prosecuting attorney shall have been noted thereon.

CHAPTER 31

(House Bill No. 64—By Mr. Proctor)

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, relating to fines of justices and payment of fines in misdemeanor cases.

[Passed January 17, 1935; in effect from passage. Approved by the Governor.]

Sec.

15. How claims of justices and constables audited and paid by county courts; annual statement, under oath, of sheriff to

Sec.

auditor, of fines and costs collected by justices and paid to sheriff; payment of same into state treasury by sheriff.

Be it enacted by the Legislature of West Virginia:

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

Section 15. All claims by justices and constables for fees
 2 due them in misdemeanor proceedings in the county instituted
 3 before them on and after the effective date of this act, shall
 4 be audited and examined by the county court, and if found
 5 correct and if submitted, as provided in section fourteen, ar-
 6 ticle seventeen, chapter fifty of this code, the county court
 7 shall cause orders to be issued therefor on the sheriff to be paid
 8 out of the general school fund or out of the general county
 9 fund, as the court may direct. The sheriff shall annually,
 10 during the month of January, render under oath to the audi-

11 tor a true statement of the account of all fines and costs col-
 12 lected by justices and transmitted to him and pay into the
 13 treasury of the state, the net proceeds of such fines
 14 and costs as exhibited by such account, to be appropriated as
 15 directed by the fifth section of article twelve of the Consti-
 16 tution; failure so to do shall be deemed a breach of his official
 17 duty.

* CHAPTER 32

(House Bill No. 65—By Mr. Proctor)

AN ACT to provide for the fees of justices in criminal cases by amending and reenacting sections eleven and fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one.

[Passed January 17, 1935; in effect from passage. Approved by the Governor.]

Sec.

11. Fees of justices of the peace in criminal cases.
 14. How fees paid; executions for fines and costs and payment to

Sec.

sheriff; claims for justices' fees to be submitted to prosecuting attorney for approval or disapproval.

Be it enacted by the Legislature of West Virginia:

That sections eleven and fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read, respectively, as follows:

Section 11. Every justice shall be entitled to a fee of one
 2 dollar in each criminal case and proceeding before him, which
 3 fee shall constitute his compensation for all official services
 4 performed by him in connection with any single case, including
 5 affidavit for warrant, warrant of arrest, trial, examination,
 6 recognizance, issuing subpoenas and copies thereof, warrants
 7 summoning and swearing a jury when required, swearing and
 8 certifying attendance of witnesses, entering judgment and tax-

* Amended by chapter thirty, acts of this session.

9 ing costs, issuing execution and any return thereon, granting
10 an appeal, including the taking of bond or recognizance, and
11 all other acts in connection therewith. Except, that he shall
12 be allowed an additional fee of fifty cents for making and cer-
13 tifying a transcript of his docket in any particular case and
14 transmitting the same to the clerk of the circuit court, the
15 state road commission, or any other office to which he may
16 be by law required to certify such transcript. The fees herein
17 provided shall cover any particular case and all proceedings
18 thereon, whether there be one defendant or more than one de-
19 fendant. And no other fees shall be taxed or charged by any
20 justice in such cases and proceedings.

Sec. 14. In all cases and proceedings before a justice in re-
2 lation to both felonies and misdemeanors, not triable on the
3 merits of the case, the fees provided by section eleven shall be
4 audited and paid by the county court as other claims against
5 the county. Fees in misdemeanor cases, triable on the merits
6 thereof, may be paid as provided by section fifteen, article
7 five, chapter seven of the code.

8 The justice may issue executions for all fines and costs im-
9 posed by him in criminal proceedings which are not paid by
10 the parties, and shall deliver such executions to a constable
11 of his district of the county and such constable shall collect the
12 same by levy or otherwise if the same can be collected, and shall
13 return such executions to the justice issuing the same, showing
14 how he has executed the same, and the justice shall note such
15 returns on his docket. All costs collected by the justice by ex-
16 ecutions or otherwise shall be paid by him to the sheriff in
17 like manner as the justice is required by section fifteen of this
18 article to pay to the sheriff all fines collected by him.

19 No payment of fees or costs shall be made to any justice as
20 provided herein until the claim shall have been submitted to
21 the prosecuting attorney and the approval or disapproval of
22 the prosecuting attorney shall have been noted thereon.

CHAPTER 33

(Senate Bill No. 25—By Mr. Belknap)

AN ACT to amend and reenact section nine, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, relating to appointment of an administrator de bonis non upon the death, resignation, or removal of an executor or the person appointed as administrator with the will annexed.

[Passed February 22, 1935; in effect from passage. Approved by the Governor.]

Sec.

9. Administration of estate in which there is a will, on death of sole surviving executor or administrator c t a. may be granted c t a: administration of estate, in which there is no will, may

Sec.

be granted to proper person by court; no executor or administrator of executor or administrator to have authority to administer estate of first testator or first intestate.

Be it enacted by the Legislature of West Virginia:

Section 9. In any estate in which there is a will, on the death, 2 resignation or removal of the sole surviving executor of any 3 such will or of an administrator with the will annexed, admin- 4 istration of the estate of the testator, not already administered, 5 may be granted with the will annexed; and in any estate in 6 which there is no will, on the death, resignation or removal of 7 the administrator of such estate, administration of the estate, 8 not already administered, may be granted, to such person as the 9 court shall find it proper to appoint; and no executor or ad- 10 ministrator of an executor or administrator shall have author- 11 ity as such to administer the estate of the first testator or the 12 first intestate.

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CHAPTER 34

(Senate Bill No. 29—By Mr. Spillers)

AN ACT to amend and reenact section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter

sixty, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to investing of funds by fiduciaries.

[Passed February 25, 1935; in effect from passage. Approved by the Governor.]

Sec.

2. Authorized investments, without court order or liability for loss, by fiduciaries; minimum and maximum interest rates; ex-

Sec.

ception when instrument creating trust specially directs investments; special directions by courts as to investments.

Be it enacted by the Legislature of West Virginia:

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

Section 2. Any executor, administrator, guardian, curator, committee, trustee, or other fiduciary whose duty it may be to loan or invest money intrusted to him as such, may without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including bonds issued under the federal farm loan act;

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the legislature of such state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality, or any other political division, of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate in this state

27 where the amount secured by such mortgage or trust deed
 28 shall not at the time of making the same exceed eighty per
 29 cent of the assessed value of the real estate covered by such
 30 mortgage or trust deed, and when such mortgage or trust deed
 31 is accompanied by a satisfactory abstract of title, certificate
 32 of title, or title insurance policy, showing good title in the
 33 mortgagor when making such mortgage or trust deed, and by
 34 a fire insurance policy in an old line company with loss, if any,
 35 payable to the mortgagee or trustee as his interest may appear:
 36 *Provided*, That the rate of interest upon the above enumerated
 37 securities in this sub-section (e), in which such investments
 38 may be made shall not be less than four per cent, nor more than
 39 seven per cent, per annum.

40 This section shall not apply where the instrument creating
 41 the trust, or the last will and testament of any testator, or any
 42 court having jurisdiction of the matter, specially directs in
 43 what securities the trust funds shall be invested, and every such
 44 court is hereby given power specially to direct by order or
 45 orders, from time to time, additional securities in which trust
 46 funds may be invested, and any investment thereof made in
 47 accordance with any such special direction shall be legal, and
 48 no executor, administrator, guardian, curator, committee, trust-
 49 tee, or other fiduciary, shall be held liable for any loss resulting
 50 in any such case.

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CHAPTER 35

(Senate Bill No. 47—By Mr. Belknap, by request)

AN ACT to amend and reenact article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to divorces, by amending and reenacting sections one, three, four, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven and twenty-nine of said article, and by repealing sections five and sixteen of said article.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec. 1. Marriages void after decree of nullity. 3. When suits for annulling mar-</p>		<p>Sec. 4. Marriages may not be instituted. Grounds for divorce from bond of matrimony.</p>
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Sec.		Sec.	
5.	Repealed.		suits withdrawn or converted into suits for divorce from bond of matrimony.
15.	Provisions of decree of divorce or annulment concerning maintenance of parties, or minor children, if any; revision or alteration of decree; when divorce or annulment denied, and parties live separate and apart, provisions as to minor children; revision or alteration of decree and decree concerning estate of parties.	21.	When maiden name or name of former husband may be resumed.
16.	Repealed.	22.	Time limit on remarriage of divorced parties, except to each other; when marriages, except to person from whom divorced, void; criminal liability.
18.	If divorce granted, dower rights barred; guilty to compensate innocent party for inchoate right of dower; lien of compensation decreed.	23.	Matrimony and trial of suits for divorce or annulment.
19.	Property rights and conveyances upon divorce or annulment.	25.	Notice to divorce commissioner, if any, of demand for trial.
20.	Provisions concerning divorces from bed and board granted before passage of act; pending	27.	Notice to parties and divorce commissioner by commissioner to whom case referred; when such notice to be published.
		29.	Suit by wife against husband for maintenance; revision or alteration of decree.

Be it enacted by the Legislature of West Virginia:

That sections five and sixteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, be repealed, and that sections one, three, four, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven and twenty-nine, of said article, be amended and reenacted to read as follows:

Section 1. All marriages between a white person and a 2 negro; all marriages which are prohibited by law on account of 3 either of the parties having a former wife or husband then 4 living; all marriages which are prohibited by law on account 5 of consanguinity or affinity between the parties; all marriages 6 solemnized when either of the parties was an insane person, 7 feeble-minded person, idiot, imbecile, or an epileptic, or was 8 afflicted with a venereal disease, or was incapable, because of 9 natural or incurable impotency of body, of entering into the 10 marriage state, or was under the age of consent; all marriages 11 solemnized when either of the parties, prior to the marriage, 12 without the knowledge of the other, had been convicted of an 13 infamous offense, or when, at the time of marriage, the wife, 14 without the knowledge of the husband, was with child by some 15 person other than the husband, or prior to such marriage had 16 been, without the knowledge of the husband, notoriously a 17 prostitute, or when, prior to such marriage the husband, with- 18 out the knowledge of the wife, had been notoriously a licen-

19 tious person, shall be void from the time they are so declared
20 by a decree of nullity.

Sec. 3. A suit for annulling a marriage may not be insti-
2 tuted:

3 (a) Where the cause is the natural or incurable impotency
4 of body of either of the parties to enter the marriage state, by
5 the party who had knowledge of such incapacity at the time
6 of marriage; or

7 (b) Where the cause is fraud, force or coercion, by the
8 party who was guilty of such fraud, force or coercion, nor by
9 the injured party if, after knowledge of the facts, he or she
10 has by acts or conduct confirmed such marriage; or

11 (c) Where the cause is affliction with a venereal disease ex-
12 isting at the time of marriage, by the party who was so afflicted
13 if such party has subsequent to the marriage become cured of
14 such disease, nor by the person who was not so afflicted if he or
15 she after the curing of the afflicted person has by acts or con-
16 duct confirmed the marriage; or

17 (d) Where the cause is the nonage of either of the parties,
18 by the party who was capable of consenting, nor by the party
19 not so capable if he or she has by acts or conduct confirmed
20 the marriage after arriving at the age of consent; or

21 (e) Where the cause is lack of consent on the part of
22 either of the parties, by the party consenting or bringing about
23 the marriage; or

24 (f) Where the cause is that either of the parties has been
25 convicted of an infamous offense prior to marriage, by the
26 other party if, after knowledge of such fact, he or she has
27 cohabited with the party so convicted; or

28 (g) Where the cause is that the wife was at the time of
29 marriage with child by some person other than the husband,
30 or that prior to the marriage the wife had been notoriously a
31 prostitute, by the husband, if, after knowledge of the fact, he
32 has cohabited with the wife; or

33 (h) Where the cause is that the husband was prior to the
34 marriage notoriously a licentious person, by the wife, if, after
35 knowledge of the fact, she has cohabited with the husband.

Sec. 4. A divorce from the bond of matrimony may be de-
2 creed:

3 (a) For adultery; or

4 (b) When either of the parties subsequent to the marriage
5 has, in or out of this state, been sentenced to imprisonment for
6 the commission of a crime which under the laws of this state is
7 a felony, and such sentence has become final, if the suit for di-
8 vorce be commenced while such party is actually imprisoned
9 under such sentence, or before the parties have again cohab-
10 ited; and no pardon granted to the party so sentenced, if suit
11 for divorce shall have been commenced before the granting of
12 such pardon, shall restore such party to his or her conjugal
13 rights; or

14 (c) To the party abandoned, when either party wilfully
15 abandons or deserts the other for two years; or

16 (d) For cruel or inhuman treatment, or reasonable ap-
17 prehension of bodily hurt, and a charge of prostitution made by
18 the husband against the wife falsely shall be deemed cruel
19 treatment within the meaning of this paragraph; or

20 (e) For habitual drunkenness of either party subsequent
21 to the marriage; or

22 (f) For the addiction of either party, subsequent to the
23 marriage, to the habitual use of opium, morphine, cocaine or
24 other like drug.

Sec. 5 is hereby repealed.

Sec. 15. Upon decreeing a divorce, the court may make such
2 further decree as it shall deem expedient, concerning the main-
3 tenance of the parties, or either of them; and upon decreeing
4 the annulment of a marriage, or a divorce, the court may make
5 such further decree as it shall deem expedient, concerning the
6 care, custody, education and maintenance of the minor chil-
7 dren, and may determine with which of the parents the chil-
8 dren or any of them, may remain; and the court may, from
9 time to time afterward, on the petition of either of the parties,
10 revise or alter such decree concerning the maintenance of the
11 parties, or either of them, and make a new decree concerning
12 the same, as the altered circumstances or needs of the parties
13 may render necessary to meet the ends of justice; and the court
14 may also from time to time afterward, on the petition of either
15 of the parties, revise or alter such decree concerning the care,
16 custody, education and maintenance of the children, and make
17 a new decree concerning the same, as the circumstances of the
18 parents and the benefit of the children may require. In any

19 case where the divorce or the annulment is denied, if the par-
20 ties are living separate and apart from each other, the court
21 shall retain jurisdiction of the case for the purpose of deter-
22 mining with which of the parents the children or any of them
23 may remain and of making such order or decree concerning
24 the care, custody, education and maintenance of the minor
25 children, or any of them, as to the court may seem proper and
26 the benefit of the child or children may require; and such order
27 or decree may, from time to time afterward, on petition of
28 either of the parties, be revised or altered, and a new order or
29 decree made, as the circumstances of the parties or the needs
30 of the children may require. For the purpose of making effec-
31 tual any order or decree provided for in this section the court
32 may make any order or decree concerning the estate of the
33 parties, or either of them, as it shall deem expedient.

Sec. 16 is hereby repealed.

Sec. 18. When a divorce shall be granted, all rights of either
2 husband or wife to dower shall be thereby barred; but the
3 court when granting any divorce shall, in every proper case,
4 compel the guilty party to compensate the innocent party for
5 any inchoate right of dower, in any then existing property,
6 that may be barred by the divorce; and to secure the payment
7 of such compensation the court may make such compensation a
8 lien upon the real estate of the party liable therefor.

Sec. 19. Upon decreeing the annulment of a marriage, or
2 upon decreeing a divorce, the court shall have power to award
3 to either of the parties whatever of his or her property, real or
4 personal, may be in the possession, or under the control, or in
5 the name, of the other, and to compel a transfer or conveyance
6 thereof as in other cases of chancery.

Sec. 20. Any decree of divorce from bed and board entered
2 before the passage of this act, may be revoked at any time by the
3 same court by which it was pronounced, under such regulations
4 and restrictions as the court may impose, upon the joint applica-
5 tion of the parties, and upon their producing satisfactory evi-
6 dence of their reconciliation. Either party to a suit in which a
7 divorce from bed and board has been granted prior to the
8 passage of this act may proceed to have the same made final in
9 the manner prescribed by the code of West Virginia. All suits

10 now pending for divorce from bed and board shall be converted
11 forthwith into suits for divorce from the bonds of matrimony
12 or withdrawn, at the option of the plaintiff. The court shall, in
13 each case when a suit for divorce from bed and board is con-
14 verted into a suit for divorce from the bonds of matrimony,
15 enter a memorandum to this effect in the chancery records, and
16 notice thereof shall be given to the defendant in the manner pro-
17 vided for service of original process.

Sec. 21. The court upon granting a divorce to a woman may,
2 if there are no children of such marriage, allow her to resume
3 her maiden name, or the name of a former deceased husband.

Sec. 22. When a divorce is decreed neither party to the
2 marriage so dissolved shall in any case again marry within
3 sixty days from the date of the decree, or pending an appeal of
4 the case in the supreme court. The court may, in its discretion,
5 further prohibit the guilty party from marrying again within
6 a certain time, not to exceed one year from the date of the de-
7 cree. The foregoing shall not prevent the divorced parties from
8 being remarried to each other at any time. The periods within
9 which both parties are prohibited from marrying again,
10 whether prescribed by law or by the court, shall be stated in
11 the decree; and any marriage contracted by any divorced
12 party, except a remarriage to the person from whom divorced,
13 within the prohibited period, shall be void, and the party shall
14 be criminally liable the same as if no divorce had been granted.

Sec. 23. Suit for divorce or annulment shall mature the
2 same as other cases in chancery, and when properly matured
3 the case shall be placed on the docket for trial, and the same
4 shall be tried before the court in chambers, and all witnesses
5 shall appear and testify at the trial the same as witnesses in
6 an action at law; and the law governing the taking and read-
7 ing of depositions in an action at law shall apply to the deposi-
8 tions in the trial of divorce cases: *Provided*, That the court may,
9 instead of proceeding with the case under this section, refer
10 the same to a commissioner in chancery, or a special commis-
11 sioner, as hereinafter provided.

Sec. 25. The plaintiff shall, in every case which is to be
2 heard before the court, at least thirty days before the first

3 day of the term at which it is expected to try the case before
4 the court, give the divorce commissioner of the county, if one
5 has been appointed under the provisions of section twenty-four
6 of this article, notice in writing that a trial will be demanded. If
7 the plaintiff has not in the bill stated the residence and post-
8 office address of the defendant, he shall furnish it to the di-
9 vorce commissioner at the time of giving such notice;
10 but if the residence and postoffice address of the defendant
11 are unknown to the plaintiff, at the time of the giving of no-
12 tice, an affidavit of this fact, by the plaintiff, delivered to the
13 divorce commissioner with the notice shall be sufficient.

Sec. 27. The commissioner to whom any case is referred
2 under the provisions of the previous section shall, before pro-
3 ceeding to execute the requirements of the decree of reference,
4 give to the parties or their attorneys, and the divorce commis-
5 sioner, if one has been appointed under the provisions of sec-
6 tion twenty-four of this article, at least ten days' notice of the
7 time and place when and where he will commence proceedings,
8 but if any party is not represented by an attorney and personal
9 service cannot be had on the party on account of absence from
10 the state or nonresidence, then it shall be sufficient to publish
11 the notice in a newspaper of general circulation in the county
12 wherein the suit is pending for such length of time as the court
13 may direct.

Sec. 29. Whenever a husband shall, without good and suffi-
2 cient cause, have failed to provide suitable support for his wife,
3 or have abandoned or deserted her, or if the wife, for such
4 cause as would entitle her to a divorce, is actually living apart
5 from her husband, and such husband is in either case of suffi-
6 cient ability to support his wife, the circuit court of any county
7 that would have jurisdiction of a suit for divorce between the
8 parties, shall, at the suit of the wife, in chancery, whether or
9 not a divorce be prayed for, decree to the wife as alimony and
10 separate maintenance such sum out of the husband's earnings
11 and income as the court may determine, considering the cir-
12 cumstances of the parties and their stations in life, and may
13 prohibit the husband from imposing any restraint on her
14 personal liberty, and may free her real and personal property
15 from possession, control or any interest of the husband; and
16 during the pendency of the suit the court, or judge thereof in

17 vacation, shall have the same powers to make such orders as
 18 are provided for suits for divorce by section thirteen of this
 19 article. Any decree entered in the case shall be effective dur-
 20 ing such time as the court shall by its order direct, or until
 21 the further order of the court thereon, and, upon the petition
 22 of either party, the court may, from time to time afterwards,
 23 revise or alter such decree, or make further decrees, concern-
 24 ing the maintenance of the wife and the interest of the hus-
 25 band in the property of the wife, and the care, custody, edu-
 26 cation and maintenance of the minor children of the parties,
 27 and may determine with which of their parents the children
 28 or any of them shall remain.

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CHAPTER 36

(Senate Bill No. 59—By Mr. Mathews)

AN ACT to provide for procuring attendance of persons resident or domiciled outside this state as witnesses in criminal proceedings pending or about to be instituted in courts of record in this state, and to provide for the attendance of persons resident or domiciled in this state as witnesses in criminal proceedings in courts of record in other states; to provide for compensating such persons so attending as witnesses in this state, and to provide certain immunities for persons coming into or passing through this state as such witnesses.

[Passed March 9, 1935: In effect from passage. Became a law without the approval of the Governor.]

Sec.	Sec.
1. Procedure for securing attendance of person resident in this state as witness in criminal case in another state: prepayment of mileage and per diem: penalty for failure of witness to attend.	3. When nonresident witness in or passing through this state free from arrest or service of process.
2. Procedure for securing attendance of nonresident as witness in criminal case in this state: prepayment of mileage and per	4. Interpretation and construction of act.
	5. How act cited.
	6. Inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

Section 1. If a judge of a court of record in any state,
 2 which by its laws has made provision for commanding persons
 3 within that state to attend and testify in criminal prosecutions

4 in this state, certifies under the seal of such court that there
5 is a criminal prosecution pending in such court, that a person
6 being within this state is a material witness in such prosecu-
7 tion, and that his presence will be required for a specified
8 number of days, upon presentation of such certificate to any
9 judge of a court of record in the county in which such person
10 is found, such judge shall fix a time and place for a hearing
11 and shall notify the witness of such time and place.

12 If at the hearing the judge determines that the witness is
13 material and necessary, that it will not cause undue hardship
14 to the witness to be compelled to attend and testify in the prose-
15 cution in the other state, that the witness will not be compelled
16 to travel more than one thousand miles to reach the place of
17 trial by the ordinary traveled route, and that the laws of the
18 state in which the prosecution is pending, and of any other
19 state through which the witness may be required to pass by
20 ordinary course of travel, will give to him protection from
21 arrest and the service of civil and criminal process, he shall
22 issue a summons, with a copy of the certificate attached, direct-
23 ing the witness to attend and testify in the court where the
24 prosecution is pending, at a time and place specified in the
25 summons.

26 If the witness, who is summoned as above provided, after
27 being paid or tendered, by some properly authorized person,
28 the sum of ten cents a mile for each mile by the ordinary trav-
29 eled route to and from the court where the prosecution is pend-
30 ing, and five dollars for each day that he is required to travel
31 and attend as a witness, fails without good cause to attend and
32 testify as directed in the summons, he shall be punished in the
33 manner provided for the punishment of any witness who dis-
34 obeys a summons issued from a court of record in this state.

Sec. 2. If a person in any state, which by its laws has made
2 provision for commanding persons within its borders to attend
3 and testify in criminal prosecutions in this state, is a material
4 witness in a prosecution pending or about to be instituted in
5 a court of record in this state, a judge of such court may issue
6 a certificate under the seal of the court stating these facts and
7 specifying the number of days the witness will be required.
8 This certificate shall be presented to a judge of a court of
9 record in the county in which the witness is found.

10 If the witness is summoned to attend and testify in the

11 criminal prosecution in this state he shall be tendered the sum
12 of ten cents a mile for each mile by the ordinary traveled route
13 to and from the court where the prosecution is pending, and
14 five dollars for each day that he is required to travel and at-
15 tend as a witness. A witness who has appeared in accordance
16 with the provisions of the summons shall not be required to
17 remain within this state a longer period of time than the period
18 mentioned in the certificate.

Sec. 3. If a person comes into this state in obedience to a
2 summons directing him to attend and testify in a criminal
3 prosecution in this state he shall not, while in this state pur-
4 suant to such summons, be subject to arrest or the service of
5 process, civil or criminal, in connection with matters which
6 arose before his entrance into this state under the summons.
7 If a person passes through this state while going to another
8 state in obedience to a summons to attend and testify in a
9 criminal prosecution in that state or while returning therefrom,
10 he shall not while so passing through this state be subject to
11 arrest or the service of process, civil or criminal, in connection
12 with matters which arose before his entrance into this state
13 under the summons.

Sec. 4. This act shall be so interpreted and construed as to
2 effectuate its general purpose to make uniform the law of the
3 states which enact it.

Sec. 5. This act may be cited as "Uniform act to secure
2 the attendance of witnesses from without the state in criminal
3 cases."

Sec. 6. All acts or parts of acts inconsistent with this act
2 are hereby repealed.

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CHAPTER 37

(Senate Bill No. 220—By Mr. Mathews)

AN ACT to amend and reenact section four, article one, chapter
fifty-one of the code of West Virginia, one thousand nine
hundred thirty-one, providing for the regulation by the

supreme court of appeals of pleading, practice and procedure in the courts of West Virginia.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

4. Supreme court of appeals to make general rules and regulations governing pleading, practice and procedure in all courts of record in state; existing statutes relating to pleading, etc.; rules and regulations to be uniform for courts of same class; rules governing

Sec.

local practice to be approved by supreme court of appeals; judicial council as advisory committee; reference of, and hearing upon proposed rules before adoption; publication as appendix to official reports of supreme court of appeals; inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

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

Section 4. The supreme court of appeals may, from time to time, make and promulgate general rules and regulations governing pleading, practice and procedure in such court and in all other courts of record of this state. All statutes relating to pleading, practice and procedure shall have force and effect only as rules of court and shall remain in effect unless and until modified, suspended or annulled by rules promulgated pursuant to the provisions of this section. Such rules and regulations shall be uniform for all courts of the same grade or class; but any court of the state other than the supreme court of appeals may adopt rules of court governing its local practice, but such rules of local practice shall not be inconsistent with any general rule of court then in existence or thereafter promulgated, and shall be effective only after approval by the supreme court of appeals.

The judicial council of West Virginia is hereby designated as advisory committee to make observation and report to the supreme court of appeals, from time to time, such recommendations as may, in its judgment, be proper; and all rules promulgated by the supreme court of appeals under the authority of this section shall, before taking effect, be referred to the chairman of the judicial council, the president of the West Virginia bar association and to the judge of every court affected thereby. In the event a hearing is requested, within twenty days after such reference, by any five of the persons

26 so designated, the supreme court of appeals shall thereupon
 27 designate a day when a hearing on the matter of the adoption
 28 of such rules shall be held. In the event no hearing is re-
 29 quested or, if requested, after such hearing, the supreme court
 30 of appeals shall be free to adopt or reject the proposed rules.
 31 General rules and regulations governing pleading, practice
 32 and procedure, and local rules, shall from time to time be
 33 published as an appendix to the official reports of the supreme
 34 court of appeals and bound therewith.

35 All acts and parts of acts inconsistent with this act are
 36 hereby repealed.

CHAPTER 38

(House Bill No. 30—By Mr. Preston)

AN ACT to amend and reenact section six, article one, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to criminal procedure and admission to bail.

[Passed February 18, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

6. Admission to bail by justice; amount of bail; when bail not granted; admission to bail by court or judge, before or after

Sec.

conviction, in certain cases; condition of recognizance when bail allowed after conviction.

Be it enacted by the Legislature of West Virginia:

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

Section 6. A justice may admit to bail a person who is
 2 charged with, but not convicted of, an offense not punishable
 3 with death. If the offense be punished by confinement in the
 4 penitentiary, he shall not admit such person to bail in a sum
 5 less than five hundred dollars. But a justice shall not admit
 6 any person to bail if bail has been previously refused to such
 7 person by any court or judge; nor shall any person confined
 8 in jail by an order of commitment in which the amount of bail
 9 he is to give, is specified, or where an order has been made
 10 by a court or judge fixing the bail such person is to give, be

11 admitted to bail by a justice in a sum less than is specified in
 12 the order. But a circuit, intermediate or criminal court, or
 13 the supreme court of appeals, or a judge of either of said
 14 courts in vacation, may, for good cause shown, admit any per-
 15 son to bail before conviction, or after conviction for a misde-
 16 meanor, or after a new trial has been granted after conviction
 17 for a felony, except conviction for offenses where the penalty
 18 is confinement in the penitentiary for life or death, and may,
 19 by order, direct the clerk of the circuit, intermediate or crimi-
 20 nal court of the county in which the offense is charged to have
 21 been committed to take the bond with good security in such a
 22 sum as the court or judge may fix in such order: *Provided,*
 23 That in cases where bail has been allowed after conviction as
 24 aforesaid, the condition of the recognizance, or bond shall be,
 25 that the accused shall appear before the said circuit, inter-
 26 mediate or criminal court at its first regular term after the
 27 appellate court shall have rendered its final order or judg-
 28 ment, upon such writ of error, appeal or supersedeas, and sub-
 29 mit himself to such order or judgment, and to be further
 30 dealt with according to law.

CHAPTER 39

(House Bill No. 81—By Mr. Van Sickler)

AN ACT to amend and reenact section four, article one, chapter forty-five of the code of West Virginia, one thousand nine hundred thirty-one, relating to the remedy of bail, surety, guarantor, etc., making payment.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

<p>Sec. 4. Action by bail, surety, etc., or sheriff for recovery of liability paid and damages; subrogation to rights of creditor; execution in name of original creditor; rights of original</p>		<p>Sec. creditor not affected; provisions of act intended to protect rights of person secondarily liable; assignments heretofore made validated.</p>
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Be it enacted by the Legislature of West Virginia:

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

Section 4. If any person liable as bail, surety, guarantor or endorser, or any sheriff liable for not taking sufficient bail, the committee, heir, or personal representative of any so liable, shall pay, in whole or in part, any judgment, decree or execution rendered or awarded on account of such liability, the person having right of action for the amount so paid, may, by motion in the court in which said judgment, decree, or execution was rendered or awarded, obtain judgment or decree against any person against whom such right of action exists for the amount so paid, with interest from the time of payment, and five per cent damages on said amount; and said person so paying in whole or in part, any such judgment, decree or execution rendered or awarded on account of such liability, or any such note, bond or other demand, in whole or in part, shall by operation of law, in addition to the remedy above provided, be substituted to and become the owner of all of the rights and remedies of the creditor for the enforcement and collection of the amount or amounts so paid, and shall be deemed the assignee thereof; executions, or other legal process to which the principal creditor was entitled, may be issued on any such judgment or decree in the name of the original creditor against the person primarily liable for the benefit of the person secondarily liable to the extent to which he has satisfied the original creditor; but nothing in this act shall be construed to impair or affect in any way the security of the original creditor, or his rights and remedies as to any balance which may be due him. The provisions of this section are cumulative, and are intended to protect the rights of any person secondarily liable to the extent to which he has satisfied the obligation of the person primarily liable. All assignments heretofore made of judgments and decrees to persons secondarily liable are hereby validated, and upon the same executions may be issued as hereinbefore provided.

CHAPTER 40

(House Bill No. 291—By Mr. Strauss)

AN ACT to permit the circuit courts of the state to charge off any account in the hands of its general receiver, whose owners

are unknown or deceased without heirs or possibility of being claimed, and the application thereof to any loss or depreciation on the investments in the hands of such general receiver.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec. 14.	Application of unclaimed funds in hands of general receiver of circuit court; publication		Sec.	of notice of intention to make application of fund.
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Be it enacted by the Legislature of West Virginia:

That a new section be added to article six, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, to be known as section fourteen, the same to read as follows:

Section 14. Whenever it shall appear to any circuit court 2 that any fund in its charge and in the hands of its general 3 receiver, for a period of at least twenty years, will, in all 4 probability, never be claimed by any one entitled thereto, the 5 court may order such fund applied to any loss of or shrinkage 6 in the investments of such general receiver due to economic 7 condition, and may release such general receiver from any 8 further liability on account of such fund so in his hands.

9 But before entering any such order, the court shall cause 10 a notice of such intention to be given by the clerk of said court 11 by publication thereof once a week for three successive weeks 12 in some newspaper of general circulation in said county, and 13 if no claimant shall appear and establish a right to said fund 14 within one year from the date of the last publication thereof, 15 the court may take said facts to have been fully established, 16 and shall so apply said fund.

CHAPTER 41

(Senate Bill No. 21—By Mr. Greene)

AN ACT to transfer the county of Mingo from the eighth judicial circuit to the twenty-fourth judicial circuit, and fixing the time of holding the terms of circuit court therein.

[Passed February 4, 1935; in effect on March 1, 1935. Became a law without the approval of the Governor.]

Sec.	1. Mingo county transferred from eighth to twenty-fourth judicial circuit: present judge of twenty-fourth circuit to con-	Sec.	2. Terms of court in twenty-fourth judicial circuit.
			tinue in office.

Be it enacted by the Legislature of West Virginia:

Section 1. The county of Mingo, which is now a part of the eighth judicial circuit, composed of the counties of McDowell and Mingo, be, and the same is, hereby transferred to and shall, on and after the first day of March, one thousand nine hundred thirty-five, or as soon thereafter as this act shall take effect, become a part of the twenty-fourth judicial circuit, which shall be composed of the counties of Mingo and Wayne; the judge of the twenty-fourth judicial circuit now serving, shall continue as judge thereof, including the county of Mingo, for his unexpired term, with the authority, powers, duties, compensation and emoluments of said office as provided by the constitution and laws relating to circuit judges.

Sec. 2. The terms of circuit court, in the counties composing the twenty-fourth judicial circuit, as aforesaid, shall commence and be held each year as follows:

For the county of Mingo, on the first Monday in January, May and October; for the county of Wayne, on the second Monday in March and July, and the fourth Monday in November.

All acts and parts of acts in conflict herewith are hereby repealed.

CHAPTER 42

(House Bill No. 490—By Mr. Haythe, by request)

AN ACT to transfer the county of Summers from the tenth judicial circuit to the eleventh judicial circuit and fixing the times of holding the circuit courts in the eleventh judicial circuit.

[Passed March 9, 1935: in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. Summers county transferred from tenth to eleventh judicial circuit.	Sec. 2. Terms of court in eleventh judicial circuit. 3. Inconsistent acts repealed.
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Be it enacted by the Legislature of West Virginia:

Section 1. That the county of Summers which is now a part of the tenth judicial circuit, composed of the counties of Boone, Raleigh and Summers, be and the same is hereby transferred to and shall, on and after the first day of January, one thousand nine hundred thirty-seven, become a part of the eleventh judicial circuit, then to be composed of the counties of Greenbrier, Monroe, Pocahontas and Summers.

Sec. 2. The times for holding court within said eleventh judicial circuit to be so constituted shall be as follows:

For the county of Pocahontas: Second Tuesday in March, first Tuesday in June, and the first Tuesday in October of each year.

For the county of Greenbrier: Third Tuesday in January, first Tuesday in May, first Tuesday in August and the fourth Tuesday in November of each year.

For the county of Monroe: First Tuesday in April, second Tuesday in July, and the second Tuesday in November of each year.

For the county of Summers: First Tuesday in January, third Tuesday in April, third Tuesday in July, and third Tuesday in October of each year.

Sec. 3. All acts or parts of acts inconsistent with this act are hereby repealed.

CHAPTER 43

(Senate Bill No. 116—By Mr. Sandridge)

AN ACT to amend and reenact chapter twenty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, fixing the time for holding terms of court in the nineteenth judicial circuit.

[Passed February 13, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

1-(s) Terms of court in the nineteenth
judicial circuit.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, amending section one-(s), article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

- Section 1-(s). For the county of Barbour, on the fourth
2 Monday in February, May and October.
3 For the county of Taylor, on the second Monday in January,
4 April and September.
5 All acts inconsistent with this act are hereby repealed.

CHAPTER 44

(Senate Bill No. 65—By Mr. Spillers, by request)

AN ACT authorizing the board of commissioners of Ohio county to pay additional compensation to the judges of the first judicial circuit and providing for limits and regulations under which such payments may be made.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Board of county commissioners of Ohio county authorized to pay additional compensation to judges of first judicial circuit; amount not to exceed two thousand dollars per an-

Sec.

num to each judge; county courts of Brooke and Hancock counties may contribute to payment of said additional compensation.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of county commissioners of Ohio county

2 is authorized to pay additional compensation to the judges of
3 the first judicial circuit, and to limit and regulate such pay-
4 ments as follows:

5 From and after January first, one thousand nine hundred
6 thirty-seven, the board of county commissioners of Ohio county
7 is hereby authorized to pay additional compensation to the
8 judges of the first judicial circuit; but the amount of such
9 compensation shall not exceed two thousand dollars per annum
10 to each of said judges. Said board of county commissioners
11 may arrange with the county courts of Brooke and Hancock
12 counties, or either or both of said counties, whereby either or
13 both of said county courts may contribute toward the payment
14 of any such additional compensation so paid to said judges.

Sec. 2. All acts or parts of acts inconsistent herewith are
2 hereby repealed.

CHAPTER 45

(House Bill No. 236—By Mr. Galbraith)

AN ACT to authorize the board of county commissioners of Ohio
County and the county court of Brooke County to provide ad-
ditional compensation for special judges of courts of record
within said counties.

[Passed February 19, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec.

1. Board of commissioners of Ohio
county and county court of
Brooke county authorized to
provide additional compensa-
tion for special judges of all

Sec.

courts of record in said coun-
ties; amount not to exceed sal-
ary of regular judge for whom
serving.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of county commissioners of Ohio
2 County and the county court of Brooke County are hereby au-
3 thorized to provide additional compensation for special judges
4 of all courts of record in said counties: *Provided*, That the
5 amount of such additional compensation provided for any such
6 judge, when added to the compensation payable to him out of
7 the state treasury, shall not exceed the amount of the salary of
8 the regular judge in whose place and stead such special judge
9 serves.

CHAPTER 46

(Senate Bill No. 230—By Messrs. Spillers and Young, of Upshur)

AN ACT to regulate and control the production, preparation, manufacture, possession, transportation, sale, disposition and use of coca leaves, cocaine, opium, morphine, codeine, heroin, and any compound, manufacture, salt, derivative, mixture and preparation thereof or of either of them; to provide for the control and sale of cannabis, chloral and barbital; to provide for the issuance, suspension and revocation of licenses to produce, prepare, manufacture, sell, dispense and otherwise handle such drugs; to prescribe penalties for violations of this act, and to provide that this act may be designated and cited as the "Uniform Narcotic Drug Act."

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

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| <p>Sec.</p> <ol style="list-style-type: none"> 1. Definition of words and phrases. 2. Manufacture, sale, etc., of narcotic drugs prohibited, unless authorized by this act. 3. License to manufacture, etc., or supply at wholesale narcotic drugs; fee; for calendar year. 4. Proof of certain facts to be furnished by applicant for license; when not to be granted; suspension or revocation. 5. To whom licensed manufacturer or wholesaler may sell narcotic drugs; official written orders for such sales; when possession or control of narcotic drugs lawful; limitation on right of designated persons to administer narcotic drugs. 6. Sales by pharmacists upon prescriptions; what prescription to state; preservation and non-refilling of prescription; sale of stock by legal owner discontinuing dealing in narcotic drugs; sales by pharmacists of solutions containing narcotic drugs. 7. Prescription for, or administering, narcotic drug by physician or dentist; what prescription to state; prescription for, or administering narcotic drug by | <p>Sec.</p> <ol style="list-style-type: none"> veterinarian; what prescription to state. 8. To what acts or sales provisions of act do not apply; to what conditions exceptions subjected; when no limit on kind and quantity of narcotic drug prescribed or sold. 9. Records to be kept by physicians, dentists; etc.; (2) records to be kept by manufacturers and wholesalers; (3) records to be kept by pharmacists; (4) records to be kept by others; (5) form of records prescribed by state board of pharmacy; what records to state; preservation; record of narcotic drugs lost, destroyed or stolen. 10. What labels affixed to narcotic drugs in packages to state; what labels affixed to narcotic drugs sold by pharmacists on prescription to state. 11. When narcotic drug to remain in container in which sold. 12. To whom provisions of act restricting possession and control of narcotic drugs do not apply. 13. What stores, vehicles, etc., deemed common nuisances for purposes of act. |
|--|--|

Sec.		Sec.	
14.	Forfeiture of and disposal of forfeited narcotic drugs; records to be kept by state board of pharmacy.		under section eight.
15.	To whom copy of judgment and sentences, on conviction of violation of act, to be sent; suspension or revocation by court of license of convicted defendant; reinstatement of license or registration.	18.	In indictments, etc., not necessary to negative exceptions, etc.
16.	Inspection of prescriptions, etc.; when officer may divulge knowledge obtained by such inspection.	19.	Written prescription required for sale of cannabis, etc.
17.	Obtaining narcotic drugs by fraud, etc.; when communication to physician not privileged; false statement in prescription, etc.; falsely assuming title of pharmacist, etc., to obtain narcotic drug; forgery of prescription, etc.; provisions of section apply to transactions	20.	Written prescription required for sale of chloral hydrate, etc.
		21.	Written prescription required for sale of malonylurea (barbituric acid), etc.
		22.	Enforcement of provisions of act.
		23.	Penalty for violation of act.
		24.	No prosecution for violation, if previously acquitted or convicted of same violation under federal narcotic act.
		25.	If any provision invalid, other provisions not affected.
		26.	Construction of act.
		27.	Inconsistent acts repealed.
		28.	How act cited.

Be it enacted by the Legislature of West Virginia:

Section 1. The following words and phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, co-partnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in the state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not prescriptions.

(7) "Pharmacist" means a licensed pharmacist as defined by the laws of this state.

(8) "Pharmacy Owner" means the owner of a store or other place of business where narcotic drugs are compounded

26 or dispensed by a registered pharmacist; but nothing in this
27 act contained shall be construed as conferring on a person
28 who is not registered or licensed as a pharmacist any author-
29 ity, right or privilege that is not granted to him by the
30 pharmacy laws of this state.

31 (9) "Hospital" means an institution for the care and
32 treatment of the sick and injured, approved by the state board
33 of pharmacy as proper to be entrusted with the custody of
34 narcotic drugs and the professional use of narcotic drugs
35 under the direction of a physician, dentist, or veterinarian.

36 (10) "Laboratory" means a laboratory approved by the
37 state board of pharmacy as proper to be entrusted with the
38 custody of narcotic drugs and the use of narcotic drugs for
39 scientific and medical purposes and for purposes of instruc-
40 tion.

41 (11) "Sale" includes barter, exchange, or offer therefor,
42 and each such transaction made by any person, whether as
43 principal, proprietor, agent, servant, or employee.

44 (12) "Coca Leaves" includes cocaine and any compound,
45 manufacture, salt, derivative, mixture, or preparation of coca
46 leaves, except derivatives of coca leaves which do not con-
47 tain cocaine, ecognine, or substances from which cocaine or
48 ecognine may be synthesized or made.

49 (13) "Opium" includes morphine, codeine, and heroin,
50 and any compound, manufacture, salt, derivative, mixture, or
51 preparation of opium.

52 (14) "Narcotic drugs" means coca leaves and opium.

53 (15) "Federal Narcotic Laws" means the laws of the
54 United States relating to opium, coca leaves, and other
55 narcotic drugs.

56 (16) "Official Written Order" means an order written on
57 a form provided for that purpose by the United States com-
58 missioner of narcotics, under any laws of the United States
59 making provision therefor, if such order forms are authorized
60 and required by federal law, and if no such order form is
61 provided then on an official form provided for that purpose
62 by the state board of pharmacy.

63 (17) "Dispense" includes distribute, leave with, give away,
64 dispose of, or deliver.

65 (18) "Registry Number" means the number assigned to
66 each person registered under the federal narcotic laws.

Sec. 2. No person shall manufacture, possess, have under
2 his control, sell, prescribe, administer, dispense, or compound
3 any narcotic drug, except as authorized in this act.

Sec. 3. No person shall manufacture, compound, mix, cult-
2 ivate, grow, or by any other process produce or prepare nar-
3 cotic drugs, and no person as a wholesaler shall supply the
4 same, without having first obtained a license so to do from the
5 state board of pharmacy.

6 A fee of ten dollars shall be charged and collected by the
7 state board of pharmacy for each manufacturer's and each
8 wholesaler's license issued under the provision of this section.
9 The license shall be for the calendar year, and shall be re-
10 newable on the first day of January of each year.

Sec. 4. No license shall be issued under the foregoing sec-
2 tion unless and until the applicant therefor has furnished
3 proof satisfactory to the state board of pharmacy:

4 (a) That the applicant is of good moral character, or if the
5 applicant be an association or corporation, that the managing
6 officers are of good moral character;

7 (b) That the applicant is equipped as to land, buildings,
8 paraphernalia properly to carry on the business described in
9 his application; and that his trade connections are such that
10 there is reasonable probability that he will apply all narcotic
11 drugs manufactured or sold by him to medicinal and scientific
12 purposes;

13 (c) No license shall be granted to any person who has with-
14 in five years been convicted of a wilful violation of any law
15 of the United States, or of any state, relating to opium, coca
16 leaves, or other narcotic drugs, or to any person who is a
17 narcotic drug addict;

18 (d) The state board of pharmacy may suspend or revoke
19 any license for cause.

Sec. 5. (1) A duly licensed manufacturer or wholesaler may
2 sell and dispense narcotic drugs to any of the following persons,
3 but only on official written orders:

4 (a) To a manufacturer, wholesaler or pharmacist;

5 (b) To a physician, dentist or veterinarian;

- 6 (c) To a person in charge of a hospital, but only for use by
7 or in that hospital: *Provided*, That the official written order is
8 signed by a physician, dentist, veterinarian or pharmacist con-
9 nected with such hospital;
- 10 (d) To a person in charge of a laboratory, but only for use
11 in that laboratory for scientific and medical purposes.
- 12 (2) A duly licensed manufacturer or wholesaler may sell
13 narcotic drugs to any of the following persons:
- 14 (a) On a special written order accompanied by a certificate
15 of exemption as required by the federal narcotic laws, to a
16 person in the employ of the United States government or of any
17 state, territorial, district, county, municipal or insular govern-
18 ment, purchasing, receiving, possessing or dispensing narcotic
19 drugs by reason of his official duties;
- 20 (b) To a master of a ship or a person in charge of any
21 aircraft upon which no physician is regularly employed, for the
22 actual medical needs of persons on board such ship or aircraft,
23 when not in port: *Provided*, That such narcotic drugs shall be
24 sold to the master of such ship or person in charge of such air-
25 craft only in pursuance of a special order form approved by a
26 commissioned medical officer or acting assistant surgeon of the
27 United States public health service;
- 28 (c) To a person in a foreign country if the provisions of the
29 federal narcotic laws are complied with.
- 30 (3) An official written order for any narcotic drug shall be
31 signed in duplicate by the person giving said order or by his
32 duly authorized agent. The original shall be presented to the
33 person who sells or dispenses the narcotic drug named therein.
34 In event of the acceptance of such order by said person, each
35 party to the transaction shall preserve his copy of such order for
36 a period of two years in such a way as to be readily accessible
37 for inspection by any public officer or employee engaged in the
38 enforcement of this act. Compliance with the federal narcotic
39 laws, by the parties to the transaction, shall be deemed com-
40 pliance with this subsection, respecting the requirements govern-
41 ing the use of order forms.
- 42 (4) Possession of or control of narcotic drugs obtained as
43 authorized by this section shall be lawful if in the regular
44 course of business, occupation, profession, employment or duty
45 of the possessor.

46 (5) A person in charge of a hospital or of a laboratory, or
47 in the employ of this state or of any other state, or of any
48 political subdivision thereof, and a master or other proper
49 officer of a ship or aircraft, who obtains narcotic drugs under
50 the provisions of this section or otherwise, shall not administer,
51 nor dispense, nor otherwise use such drugs, within this state,
52 except within the scope of his employment or official duty, and
53 then only for scientific or medicinal purposes and subject to the
54 provisions of this act.

Sec. 6. (1) A pharmacist, in good faith, may sell and dis-
2 pense narcotic drugs to any person upon a written prescription
3 of a physician, dentist, or veterinarian: *Provided*, That such
4 prescription is properly executed, dated and signed by the
5 person prescribing on the day when issued, and bearing the full
6 name and address of the patient for whom, or of the owner of
7 the animal for which, the drug is dispensed, and the full name,
8 address, and registry number under the federal narcotic laws,
9 of the person prescribing, if he is required by those laws to
10 be so registered. If the prescription be for an animal, it shall
11 state the species of animal for which the drug is prescribed. The
12 person filling the prescription shall write the date of filling and
13 his own signature on the face of the prescription. The pre-
14 scription shall be retained on file by the proprietor of the
15 pharmacy in which it is filled for a period of two years, so as to
16 be readily accessible for inspection by any public officer or em-
17 ployee engaged in the enforcement of this act. The prescrip-
18 tion shall not be refilled.

19 (2) The legal owner of any stock of narcotic drugs in a
20 pharmacy, upon discontinuance of dealing in said drugs, may
21 sell said stock to a manufacturer, wholesaler, pharmacist or
22 pharmacy owner, but only on an official written order.

23 (3) A pharmacist, only upon an official written order, may
24 sell to a physician, dentist, or veterinarian, in quantities not ex-
25 ceeding one ounce at any one time, aqueous or oleaginous
26 solutions of which the content of narcotic drug does not exceed
27 a proportion greater than twenty per cent of the complete
28 solution, to be used for medical purposes. The original order
29 form must be filed by the pharmacist with his narcotic pre-
30 scriptions. Each package containing an aqueous or oleaginous

31 solution so furnished must bear a label showing the date and
32 number of the order form, the name and proportion of narcotic
33 drug contained in the solution, the name, address, and registry
34 number of the person furnishing the order, and the name,
35 address and registry number of the pharmacist or pharmacy
36 owner filling the order.

Sec. 7. (1) A physician or a dentist, in good faith and in
2 the course of his professional practice only, may prescribe on
3 written prescription, administer, and dispense narcotic drugs,
4 or he may cause the same to be administered by a nurse or
5 interne under his direction and supervision. Such a prescrip-
6 tion shall be dated and signed by the person prescribing on
7 the day when issued, and shall bear the full name and address
8 of the patient for whom the narcotic drug is prescribed, and
9 the full name, address and registry number under the federal
10 narcotic laws of the person prescribing: *Provided*, That he is
11 required by those federal laws to be so registered.

12 (2) A veterinarian, in good faith and in the course of his
13 professional practice only, and not for use by a human being,
14 may prescribe on written prescription, administer, and dis-
15 pense narcotic drugs, and he may cause them to be administered
16 by an assistant or orderly under his direction and supervision.
17 Such a prescription shall be dated and signed by the person
18 prescribing on the day when issued and shall bear the full
19 name and address of the owner of the animal, and the species
20 of the animal, for which the narcotic drug is prescribed, and
21 the full name, address, and registry number under the federal
22 narcotic laws of the person prescribing provided he is required
23 by those laws to be so registered.

Sec. 8. Except as otherwise in this act specifically provided,
2 this act shall not apply to the following cases:

- 3 (1) Prescribing, administering, dispensing, or selling at re-
4 tail of any medicinal preparation that contains not more than
5 two grains of opium, or more than one-fourth of a grain of
6 morphine, or more than one-eighth of a grain of heroin, or more
7 than one grain of codeine, or any salt or derivative of any of
8 them in one fluid ounce, or if a solid or semi-solid preparation,
9 in one avoirdupois ounce;
- 10 (2) Prescribing, administering, dispensing, or selling at re-

11 tail of liniments, ointments, and other preparations that are
12 susceptible of external use only and that contain narcotic drugs
13 in such combinations as prevent their being readily extracted
14 from such liniments, ointments, or preparations, except that
15 this act shall apply to all liniments, ointments, and other prep-
16 arations, that contain coca leaves in any quantity or combina-
17 tion;

18 (3) The exceptions authorized by this section shall be sub-
19 ject to the following conditions:

20 (a) The medicinal preparation, or the liniment, ointment,
21 or other preparations susceptible of external use only, pre-
22 scribed, administered, dispensed, or sold, shall contain, in ad-
23 dition to the narcotic drug in it, some drug or drugs conferring
24 upon it medicinal qualities other than those possessed by the
25 narcotic drug alone;

26 (b) Such preparation shall be prescribed, administered, com-
27 pounded, dispensed, and sold in good faith as a medicine, and
28 not for the purpose of evading the provisions of this act;

29 (c) Nothing in this section shall be construed to limit the
30 kind and quantity of any narcotic drug that may be prescribed,
31 administered, compounded, dispensed, or sold, to any person
32 or for the use of any person or animal, when it is prescribed,
33 administered, compounded, dispensed, or sold, in compliance
34 with the general provisions of this act.

Sec. 9. (1) Every physician, dentist, veterinarian, or other
2 person who is authorized to administer or professionally use
3 narcotic drugs, shall keep a record of such drugs received by
4 him, and a record of all such drugs administered, dispensed, or
5 professionally used by him otherwise than by prescription.
6 The keeping of a record by any such person using small quan-
7 tities of solutions or other preparations of such drugs for local
8 application, of the quantity, character, and potency of such
9 solutions or other preparations purchased or made up by him,
10 and of the dates when purchased or made up, without keeping
11 a record of the amount of such solution or other preparation
12 applied by him to individual patients, shall constitute a suffi-
13 cient compliance with this subsection.

14 (2) Manufacturers and wholesalers shall keep records of all
15 narcotic drugs compounded, mixed, cultivated, grown, or by any
16-17 other process produced or prepared, and of all narcotic

18 drugs received and disposed of by them, in accordance with the
19 provisions of subsection five of this section.

20 (3) Pharmacists and pharmacy owners shall keep records of
21 all narcotic drugs received and disposed of by them, in accord-
22 ance with the provisions of subsection five of this section.

23 (4) Every person who purchases for resale, or who sells
24 narcotic drug preparations exempted by section eight of this act,
25 shall keep a record showing the quantities and kinds thereof
26 received and sold, or disposed of otherwise, in accordance with
27 the provisions of subsection five of this section.

28 (5) The form of records shall be prescribed by the state
29 board of pharmacy. The record of narcotic drugs received shall
30 in every case show the date of receipt, the name and address of
31 the person from whom received, and the kind and quantity of
32 drugs received, the kind and quantity of narcotic drugs pro-
33 duced or removed from process of manufacture, and the date of
34 such production or removal from process of manufacture; and
35 the record shall in every case show the proportion of morphine,
36 cocaine, or ecognine contained in or producible from crude
37 opium or coca leaves received or produced.

38 The record of all narcotic drugs sold, administered, com-
39 pounded, dispensed, or otherwise disposed of, shall show the
40 date of selling, administering, compounding, or dispensing, the
41 name and address of the person to whom or for whose use, or
42 the owner and species of animal for which the drugs were sold,
43 administered, compounded, or dispensed, and the kind and
44 quantity of drugs. Every such record shall be kept for a period
45 of two years from the date of the transaction recorded. The
46 keeping of a record required by or under the federal narcotic
47 laws, containing substantially the same information as is speci-
48 fied above, shall constitute compliance with this section, except
49 that every record shall contain a detailed list of narcotic drugs
50 lost, destroyed, or stolen, if any, the kind and quantity of such
51 drugs, and the date of the discovery of such loss, destruction, or
52 theft.

Sec. 10. (1) Whenever a manufacturer sells or dispenses a
2 narcotic drug, and whenever a wholesaler sells or dispenses a
3 narcotic drug in a package prepared by him, he shall securely
4 affix to each package in which that drug is contained a label
5 showing in legible English the name and address of the vendor

6 and the quantity, kind, and form of narcotic drug contained
7 therein. No person, except a pharmacist for the purpose of
8 filling a prescription under this act shall alter, deface, or re-
9 move any label so affixed.

10 (2) Whenever a pharmacist sells or dispenses any narcotic
11 drug on a prescription issued by a physician, dentist or veteri-
12 narian, he shall affix to the container in which said drug is
13 sold or dispensed, a label showing his name or the name of
14 the store, address, and registry number, or the name, address,
15 and registry number of the pharmacist for which he is law-
16 fully acting; the serial number of the prescription; the name
17 and address of the patient, or, if the patient is an animal, the
18 name and address of the owner of the animal and the species
19 of the animal; the name, address and registry number of the
20 physician, dentist, or veterinarian, by whom the prescription
21 was written; and such directions as may be stated on the pre-
22 scription. No person shall alter, deface, or remove any label
23 so affixed, so long as any of the original contents remain.

Sec. 11. A person to whom or for whose use any narcotic
2 drug has been prescribed, sold, or dispensed, by a physician,
3 dentist, pharmacist, or other person authorized under the
4 provisions of section five of this act, and the owner of any
5 animal for which any such drug has been prescribed, sold,
6 or dispensed, by a veterinarian, may lawfully possess it only
7 in the container in which it was delivered to him by the person
8 selling or dispensing the same.

Sec. 12. The provisions of this act restricting the possess-
2 ing and having control of narcotic drugs shall not apply to
3 common carriers or to warehousemen, while engaged in law-
4 fully transporting or storing such drugs, or to any employee of
5 the same acting within the scope of his employment; or to
6 public officers or their employees in the performance of their
7 official duties requiring possession or control of narcotic drugs;
8 or to temporary incidental possession by employees or agents
9 of persons lawfully entitled to possession, or by persons whose
10 possession is for the purpose of aiding public officers in per-
11 forming their official duties.

Sec. 13. Any store, shop, warehouse, dwelling house, build-

2 ing, vehicle, boat, aircraft, or any place whatever, which is
3 resorted to by narcotic drug addicts for the purpose of using
4 narcotic drugs or which is used for the illegal keeping or sell-
5 ing of the same, shall be deemed a common nuisance. No person
6 shall keep or maintain such a common nuisance.

Sec. 14. All narcotic drugs, the lawful possession of which
2 is not established or the title to which cannot be ascertained,
3 which have come into the custody of a peace officer, shall be
4 forfeited, and disposed of as follows:

5 (a) The court or magistrate having jurisdiction shall im-
6 mediately notify the state board of pharmacy and unless other-
7 wise requested within fifteen days by the state board of
8 pharmacy, in accordance with subsection (b) of this section
9 shall order such narcotic drugs forfeited and destroyed. A
10 record of the place where said drugs were seized, of the kinds
11 and quantities of drugs so destroyed, and of the time, place,
12 and manner of destruction, shall be kept, and a return under
13 oath, reporting said destruction, shall be made to the court
14 or magistrate and to the United States commissioner of
15 narcotics, by the officer who destroys them;

16 (b) Upon written application by the state board of pharmacy
17 the court or magistrate by whom the forfeiture of narcotic
18 drugs has been decreed may order the delivery of any of them,
19 except heroin and its salts and derivatives, to said state board
20 of pharmacy, for distribution or destruction, as hereinafter
21 provided;

22 (c) Upon application by any hospital or institution within
23 this state, not operated for private gain, the state board of
24 pharmacy may in its discretion deliver any narcotic drugs that
25 have come into its custody by authority of this section to the
26 applicant for medicinal or scientific use. The state board of
27 pharmacy may from time to time deliver excess stocks of such
28 narcotic drugs to the United States commissioner of narcotics,
29 or may destroy same;

30 (d) The state board of pharmacy shall keep a full and
31 complete record of all drugs received and of all drugs disposed
32 of, showing the exact kinds, quantities, and forms of such drugs;
33 the persons from whom received and to whom delivered; by
34 whose authority received, delivered, and destroyed; and the

35 dates of the receipt, disposal, or destruction, which record shall
36 be open to inspection by all federal or state officers charged
37 with the enforcement of federal and state narcotic laws.

Sec. 15. On the conviction of any person of the violation
2 of any provision of this act, a copy of the judgment and sen-
3 tence, and of the opinion of the court or magistrate, if any
4 opinion be filed, shall be sent by the clerk of the court, or by
5 the magistrate, to the board or officer, if any, by whom the
6 convicted defendant has been licensed or registered to prac-
7 tice his profession or to carry on his business. A duplicate
8 copy of the judgment and sentence and opinion, if any opinion
9 be filed, shall be sent to the state board of pharmacy.

10 On the conviction of any such person the court may, in its
11 discretion, suspend or revoke the license or registration of the
12 convicted defendant to practice his profession or to carry on
13 his business. On the application of any person whose license
14 or registration has been suspended or revoked, and upon
15 proper showing and for good cause, said board or officer may
16 reinstate such license or registration.

Sec. 16. Prescriptions, orders, and records, required by
2 this act, and stocks of narcotic drugs, shall be open for inspec-
3 tion only to federal, state, county and municipal officers, whose
4 duty it is to enforce the laws of this state or of the United
5 States relating to narcotic drugs. No officer having knowledge
6 by virtue of his office of any such prescription, order or rec-
7 ords shall divulge such knowledge, except in connection with
8 a prosecution or proceedings in court or before a licensing or
9 registration board or officer, to which prosecution or proceed-
10 ing the person to whom such prescriptions, orders, or records
11 relate, is a party.

Sec. 17. (1) No person shall obtain or attempt to obtain
2 a narcotic drug, or procure or attempt to procure the admin-
3 istration of a narcotic drug, (a) by fraud, deceit, misrepre-
4 sentation, or subterfuge; or (b) by forgery or alteration of
5 a prescription or of any written order; (c) by the conceal-
6 ment of a material fact; or (d) by the use of a false name or
7 the giving of a false address.

8 (2) Information communicated to a physician in an effort

9 to unlawfully procure a narcotic drug, or unlawfully to pro-
10 cure the administration of any such drug, shall not be deemed
11 a privileged communication.

12 (3) No person shall wilfully make a false statement in any
13 prescription, order, report, or record, required by this act.

14 (4) No person shall, for the purpose of obtaining a narcotic
15 drug, falsely assume the title of, or represent himself to be, a
16 manufacturer, wholesaler, pharmacist, pharmacy owner,
17 physician, dentist, veterinarian, or other authorized person.

18 (5) No person shall make or utter any false or forged pre-
19 scription or false or forged written order.

20 (6) No person shall affix any false or forged label to a pack-
21 age or receptacle containing narcotic drugs.

22 (7) The provisions of this section shall apply to all transact-
23 ions relating to narcotic drugs under the provisions of section
24 eight of this act, and in the same way as they apply to transact-
25 ions under all other sections.

Sec. 18. In any complaint, information or indictment, and in
2 any action or proceeding brought for the enforcement of any
3 provision of this act, it shall not be necessary to negative any
4 exception, excuse, proviso, or exemption, contained in this act,
5 and the burden of proof of any such exception, excuse, pro-
6 viso, or exemption, shall be upon the defendant.

Sec. 19. No cannabis, including the following substances
2 under whatever names they may be designated (a) the dried
3 flowering or fruiting tops of the pistillate plant of Cannabis
4 Sativa L., from which the resin has not been extracted, or
5 (b) the resin extracted from such tops, or (c) any compound,
6 manufacture, mixture, or preparation of such resin, or of
7 such tops from which the resin has not been extracted, shall
8 be sold at retail or dispensed at retail to any person except up-
9 on the written prescription of a physician, dentist, or veter-
10 inarian: *Provided, however,* That nothing in this section shall
11 prevent a registered pharmacist from supplying any of the
12 said drugs to a physician, dentist, veterinarian, or accredited
13 hospital for medicinal use: *Provided further,* That nothing
14 in this section shall prevent the sale or dispensing at retail of
15 preparations containing cannabis when used for external pur-
16 poses.

Sec. 20. No chloral hydrate, or any compound, manufac-
2 ture, mixture, or preparation thereof containing over two
3 grains to the ounce, shall be sold at retail or dispensed at re-
4 tail to any person except upon the written prescription of a
5 physician, dentist, or veterinarian: *Provided, however,* That
6 nothing in this section shall prevent a registered pharmacist
7 from supplying any of the said drugs to a physician, dentist,
8 veterinarian, or accredited hospital for medicinal use.

Sec. 21. No malonylurea (barbituric acid), as such, or
2 diethyl-malonylurea, as such, or any sodium or potassium salt
3 of either of them, under whatever name they may be desig-
4 nated, or any sodium or potassium salt of any chemical de-
5 rivative of malonylurea, or diethyl-malonylurea, under what-
6 ever name they may be designated, that may be classed as a
7 dangerous hypnotic or narcotic as defined by regulations of
8 the state board of pharmacy, shall be sold at retail or dis-
9 pensed at retail to a person except upon the written prescrip-
10 tion of a physician, dentist, or veterinarian: *Provided, how-*
11 *ever,* That nothing in this section shall prevent a registered
12 pharmacist from supplying any of the said drugs to physicians,
13 dentists, veterinarians and/or accredited hospitals for medi-
14 cinal use: *Provided further,* That in order to carry out the
15 intent of this section to control the misuse of certain drugs
16 that no malonylurea or any of its salts, derivatives, mixtures,
17 or preparations thereof shall be sold or dispensed, at retail,
18 by any person not a pharmacist as defined.

Sec. 22. The state board of pharmacy, its officers, agents, in-
2 spectors, and representatives, and all peace officers within the
3 state, and all prosecuting attorneys of the state shall enforce
4 all provisions of this act, except those specifically delegated, and
5 shall cooperate with all agencies charged with the enforcement
6 of the laws of the United States, of this state, and of all other
7 states, relating to narcotic drugs.

Sec. 23. Any person violating any provision of this act shall
2 upon conviction be punished, for the first offense, by a fine not
3 exceeding one hundred dollars, or by imprisonment in jail for
4 not exceeding one year, or by both such fine and imprisonment;
5 and for any subsequent offense, by a fine not exceeding
6 one thousand dollars or by imprisonment for not exceeding five

7 years in the penitentiary or by both such fine and imprisonment.

Sec. 24. No person shall be prosecuted for a violation of any provision of this act if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this act.

Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

Sec. 26. This act shall be interpreted and construed as to effectuate its general purpose, to make uniform the laws of these states which enact it.

Sec. 27. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Sec. 28. This act may be designated and cited as the "Uniform Narcotic Drug Act."

CHAPTER 47

(House Bill No. 136—By Mr. Wiseman)

AN ACT to amend and reenact sections three and four, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to inspection and analysis of food and drugs; adulteration of food and drugs; sale and penalties; and conferring upon the West Virginia board of pharmacy certain powers and duties in relation thereto.

[Passed February 27, 1935; in effect from passage. Approved by the Governor.]

Sec.

3. Inspection and analysis of foods and drugs by state department of health, West Virginia board of pharmacy or county or municipal health officer; procedure; report of analysis.
4. Penalty for adulterating, or sell-

Sec.

ing adulterated food or drug; to pay cost of analysis; if a pharmacist, registration to be revoked; adulterated article to be destroyed; inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

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

Section 3. Whenever the state department of health, the 2 West Virginia board of pharmacy, or any county or municipal health officer has reason to believe that any food or drug 3 manufactured for sale, offered for sale, or sold, within this 4 state, is adulterated, such department of health or board of 5 pharmacy, by its authorized agents, or such county or municipal health officer, shall have the power, and it shall be his 6 duty, to enter, during the usual hours of business, into any 7 creamery, factory, store, sales room, drug store, laboratory, or 8 other place where he has reason to believe such food or drug 9 is manufactured, prepared, sold, or offered for sale, within 10 the county or municipality, as the case may be, and to open 11 any case, tub, jar, bottle, or package containing, or supposed to contain, any such food or drug, and take a specimen 12 thereof for examination and analysis. If less than a whole 13 package is taken, the specimen shall be sealed and properly 14 prepared for shipment to the person who will make the analysis hereinafter provided for. No whole or less than a whole 15 package taken and prepared for shipment shall be opened 16 before it has been received by the analyst aforesaid.

21 It shall be the duty of the chief chemist of the state hygienic 22 laboratory to test and analyze any such specimen, to record the 23 result of his analysis among the records of the laboratory, and 24 to certify such findings to the state department of health, the 25 West Virginia board of pharmacy, or to the county or municipal health officer, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate 26 of such result, sworn to by the person making the analysis, who 27 shall also state in his certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such 28 adulteration in prosecution under this article.

Sec. 4. Whoever, by himself or his agents, knowingly 2 adulterates or causes to be adulterated any article of food or 3 drug, or knowingly manufactures for sale, offers for sale, or 4 sells, within this state, any article of food or drug which is 5 adulterated within the meaning of this article, without mak-

6 ing the same known to the buyer, shall be guilty of a misde-
 7 meanor, and, upon conviction thereof, shall be fined not ex-
 8 ceeding five hundred dollars, or confined in jail not more than
 9 one year, or both, in the discretion of the court; and in addi-
 10 tion to the penalties hereinbefore provided, he shall be ad-
 11 judged to pay the cost and expense of analyzing such adulter-
 12 ated food or drug, as set forth in the certificate of the person
 13 making the analysis, not exceeding twenty-five dollars in any
 14 one case, which shall be included in the costs of such prosecution
 15 and taxed in favor of the state department of health or the
 16 West Virginia board of pharmacy, as the case may be; and if
 17 he be a registered pharmacist or assistant pharmacist, his
 18 name shall be stricken from the register. The adulterated
 19 article shall be forfeited and destroyed.

20 All acts and parts of acts inconsistent herewith are hereby
 21 repealed insofar, and only so far, as they are inconsistent
 22 with this particular act.

CHAPTER 48

(Senate Bill No. 10—By Mr. Smith)

AN ACT to provide educational opportunities for the children of soldiers, sailors and marines who were killed in action or died during the World War.

[Passed March 7, 1935; In effect ninety days from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <p>1. Appropriation from treasury of \$1,800 yearly until 1942, to provide educational opportunities for children of certain deceased world war veterans in state educational or training institution.</p> <p>2. Eligibility of applicant for benefits of act; application forms; determination of eligibility of applicant and amount of assistance by department of</p>	<p>Sec.</p> <p>public welfare; to whom preference given.</p> <p>3. No tuition fees to be charged; to whom and for what purposes the allowances may be expended by the department of public welfare; upon withdrawal from institution, allowance to cease.</p> <p>4. Balances in fund at end of fiscal year not to revert to treasury, except fiscal year of 1942.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. For the purpose of providing educational opportunities for the children of those who were killed in action or died from other cause from April sixth, one thousand nine

4 hundred seventeen, to July second, one thousand nine hundred
5 twenty-one, while serving in the army, navy or marine corps
6 of the United States, or died as a result of such service, the
7 sum of eighteen hundred dollars, out of any moneys in the
8 treasury not otherwise appropriated, is hereby appropriated
9 out of the treasury for each of the fiscal years beginning July
10 first, one thousand nine hundred thirty-five, to July first,
11 one thousand nine hundred forty-two, inclusive, while such
12 children are attending a state educational or training insti-
13 tution.

Sec. 2. To be eligible for the benefits of this act, said
2 children must be at least sixteen and not more than twenty-
3 two years of age and have had their domiciles in this state
4 for at least twelve months preceding their application for said
5 benefits. Such application shall be made to, and upon forms
6 provided by, the department of public welfare of West Vir-
7 ginia, which department shall determine the eligibility of those
8 who make such application and the yearly amount to be
9 allotted each applicant, which amount in the discretion of the
10 department may vary from year to year, but shall not exceed
11 the sum of one hundred and fifty dollars in any one year. In
12 selecting those to receive the benefits of this act preference
13 shall be given those who are otherwise financially unable to
14 secure said educational opportunities and to those whose parent
15 was domiciled in this state during the period of such parent's
16 war service.

Sec. 3. No tuition fees shall be charged such applicants at-
2 tending any state educational or training institution and the
3 funds herein appropriated shall be expended by said depart-
4 ment of public welfare only for matriculation fees, board,
5 room rent, books, supplies and other necessary living expenses
6 of such children. Said department is charged with the duty
7 of disbursing the funds herein provided and shall draw its
8 requisitions upon the auditor for that purpose. In the discre-
9 tion of said department, such requisitions may be made pay-
10 able to said educational or training institutions or to those
11 furnishing to said children board, room rent, books, supplies
12 and other necessary living expenses, the department being first
13 satisfied as to the correctness and amounts of such expendi-
14 tures. Should any child withdraw from any such institution

15 all allowances to such child shall cease. No member or em-
16 ployee of said department shall receive any additional com-
17 pensation for the services herein required.

Sec. 4. Balances in this fund remaining at the end of any
2 fiscal year, except the last herein appropriated for, shall not
3 revert to the treasury. Any balance remaining at the end of the
4 fiscal year beginning July first, one thousand nine hundred forty-
5 two, shall revert to the treasury.

CHAPTER 49

(Senate Bill No. 184—By Mr. Hodges, by request)

AN ACT to authorize the West Virginia board of control to apply any surplus funds in the funds commonly known as the "Woman's Hall Fund," the "Special Departmental Fees Fund" or any other special funds, at the West Virginia university, for the purpose of meeting any deficits in the federal funds available for completing the new dormitories at the university.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Board of control authorized to expend certain surpluses in funds collected at West Virginia University to complete

Sec.

building projects under construction at the university; conditions under which expenditures may be made.

Be it enacted by the Legislature of West Virginia:

Section 1. The West Virginia board of control is hereby
2 authorized to expend any surplus funds collected at the univer-
3 sity and any surplus funds to the credit of the funds commonly
4 known as the "Woman's Hall Fund," the "Special Depart-
5 mental Fees Fund" or any other special fund, for the purpose
6 of completing the finishing of certain items of the men's dormi-
7 tory and the additions to the woman's hall, now under construc-
8 tion at the West Virginia university under the provisions of
9 chapter nine, acts of the Legislature, regular session, one thou-
10 sand nine hundred thirty-three, to the extent that the federal
11 grant and proceeds of bonds heretofore sold be not sufficient to
12 complete the finishing of certain details thereof, when and if in

13 their judgment, a sufficient balance exists in any of the said
 14 special funds for such purpose over and above the amount
 15 necessary to be reserved in said funds for current general ex-
 16 penses payable from the same, and the need for such additional
 17 finishing exists.

CHAPTER 50

(Com. Sub. for House Bill No. 169—Originating in the House Committee
 on Education)

AN ACT to amend and reenact section sixteen, article five, chapter eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to the establishment of the county unit plan of school organization; providing that the boards of education may not be compelled to pay tuition to the boards of education of adjoining counties for the transfer of pupils where a first class high school or elementary school is maintained accessible to the pupils, except upon the order of the board of education.

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

ARTICLE V.

Sec.

16. Transfer by superintendent of pupils between schools in same district; appeal to board of education; transfers from one county to another; approval of board of county to which transferred; exceptions; when school unit comprises parts of two or more counties; amount

Sec.

of tuition fees to be paid by board making transfer; parent or guardian not required to pay cost of transfer or tuition; certification and payment of tuition fees; transfer of negro high school students and payment of tuition fees; transfer of pupils from this state to another.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article five, chapter eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

ARTICLE V.

Section 16. The board may divide its territory into such 2 sub-districts as are necessary to determine the schools the 3 pupils of its district shall attend. But upon the written request

4 of any parent or guardian, or person legally responsible for
5 any pupil, or for reasons affecting the best interests of the
6 schools, the superintendent may transfer pupils from one
7 school to another within the district. Any aggrieved person
8 may appeal the decision of the superintendent to the board,
9 and the decision of the board shall be final.

10 Transfers of pupils from one county to another may be made
11 by the board of the county in which the pupil desiring to be
12 transferred resides; but the transfer shall be subject to the
13 approval of the board of the county to which the pupil wishes
14 to be transferred, except such approval shall not be a condition
15 precedent to the transfer of a pupil resident in a municipality
16 comprised of parts of two or more counties in this state, or
17 resident in an independent school district as the same existed
18 prior to the date the county unit act became effective, made up
19 of parts of two or more counties and whether or not within its
20 limits now defined is located a municipality or part thereof,
21 but until otherwise provided by the board of the unit of his
22 residence, such pupil shall be considered and treated as trans-
23 ferred, as the case or the situation may be, with the right
24 unimpaired to attend the school or schools now established and
25 maintained (if not discontinued) in such municipality and/or
26 independent school district. Such transfer by operation of law
27 shall cease, when; (a), the board of the unit comprising a part
28 of the municipality or independent school district, has erected
29 or does establish and maintain therein a school or schools of the
30 grade or grades and standing, respectively, equivalent to the
31 school or schools in adjoining unit which the pupil coming
32 within the exception above mentioned is given the right to
33 attend; or (b), in the discretion of the board it can transport
34 economically the pupils coming within the exception aforesaid
35 to some school or schools established and maintained in the
36 jurisdiction of the unit of the pupils' residence, and elects to
37 so do. The existence of the fact under (a) aforesaid shall be
38 declared by the board and entered of record in its minutes, as
39 well as the entry of the exercise of its discretion and election
40 under the provisions (b) aforesaid, and a copy of the minutes
41 of the board relating to its declaration and/or discretion and
42 election as aforesaid, as the case may be, duly certified by the
43 signature of the president and the secretary of said board, shall
44 be furnished forthwith to the board of the unit comprising the

45 other part of said municipality or independent school district.
46 In all cases of transfer by the act of the board or by operation
47 of law, either to elementary schools or to high schools, the
48 board making the transfer shall pay to the board to which such
49 transfer is made, reasonable tuition fees, which for elementary
50 schools shall not exceed two and one-half dollars a month, and
51 for junior and senior high schools shall not exceed ten dollars
52 a month. The fee, to be paid out of the teachers' fund, shall
53 not exceed the actual cost of the instruction. No parent,
54 guardian or person acting as parent or guardian shall be re-
55 quired to pay for the transfer or for the tuition of the pupil
56 after the transfer. The board of the district to which the pupil
57 has been transferred shall promptly, at the first of each month,
58 certify to the board of the district from which the pupil was
59 transferred the correct amount of all tuition fees due and pay-
60 able for the next preceding month. All tuition fees shall be
61 paid within thirty days of certification, to the district main-
62 taining the school by the district to which the fees are certified.
63 All tuition fees shall be paid out of the teachers' fund of the
64 one district to the teachers' fund of the other:

65 *Provided*, That in districts in which no high school is main-
66 tained for negro pupils and no provision for high school train-
67 ing for such pupil or pupils is otherwise provided for by said
68 districts, such board shall transfer said pupils to the high school
69 department of one of the state supported educational institu-
70 tions or similar other institution in which said pupils may be
71 trained. In which case said board of education shall pay to
72 such institution on proper requisition the sum of ten dollars per
73 month to be applied to the general expenses of said pupil at
74 such institution: *Provided further*, That in districts where
75 high schools are maintained, and because of the topography of
76 the district, or impassable roads, or other conditions preventing
77 practical transfer of pupils to high schools within the district,
78 the district shall provide financial assistance toward the general
79 expenses of said pupils, not to exceed ten dollars per month.

80 Transfer of pupils from this state to another shall be upon
81 such terms as shall be mutually agreed upon by the board of
82 the transferring district and the authorities of the school to
83 which the transfer is made, and shall be based upon the aggre-
84 gate per capita student cost of the preceding year, of the school
85 to which the transfer is made.

CHAPTER 51

(House Bill No. 338—By Mr. Johnston)

AN ACT to provide funds for the purchase of materials for co-operation with the Federal Emergency Relief Administration in the completion of any and all projects and improvements at Concord State Teachers College; to provide labor at said institution for unemployed laborers in Mercer county; and to authorize the use of any surplus funds at said college saved out of appropriations or collected in excess of money appropriated out of collections for said institution, for the fiscal year ending June thirty, one thousand nine hundred thirty-five, and to authorize the West Virginia state board of control to cause all such excess collections and balances to be set apart in a special improvement fund, and to expend the same for the purposes herein stated under its direction.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Continued purchase of material, etc., by Concord state teachers' college and state board of control from excess collections and savings to complete FERA projects at said college.
2. Creation of special improvement fund to complete said projects; surplus collections to be first

Sec.

- paid into state treasury and paid out on approval of board of control; when excess collections immediately available.
3. Sources of special improvement fund.
4. Other payments into improvement fund.

Be it enacted by the Legislature of West Virginia:

Section 1. The Concord State Teachers College and the West Virginia Board of Control is hereby authorized to continue to purchase material and employ labor toward the completion of projects and improvements now under construction at said institution or hereafter approved by the Federal Emergency Relief Administration by the use of excess collections and savings from appropriations authorized for the said college for the fiscal year ending June thirty, one thousand nine hundred thirty-five.

Sec. 2. The West Virginia Board of Control is hereby authorized to set aside any surplus remaining from collections for the fiscal year ending June thirtieth, one thousand nine hundred thirty-five, made at said college over and above the amount necessary to meet the requirements of said college for the year

6 one thousand nine hundred thirty-five, and also any accumula-
7 tions, any special funds at said college over and above the needs
8 of said special funds for this fiscal year, and credit same to a
9 special improvement fund to be used for purchasing materials
10 and employing labor to assist in the completion of any Fed-
11 eral Relief Administration projects and improvements now in
12 process of completion or hereafter undertaken by the Federal
13 Emergency Relief Administration and/or any other federal
14 agency: *Provided*, That all of said surplus collections must first
15 be put into the state treasury as required by section two,
16 article two, chapter twelve of the code of West Virginia, one
17 thousand nine hundred thirty-one, and then paid out only on
18 approval of the West Virginia State Board of Control: *Pro-*
19 *vided further*, That after the full amount has been collected to
20 meet the appropriations out of the collections for salaries of
21 officials, teachers and employees and current general expense
22 for said Concord State Teachers College for the fiscal year end-
23 ing June thirtieth, one thousand nine hundred thirty-five, any
24 excess collections herein referred to shall be immediately avail-
25 able for use for the purposes and in the manner herein set out.

Sec. 3. The West Virginia State Board of Control is hereby
2 authorized and directed to transfer to said Special Improve-
3 ment Fund hereinbefore referred to any balances in said ap-
4 propriations, special funds in excess of needs for this fiscal year,
5 and collections in excess of appropriations out of collections for
6 the fiscal year ending June thirtieth, one thousand nine hundred
7 thirty-five, to be used for the purposes above set forth in section
8 two of this act.

Sec. 4. The West Virginia State Board of Control is hereby
2 authorized and directed to also set aside into the said Special
3 Improvement Fund any moneys accumulating at said Concord
4 State Teachers College, from collections for the rent of the
5 president's home and/or from the town of Athens for water
6 furnished said town by Concord State Teachers College, said
7 collections to be paid into the state treasury as required by
8 section two, article two, chapter twelve, of the code of West
9 Virginia, one thousand nine hundred thirty-one, and then used
10 for the purposes set forth in section two of this act.

11 All existing acts of law inconsistent with this act are hereby
12 repealed.

CHAPTER 52

(House Bill No. 481—By Mr. Parrish)

AN ACT to amend and reenact section one, article sixteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to Potomac State School.

[Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

1. Name of Potomac state school changed; control of educational affairs of school transferred to board of governors of West Virginia university; control of financial and business affairs under board of control; board

Sec.

of governors to determine subjects in which instruction offered and may extend instructional facilities and resources of university to school; when act effective and transfer of appropriations.

Be it enacted by the Legislature of West Virginia:

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

Section 1. The Potomac State School heretofore established and located at Keyser, in Mineral county, shall be continued and shall be known as the "Potomac State School of West Virginia University". The educational affairs of the college shall be under the control, supervision and management of the board of governors of the West Virginia University who shall have full authority to employ all officers, teachers and other employees and fix their yearly or monthly salaries, as provided in section one, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and its financial and business affairs shall be under the charge and control of the state board of control, as provided in section one, article eleven, chapter eighteen of said code. The college shall offer instructions in such subjects as the board of governors may direct. The board of governors shall have authority to extend all instructional facilities and resources of West Virginia University for use from time to time within said Potomac State School.

This act shall become effective July first, one thousand nine hundred thirty-five, and all moneys heretofore appropriated for the use and benefit of Potomac State School for the fiscal

22 year of one thousand nine hundred thirty-five, one thousand
23 nine hundred thirty-six, shall be for the use and benefit of
24 Potomac State School of West Virginia University.

25 All acts and parts of acts inconsistent herewith are hereby
26 repealed.

CHAPTER 53

(Senate Bill No. 62—By Mr. Mathews)

AN ACT to amend and reenact section twenty-two, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to publication and posting of delinquent lists.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.
22. Publication and posting of lists of delinquent taxes; cost of printing; paid from county treasury; aggregate amount of

Sec. tax only need be published; collection by sheriff after publication and posting.

Be it enacted by the Legislature of West Virginia:

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

Section 22. A copy of each of such lists shall be posted at 2 the front door of the courthouse of the county, at least two 3 weeks before the session of the county court at which they are 4 presented for examination. A copy of each of such lists shall 5 at the same time be printed once, in two newspapers of opposite 6 politics, if such there be in the county, and the costs of printing 7 shall be paid out of the county treasury; but in such publica- 8 tion the aggregate amount of the tax only and not each 9 division thereof need be published. Thereafter the sheriff shall 10 proceed to collect such delinquent taxes.

CHAPTER 54

(House Bill No. 5—By Mr. Thomas)

AN ACT to amend and reenact sections one and five, chapter six-

teen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, as amended by chapter forty-five, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, relating to forfeited and delinquent lands.

[Passed February 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Redemption of land delinquent and/or forfeited for non-payment of taxes until December 31, 1935, by payment to auditor of taxes assessed, without interest or costs, for years prior to 1933: when cost of suit by commissioner of school land to be included: redemption under court order, when two or more

Sec.

claimants to same tract.
5. Auditor to receive payment of taxes without fees, costs or interest until December 31, 1935; redemptions after said date; reports by auditor to county assessor; form of receipts for tax payments; recodation and filing of receipt by clerk of county court.

Be it enacted by the Legislature of West Virginia:

That sections one and five, chapter sixteen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, as amended by chapter forty-five, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 1. That the owner of any land and real estate in this state, his heirs, devisees or assigns and any person holding a lien thereon, or having the right to charge the same with a debt, which land and real estate has been returned delinquent and/or forfeited for the non-payment of taxes levied and assessed against the same, including forfeited land and real estate certified to the commissioner of school lands of the respective counties on which suits may or may not have been instituted or may still be pending in which no sale and/or confirmation of sale has been made, may redeem such land and real estate from such delinquency and/or forfeiture, or for any other cause, by the payment to the auditor of the state of West Virginia of the taxes so levied and assessed together with all taxes which would have been levied and extended on the land books against said real estate had there been no such forfeiture, without interest or costs, if the same shall be paid on or before December thirty-first, one thousand nine hundred thirty-five. Such payment shall include all taxes assessed and in arrears for any and all years prior to the year one thousand nine hundred

20 thirty-three, and prior to such redemption, and any legal costs
21 as now provided by statute that have accrued by reason of the
22 prosecution of any suit shall be paid by the commissioner of
23 school lands in the county in which the land is situated, when
24 approved and so ordered by the court by order entered of record
25 from any funds in his hands for which said commissioner shall
26 have credit in his settlement of accounts, as such commissioner
27 and commissioners of school lands shall be allowed in their set-
28 tlements such reasonable sums as the court shall determine and
29 allow for work done and services rendered by them and their
30 attorneys in relation to the tracts, lots and parcels of land
31 which have been heretofore certified to them and which have
32 not before this act becomes effective been disposed of, and such
33 sums so allowed may be, by order of the court, paid out of funds
34 in the hands of the commissioners or which shall come into their
35 hands: *Provided, however,* That where two or more claimants
36 have filed their petition as required by law asking to redeem the
37 same tract or tracts of land, said tract or tracts of land shall not
38 be certified to the auditor by the circuit clerk as provided in
39 section three of this act, nor be redeemed from the auditor as
40 provided in section one of this act as amended, but the party de-
41 creed by the court to be entitled to redeem said land by pay-
42 ing all costs accumulated as taxed by the clerk thereof, by
43 reason of the contest of title, together with the portion of the
44 taxes as above set forth unto the commissioner of school lands.

Sec. 5. It shall be the duty of the auditor of this state to
2 receive payment of the taxes mentioned in the lists certified to
3 him by virtue of sections two and three of this act, and to ac-
4 count for and disburse the same as other taxes received by him,
5 and in the payment of such taxes as is mentioned in section one
6 of this act, as amended, he shall charge no fees, costs nor interest,
7 if redeemed on or before December thirty-first, one thousand nine
8 hundred thirty-five, after which date all such redemptions shall
9 be made as provided in section thirty, article ten, chapter eleven
10 of the code of West Virginia, one thousand nine hundred thirty-
11 one. The auditor shall make written reports every thirty days to
12 the assessor of each county in this state of all forfeited lands
13 redeemed, and upon the payment of such taxes to the auditor as
14 aforesaid he shall execute triplicate receipts, retain and file one
15 in his office and deliver two thereof, including the original, to

16 the party paying the same in the following form or to the fol-
17 lowing effect:

18 19.....

19 Received of.....

20 dollars in full pay-

21 ment of all taxes assessed against..... acres of land

22 situate on in district, county of

23 for the year(s).....

24

25 (here give the years for which delinquent and/or forfeited) in
26 the name of.....

27 which are the total taxes assessed against the same, which pay-
28 ment is made by virtue of chapter sixteen, acts of the first
29 extraordinary session, one thousand nine hundred thirty-three,
30 as amended by chapter forty-five, acts of the second extraordi-
31 nary session, one thousand nine hundred thirty-three, as amend-
32 ed by the regular session, one thousand nine hundred thirty-
33 five.

34

35 Auditor of West Virginia.

36 *Provided, however,* That when the aforesaid redemption re-
37 ceipt is presented by the redelector to the clerk of the county
38 court of the county in which the real estate is situated, he shall
39 record and file the aforesaid redemption receipt for which
40 service no fee shall be charged.

CHAPTER 55

(House Bill No. 138—By Mr. Wysong)

AN ACT to amend and reenact section two, chapter forty-six, acts
of the Legislature of West Virginia, second extraordinary ses-
sion, one thousand nine hundred thirty-three, relating to for-
feited and delinquent lands.

[Passed March 6, 1935; in effect from passage. Approved by the Governor.]

Sec.
2. Time for certification by auditor to commissioner of school lands or sheriff of certificates of county clerks of lands purchased by state for delinquent taxes extended to Decembr 31, 1935; no proceedings by com-

Sec.
missioner of school lands against forfeited lands certified to him by auditor, except at request of owners, to be instituted before said date, unless otherwise ordered by court.

Be it enacted by the Legislature of West Virginia:

That section two, chapter forty-six, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 2. The time within which the auditor shall certify to 2 the commissioner of school lands or sheriff of the proper counties 3 copies of the certificates of the clerks of the county courts of 4 such counties of lands purchased for the state at sales thereof 5 for taxes due thereon for the years one thousand nine hundred 6 twenty-nine, one thousand nine hundred thirty, one thousand 7 nine hundred thirty-one, and one thousand nine hundred thirty- 8 two, as provided in section five, article three, chapter thirty- 9 seven of the code of West Virginia, one thousand nine hundred 10 thirty-one, shall be and the same is hereby extended until the 12 thirty-first day of December, one thousand nine hundred thirty- 13 five. The commissioner of school lands shall cause no proceed- 14 ings to be started or prosecuted against any forfeited lands here- 15 tofore certified to him by the auditor, until after the thirty-first 16 day of December, one thousand nine hundred thirty-five, ex- 17 cept at the instance and request of the owner or owners of 18 any particular tract or tracts, or of a redeemable interest therein 19 to enable such owner, or owners to redeem such tract or tracts 20 unless the court for good reasons otherwise orders and directs.

CHAPTER 56

(Senate Bill No. 155—By Mr. Garrett, by request)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto article eleven, relating to the organization and regulation of domestic companies, and to the admission and regulation of foreign companies, for the purpose of transacting the business of accident and health insurance.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

ARTICLE XI.

Sec.

1. Incorporation of stock companies

Sec.

in state, with approval of insurance commissioner, to issue

- | | |
|---|---|
| <p>Sec. accident and health insurance policies.</p> <p>2. Capital and reserve of such companies.</p> <p>3. How capital, reserves and surplus of such companies invested; purposes and manner in which real estate may be held; disposition of same after notice from insurance commissioner.</p> <p>4. Deposit with state treasurer to protect policy holders.</p> <p>5. Compliance with provisions of article by domestic stock or legal reserve mutual life insurance companies.</p> <p>6. Compliance with provisions of article by domestic stock or mutual casualty insurance companies.</p> <p>7. Foreign stock or legal reserve mutual life insurance companies may be admitted to do business after complying with provisions of act; provision as to deposit by such companies.</p> <p>8. All companies doing business in state under this article to comply with laws governing insurance companies.</p> <p>9. Approval by insurance commissioner of form of health and accident insurance policies before issuance; review of decision of commissioner.</p> <p>10. What policy to state and size of type.</p> | <p>Sec.</p> <p>11. Standard provisions of policy; substitution of certain words; forms A and B; specified standard provisions.</p> <p>12. Optional standard provisions.</p> <p>13. Provisions in accident and health policies of foreign companies; same, in policies of resident companies, issued or delivered in another state.</p> <p>14. Policy not to contain provisions contrary to standard provisions nor making charter, etc., part of policy unless set forth in full.</p> <p>15. Penalty for alteration of application by other than insured; when made by officer or employee of insurer.</p> <p>16. When rights of insurer to defend claim under policy not affected.</p> <p>17. Policy issued in violation of article valid; construction of; conflicting provision invalid.</p> <p>18. Discriminations prohibited.</p> <p>19. Penalty for issuing or delivering policy in violation of article.</p> <p>20. (a) Article not to apply to workmen's compensation and other policies. (b) article not to apply to policy containing no provisions relating to accident or health insurance; exceptions. (c) article not to apply to fraternal benefit societies. (d) what may be omitted from transportation ticket policies.</p> <p>21. If section invalid, other sections not affected.</p> |
|---|---|

Be it enacted by the Legislature of West Virginia:

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

ARTICLE XI

Section 1. Stock companies may incorporate under the 2 general corporation laws of this state, with the approval of 3 the insurance commissioner, and, subject to all of the provisions 4 of the laws of this state not inconsistent herewith, may issue 5 policies of accident and health insurance covering personal 6 injury, disablement or death by accident, disability resulting 7 from sickness, reimbursement for expenses incident to personal 8 injury, sickness or death, and every coverage appertaining to 9 accident and health insurance.

Sec. 2. Stock companies incorporated under this article 2 must have a capital of not less than one hundred thousand

3 dollars, fully paid, and in addition thereto shall maintain a
4 reserve equal to the unearned portion of the gross premium
5 charged for all risks written and renewed.

Sec. 3. (1) The capital, reserves and surplus funds of
2 stock companies incorporated under this article shall be in-
3 vested in the following manner:

4 (a) In bonds of the United States, any state, county, dis-
5 trict, township, city, town or village of this state or any other
6 state of the United States or the District of Columbia: *Pro-*
7 *vided*, That such bonds are not in default as to interest or
8 principal;

9 (b) In bonds and preferred stocks of corporations, pro-
10 vided the same are listed upon some recognized exchange, and
11 provided also that no default in interest or dividends exists
12 at the time of purchase or has existed at any time during the
13 two years next previous;

14 (c) In loans secured by pledge of securities of the character
15 enumerated in subdivisions (a) and (b) hereof, but no such
16 loans shall be made for more than eighty per cent of the actual
17 market value of such securities;

18 (d) In loans upon unencumbered real estate situated in
19 this state or in any state of the United States or the District
20 of Columbia, but no such loans shall be made for more than
21 fifty per cent of the market value thereof, such market value
22 to be ascertained by the sworn appraisements of three free-
23 holders of recognized knowledge of values in the community in
24 which such real estate is located.

25 (2) No company incorporated under this article shall pur-
26 chase, hold, or convey real estate, except for the purpose and
27 in the manner herein set forth, to-wit:

28 (a) Such as shall be requisite for the transaction of its
29 business;

30 (b) Such as shall have been conveyed to it in satisfaction
31 of debts previously contracted in the course of its dealings;

32 (c) Such as shall have been purchased at sales upon judg-
33 ments, decrees, or mortgages, obtained or made for debts due
34 the company, or for debts due other persons, where such com-
35 pany may have liens or encumbrances on the same, and the
36 purchase is deemed necessary to save the company from loss.

37 It shall not be lawful for any such company to purchase or
38 hold real estate in any other case or for any other purpose.
39 Any real estate purchased, received, or acquired under para-
40 graphs (b) and (c) of this subdivision (two), which has been
41 held for a period of more than five years from the date of
42 its purchase, receipt, or acquisition, must be sold and disposed
43 of within a period of six months after due notice to the com-
44 pany from the insurance commissioner to sell and convey the
45 same. The commissioner may extend the time for such dis-
46 position if he believes the interest of the company will suffer
47 materially by a forced sale.

Sec. 4. Stock companies incorporated under this article
2 shall, as a condition precedent to engaging in writing insur-
3 ance, deposit with the state treasurer in accordance with the
4 provisions of article five, chapter twelve of the code of West
5 Virginia, one thousand nine hundred thirty-one, one hundred
6 thousand dollars in securities of the kinds prescribed in
7 section three of this article, in trust, for the protection of
8 all policyholders of such company.

Sec. 5. Stock or legal reserve mutual life insurance com-
2 panies, organized under the laws of this state to transact a
3 life insurance business, may write the classes of business
4 enumerated in section one of this article by otherwise comply-
5 ing with all of the provisions of this article.

Sec. 6. Stock or mutual casualty insurance companies
2 organized under the laws of this state may write the classes
3 of business enumerated in section one of this article by other-
4 wise complying with all of the provisions of this article.

Sec. 7. Stock or legal reserve mutual life insurance com-
2 panies and stock or mutual companies authorized to do a
3 casualty or miscellaneous business and incorporated under the
4 laws of any other state or government may be admitted to
5 do the kinds of business enumerated in section one of this
6 article by otherwise complying with the laws of this state
7 relative to the admission of foreign insurance companies and
8 by complying with all of the provisions of this article:
9 *Provided*, That the deposit required in section four of this
10 article of companies incorporated under this article, shall not

11 be required of companies incorporated under the laws of any
12 other state or government, if a certificate is filed showing that
13 a general deposit of equal amount is being maintained with
14 the proper official in the state in which it is incorporated or,
15 if an alien company, in some other state of the United States.

Sec. 8. Companies organized and doing business under this
2 article and companies admitted to transact business in this
3 state, under this article, shall be required to comply with all
4 of the laws of this state governing the operations of insurance
5 companies if such laws are not inconsistent with the provisions
6 of this article, and the taxes and fees imposed upon insurance
7 companies by the laws of this state shall apply to companies
8 organized or admitted to do business in this state under this
9 article.

Sec. 9. No policy of insurance against loss from sickness,
2 or loss or damage from bodily injury or death of the insured
3 by accident, shall be issued or delivered by any stock or mutual
4 casualty company, or any stock or mutual life insurance com-
5 pany issuing such policies, to any person in this state until
6 a copy of the form thereof, and of the classification of risks
7 and the premium rates pertaining thereto, have been filed with
8 the insurance commissioner, nor shall such policy be so issued
9 or delivered until the expiration of thirty days after it has
10 been so filed, unless the insurance commissioner shall sooner
11 give his written approval thereto. If the insurance commis-
12 sioner shall notify in writing the company, corporation, asso-
13 ciation, or other insurer which has filed such form that it does
14 not comply with the requirements of law, specifying the reasons
15 for his opinion, it shall be unlawful thereafter for any such
16 insurer to issue any policy in such form. The action of the
17 insurance commissioner in this regard shall be subject to re-
18 view in the mode and manner prescribed by section thirteen,
19 article two, of this chapter.

Sec. 10. No such policy shall be issued or delivered, except
2 subject to the following conditions: (a) Unless the entire
3 money and other consideration therefor be expressed in the
4 policy; nor (b) unless the time at which the insurance there-
5 under takes effect and terminates be stated in a portion of
6 the policy preceding its execution by the insurer; nor (c) if the

7 policy purports to insure more than one person; nor (d) unless
8 every printed portion thereof and of any endorsements or
9 attached papers shall be plainly printed in type of which the
10 face shall be not smaller than ten point; nor (e) unless a
11 brief description thereof be printed on its first page and on
12 its filing back in type of which the face shall be not smaller
13 than fourteen point; nor (f) unless the exceptions of the policy
14 be printed with the same prominence as the benefits to which
15 they apply; nor (g) unless any portion of such policy which
16 purports, by reason of the circumstances under which a loss
17 is incurred, to reduce any indemnity promised therein to an
18 amount less than that provided for the same loss occurring
19 under ordinary circumstances shall be printed in bold face
20 type and with greater prominence than any other portion
21 of the text of the policy.

Sec. 11. Every such policy so issued shall contain certain
2 standard provisions, which shall be in the words and in the
3 order hereinafter set forth, and be preceded in every policy
4 by the caption "Standard Provisions." In each such standard
5 provision as hereinafter set forth, wherever the word "insurer"
6 is used, there shall be substituted therefor the word "com-
7 pany," or "corporation," or "association," or "society," as
8 the case may be, in printing such standard provisions as a
9 part of such policy. Such standard provisions shall be:

10 (a) A standard provision relative to the contract which
11 may be in either of the following two forms: Form (A), to
12 be used in policies which do not provide for reduction of
13 indemnity on account of change of occupation, and form (B),
14 to be used in policies which do so provide. If form (B) is
15 used, and the policy provides indemnity against loss from
16 sickness, the words "or contracts sickness" may be inserted
17 therein immediately after the words "in the event that the
18 insured is injured."

19 "(A)—1. This policy includes the endorsements and at-
20 tached papers, if any, and contains the entire contract of in-
21 surance. No reduction shall be made in any indemnity herein
22 provided by reason of change in the occupations of the in-
23 sured or by reason of his doing any act or thing pertaining
24 to any other occupation."

25 "(B)—1 This policy includes the endorsements and at-

26 tached papers, if any, and contains the entire contract of in-
27 surance except as it may be modified by the insurer's classifi-
28 cation of risks and premium rates in the event that the in-
29 sured is injured after having changed his occupation to one
30 classified by the insurer as more hazardous than that stated
31 in the policy, or while he is doing any act or thing pertaining
32 to any occupation so classified, except ordinary duties about
33 his residence or while engaged in recreation, in which event
34 the insurer will pay only such portion of the indemnities
35 provided in the policy as the premium paid would have pur-
36 chased at the rate but within the limits so fixed by the in-
37 surer for such more hazardous occupation.

38 If the law of the state in which the insured resides at
39 the time this policy is issued requires that prior to its issue
40 a statement of the premium rates and classification of risks
41 pertaining to it shall be filed with the state official having
42 supervision of insurance in such state, then the premium
43 rates and classification of risks mentioned in this policy shall
44 mean only such as have been last filed by the insurer in
45 accordance with such law, but if such filing is not required
46 by such law then they shall mean the insurer's premium rates
47 and classification of risks last made effective by it in such
48 state prior to the occurrence of the loss for which the insurer
49 is liable."

50 (b) A standard provision relative to changes in the con-
51 tract, which shall be in the following form:

52 "2. No statement made by the applicant for insurance not
53 included herein shall avoid the policy or be used in any legal
54 proceeding hereunder. No agent has authority to change this
55 policy or to waive any of its provisions. No change in this
56 policy shall be valid unless approved by an executive officer
57 of the insurer and such approval be endorsed hereon."

58 (c) A standard provision relative to reinstatement of
59 policy after lapse, which may be in either of the three follow-
60 ing forms: Form (A), to be used in policies which insure only
61 against loss from accident; form (B), to be used in policies
62 which insure only against loss from sickness; and form (C),
63 to be used in policies which insure against loss from both
64 accident and sickness.

65 "(A)—3. If default be made in the payment of the agreed

66 premium for this policy, the subsequent acceptance of a
67 premium by the insurer or by any of its duly authorized
68 agents shall reinstate the policy but only to cover loss result-
69 ing from accidental injury thereafter sustained.”

70 “(B)—3. If default be made in the payment of the agreed
71 premium for this policy, the subsequent acceptance of a
72 premium by the insurer or by any of its duly authorized
73 agents shall reinstate the policy but only to cover such sick-
74 ness as may begin more than ten days after the date of such
75 acceptance.”

76 “(C)—3. If default be made in the payment of the agreed
77 premium for this policy, the subsequent acceptance of a
78 premium by the insurer or by any of its duly authorized
79 agents shall reinstate the policy but only to cover accidental
80 injury thereafter sustained and such sickness as may begin
81 more than ten days after the date of such acceptance.”

82 (d) A standard provision relative to time of notice of
83 claim, which may be in either of the three following forms:
84 Form (A), to be used in policies which insure only against
85 loss from accidents; form (B), to be used in policies which
86 insure only against loss from sickness; and form (C), to be
87 used in policies which insure against loss from both accident
88 and sickness. If form (A) or (C) is used, the insurer may,
89 at its option, add thereto the following sentence: “In event
90 of accidental death immediate notice thereof must be given
91 to the insurer.”

92 “(A)—4. Written notice of injury on which claim may be
93 based must be given to the insurer within twenty days after
94 the date of the accident causing such injury.”

95 “(B)—4. Written notice of sickness on which claim may be
96 based must be given to the insurer within ten days after the
97 commencement of the disability from such sickness.”

98 “(C)—4. Written notice of injury or of sickness on which
99 claim may be based must be given to the insurer within
100 twenty days after the date of the accident causing such in-
101 jury or within ten days after the commencement of disability
102 from such sickness.”

103 (e) A standard provision relative to sufficiency of notice
104 of claim, which shall be in the following form, and in which
105 the insurer shall insert, in the blank space, such office and

106 its location as it may desire to designate for such purpose
107 of notice:

108 "5. Such notice given by or in behalf of the insured or
109 beneficiary, as the case may be, to the insurer at
110 or to any authorized agent of the insurer, with particulars
111 sufficient to identify the insured, shall be deemed to be notice
112 to the insurer. Failure to give notice within the time pro-
113 vided in this policy shall not invalidate any claim if it shall
114 be shown not to have been reasonably possible to give such
115 notice and that notice was given as soon as was reasonably
116 possible."

117 (f) A standard provision relative to furnishing forms
118 for the convenience of the insured in submitting proof of
119 loss, as follows:

120 "6. The insurer upon receipt of such notice, will furnish
121 to the claimant such forms as are usually furnished by it
122 for filing proofs of loss. If such forms are not so furnished
123 within fifteen days after the receipt of such notice, the
124 claimant shall be deemed to have complied with the require-
125 ments of this policy as to proof of loss upon submitting within
126 the time fixed in the policy for filing proofs of loss, written
127 proof covering the occurrence, character and extent of the
128 loss for which claim is made."

129 (g) A standard provision relative to filing proof of loss,
130 which shall be in such one of the following forms as may
131 be appropriate to the indemnities provided:

132 "(A)—7. Affirmative proof of loss must be furnished to the
133 insurer at its said office within ninety days after the date
134 of the loss for which claim is made."

135 "(B)—7. Affirmative proof of loss must be furnished to
136 the insurer at its said office within ninety days after the
137 termination of the period of disability for which the com-
138 pany is liable."

139 "(C)—7. Affirmative proof of loss must be furnished to
140 the insurer at its said office in case of claim for loss of time
141 from disability within ninety days after the termination of
142 the period for which the insurer is liable, and in case of
143 claim for any other loss, within ninety days after the date
144 of such loss."

145 (h) A standard provision relative to examination of the

146 person of the insured, and relative to autopsy, which shall
147 be in the following form:

148 "8. The insurer shall have the right and opportunity to
149 examine the person of the insured when and so often as it
150 may reasonably require during the pendency of claim here-
151 under, and also the right and opportunity to make an autopsy
152 in case of death where it is not forbidden by law."

153 (i) A standard provision relative to the time within
154 which payments, other than those for loss of time on account
155 of disability shall be made, which provision may be in either
156 of the following two forms, and which may be omitted from
157 any policy providing only indemnity for loss of time on
158 account of disability. The insurer shall insert, in the blank
159 space, either the word "Immediately," or appropriate language
160 to designate such period of time, not more than sixty days,
161 as it may desire: Form (A), shall be used in policies which
162 do not provide indemnity for loss of time on account of
163 disability; and form (B), shall be used in policies which do
164 so provide:

165 "(A)—9. All indemnities provided in this policy will be
166 paid.....after receipt of due proof."

167 "(B)—9. All indemnities provided in this policy for loss
168 other than that of time on account of disability will be paid
169after receipt of due proof."

170 (j) A standard provision relative to periodical payments
171 of indemnity for loss of time on account of disability, which
172 provision shall be in the following form, and which may be
173 omitted from any policy not providing for such indemnity.
174 The insurer shall insert, in the first blank space of the form,
175 appropriate language to designate the proportion of accrued
176 indemnity it may desire to pay, which proportion may be all
177 or any part not less than one-half, and, in the second blank
178 space, shall insert any period of time not exceeding sixty
179 days:

180 "10. Upon request of the insured and subject to due proof
181 of loss.....accrued indemnity for loss of time
182 on account of disability will be paid at the expiration of each
183during the continuance of the period for
184 which the insurer is liable, and any balance remaining un-

185 paid at the termination of such period will be paid im-
186 mediately upon receipt of due proof."

187 (k) A standard provision relative to indemnity payments,
188 which may be in either of the two following forms: Form (A),
189 to be used in policies which designate a beneficiary; and form
190 (B), to be used in policies which do not designate any
191 beneficiary other than the insured:

192 "(A)—11. Indemnity for loss of life of the insured is pay-
193 able to the beneficiary if surviving the insured, and other-
194 wise to the estate of the insured. All other indemnities of
195 this policy are payable to the insured."

196 "(B)—11. All the indemnities of this policy are payable to
197 the insured."

198 (1) A standard provision providing for cancellation of the
199 policy at the instance of the insured, which shall be in the
200 following form:

201 "12. If the insured shall at any time change his occupation
202 to one classified by the insurer as less hazardous than that
203 stated in the policy, the insurer, upon written request of the
204 insured and surrender of the policy, will cancel the same and
205 will return to the insured the unearned premium."

206 (m) A standard provision relative to the right of the
207 beneficiary under the policy, which shall be in the following
208 form, and which may be omitted from any policy not desig-
209 nating a beneficiary:

210 "13. Consent of the beneficiary shall not be requisite to
211 surrender or assignment of this policy, or to change of
212 beneficiary, or to any other changes in the policy."

212-a (n) A standard provision limiting the time within which
213 suit may be brought upon the policy, as follows:

214 "14. No action at law or in equity shall be brought to
215 recover on this policy prior to the expiration of sixty days
216 after proof of the loss has been filed in accordance with the
217 requirements of this policy, nor shall such action be brought
218 at all unless brought within two years from the expiration
219 of the time within which proof of loss is required by the
220 policy."

221 (o) A standard provision relative to time limitations of
222 the policy as follows:

223 "15. If any time limitation of this policy with respect to
224 giving notice of claim or furnishing proof of loss is less than

225 that permitted by the law of the state in which the insured
226 resides at the time this policy is issued, such limitation is
227 hereby extended to agree with the minimum period permitted
228 by such law.''

Sec. 12. No such policy shall be so issued or delivered which
2 contains any provision (a) relative to cancellation at the in-
3 stance of the insurer, or (b) limiting the amount of indemnity
4 to a sum less than the amount stated in the policy and for
5 which the premium has been paid, or (c) providing for the
6 deduction of any premium from the amount paid in settle-
7 ment of claim, or (d) relative to other insurance by the same
8 insurer, or (e) relative to the age limits of the policy, unless
9 such provisions, which are hereby designated as optional
10 standard provisions, shall be in the words and in the order in
11 which they are hereinafter set forth; but the insurer may, at
12 its option, omit from the policy any such optional standard
13 provision. Such optional standard provisions, if inserted in
14 the policy, shall immediately succeed the standard provisions
15 named in the preceding section of this article and shall be as
16 follows:

17 (a) An optional standard provision relative to cancellation
18 of the policy at the instance of the insurer, as follows:

19 "16. The insured may cancel this policy at any time by
20 written notice delivered to the insured or mailed to his last
21 address, as shown by the records of the insurer, together with
22 cash or the insurer's check for the unearned portion of the
23 premiums actually paid by the insured, and such cancellation
24 shall be without prejudice to any claim originating prior
25 thereto."

26 (b) An optional standard provision relative to reduction of
27 the amount of indemnity to a sum less than that stated in the
28 policy as follows:

29 "17. If the insured shall carry with another company, corpo-
30 ration, association or society other insurance covering the same
31 loss without giving written notice to the insurer, then in that
32 case the insurer shall be liable only for such portion of the
33 indemnity promised as the said indemnity bears to the total
34 amount of like indemnity in all policies covering such loss.
35 and for the return of such part of the premium paid as shall
36 exceed the pro rata for the indemnity thus determined."

37 (c) An optional standard provision relative to deduction of
38 premium upon settlement of claim, as follows:

39 "18. Upon the payment of any claim hereunder any premium
40 then due and unpaid or covered by any note or written order
41 may be deducted therefrom."

42 (d) An optional standard provision relative to other in-
43 surance by the same insurer, which shall be in such one of the
44 following forms as may be appropriate to the indemnities pro-
45 vided, and in the blank spaces of which the insurer shall insert
46 such upward limits of indemnity as are specified by the in-
47 surer's classification of risks, filed as required by this article:
48 "(A)—19. If a like policy or policies, previously issued by
49 the insurer to the insured be in force concurrently herewith,
50 making the aggregate indemnity in excess of \$.....
51 the excess insurance shall be void and all premiums paid for
52 such excess shall be returned to the insured."

53 "(B)—19. If a like policy or policies, previously issued by
54 the insurer to the insured be in force concurrently herewith,
55 making the aggregate indemnity for loss of time on account
56 of disability in excess of \$.....weekly, the excess
57 insurance shall be void and all premiums paid for such excess
58 shall be returned to the insured."

59 "(C)—19. If a like policy or policies, previously issued by
60 the insurer to the insured be in force concurrently herewith,
61 making the aggregate indemnity for loss other than that of
62 time on account of disability in excess of \$.....,
63 or the aggregate indemnity for loss of time on account of
64 disability in excess of \$.....weekly, the excess in-
65 surance of either kind shall be void and all premiums paid
66 for such excess shall be returned to the insured."

67 (e) An optional standard provision relative to the age
68 limits of the policy, which shall be in the following form, and
69 in the blank spaces of which the insurer shall insert such
70 number of years as it may elect:

71 "20. The insurance under this policy shall not cover any
72 person under the age ofyears nor over the age
73 of.....years. Any premium paid to the insurer for
74 any period not covered by this policy will be returned upon
75 request."

Sec. 13. Policies of insurance against accidental bodily in-

2 jury or sickness, issued by an insurer not organized under
3 the laws of this state, may contain, when issued in this state,
4 any provision which the law of the state, territory or district
5 of the United States or country, under which the insurer is
6 organized, prescribes for insertion in such policies. Policies
7 of insurance against accidental bodily injury or sickness,
8 issued by an insurer organized under the laws of this state,
9 may contain, when issued or delivered in any other state,
10 territory, district, or country, any provision required by the
11 laws of the state, territory, district, or country in which the
12 same are issued, anything in this article to the contrary not-
13 withstanding.

Sec. 14. No such policy shall be issued or delivered if it
2 contains any provision contradictory, in whole or part, of any
3 of the provisions hereinbefore, in this article, designated as
4 "Standard Provisions" or as "Optional Standard Provisions",
5 nor shall any endorsements or attached papers vary, alter,
6 extend, or be used as a substitute for, or in any way conflict
7 with, any of the said "Standard Provisions" or the said
8 "Optional Standard Provisions", nor shall such policy be so
9 issued or delivered if it contains any provision purporting to
10 make any portion of the charter, constitution, or by-laws of
11 the insurer a part of the policy, unless such portion of the
12 charter, constitution, or by-laws shall be set forth in full in
13 the policy; but this prohibition shall not be deemed to apply
14 to any statement of rates or classification of risks, filed with
15 the insurance commissioner in accordance with the provisions
16 of this article.

Sec. 15. No alteration of any written application for in-
2 surance, by erasure, insertion, or otherwise, shall be made by
3 any person other than the applicant, without his written con-
4 sent, and the making of any such alteration without the con-
5 sent of the applicant shall be a misdemeanor. If such alter-
6 ation shall be made by any officer of the insurer, or by any
7 employee of the insurer with the insurer's knowledge or con-
8 sent, then such act shall be deemed to have been performed
9 by the insurer thereafter issuing the policy upon such altered
10 application. The commissioner may revoke the license of the
11 insurer for any violation of this section.

Sec. 16. The acknowledgment by any insurer of the receipt
2 of notice given under any policy covered by this article or
3 the furnishing of forms for filing proofs of loss, or the accept-
4 ance of such proofs, or the investigation of any claims there-
5 under, shall not operate as a waiver of any of the rights of
6 the insurer in defense of any claim arising under such policy.

Sec. 17. A policy issued in violation of this article shall
2 be held valid, but shall be construed as provided herein; and,
3 when any provision in such policy is in conflict with any pro-
4 vision of this article, such provision of the policy so conflicting
5 shall be invalid, and the policy shall be deemed to contain the
6 standard provisions required by this article.

Sec. 18. Discrimination between individuals of the same
2 class in the amount of premiums or rates charged for any
3 policy of insurance covered by this article, or in the benefits
4 payable thereon, or in any of the terms or conditions of such
5 policy, or in any other manner whatsoever, is prohibited.

Sec. 19. Any insurer, or any officer or agent thereof, who
2 issues or delivers to any person in this state any policy, or
3 alters any written application for insurance, in willful violation
4 of the provisions of this article, shall be guilty of a misdemeanor,
5 and, upon conviction thereof shall be sentenced to pay a fine
6 of not more than three hundred dollars for each offense. The
7 insurance commissioner may revoke the license of any com-
8 pany, corporation, association or other insurer of another state
9 or country, or of the agent thereof, which or who wilfully
10 violates any of said provisions.

Sec. 20. (a) Nothing in this article, however, shall apply
2 to or affect any policy of liability or workmen's compensation
3 insurance or any policy of insurance on which the premiums
4 are payable weekly or any group, general or blanket policy
5 of insurance issued to any municipal corporation or depart-
6 ment thereof, or to any corporation, co-partnership, associa-
7 tion or individual employer, police or fire department, under-
8 writer's corps, salvage bureau, or to any association having a
9 constitution or by-laws and formed in good faith for purposes
10 other than that of obtaining insurance, where the officers,
11 members or employees or classes or departments thereof are
12 insured for their individual benefit against specified accidental

13 bodily injuries or sickness while exposed to the hazards of the
14 occupation or otherwise.

15 (b) Nothing in this article shall apply to nor in any way
16 affect life insurance, endowment or annuity contracts or con-
17 tracts supplemental thereto which contain no provisions relat-
18 ing to accident or health insurance except (a) such as provide
19 additional benefits in case of death by accidental means, and
20 except (b) such as operate to safeguard such contracts against
21 lapse, or to give a special surrender value, or special benefit,
22 or an annuity, in the event that the insured or annuitant shall
23 become totally and permanently disabled as defined by the con-
24 tract or supplemental contract.

25 (c) Nothing in this article shall apply to or in any way
26 affect fraternal benefit societies.

27 (d) The provisions of this article contained in clause (e)
28 of section ten and in clauses (b), (c), (h), and (i) of section
29 eleven, may be omitted from transportation ticket policies.

Sec. 21. If any section, paragraph, sentence, clause, word
2 and/or application of any part hereof be held unconstitutional
3 the same shall not affect the validity of the remaining portions.

4 All acts and parts of acts in conflict with the provisions of
5 this act are hereby repealed.

CHAPTER 57

(Senate Bill No. 156—By Mr. Garrett, by request)

AN ACT to amend and reenact article five, chapter thirty-three
of the code of West Virginia, one thousand nine hundred
thirty-one, relating to farmers' mutual fire insurance com-
panies.

[Passed March 1, 1935; in effect from passage. Became a law without the
approval of the Governor.]

<p>Sec.</p> <p>1. Incorporation of domestic farmers' mutual life insurance company without capital stock.</p> <p>2. Certificate of authority from and approval of charter and by laws by insurance commissioner; charter and by laws before approval, to be accompanied by applications from citizens of state for not less than \$100,000</p>	<p>Sec.</p> <p>dollars insurance; renewal of certificate of authority.</p> <p>3. Powers; amendments to charter or by laws to be approved by insurance commissioner.</p> <p>4. May insure property at any location; premiums on mercantile or industrial properties; dividends.</p>
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| <p>Sec.</p> <p>5. What damages companies may insure against; policy forms to be approved by insurance commissioner; limitation of liability to definite per cent of value of property.</p> <p>6. Reinsurance; joint policies by two or more companies.</p> <p>7. Policies held by corporations, boards or associations.</p> <p>8. Limitations on insurance on single risks.</p> <p>9. Surplus or emergency fund.</p> <p>10. Number, election and meetings of board of directors.</p> <p>11. Organization of board of directors; to prescribe duties and fix compensation of officers.</p> <p>12. Bonds of treasurer, secretary and employees.</p> <p>13. Notice of cancellation or reduction of policies.</p> <p>14. Notice of annual meeting to members.</p> <p>15. Who may become members.</p> <p>16. Statement of condition of company presented to annual meeting.</p> <p>17. Assessments and premiums; notice to members; action for payment of assessment.</p> <p>18. Contingent liability of member; liability of member in absence of limitation.</p> <p>19. Fees or initial charges provided by by-laws.</p> <p>20. Procedure for withdrawal of member; cancellation of policy upon notice; suspension of li-</p> | <p>Sec.</p> <p>bility, if assessments unpaid; reinstatement of policy.</p> <p>21. License to agents; revocation or nonrenewal of license reported to insurance commissioner; when revocation on nonrenewal deemed confidential; annual fee of \$1.00 for licensing agents.</p> <p>22. Person determining character of risk not to receive commission on premium.</p> <p>23. Annual report and fee to insurance commissioner; when uniform accounting forms may be prescribed by commissioner.</p> <p>24. Reports to fire marshal of fire losses; availability of reports; reports not open for public inspection; non-liability of company or fire marshal on reports; information as to risk of owner and fee; when confidential.</p> <p>25. Examination by insurance commissioner or qualified examiner every three years or oftener; qualifications, powers, duties and report by examiner; action of insurance commissioner upon report.</p> <p>26. Voluntary discontinuation of business and dissolution of company.</p> <p>27. Companies heretofore organized, by resolution, to be governed by article.</p> <p>28. Exemption of companies operating under act from provisions of other insurance laws of state.</p> <p>29. If any section invalid; other sections not affected.</p> |
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Be it enacted by the Legislature of West Virginia:

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

Section 1. A farmers' mutual fire insurance company may
 2 be organized and incorporated without capital stock under
 3 the provisions of this article for the purpose of insuring prop-
 4 erty against damage by fire, lightning, hail, tornado or wind-
 5 storm.

Sec. 2. No such company shall commence the transaction
 2 of business until it receives from the insurance commissioner
 3 a certificate of authority, which shall state that such com-
 4 pany has complied with the provisions of this article, and such
 5 certificate shall continue in force until the first day of April
 6 next after its issuance, unless sooner revoked for cause. Be-

7 fore such certificate may be issued such company shall file
8 with the insurance commissioner a certified copy of its charter
9 and by-laws and have same approved in writing by him. The
10 charter and by-laws so submitted must be accompanied by
11 applications by citizens of this state for not less than one
12 hundred thousand dollars of insurance on property located
13 in this state, of which amount no one risk subject to one fire shall
14 exceed one thousand dollars. The certificate of authority shall
15 be renewed from year to year unless cause exists to refuse
16 such renewal.

Sec. 3. Every such company when so authorized to transact
2 business shall possess all the powers necessary to carry out the
3 corporate purposes not inconsistent with the constitution or
4 laws of this state. Amendments to the charter and/or by-laws
5 may be offered by the board or any member at any regular or
6 special meeting of members and may be adopted by the ap-
7 proval of a majority of the members present and voting, pro-
8 vided notice in writing of the intention to propose such
9 amendments and the substance thereof is given to the members
10 not less than thirty days prior to such meeting. All amend-
11 ments shall be subject to the approval of the insurance
12 commissioner.

Sec. 4. Any such company may insure property at any
2 location. If insurance is granted on mercantile or industrial
3 property the premiums or assessments shall be based on an
4 annual inspection bureau rate on the property insured, in
5 which case the company may pay such dividend on such
6 insurance as the company's experience with such insurance
7 may justify.

Sec. 5. Every such company may issue policies of insurance,
2 signed by its president and secretary, agreeing in the name of
3 the company to pay all damages caused by fire, lightning, hail,
4 tornado or windstorm to the property insured during the term
5 of the policy. The form of all such policies shall be subject
6 to regulation and approval of the insurance commissioner, who
7 may, if he deems fit, after conferring with representatives of
8 companies affected, prescribe a general form or forms for such
9 policies, or specific provisions which shall be inserted in such
10 policies, and all such policies thereafter issued shall conform

11 to all such regulations prescribed by the insurance commis-
12 sioner. All policies issued shall have all of their terms and
13 provisions printed thereon or attached thereto in full. Com-
14 panies may limit their liability in the policy to a definite per
15 cent of the value of the property.

Sec. 6. Any such company may reinsure any or all of its
2 risks in any fire insurance company authorized to do business
3 in this state and may itself issue policies of reinsurance to
4 other companies operating in this state. Two or more farmers'
5 mutual fire insurance companies may issue policies jointly.

Sec. 7. Whenever any public or private corporation, board
2 or association in this state has entered into an agreement for
3 and holds a policy in any farmers' mutual fire insurance com-
4 pany operating under this article, any officer, stockholder or
5 trustee of any such corporation, board or association may be
6 recognized as acting for or on its behalf for the purpose of
7 such membership, but shall not be personally liable upon such
8 contract of insurance by reason of acting in such representative
9 capacity. The right of any corporation organized under the
10 laws of this state to participate as a member of such
11 farmers' mutual insurance company is hereby declared to be
12 incidental to the purpose for which such corporation is organ-
13 ized and as much granted as the rights and powers expressly
14 conferred.

Sec. 8. No such company shall insure any single risk com-
2 prising a building and contents or other property so located
3 as to be subject to destruction by a single fire for a greater
4 amount than one thousand dollars until its insurance in force
5 shall be as much as five hundred thousand dollars, nor shall
6 it then insure any such risks for an amount greater than one-
7 fifth of one per cent of the net insurance in force under its
8 policies, unless the risks insured by the company in excess of
9 the amounts above stipulated are simultaneously covered by
10 reinsurance.

Sec. 9. Every such company is authorized to accumulate a
2 surplus or emergency fund in such amount as may be deemed
3 advisable by its board of directors.

Sec. 10. The number of directors of any such company

2 shall not be less than six nor more than fifteen, a majority
3 of whom shall constitute a quorum to do business, to be elected
4 from the incorporators by ballot, of whom one-third shall be
5 elected for one year, one-third for two years and one-third for
6 three years, until their successors are elected and qualified.
7 At all subsequent elections, except to fill vacancies, one-third
8 of such board of directors shall be elected for three years,
9 such election to be held at the annual meeting of the company.
10 In the election of the first board of directors each incorporator
11 shall be entitled to one vote. At every subsequent election,
12 unless otherwise provided in the by-laws, every member shall
13 be entitled to one vote and may cast the same in person or by
14 proxy. Regular meetings of the board of directors shall be
15 held as often as the by-laws may provide, and special meetings
16 may be held at the call of the president, secretary, or a major-
17 ity of the board of directors.

Sec. 11. The directors shall elect from their number a presi-
2 dent and a treasurer, and shall also employ a secretary, who
3 may or may not be a member of the company, all of whom
4 shall hold their office for one year and until their successors
5 are elected and qualified. Any two of the above named offices
6 except the office of president may be held by the same person.
7 The directors shall also prescribe the duties of the officers and
8 fix their compensation, not inconsistent with the charter and
9 by-laws.

Sec. 12. The treasurer and secretary shall give bonds to
2 the company for the faithful performance of their duties in
3 such amounts as shall be prescribed by the board of directors,
4 only one bond being required where the office of treasurer and
5 secretary is held by the same person. Bonds may be required of
6 other employees and agents of the company at the discretion
7 of the board of directors.

Sec. 13. All notices of cancellation of policies or reduction
2 thereof and all other notices to members required by this
3 article shall be delivered personally or mailed in a sealed en-
4 velope addressed to the last known address of the member
5 and when so given they shall be deemed sufficient and binding
6 upon the member so notified.

Sec. 14. The board of directors shall notify all members of

2 the time and place of the annual meeting of such members,
3 either by printing the same on their policies or by written
4 notice, as required by section thirteen of this article, and shall
5 report at such annual meeting all matters pertaining to the
6 operations of the company.

Sec. 15. Any person owning property may become a mem-
2 ber of such company by insuring therein, and shall be entitled
3 to all the rights and privileges appertaining thereto and sub-
4 ject to all liabilities connected with such membership.

Sec. 16. The president and secretary of every such mutual
2 company shall prepare annually, under oath, a full, true and
3 complete statement of the condition of such company on the
4 thirty-first day of December, and present the same to the
5 annual meeting.

Sec. 17. Any such company may levy assessments or collect
2 premiums for the purpose of paying losses and expenses al-
3 ready incurred, or for estimated future losses and expenses,
4 and for reserve or surplus fund purposes. The secretary of any
5 such company shall notify every member of the company of
6 the amount due by a written or printed notice, stating the
7 amount due the company from the member and the time and
8 place and to whom it shall be paid. Such payment shall be
9 made by the member within sixty days from date of mailing
10 such notice, or within a less period, as the by-laws may pro-
11 vide. The company may maintain an action against any mem-
12 ber thereof to recover all such assessments which he may
13 neglect or refuse to pay when legally due and payable.

Sec. 18. The contingent liability of the member may, with
2 the approval of the insurance commissioner, be limited to one
3 or more times the premium stated in the policy, and the com-
4 pany may issue a policy without contingent liability to the
5 member if at the time of issuance it has a surplus of not less
6 than one hundred thousand dollars and maintains unearned
7 premium and other reserves on the same basis as that required
8 of domestic stock companies offering the same kind of insur-
9 ance. In the absence of such limitation of contingent liability
10 each member shall be liable for his pro rata share of losses
11 and expenses of the company, including a reasonable contri-
12 bution to a surplus fund.

Sec. 19. Any such company shall collect from its members 2 such fees or initial charges as the by-laws may provide.

Sec. 20. Any member of a company may withdraw there- 2 from upon written notice to the company. Every member 3 so withdrawing shall immediately surrender his policy and 4 pay to the extent of his liability as stated in the policy, all of 5 his indebtedness legally due the company. No member shall 6 be liable for losses or expense occurring subsequent to the time 7 of his membership. No member shall upon withdrawal have 8 any right or interest in the surplus of the company. The com- 9 pany may cancel any policy upon written notice to the holder. 10 A company may, in its by-laws, provide for the suspension of 11 its liability for loss upon any policy from the date when an 12 unpaid assessment becomes due if notice is given to the mem- 13 ber five days before the suspension is to become effective, and 14 the payment of such assessment shall only reinstate such policy 15 from the date of such payment, but no allowance shall be made 16 in any assessment because of such suspension.

Sec. 21. Every company licensed under this article shall 2 be required to obtain from the insurance commissioner a li- 3 cense for each of its agents who solicits or writes insurance 4 in this state, which license shall continue in force until the 5 first day of April next after date of its issuance, unless sooner 6 revoked for cause. If the license of any agent is revoked by 7 the company or not renewed at the end of the license year, 8 the reasons for such revocation or failure to renew shall be 9 reported by the company to the insurance commissioner on 10 forms provided for that purpose. The information thus fur- 11 nished to the insurance commissioner shall be available to 12 any insurance company licensed in this state. The records 13 containing such information shall not be open for public in- 14 spection and neither the insurance commissioner nor the com- 15 pany furnishing such information shall be liable for any action 16 of damages for any statement made in complying with the 17 provisions of this section. The name of the person or the 18 company furnishing such information shall be held as confi- 19 dential and not disclosed in such report. The annual fee for the 20 licensing of all such agents shall be one dollar.

Sec. 22. No officer or other person whose duty it is to de-

2 termine the character of the risk and upon whose decision the
5 application shall be finally accepted or rejected shall receive
4 as any part of his compensation a fee or commission upon the
5 premium.

Sec. 23. Every company operating under this article shall
2 make an annual report to the insurance commissioner on or
3 before the first day of March, showing the condition of the
4 company on the thirty-first day of December next preceding,
5 on such form as he shall prescribe, and shall pay the insurance
6 commissioner a fee of five dollars at the time of filing such
7 annual report. If the insurance commissioner finds it neces-
8 sary in order to receive a satisfactory report he may, after con-
9 ferring with representatives of the companies affected, pre-
10 scribe uniform accounting forms and practices to be followed
11 by all such companies.

Sec. 24. Every company licensed under this article shall
2 report promptly to the fire marshal of this state, on forms
3 provided by him, all the details in regard to each loss sus-
4 tained by such company under its policies. The primary pur-
5 pose of such reports shall be fire prevention and the detection
6 and punishment of arson. The information thus furnished
7 shall be available to any insurance company licensed in this
8 state. The records containing such information shall not be
9 open for public inspection and neither the fire marshal nor
10 the company furnishing such reports shall be liable in any
11 action of damages by reason of any statement made in com-
12 plying with the provisions of this section. On request of any
13 licensed company the fire marshal shall furnish such informa-
14 tion as he may have relative to any risk or the owner thereof,
15 and a fee of one dollar may be charged for each report. The
16 name of the person or company furnishing such information
17 shall be held as confidential and not disclosed in such report.

Sec. 25. Every such company shall be examined by the
2 insurance commissioner or some other qualified examiner ap-
3 pointed by him at least once in every three years, and oftener
4 if he deems it necessary. No person shall be considered a
5 qualified examiner unless he is familiar with the underwriting
6 and accounting methods of such companies. He shall have free
7 access to the books, papers and records of the company, and is

8 authorized to examine members, officers, and employees of the
9 company under oath touching any matters pertaining to the
10 operation of the company. A written report of each examina-
11 tion, giving consideration to the underwriting methods and
12 financial condition of the company, shall be made and placed
13 on file in the office of the insurance commissioner, where it
14 shall be available to the public, and a copy of such report
15 shall be furnished to the examined company. If the insurance
16 commissioner shall find that such company is not paying its
17 losses or is not complying with the law, or is conducting its
18 business in a manner detrimental to the interests of the mem-
19 bers or the public he may order the levy of an assessment upon
20 all members liable for assessment, order the company to cease
21 issuing new policies, or take such other action as shall best pro-
22 tect the interests of those insured by the company.

Sec. 26. Any such company may at any annual or special
2 meeting, due notice of the time, place, and object of which shall
3 have been given, decide to voluntarily discontinue its opera-
4 tions and settle its affairs. A committee of three members shall
5 be then designated which shall on behalf of the company and
6 under the supervision of the insurance commissioner, liquidate
7 its assets, pay its debts and expenses and divide any surplus
8 ratably among the member. Upon final settlement by such
9 committee it shall make a complete report which shall be
9-a signed by its members and filed with the insurance commis-
10 sioner. If he approves the report he shall transmit to such
11 committee a certificate of his approval and thereupon the
12 company shall be deemed dissolved and shall cease to exist
13 under this article.

Sec. 27. Any farmers' mutual fire insurance company here-
2 tofore organized and doing business pursuant to the laws of
3 the state of West Virginia may by resolution and without reor-
4 ganization avail itself of and be governed by all of the pro-
5 visions of this article. A copy of such resolution, duly certi-
6 fied by the president and secretary of such company, shall be
7 filed with the insurance commissioner. All farmers' mutual
8 fire insurance companies hereafter organized pursuant to the
9 laws of the state of West Virginia shall be subject to the pro-
10 visions of this article. After the first day of January,

11 nineteen hundred and forty, all farmers' mutual fire insurance
12 companies incorporated in this state shall comply with this
13 article.

Sec. 28. Any such company organized or operating under
2 the provisions of this article shall be exempt from all provi-
3 sions of other insurance laws of this state, and no law here-
4 after passed shall apply to such companies unless such law
5 shall expressly declare that it is applicable to farmers' mutual
6 fire insurance companies, as contemplated by this article.

Sec. 29. If any section, paragraph, sentence, clause, word,
2 and/or application of any part hereof be held unconstitutional,
3 the same shall not affect the validity of the remaining portions.
4 All existing provisions of law inconsistent with this act are
5 hereby repealed.

CHAPTER 58

(Senate Bill No. 157—By Mr. Garrett, by request)

AN ACT to amend and reenact section eighteen, article two,
chapter thirty-three of the code of West Virginia, one thou-
sand nine hundred thirty-one, relating to discrimination and
rebating by insurance companies and insurance agents,
solicitors, brokers and other persons, and providing penalties.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec.
18. Discriminations by life insurance
companies or agents prohibited;
hearing by insurance commis-
sioner on charge of discrimina-
tion; review of commissioner's
orders; continuation of rates;
notice to insurer; contract for

Sec.
Insurance to be plainly ex-
pressed in policy; rebate of
premium, commissions, etc., and
other inducements not specified
in policy prohibited; provisions
as to loans as inducement; pen-
alties for violation of section

Be it enacted by the Legislature of West Virginia:

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

Section 18. No life insurance company doing business in
2 this state shall make or permit any distinction or discrimina-

3 tion in favor of individuals of the same class, or of equal
4 expectation of life, in the amount of payment or return of
5 premiums or rates charged for policies of insurance, or in
6 the dividends or other benefits payable thereon, or in any other
7 of the terms and conditions of the contract it makes, nor shall
8 any such company permit, or agent thereof offer or make,
9 any contract of insurance or agreement as to such contract
10 other than is plainly expressed in the issued policy thereon.
11 No other insurer, authorized to transact business in this state,
12 shall fix or make any rates or schedules of rates or charge a
13 rate which discriminates unfairly between risks in this state
14 of essentially the same hazard. Whenever it is made to appear
15 to the satisfaction of the insurance commissioner that such
16 discrimination exists, he may, after a full hearing either before
17 himself or before any salaried employee of the insurance de-
18 partment whose report he may adopt, order such discrimination
19 removed. The findings, determinations and orders of the com-
20 missioner shall be subject to review in the manner provided
21 in section thirteen, article two of this chapter. If complaint
22 is made to the insurance commissioner that any rate or premium
23 or schedule of rates or premiums discriminates unfairly in
24 violation of this section, or if the insurance commissioner shall
25 himself raise the question, without complaint, he shall send
26 written notice to the insurer, charging such rate or premium
27 or making use of such schedule of rates or premiums. but
28 such rate or premium or schedule may, nevertheless, be con-
29 tinued in effect until the issue as to its discriminatory character
30 is finally determined. And no company authorized or per-
31 mitted to do an insurance business within this state, or any
32 officer, agent, solicitor or representative thereof, shall make
33 any contract for such insurance on property or risk located
34 within the state against liability, casualty, accident or hazard
35 that may arise or occur thereon, or any agreement as to such
36 contract, other than as plainly expressed in the policy issued,
37 or to be issued, thereon; and no insurance company, association
38 or society, by itself or any other party, and no insurance agent,
39 solicitor or broker, personally, or by any other party, shall
40 offer, promise, allow, give, set off or pay, directly or indirectly,
41 any rebate of or part of the premium payable on the policy,
42 or on any policy, or agent's commission thereon, earnings.

43 profits, dividends, or other benefit founded, arising, accruing
44 or to accrue thereon, or therefrom, or any other valuable con-
45 sideration or inducement to or for insurance, on any risk in
46 this state now or hereafter to be written, which is not specified
47 in the policy contract of insurance, nor shall any such com-
48 pany, association, or society, agent, solicitor, or broker, person-
49 ally or otherwise, offer, promise, give, sell or purchase any
50 stocks, securities or property, or any dividends or profits
51 accruing or to accrue thereon, or other thing of value whatso-
52 ever as inducement to insurance, or in connection therewith,
53 which is not specified in the policy. And no insurance agent,
54 solicitor or broker, personally or by any other party, shall
55 directly or indirectly offer a loan through any building asso-
56 ciation or bank, or in any other way, as an inducement to
57 insurance, nor shall any insurance agent, solicitor or broker
58 require an applicant for a loan to cancel outstanding in-
59 surance in admitted and solvent companies: *Provided*, That
60 any insurance agent, solicitor or broker may accept the renewal
61 of any policy, even though such agent, solicitor or broker
62 represents a building association, bank or other party making
63 the insured a loan, if the insured protects the lender by an
64 indorsement on such policy in proper form. Upon satisfactory
65 evidence of the violation of any provision of this section by
66 any solicitor or agent of any insurance company, the insurance
67 commissioner shall forthwith revoke the certificate of authority
68 of such solicitor or agent, and no license shall be issued to
69 such agent or solicitor within one year from the date of the
70 revocation of such license; and any insurance company, asso-
71 ciation, or society, its officers, solicitors or agents, or any in-
72 surance broker violating the provisions of this section shall be
73 guilty of a misdemeanor, and, upon conviction thereof, shall
74 be fined one hundred dollars for each and every violation, or,
75 in the discretion of the court, imprisoned in the county jail
76 of the county in which the offense is committed for a period
77 of not less than ninety days nor more than six months.

CHAPTER 59

(Senate Bill No. 17—By Mr. Henderson)

AN ACT to provide for the use of safety glass in motor vehicles and providing penalties.

[Passed March 4, 1935; in effect ninety days from passage. Approved by the Governor.]

<p>Sec.</p> <p>1. When unlawful to operate motor vehicle registered in this state unless equipped with safety glass.</p> <p>2. Definition of safety glass.</p> <p>3. When unlawful to operate motor vehicle registered in this state unless equipped with safety glass.</p>	<p>Sec.</p> <p>4. State road commissioner to approve and maintain list of approved types of glass to be used.</p> <p>5. Penalty for violation of act by operator, owner or custodian of motor vehicle; revocation or suspension of permit or certificate.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. On and after July first, one thousand nine hundred and thirty-five, and except as hereinafter otherwise provided, it shall be unlawful to operate, on any public highway or street in this state, any motor vehicle which is registered in this state, and which shall have been manufactured or assembled on or after July first, one thousand nine hundred thirty-five, unless such motor vehicle be equipped with safety glass wherever glass is used in partitions, doors, windows or windshields.

Sec. 2. The term "safety glass", as used in this act shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by glass when the glass is cracked or broken.

Sec. 3. After January first, one thousand nine hundred and thirty-seven, it shall be unlawful to operate on any highway any motor vehicle registered in this state, manufactured or assembled after the said date, unless such vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields and sideshields; this provision shall not, however,

7 apply to any vehicle registered in this or any other state prior
8 to January first, one thousand nine hundred thirty-seven.

Sec. 4. The state road commissioner shall approve and
2 maintain a list of the approved types of glass, conforming to
3 the specifications and requirements for safety glass as set forth
4 in this act and in accordance with the standards recognized by
5 the United States bureau of standards, and shall not issue a
6 license for or relicense any motor vehicle subject to the provi-
7 sions of this act, unless such motor vehicle be equipped as
8 herein provided with such approved type of glass.

Sec. 5. The operator, owner, or custodian of any motor
2 vehicle which is operated in violation of the provisions of this
3 act shall be deemed guilty of a misdemeanor and upon con-
4 viction thereof shall be fined twenty-five dollars or be impris-
5 oned ten days in jail or both. In case of the violation of the
6 provisions of this act by any common carrier or person oper-
7 ating under a permit or certificate issued by the public service
8 commission, such permit or certificate shall be revoked, or, in
9 the discretion of the commission, suspended until the provisions
10 of this act are satisfactorily complied with.

CHAPTER 60

(Senate Bill No. 20—By Mr. Spillers)

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 last amended and reenacted by chapter
eight, acts of the Legislature, first extraordinary session, one
thousand nine hundred thirty-three, relating to the authority
of county boards of education, and authorizing the purchase
of insurance against negligence.

[Passed March 7, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec.
13. Enumerated powers of county
boards of education, including
purchase of insurance against
negligence of drivers of school
buses operated by the board;

Sec.
amount that may be expended
upon each child of school age;
no change in textbooks except
by general law; instruction in
state history.

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 last amended and reenacted by chapter eight, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted so as to read as follows:

Section 13. The board, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests of the county;

(2) To establish needed high schools;

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

(4) To consolidate schools;

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

(6) To provide at public expense adequate means of transportation for all children of school age who live more than two miles distant from school by the nearest available road or path;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses operated by the board; and if the transportation of pupils be let out to contract, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify.

The board of any district may expend, under such regulations as it establishes, for each child, an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis. No changes in textbooks except those provided by general law shall be made as a result of the passage of this act: *Provided, however,* That at least one year of instruction in the history of the state of West Virginia shall be given prior to the eighth grade.

CHAPTER 61

(Senate Bill No. 216—By Mr. Fleming)

AN ACT to amend chapter seventeen of the code of West Virginia one thousand nine hundred thirty-one, by adding thereto article twenty, relating to the protection of the public against reckless and irresponsible persons on public highways, the operation of motor vehicles on public highways and the financial responsibility of owners and operators of motor vehicles for damages caused by such operation and providing penalties.

[Passed March 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Acts supplemental to other laws relating to motor vehicles and their operation; if conflict in penalties, greater penalty to prevail.
2. Suspension of permits, licenses, certificates of registration and registration plates upon conviction, plea of guilty or forfeiture of bond for violations of motor vehicle law; suspension not lifted on vehicle thereafter registered in name of violator until he proves his ability to respond in damages for liability thereafter incurred; amount; when certificate of registration or registration plates not suspended; proof by nonresident owner or operator; certified copy of conviction, etc., to be sent to state road commissioner; if violator is nonresident, certified copy to be sent by commissioner to proper officer in state of violator's residence; when violator is not owner and owner furnishes required proof, violator not required to give proof in own behalf, except for vehicles registered in his name.
3. When final judgment in excess of fifty dollars not satisfied within thirty days, permits, licenses, etc., suspended until judgment satisfied and proof of ability to respond in damages given; when judgment is against nonresident, certified copy to commissioner and to proper officer of state of nonresident; when proof given, but another judgment obtained before proof given, permits, etc.,

Sec.

- again suspended until judgment satisfied; when judgment, for purposes of this article, regarded as satisfied by certain payments; partial payment credited on amounts provided for in section.
4. Application to court or justice by judgment debtor to pay judgment in installments; if not in default and proof of ability to respond in damages given, restoration of license, etc.
 5. How proof of ability to respond in damages evidenced; (a) by insurance policy; when additional operator's insurance policy required; proof by nonresidents; reciprocity or nonreciprocity of certificates of insurance carriers; default of foreign insurance carrier; notification to commissioner by insurance carrier of cancellation or expiration of policy; (b) by bond of surety company or individual bond, with sureties; conditions, and cancellation of bond; lien of, how established; fee and duties of county clerk; when other evidence of ability to respond in damages may be required.
 6. Commissioner to hold bond as satisfying judgment for damages; action by judgment creditor, in name of state, against company or person executing bond.
 7. Commissioner to furnish copy of operating record of any person subject to provisions of article; what abstract to show; fee

Sec.	Sec.
	13. Penalties for violations of act.
8. Commissioner to furnish injured person with information as to ability of owner or operator to respond in damages.	14. Definition, and provisions of motor vehicle liability policy, operator's policy; commissioner to approve form of policy before issuance or delivery; provisions to which policies subject, whether or not stated therein; may not be cancelled after accident by carrier and insured; rights of carrier against insured; what constitutes entire contract; certificate of issuance of policy for filing with commissioner; binder or endorsement.
9. Return of suspended licenses, registration plates, etc., to commissioner; penalty for failure; when superintendent of department of public safety to secure and return same to commissioner.	15. When commissioner attorney for nonresident for service of process; fee and bond; notice to nonresident.
10. When bond or certificate of insurance to be returned; conditions on which cancellation or return may be made; when reestablishment of proof required upon application for license; cancellation or return upon substitution of other adequate proof.	16. Definitions of words and phrases.
11. Provisions concerning transfer of suspended certificate of registration or the registration, re-possession or sale of motor vehicle.	17. Rules and regulations by commissioner for enforcement of act.
12. Endorsement of certificates of insurance to conform to requirements of article.	18. Plaintiff may use other processes of law.
	19. If section invalid, other sections not affected.
	20. Act not retroactive.

Be it enacted by the Legislature of West Virginia:

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

Section 1. This article shall in no respect be considered as a repeal of any law relating to motor vehicles and their operation but shall be considered as supplemental thereto, and, in the event there is a conflict between any penalty provided in this article and any other penalty provided by law for the same offense, the greater penalty shall be enforced.

Sec. 2. The motor vehicle learner's permit, operator's and/or chauffeur's license, all of the certificates of registration and the registration plates of any person shall be suspended by the state road commissioner, hereinafter called the commissioner, if such person shall, by a final order or judgment, have been convicted of, or shall have pleaded guilty to, or shall have forfeited any bond or collateral deposited to secure his appearance for trial as defendant (where such forfeiture shall not have been vacated) for any of the following offenses hereinafter committed:

(a) Operating a motor vehicle while under the influence

11 of intoxicating liquor, drugs or narcotics in violation of any
12 law of this state;

13 (b) Homicide or assault arising out of the operation of a
14 motor vehicle;

15 (c) Reckless driving, resulting in bodily injury or damage
16 to property;

17 (d) Leaving the scene of an automobile accident without
18 making identity known, in violation of the provisions of ar-
19 ticle eight of this chapter and of the acts amendatory thereof
20 and supplemental thereto;

21 (e) Operating a motor vehicle on any road or highway of
22 this state without being licensed therefor, in violation of any
23 of the provisions of article six of this chapter and of the acts
24 amendatory thereof and supplemental thereto;

25 (f) Such other violations of the laws as require suspension
26 or revocation of permits and/or licenses in this state;

27 (g) An offense in any other state or in any province of the
28 Dominion of Canada which, if committed in this state, would
29 be in violation, as aforesaid, of any of the above specified
30 provisions of law in this state.

31 Such permit, license, certificate and plates, so sus-
32 pended by the commissioner, shall remain so suspended
33 and shall not at any time thereafter be renewed or used, nor
34 shall any such permit or license be thereafter issued to such
35 person, nor shall any motor vehicle be thereafter registered
36 in the name of such person, until he shall have given proof
37 of his ability to respond in damages for any liability thereafter
38 incurred, resulting from the ownership, maintenance, use or
39 operation thereafter of a motor vehicle, for bodily injury
40 to or death of any one person in the amount of at least five
41 thousand dollars, and, subject to the aforesaid limit for any
42 one person injured or killed, of at least ten thousand dollars
43 for bodily injury to or the death of two or more persons in
44 any one accident, and for damage to property in the amount
45 of at least one thousand dollars resulting from any one acci-
46 dent: *Provided, however,* That the certificate of registration
47 and the registration plates issued for any motor vehicle regis-
48 tered in the name of such person as owner shall not be so
49 suspended in the event such person has previously given or
50 shall immediately give and thereafter maintain, for a period
51 of three years, proof of his ability to respond in damages ac-

52 cording to the provisions of this article, with respect to each
53 and every motor vehicle owned and registered by such person.
54 Such proof in said amounts shall be furnished for each motor
55 vehicle registered by such person. If such person shall not
56 be a resident of this state, he shall not operate any motor
57 vehicle in this state nor shall any motor vehicle owned by
58 him be operated within this state by any person, and no
59 learner's permit or operator's or chauffeur's license shall be
60 issued to such person and no motor vehicle shall be registered
61 in his name, until he shall have given proof as aforesaid.

62 Whenever there is a conviction, plea or forfeiture, as afore-
63 said, in any court of record, or in a justice's court, or in the
64 police court of any incorporated municipality, the clerk of
65 such court of record, or the justice of a justice's court, or the
66 clerk or recorder of the municipality in which is such police
67 court, as the case may be, in which any such judgment is
68 rendered or order is entered or other such action taken, shall
69 forward immediately to the commissioner a certified copy
70 thereof, to which copy shall be appended a certificate showing
71 the nature of the offense upon which the conviction was had.
72 A certified copy of the judgment, order or record of other
73 action of the court or justice shall be prima facie evidence
74 of the conviction, plea, forfeiture or other action therein
75 stated. In the event that the person so shown to have been
76 convicted, pleaded guilty or forfeited bond or collateral ap-
77 pears to be a nonresident of this state, the commissioner shall
78 transmit a copy of such certified copy, certified to by him, to
79 the officer in charge of the issuance of motor vehicle operators'
80 and/or chauffeurs' licenses and registration certificates of
81 the state or province of which such person appears to be a
82 resident.

83 If it shall be duly established to the satisfaction of the com-
84 missioner and the commissioner shall so find (a) that any
85 person, whether a resident or nonresident of this state, who
86 shall have been convicted, pleaded guilty or forfeited bond
87 or collateral, as aforesaid, was, upon the occasion of the offense
88 upon which such conviction, plea or forfeiture was based, a
89 chauffeur or motor vehicle operator, however designated, in
90 the employ of the owner of the motor vehicle involved in such
91 offense or a member of the immediate family or household of
92 the owner of such motor vehicle, and (b) that there was not,

93 at the time of such offense or subsequent thereto, up to the
94 date of such finding, any motor vehicle registered in this
95 state, (or if a nonresident, in the state of his residence) in
96 the name of the person who so has been convicted, pleaded
97 guilty or forfeited bond or collateral, as aforesaid, then and
98 in that event, if the person in whose name such motor vehicle
99 is registered shall give proof of ability to respond in damages
100 according to the provisions of this article (and the commis-
101 sioner is hereby authorized to accept such proof from such
102 person) such chauffeur or other person, as aforesaid, shall be
103 relieved of the necessity of giving such proof in his own behalf,
104 so long as such chauffeur or other person is operating a motor
105 vehicle for which the owner has given proof as herein pro-
106 vided. The commissioner shall designate the restrictions im-
107 posed by this section on the face of such person's operator's
108 or chauffeur's license: *Provided, however,* That such chauffeur
109 or other person shall furnish proof of ability to respond in
110 damages, as herein required, for all motor vehicles registered
111 in the name of such chauffeur or other person: *Provided*
112 *further,* That no such license shall be reinstated or any new
113 license issued until otherwise permitted under the laws of
114 this state.

Sec. 3. In the event of the failure of any person, within thirty
2 days thereafter, to satisfy any judgment, which shall have be-
3 come final by expiration, without appeal, of the time within
4 which appeal might have been perfected, or by final affirmance
5 on appeal rendered against him by a court of competent juris-
6 diction in this state or in any other state or the District of Co-
7 lumbia, or in any district court of the United States, or by a
8 court of competent jurisdiction in any province of the Dominion
9 of Canada, for damages on account of bodily injury, including
10 death, or damage to property in excess of fifty dollars,
11 resulting from the ownership, maintenance, use or operation
11-a hereafter of a motor vehicle, the learner's permit, operator's
12 and/or chauffeur's license, every certificate of registration and
13 the registration plates of such person shall be forthwith sus-
14 pended by the commissioner upon receiving a certified copy of
15 such final judgment from the court in which or the justice by
16 whom the same was rendered, together with a certificate from
17 such court or justice that such judgment is final and still un-
18 satisfied and that more than thirty days have elapsed since the

19 same became final, as aforesaid, and shall remain so suspended
20 and shall not be renewed nor shall any motor vehicle be there-
21 after registered in the name of such person while any such
22 judgment remains unstayed, unsatisfied and subsisting, nor
23 until every such judgment is satisfied or discharged, except by
24 a discharge in bankruptcy, and until such person gives proof
25 of his ability to respond in damages as required in section two
26 of this article for future accidents. If such person who has
27 failed to satisfy within thirty days any final judgment, as
28 aforesaid, shall not be a resident of this state, he shall not
29 operate any motor vehicle in this state, nor shall any motor
30 vehicle owned by him be operated in this state by any person,
31 nor shall any operator's or chauffeur's license be issued to such
32 person or any motor vehicle be registered in his name, until
33 every such judgment shall be stayed, satisfied or discharged as
34 herein provided, and until such person shall have given proof
35 of his ability to respond in damages for future accidents as re-
36 quired in section two of this article. The clerk of the court of
37 record in which, or the justice by whom, any such judgment
38 is rendered, shall forward immediately, after the expiration of
39 said thirty days, as aforesaid, to the commissioner, a certified
40 copy of such judgment as aforesaid. In the event the defendant
41 is a nonresident, the commissioner shall transmit to the com-
42 missioner of motor vehicles or other officer or body in charge
43 of the issuance of operators' licenses and registration certificates
44 of the state or province of which the defendant is a resident, a
45 certified copy of such judgment. If after such proof has been
46 given, any other such judgment shall be recovered against such
47 person for an event occurring before such proof was given but
48 after this article shall take effect, such permit, license or
49 licenses and certificate or certificates and plates shall again be
50 and remain suspended, and no other such permit, license, cer-
51 tificate or plates shall be issued to such person while any such
52 judgment remains unstayed, unsatisfied and subsisting, as afore-
53 said: *Provided, however,* That, (a) When five thousand dollars
54 has been credited upon any judgment or judgments rendered
55 in excess of that amount for bodily injury to or death of one
56 person as the result of any one accident; or
57 (b) When, subject to the limit of five thousand dollars as to
58 one person, the sum of ten thousand dollars has been credited
59 upon any judgment or judgments rendered in excess of that

60 amount for bodily injury to or the death of more than one
61 person as the result of any one accident; or

62 (c) When one thousand dollars has been credited upon any
63 judgment or judgments rendered in excess of that amount for
64 damage to property of others as a result of any one accident,
65 resulting from the ownership, maintenance, use or operation
66 of a motor vehicle, credit for such amounts shall be deemed a
67 satisfaction of such judgment or judgments in excess of said
68 amounts for the purposes of this article only.

69 Whenever payment has been made in settlement of any
70 claims for bodily injury, death, or property damage arising
71 from a motor vehicle accident resulting in injury, death, or prop-
72 erty damage to two or more persons in such accident, any such
73 payment shall be credited in reduction of the amounts provided
74 for in this section.

Sec. 4. A judgment debtor to whom this article applies may,
2 for the sole purpose of giving authority to the commissioner
3 to authorize such judgment debtor to operate a motor vehicle
4 thereafter, after five days' notice to the judgment creditor.
5 apply to the court in which or the justice before whom the
6 judgment was obtained for the privilege of paying such judg-
7 ment in installments, and the court or justice, without prejudice
8 to any other legal remedies which the judgment creditor may
9 have, may so order, fixing the amounts and times of payment of
10 the installments. While the judgment debtor is not in default
11 in payment of such installments, the commissioner, upon his
12 giving proof of ability to respond in damages for future acci-
13 dents, as hereinbefore provided, may, in his discretion, restore
14 or refrain from suspending his permit, license and/or certificate
15 or certificates of registration and registration plates, but such
16 permit, license and/or certificate or certificates and plates shall
17 be suspended as hereinbefore provided, if and when the com-
18 missioner is satisfied that the judgment debtor has failed to
19 comply with the terms of the order of such court or justice.

Sec. 5. Proof of ability to respond in damages, when re-
2 quired by this article, may be evidenced by either of the
3 following:

4 (a) By filing with the commissioner the written certificate
5 or certificates of any insurance carrier, duly authorized to
6 do business within this state, that it has issued to, or for

7 the benefit of, the person furnishing such proof and named
8 as the insured, a motor vehicle liability policy or policies, or
9 in certain events an operator's policy, in the form hereinafter
10 prescribed, which, at the date of the certificate or certificates
11 is or are in full force and effect, and designating therein by
12 explicit description or by other adequate reference, all motor
13 vehicles to which the policy or policies apply, unless the policy
14 or policies are issued to a person who is not the owner of a
15 motor vehicle. The commissioner shall not accept any cer-
16 tificate or certificates unless the same shall cover all motor
17 vehicles then registered in the name of the person furnishing
18 such proof as owner. An additional certificate or certificates,
19 as aforesaid, shall be required as a condition precedent to the
20 registration of any additional motor vehicle or motor vehicles
21 in the name of such person furnishing such proof as owner.
22 Such certificate or certificates shall certify that the motor
23 vehicle liability policy or policies therein cited shall not be
24 canceled or expire except as hereinafter provided.

25 When a certificate is filed showing that a policy or policies
26 have been issued covering all motor vehicles owned by the
27 insured but not insuring such person when operating any
28 motor vehicle not owned by him, it shall be unlawful for such
29 person to operate any motor vehicle not owned by him or not
30 covered by such certificate. In such event the commissioner
31 shall designate the above restriction upon the operator's or
32 chauffeur's license of such person. In the event the owner of
33 a motor vehicle or motor vehicles desires to be relieved of such
34 restriction and to be permitted to drive any other motor
35 vehicle he may have such restriction removed upon filing a
36 certificate showing that there has been issued to him a policy
37 of insurance insuring him as insured against liability imposed
38 by law upon such insured for bodily injury to or death of
39 any person or damage to property to the amounts and limits
40 as provided under section two of this article with respect to
41 any motor vehicle operated by him and which otherwise com-
42 plies with the requirements of this article with respect to
43 such type of policy. Such policy is hereinafter referred to as
44 an operator's policy. When the person required to give proof
45 of ability to respond in damages is not the owner of a motor
46 vehicle, then an operator's policy of the type and coverage

47 described in this paragraph shall be sufficient under this
48 article.

49 If such person be a nonresident, a certificate, as aforesaid,
50 of an insurance carrier authorized to transact business in the
51 state or province in which the motor vehicle or motor vehicles
52 described in such certificate is or are registered, or if such non-
53 resident does not own a motor vehicle, then in the state or
54 province in which the insured resides, and otherwise conform-
55 ing to the provisions of this article, shall be accepted if such
56 carrier shall, (1) execute a power of attorney authorizing the
57 commissioner to accept service of notice or process in any
58 action arising out of a motor vehicle accident in this state,
59 and (2) duly adopt a resolution which shall be binding on it,
60 declaring that its policies shall be deemed to be varied to
61 comply with the laws of this state relating to the terms of
62 motor vehicle liability policies issued therein, and (3) agree
63 to accept as final and binding any final judgment of any court
64 of competent jurisdiction in this state, duly rendered in any
65 action arising out of a motor vehicle accident: *Provided, how-*
66 *ever,* That the provisions of this section shall be operative as
67 to such insurance carriers (organized and existing under the
68 laws of such state or province and not licensed to transact busi-
69 ness in this state) only to the extent and under the same terms
70 and conditions that, under the laws of such state or province
71 where such motor vehicle is registered or in which the insured
72 resides, like recognition, if a law of like effect is in force and
73 effect, is granted to certificates of insurance carriers organized
74 and existing under and by virtue of the laws of this state.
75 If, under the laws of such state or province, in which a law
76 of like effect is in force and effect, certificates of insurance
77 carriers organized and existing under or by virtue of the laws
78 of this state are not accepted, the certificates of insurance car-
79 riers of such state or province shall not be accepted under the
80 provisions of this article: *Provided further,* That whenever
81 any foreign insurance carrier which has qualified to furnish
82 proof of ability to respond in damages, as hereinbefore re-
83 quired, defaults in any of its undertakings or agreements, the
84 commissioner shall not thereafter accept any certificate of said
85 carrier, whether theretofore filed or thereafter tendered, as
86 such proof of ability to respond in damages, so long as such
87 default continues.

88 The commissioner shall be notified by the insurance carrier
89 of the cancellation or expiration of any motor vehicle liability
90 policy certified under the provisions of this article at least ten
91 days before the effective date of such cancellation or expira-
92 tion, and until such notice is duly given, such policy shall
93 continue in full force and effect. The notice of such cancella-
94 tion or expiration shall be served in the manner provided in
95 section one, article two, chapter fifty-six of the code of West
96 Virginia, one thousand nine hundred thirty-one, or by regis-
97 tered mail, which latter method shall be evidenced by a return
98 receipt.

99 (b) By filing with the commissioner a bond executed by the
100 person giving such proof and by a surety company, duly
101 authorized to transact business in this state, or a bond executed
102 by the person giving such proof and by at least two individual
103 sureties, each owning real estate within the county where such
104 surety resides and having an equity therein in the amount of
105 such bond, which real estate shall be scheduled in the bond
106 and such bond shall be approved by the clerk of a court of
107 record in the county in which such surety resides. Such bond
108 shall be conditioned for the payment of the amounts specified
109 in section two of this article and shall be filed with the com-
110 missioner and shall not be cancellable except after ten days'
111 written notice to said commissioner, served and evidenced in
112 the manner provided in this section as to similar notices re-
113 specting motor vehicle liability policies, but cancellation of
114 such bond shall not prevent recovery thereon with respect to
115 any right or cause of action arising prior to the date of can-
116 cellation. Such restriction as to cancellation only after ten
117 days' notice shall be set forth in the bond. Such bond shall
118 constitute a lien in favor of the state upon the real estate so
119 scheduled of any surety, which lien shall exist in favor of any
120 holder of a final judgment against the person who has filed
121 such proof, on account of damage to property in excess of
122 fifty dollars, or injury to, including death of, a person
123 or persons resulting from the ownership, maintenance, use or
124 operation hereafter of a motor vehicle, upon the filing of a
125 notice to that effect by the commissioner in the office of the
126 clerk of the county court of the county where such real estate
127 is located. Such notice shall contain the name in full of any
128 such surety to be affected by it, the description of the real

129 estate located in such county as scheduled in the bond, and
130 shall be signed by said commissioner and bear an imprint of
131 the official seal of the commission. Such clerk shall indicate
132 on such notice the day and hour when it was received by him,
133 and, upon the payment of a fee of one dollar, he shall imme-
134 diately record such notice in the place wherein trust deeds
135 of real estate are recorded and shall index such notice in the
136 name of such surety in the same place in which such trust
137 deeds are indexed, treating such surety as a grantor and the
138 state of West Virginia as a grantee, and such clerk shall be
139 subject to the penalties provided in article three of chapter
140 thirty-eight and in article four of chapter fifty-one of the code
141 of West Virginia, one thousand nine hundred thirty-one, for the
142 failure to so record and to so index such notice, respectively.
143 A fee of one dollar shall be collected by the commissioner from
144 the person who has filed such proof and shall be paid to such
145 clerk by the commissioner. All liens so created shall relate
146 to the time of filing such notice in such clerk's office and shall
147 have priority over all liens suffered or created thereafter.
148 Whenever any evidence of proof of ability to respond in
149 damages filed under the provisions of this article no longer
150 fulfills the purpose for which required, the commissioner shall,
151 for the purposes of this article, require other evidence of ability
152 to respond in damages as required by this article and shall
153 suspend the operator's license, chauffeur's license, certificate
154 of registration and registration plates of the person con-
155 cerned pending such proof.

Sec. 6. A bond filed by or on behalf of any person, under
2 the provisions of the preceding section, shall be held by the
3 commissioner to satisfy, in accordance with the provisions of
4 this article, any execution issued against such person on a
5 judgment for damages, as aforesaid, arising out of the owner-
6 ship, maintenance, use or operation of a motor vehicle as afore-
7 said. If such a judgment rendered against the principal on
8 the surety company or real estate individual bond given under
9 the provisions of this article shall not be satisfied within thirty
10 days after it has become final, as hereinbefore provided, the
11 judgment creditor may, for his own use and benefit and at his
12 sole expense, bring an action or actions in the name of the
13 state against the company or persons executing such bond and
14 may enforce by a suit in equity in his own name any lien

15 existing by virtue of the provisions of this article upon the
16 real estate of a person who has executed such bond.

Sec. 7. The commissioner shall upon request furnish any
2 insurance carrier, person or surety a certified abstract of the
3 operating record on file in the office of said commissioner, of
4 any person subject to the provisions of this article, which
5 abstract shall fully designate every motor vehicle (if any)
6 registered in the name of such person, and if there shall be no
7 such record of any conviction of such person of a violation of
8 any provisions of any statute relating to the operating of a
9 motor vehicle or of any injury or damage caused by such
10 person as herein provided, the commissioner shall so certify.
11 The commissioner shall collect for each such certificate the sum
12 of one dollar. Such record shall not be admissible as evidence
13 in any action for damages or criminal proceeding arising out of
14 a motor vehicle accident.

Sec. 8. The commissioner shall furnish any person who may
2 have been injured in person or property by any motor vehicle,
3 upon written request accompanied by a fee of one dollar, with
4 all information of record in his office pertaining to the evidence
5 of the ability of any operator or owner of any motor vehicle
6 to respond in damages.

Sec. 9. Any operator or any owner, whose learner's permit,
2 operator's and/or chauffeur's license or certificate of registra-
3 tion or registration plates shall have been suspended as in this
4 article provided, or whose policy of insurance or surety bond,
5 when same is required under this article, shall have been can-
6 celed or terminated, or who shall neglect to furnish additional
7 evidence of ability to respond in damages upon request of
8 the commissioner, shall immediately return to the commissioner
9 his learner's permit, operator's license, certificate of registra-
10 tion and the registration plates issued under the provisions of
11 this article. If any person shall wilfully fail to return to the
12 commissioner the learner's permit, operator's and/or chauffeur's
13 license, certificate of registration and the registration plates so
14 issued as provided herein, the commissioner shall forthwith
15 notify the superintendent of the department of public safety
16 who shall, as soon as possible, secure possession thereof and
17 return same to the commissioner. Said superintendent of the
18 department of public safety shall make a report in writing

19 to the commissioner, within two weeks after being so notified
20 by the commissioner, as to the result of his efforts to secure
21 the possession and return of such permit, license, certificate of
22 registration and registration plates. Any person wilfully fail-
23 ing to return such learner's permit, operator's or chauffeur's
24 license or such certificate and registration plates shall be guilty
25 of a misdemeanor and, upon conviction thereof, shall be fined
26 not more than two hundred dollars, and such penalty shall be
27 in addition to any penalty imposed for any violation of any of
28 the motor vehicle laws of this state.

Sec. 10. (a) The commissioner shall, upon the request in
2 writing of the person on whose behalf such proof of ability
3 to respond in damages was furnished, cancel any bond or return
4 any certificate of insurance filed pursuant to this article as
5 proof of ability to respond in damages, or waive the requirement
6 of filing proof of ability to respond in damages in any of the
7 following events:

8 (1) At any time after three years shall have elapsed since
9 the filing of such bond or certificate, if the person has not,
10 during the three year period immediately preceding the re-
11 quest, been convicted of any offense referred to in section two
12 of this article; or

13 (2) In the event of the death of the person on whose behalf
14 such proof was filed, or the permanent incapacity of such per-
15 son to operate a motor vehicle; or

16 (3) In the event the person who has given proof of ability
17 to respond in damages surrenders his operator's or chauffeur's
18 license, every certificate of registration and all registration
19 plates to the commissioner: *Provided, however,* That in each
20 of the foregoing instances such cancellation or return shall
21 be upon the condition that no action for damages, upon a
22 liability referred to in this article, is pending against such
23 person on whose behalf such proof of ability to respond in
24 damages was furnished, that no judgment upon any such lia-
25 bility against such person is outstanding and unsatisfied, and
26 that no notice has been filed with the commissioner of an acci-
27 dent involving such person, occurring within the three month
28 period immediately preceding such request and resulting from
29 the ownership, maintenance, use or operation of a motor ve-
30 hicle.

31 The affidavit of such person, showing fulfillment of the neces-
32 sary requirements under this section, shall be sufficient proof
33 thereof in the absence of evidence to the contrary in the records
34 of the commissioner.

35 Whenever any person, as to whom such proof has been so
36 canceled or to whom such proof has been so returned, applies
37 for an operator's or chauffeur's license or the registration of
38 a motor vehicle within a period of three years from the date
39 proof of ability to respond in damages was originally required,
40 any such application shall be refused unless the applicant shall
41 reestablish such proof for the remainder of such period.

42 (b) The commissioner shall cancel any bond or return any
43 certificate of insurance to the person entitled thereto, upon
44 the substitution and acceptance of other adequate proof of
45 ability to respond in damages pursuant to the provisions of this
46 article.

Sec. 11. If an owner's certificate of registration has been
2 suspended under the provisions of this article, such certificate
3 shall not be transferred nor the motor vehicle, in respect of
4 which such certificate was issued, registered in another name,
5 where the commissioner has reasonable grounds to believe that
6 such transfer or registration is proposed for the purpose or will
7 have the effect of defeating the purpose of this article: *Pro-*
8 *vided, however,* That nothing in this section contained shall be
9 held to apply to or affect the registration of any motor vehicle
10 sold by a person who, pursuant to the terms or conditions of
11 any written instrument giving a right of repossession, has
12 exercised such right and has repossessed such motor vehicle
13 from a person whose certificate of registration has been sus-
14 pended under the provisions of this article: *Provided further,*
15 That nothing in this section contained shall prevent the owner
16 of a motor vehicle, the registration of which has been suspended
17 hereunder, from effecting a bona fide sale of such motor vehicle
18 to another person whose rights or privileges are not suspended
19 under this article nor prevent the registration of such motor
20 vehicle by such other person.

Sec. 12. Nothing in this article contained shall be held to
2 apply to or affect policies of automobile insurance against
3 liability which may now or hereafter be required by any other
4 law of this state, and such policies, if endorsed to conform to

5 the requirements of this article, shall be accepted as proof of
6 ability to respond in damages when required under this article,
7 nor shall anything in this article contained be held to apply
8 to or affect policies insuring solely the insured named in the
9 policy against liability resulting from the maintenance, opera-
10 tion or use by persons in the insured's employ or in his behalf
11 of motor vehicles not owned by the insured.

Sec. 13. Any person who shall forge, or, without authority,
2 sign any evidence of ability to respond in damages as required
3 by the commissioner in the administration of this article, or
4 utter or attempt to employ as true such forged evidence of
5 ability to respond in damages, knowing the same to be forged,
6 and any person who shall violate any of the provisions of this
7 article for which no penalty is otherwise provided shall be
8 guilty of a misdemeanor, and, upon conviction thereof, be fined
9 not more than one thousand dollars, or imprisoned not more
10 than six months, or both so fined and imprisoned. Any person
11 whose learner's permit, operator's or chauffeur's license or
12 certificate of registration, registration plates and/or other
13 privilege to operate a motor vehicle has been suspended or re-
14 voked and restoration thereof or issuance of a new permit,
15 license or certificate of registration is contingent upon the fur-
16 nishing of proof of ability to respond in damages according
17 to the provisions of this article, and who, during such sus-
18 pension or revocation, or in the absence of full authorization
19 from the commissioner, drives any motor vehicle upon any
20 highway or knowingly permits any motor vehicle owned by him
21 to be operated by another upon any highway, except as per-
22 mitted hereunder, shall be guilty of a misdemeanor, and, upon
23 conviction thereof, be imprisoned for not more than six months
24 or fined not more than five hundred dollars, or both so fined
25 and imprisoned.

Sec. 14. "Motor vehicle liability policy," as used in this
2 article, shall be taken to mean any policy of liability insurance
3 issued by an insurance carrier authorized to transact business
4 in this state, or issued by an insurance carrier authorized to
5 transact business in the state or province in which the motor
6 vehicle or motor vehicles therein described is or are registered,
7 or if none be described, then in the state in which the insured
8 resides, to or for the benefit of the person therein named as

9 insured, which policy shall either (a) designate, by explicit
10 description or other adequate reference, every motor vehicle
11 with respect to which coverage is intended to be granted by
12 such policy, and shall insure the insured named therein and
13 any other person using or responsible for the use of any such
14 motor vehicle with the consent, express or implied, of such
15 insured, against loss from the liability imposed by law upon
16 such insured or upon such other person for injury to or
17 death of any person, other than such insured and such person
18 or persons as may be covered as respects such injury or death
19 by any workmen's compensation law, and/or for damage to
20 property, except property of others in charge of the insured
21 or of his employees or other agents, growing out of the owner-
22 ship, maintenance, use or operation of any such motor vehicle
23 within the continental limits of the United States of America
24 or the Dominion of Canada, or which policy shall, in the
25 alternative (b) insure the person therein named as insured
26 against loss from the liability imposed by law upon such
27 insured for bodily injury to or death of any person, other
28 than such insured and such person or persons as may be
29 covered as respects such injury or death by any workmen's
30 compensation law, and/or for damage to property, except
31 property of others in charge of the insured or of his employees
32 or other agents, growing out of the maintenance, operation or
33 use by such insured of any motor vehicle, except a motor
34 vehicle registered in the name of such insured, and occurring
35 while such insured is personally in control, as driver or occu-
36 pant, of such motor vehicle within the continental limits of
37 the United States of America or the Dominion of Canada, the
38 policy in the latter case to be known as an operator's policy;
39 in either case to the amount or limit of five thousand dollars,
40 exclusive of interest and costs, on account of bodily injury
41 to or death of any one person, and, subject to the same limit
42 as respects bodily injury to or death of any one person, of
43 ten thousand dollars, exclusive of interest and costs, on ac-
44 count of any one accident resulting in bodily injury to or
45 death of more than one person; and of one thousand dollars
46 for damage to property of others, as herein provided, result-
47 ing from any one accident; or a binder pending the issuance
48 of any such policy, or an endorsement to an existing policy,
49 both as hereinafter provided: *Provided, however,* That this

50 section shall not be construed as preventing an insurance
51 carrier from granting in a motor vehicle liability policy any
52 lawful coverage in excess of or in addition to the coverage
53 herein provided for, or from embodying in such policy any
54 agreements, provisions or stipulations not contrary to the pro-
55 visions of this article and not otherwise contrary to law:
56 *Provided further*, That separate concurrent policies, which
57 together meet the requirements of this article, whether issued
58 by one or several carriers, covering, respectively, (1) personal
59 injury or death, as aforesaid, and (2) property damage, as
60 aforesaid, shall be termed a "motor vehicle liability policy,"
61 within the meaning of this article.

62 Except as in section twelve of this article is provided, no
63 motor vehicle liability policy or operator's policy shall be
64 issued or delivered in this state, pursuant to the provisions of
65 this article, until a copy of the form of policy shall have been
66 on file with the insurance commissioner for at least thirty
67 days, unless sooner approved in writing by said insurance
68 commissioner, nor if within said period of thirty days said
69 insurance commissioner shall have notified the carrier in writ-
70 ing that in his opinion, specifying the reasons therefor, the
71 form of policy does not comply with the provisions of this
72 article. Said insurance commissioner shall approve any form
73 of policy which specifies the name, address and business, if
74 any, of the insured, the coverage afforded by the policy, the
75 premium charged therefor, the policy period, and the limits
76 of liability, and contains an agreement that the insurance
77 thereunder is provided in accordance with the coverage defined
78 in this article, as respects bodily injury and death or property
79 damage or both, and is subject to all the provisions of this
80 article.

81 Every such motor vehicle liability policy and every such
82 operator's policy shall be subject to the following provisions,
83 whether or not contained therein:

84 (a) The liability of the insurance carrier under any such
85 policy shall become absolute whenever loss or damage covered
86 by such policy occurs, and the satisfaction by the insured of
87 a final judgment for such loss or damage shall not be a con-
88 dition precedent to the right or obligation of the carrier to
88-a make payment on account of such loss or damage: *Provided*,
88-b *however*, That the insurance carrier shall have the right to

88-c settle any claim covered by the policy and, if such settlement
88-d is made in good faith, the amount thereof shall be deductible
88-e from the limits of liability specified in the policy: No such
89 policy shall be canceled or annulled as respects any loss or
90 damage, by any agreement between the carrier and the in-
91 sured after the insured has become involved in any accident
92 out of which any liability may arise for such loss or damage,
93 and any such cancellation or annulment shall be void.

94 The policy may provide that the insured, or any other person
95 covered by the policy, shall reimburse the insurance carrier
96 for any payment made on account of a loss, or damage claim,
97 or suit, involving a breach of the terms, provisions or con-
98 ditions of the policy; and further, if the policy shall provide
99 for limits in excess of the limits specified in this article, the
100 insurance carrier may plead against any plaintiff, with respect
101 to the amount of such excess limits of liability, any defenses
102 which it may be entitled to plead against the insured, and any
103 such policy may further provide for the prorating of the in-
104 surance thereunder with other applicable valid and collectible
105 insurance.

106 (b) The policy, the written application therefor, if any, and
107 any rider or endorsement which does not conflict with the
108 provisions of this article shall constitute the entire contract
109 between the parties.

110 (c) The insurance carrier shall, upon the request of the
111 insured, deliver to the insured for filing, or at the request of
112 the insured shall file direct with the commissioner, an appro-
113 priate certificate showing that such policy has been issued,
114 which certificate shall be in conformity with the provisions of
115 section five of this article.

116 (d) Any carrier authorized to issue motor vehicle liability
117 policies may, pending the issuance of such a policy, execute
118 an agreement, to be known as a "binder", or may, in lieu of
119 such a policy, issue an endorsement to an existing policy.
120 Every such binder or endorsement shall be subject to the pro-
121 visions of this section and shall be construed to provide in-
122 demnity or insurance in like manner and to the same extent
123 as a motor vehicle liability policy.

Sec. 15. The operation by a nonresident, or by his duly
2 authorized agent, of a motor vehicle upon a public street or
3 highway of this state, shall be deemed equivalent to an appoint-

4 ment by such nonresident of the commissioner, or his successor
5 in office, to be his true and lawful attorney upon whom may
6 be served all lawful process in any action or proceeding against
7 him, growing out of any accident or collision in which such
8 nonresident may be involved while so operating or so per-
9 mitting to be operated a motor vehicle on any such street or
10 highway, and such operation shall be a signification of his
11 agreement that any such process against him, which is so served,
12 shall be of the same legal force and validity as if served upon
13 him personally. Service of such process shall be made by
14 leaving a copy thereof, with a fee of two dollars, with said
15 commissioner or in his office, together with a bond conditioned
16 on the failure of the plaintiff to prevail in the action, in the
17 sum of five hundred dollars with sureties to be approved by the
18 commissioner, for the purpose of reimbursing the defendant for
19 expenses necessarily incurred by him in defending the action
20 in this state, and such service shall be sufficient service upon
21 said nonresident, provided that notice of such service and a
22 copy of the process shall forthwith be sent by registered mail
23 by said commissioner to the defendant, and the defendant's
24 return receipt is appended to the original process and filed
25 therewith in court. The court in which the action is pending
26 may order such continuances as may be reasonable to afford the
27 defendant opportunity to defend the action. The fee of two
28 dollars, paid by the plaintiff to said commissioner at the time
29 of service, shall be taxed in the costs of the proceeding and said
30 commissioner shall keep a record of all such process, which
31 shall show the day and hour of service, and he shall pay into
32 the state treasury all funds so coming into his hands from such
33 service.

Sec. 16. The following words and phrases, when used in
2 this article, shall, for the purpose of this article and unless a
3 different intent on the part of the legislature be apparent from
4 the context, have the following meanings:

5 (a) "Commissioner" shall mean the state road commissioner
6 of this state.

7 (b) "Person" shall include individuals, partnerships, corpo-
8 rations, receivers, referees, trustees, executors and adminis-
9 trators, and shall also include the owner of any motor vehicle as
10 requisite; but shall not include the state or any political sub-
10-a division thereof.

11 (c) "Motor vehicle" shall mean and include any self-pro-
12 pelled vehicle, including motorcycles and tractors, and trailers,
13 not operated exclusively upon stationary tracks.

14 (d) "Vehicle" shall mean every device in, upon or by which
15 any person or property is or may be transported or drawn upon
16 a highway, except devices moved by human power or used ex-
17 clusively upon stationary rails or tracks.

18 (e) "Nonresident" shall mean every person who is not a
19 resident of this state.

20 (f) "Owner" shall mean a person who holds the legal title
21 of a vehicle or in the event a vehicle is the subject of an
22 agreement for the conditional sale or lease thereof with the
23 right of purchase upon performance of the conditions stated
24 in the agreement and with an immediate right of possession
25 vested in the conditional vendee or lessee, or in the event a
26 mortgagor of a vehicle is entitled to possession, then such
27 conditional vendee or lessee or mortgagor shall be deemed the
28 owner for the purpose of this article.

29 (g) "Street," "road" or "highway" shall mean the entire
30 width between property lines of every way or place of whatever
31 nature when any part thereof is open to the use of the public,
32 as a matter of right, for purposes of vehicular traffic.

33 (h) "State" shall mean any state of the United States, the
34 District of Columbia, or any province of the Dominion of
35 Canada.

36 (i) "Province" shall mean any province of the Dominion of
37 Canada.

Sec. 17. The commissioner shall administer and enforce the
2 provisions of this article and he is hereby authorized to adopt
3 and enforce such rules and regulations as may be necessary for
4 the administration of the provisions of this article.

Sec. 18. Nothing herein shall be construed as preventing the
2 plaintiff in any action at law from relying for security upon
3 the other processes provided by law.

Sec. 19. If any part, subdivision or section of this article
2 shall be deemed unconstitutional, the validity of its remaining
3 provisions shall not be affected thereby.

Sec. 20. This act shall not have a retroactive effect and
2 shall not apply to any judgment or cause of action arising out
3 of an accident occurring prior to the effective date of this act.

CHAPTER 62

(Com. Sub. for House Bill No. 158—Originating in the House Committee on Roads)

AN ACT to add sections five-(a), twenty-six and twenty-seven to article one, and to amend and reenact sections three, five, ten, twelve, twenty, twenty-(a), twenty-(b), twenty-three and twenty-five of article six, and to add thereto sections four-(a), four-(b), four-(c) and four-(d), and to amend and reenact section six, article seven, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and chapters twenty-three and twenty-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, and to vest authority in the road commissioner to exercise the requirements of law set out in said sections; defining truck tractors, certificates of convenience and permits; providing for the issuance of certificates of convenience and permits for certain vehicles operated for compensation; providing for the issuance of certificates of convenience for vehicles operated in interstate commerce; providing for the regulation of vehicles operated for compensation and prescribing the fees therefor and the penalties for the violation of such provisions; defining the terms of certificates of convenience and permits; prescribing the fees for certain vehicles, restricting the load of certain vehicles and providing for additional fees for weights in excess of such restrictions; prescribing penalties for certain violations, prescribing the license period, prohibiting the operation of vehicles without proper registration plates and prescribing penalties for the violation thereof; providing for the regulation of dealers in motor vehicles and prescribing penalties for the violation of such regulations.

[Passed March 9, 1935; in effect July 1, 1935. Approved by the Governor.]

ARTICLE I.

Sec.

- 5-(a). Definition of truck tractor.
- 26. Definition of certificate of convenience.
- 27. Definition of permit.

ARTICLE VI.

Sec.

- 3. When permits or certificates of convenience required for operation of motor vehicles; when vehicle used in interstate com-

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| <p>Sec.</p> <p>merce; granting by other commission or board if power transferred from state road commissioner; assent to federal requirements.</p> <p>4-(a). Permits other than over regular route or between fixed termini; terms and conditions; permits for classes K and L licenses; secretary of state as attorney in fact for nonresident operator for service of process.</p> <p>4-(b). Schedule of fees for trucks and truck tractors transporting property for compensation not operating under certificate of convenience.</p> <p>4-(c). Schedule of fees for trailers and semi-trailers transporting property for compensation not operating under certificates of convenience; when credited on classes K and L fees; not to apply to trailers used for certain purposes.</p> <p>4-(d). Distinguishing mark, form, and data on, permit; permit plates, form and display; penalty for not displaying or altering; to whom penalty applies.</p> <p>5. Granting or refusal of permits or certificates of convenience by commissioner; when application for class J permit may be refused; time certificates of convenience to be in effect; consolidation, cancellation, etc., of certificates; assignment, sale, etc., of certificate; report by operator under, to road commissioner.</p> <p>10. Fees for Class A licenses, not operated for compensation.</p> <p>12. Fees for vehicles, trailed or propelled by vehicle or tractor, not operated for compensation or by common carriers.</p> | <p>Sec.</p> <p>20. Fees for trucks or truck tractors, operated for transportation of property for compensation, not over regular route or between fixed termini.</p> <p>20-(a). Fees for trailers and semi-trailers operated for transportation of property for compensation, not over regular route or between fixed termini.</p> <p>20-(b). When manufacturer's rated or warranted capacity used in determining fees for vehicles transporting property; overloads permitted; excess overloads, upon payment of additional registration fees; restrictions on additional overloads; permissible overload to be shown on registration card; fee; penalty for violation of section.</p> <p>23. Yearly and quarterly license or registration fees; expiration; duplicate plate, when original lost or destroyed; fee; transfer of certificate of registration; penalty when certificate of registration obtained by misrepresentation.</p> <p>25. Display of registration plate; penalty for display of unauthorized plates; revocation, after notice, of registration and plates; renewal, after revocation.</p> <p>ARTICLE VII.</p> <p>Sec.</p> <p>6. Separate certificate of title for each motor vehicle required in case of dealers; commissioner to determine form of certificate and assignment; for what purpose and by whom records of dealers subject to inspection; penalty for violation of section; if section invalid, remaining sections not affected.</p> |
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Be it enacted by the Legislature of West Virginia:

That sections three, five, ten, twelve, twenty, twenty-(a), twenty-(b), twenty-three and twenty-five of article six, and section six, article seven, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and chapters twenty-three and twenty-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted, and that sections five-(a), twenty-six and twenty-seven, reading as hereinafter set forth, be added to article one, and that sections four-(a), four-(b), four-(c) and four-(d),

reading as hereinafter set forth, be added to article six of said chapter seventeen.

ARTICLE I

Section 5-(a). "Truck Tractor" shall mean and include any motor vehicle designed and used primarily for drawing or propelling other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Sec. 26. "Certificate of Convenience" as used in this chapter shall mean and include all certificates of convenience issued or to be issued by the state road commissioner authorizing the transportation of passengers or property, or both, for compensation, over a regular route or between fixed termini.

Sec. 27. "Permit" as used in this chapter shall mean and include all permits issued or to be issued by the state road commissioner authorizing the transportation of passengers or property, or both, for compensation, other than over a regular route or between fixed termini.

ARTICLE VI

Section 3. No motor vehicle shall be operated over any public road, highway, street or alley in this state, for public transportation of passengers or property, or both, for compensation until the owner or operator of such vehicle shall first have made application to and secured from the state road commissioner a permit or certificate of convenience to operate such vehicle. Such classification shall include public livery vehicles, cars for hire or for rent, taxi cabs, bus lines, truck lines, and any other public transportation of passengers or property for compensation, without regard to whether such operation is between fixed termini or over regular routes or otherwise.

The state road commissioner may also grant certificates of convenience and necessity and permits for the transportation of persons or property, or both, for compensation in interstate commerce, and regulate such interstate commerce under the authority of and in accordance with the provisions of any statute that has been or hereafter may be enacted by the Congress of the United States, vesting in or delegating to the state road commissioner of West Virginia the authority,

21 as an agency of the United States Government, so to grant
 22 such certificates and permits, and so to regulate such com-
 23 merce. If the Legislature shall by statute transfer from the
 24 state road commissioner to any other commission, board or
 25 officer, the authority to grant certificates of convenience and
 26 permits and to regulate intrastate transportation of persons
 27 or property, or both, for compensation, then the authority
 28 herein granted shall vest in such other commission, board or
 29 officer. The state road commissioner, or such other com-
 30 mission, board or officer, as the case may be, is hereby author-
 31 ized to notify the proper department of the federal govern-
 32 ment of his or its assent to conform to the requirements, con-
 33 ditions and obligations of said statute of the congress in regard
 34 to interstate commerce by motor vehicles.

Sec. 4-(a). The state road commissioner shall have the
 2 power to issue to any applicant a permit for the transporta-
 3 tion of property for compensation other than over a regular
 4 route or between fixed termini, or to issue it for the partial
 5 exercise only of the privileges sought and may attach to the
 6 exercise of the rights given by such permit, such terms and con-
 7 ditions as in his judgment may be necessary for the welfare and
 8 adequate protection of the public. No license shall be issued by
 9 the commissioner for the operation of any vehicle or vehicles
 10 under Classes K or L until the applicant for such license shall
 11 have first applied for and obtained from the commissioner a per-
 12 mit as provided for in this article and section. No permit shall
 13 be issued by the commissioner to any non-resident operator until
 14 such non-resident operator shall have executed and filed with
 15 the secretary of state of this state a writing constituting the
 16 secretary of state attorney in fact of such non-resident oper-
 17 ator, upon whom all legal processes in any action, suit or pro-
 18 ceeding against such non-resident operator may be served, or
 19 the secretary of state may accept service of all such processes.

Sec. 4-(b). The annual permit fee for all trucks and truck
 2 tractors used for the transportation of property for compen-
 3 sation other than those operated under a certificate of con-
 4 venience and necessity shall be as follows:

5		Pneumatic	Solid
6	Capacity	Tires	Tires
7	One ton or less	\$ 20.00	\$ 32.00

8	Over 1 ton to 1½ tons.....	30.00	42.00
9	Over 1½ tons to 2 tons	40.00	55.00
10	Over 2 tons to 3 tons	83.00	122.00
11	Over 3 tons to 4 tons	125.00	185.00
12	Over 4 tons to 5 tons	175.00	260.00
13	For each additional ton over 5 tons	100.00	150.00

Sec. 4-(c). The permit fee for all trailers and semi-trailers used for the transportation of property for compensation, other than those operated under a certificate of convenience and necessity, shall be as follows:

Capacity	Trailers		Semi-trailers	
	Pneumatic Tires	Solid Tires	Pneumatic Tires	Solid Tires
One ton or less	\$ 16.00	\$ 24.00	\$ 10.00	\$ 16.00
Over 1 ton to 2 tons	34.00	50.00	21.00	31.00
Over 2 tons to 3 tons	57.00	86.00	32.00	48.00
Over 3 tons to 4 tons	89.00	132.00	46.00	68.00
Over 4 tons to 5 tons	122.00	184.00	62.00	92.00
For each additional ton over 5 tons.....	100.00	150.00	50.00	75.00

Provided, That the payments on the permit fees provided for in sections four-(b) and four-(c) of this article may be credited against the registration fees under Classes K and L as required by sections twenty and twenty-(a) respectively of this article. The fees required by sections four-(b) and four-(c) of this article shall not apply to vehicles used for the transportation of live stock, or the unprocessed products of farm or orchard. The fee for permits issued under the provisions of sections four-(a) and four-(b), shall be collected on the same basis as registration fees as provided in section twenty-three of this article.

Sec. 4-(d). Upon the granting of the permit and the payment of the fees provided for in sections four-(a), four-(b) and four-(c), the state road commissioner shall issue the permit to the applicant, giving it a distinguishing mark and number. Such permit shall be of convenient size and form; shall contain data sufficient to identify the vehicle or vehicles to be operated; shall be at all times carried upon such vehicle and shall be sub-

8 ject to examination upon demand by any proper officer as herein
9 provided.

10 In addition to the permit the state road commissioner shall,
11 without additional charge, deliver to the owner one metal plate
12 bearing the abbreviations of the names of the commission and
13 of the state, the year for which issued, and the distinguishing
14 mark or number assigned to such permit and vehicle. Such plate
15 shall be known as a permit plate. The plates shall be of such
16 size, colors and character as the state road commissioner may
17 prescribe so as to properly accommodate the numerals and other
18 marks. Every vehicle operated by the grantee of any permit
19 shall be required to carry one of such plates.

20 No vehicle used for the transportation of property for com-
21 pensation, except vehicles operated under a certificate of con-
22 venience, shall be operated without the proper permit plate
23 fastened thereon in some conspicuous place on the left forward
24 side of said vehicle. Permit plates issued prior to the first of
25 the year for which they are to be effective may be placed on
26 the vehicle for which issued not more than ten days prior to the
27 first day of such year and used without additional permit fee.

28 Any person, firm or corporation engaged in the transportation
29 of property for compensation, except under a certificate of con-
30 venience, who fails to carry the permit in the vehicle for which
31 issued, or who operates a vehicle without the proper permit plate
32 affixed thereto, or who changes the name, number or other iden-
33 tification information on the permit or the permit plates, shall
34 be deemed guilty of a misdemeanor, and upon conviction, shall
35 be fined not less than twenty-five nor more than two hundred
36 dollars, and if such person, firm or corporation be the grantee
37 of a permit, the permit shall be revoked by the state road
38 commissioner.

39 The provisions of this section shall apply both to the operator
40 or chauffeur and to the owner and the agent or lessee of the
41 owner who causes or knowingly permits his vehicle to be oper-
42 ated without the permit and permit plates as herein provided.

Sec. 5. The state road commissioner shall have the power to
2 issue any certificate of convenience and such certificates, when
3 granted, shall remain in effect until cancelled or revoked by the
4 commissioner as hereinafter provided: *Provided, however,* That
5 motor vehicles operated for transportation of passengers or

6 property, or both, for compensation, and not running over a
7 regular route between fixed termini or having a regular time
8 schedule, shall be granted a permit only until the first day of
9 the next annual licensing period. The commissioner is hereby
10 given authority to deny an application for a permit under
11 Class J, if in the judgment of the commissioner the community
12 proposed to be served by the application is adequately served
13 by vehicles operated under permit similar to that for which
14 application is made.

15 Certificates of convenience heretofore granted by the state road
16 commission shall be and remain in full force and effect until
17 revoked or cancelled as provided herein, and shall give the same
18 rights and be subject to the same restrictions as if granted here-
19 under.

20 The state road commissioner may consolidate two or more
21 certificates, cancel a certificate in whole or in part, or extend or
22 divide a certificate already granted if not against public wel-
23 fare, and under such rules as the commissioner may prescribe

24 Any certificate held, owned or obtained by any person may
25 be sold, assigned, leased, transferred as other property, only
26 upon authorization by the commissioner. The owner of or
27 operator under any certificate of convenience shall make
28 such report and furnish such detailed information with respect
29 to the service rendered as the state road commissioner shall from
30 time to time direct.

Sec. 10. Class A. Fee for motor vehicles of the passenger
2 type, other than those operated for compensation.

3 The registration fee for all motor vehicles of the passenger
4 type, other than those operated for compensation, shall be
5 eleven dollars for a vehicle of a weight of two thousand pounds
6 or less, and for all motor vehicles having a weight of over two
7 thousand pounds, sixty cents additional for each one hundred
8 pounds of weight, or fraction thereof, in excess of two thousand
9 pounds, and for the purpose of determining the weight, except
10 of those used in transportation of passengers or property for
11 compensation, the actual weight of the vehicle shall be taken.

Sec. 12. The registration fee for all vehicles trailed or pro-
2 pelled by any motor vehicle or tractor except those operated for
3 compensation, other than over a regular route or between fixed
4 termini by common carriers, shall be as follows:

5	6 Capacity	Trailers		Semi-Trailers	
		7 Pneumatic Tires	Solid Tires	Pneumatic Tires	Solid Tires
8	One-half ton trailers...	\$ 9.00	\$ 13.50	\$ 5.00	\$ 10.00
9	One ton	25.00	37.50	18.75	28.00
10	Over 1 ton to 2 tons ...	35.00	52.50	26.25	39.50
11	Over 2 tons to 3 tons ...	78.00	117.00	58.50	87.50
12	Over 3 tons to 4 tons....	120.00	180.00	90.00	135.00
13	Over 4 tons to 5 tons....	170.00	255.00	127.50	191.25
14	Over 5 tons to 6 tons....	228.00	342.00	171.00	256.50
15	Over 6 tons to 7 tons....	294.00	441.00	220.50	330.75
16	Over 7 tons to 8 tons....	368.00	552.00	276.00	414.00
17	Over 8 tons to 9 tons....	450.00	675.00	337.50	506.25
18	Over 9 tons to 10 tons..	540.00	810.00	405.00	607.50
19	For each additional ton				
20	over 10 tons	100.00	150.00	75.00	112.50

Sec. 20. The registration fee for all motor vehicles, commonly designated as trucks and truck-tractors, operated for transportation of property for compensation, other than over a regular route or between fixed termini by common carrier, shall be as follows:

6	7 Capacity	Pneumatic	Solid
7		Tires	Tires
8	One ton or less	\$ 30.00	\$ 54.00
9	Over 1 ton to 1½ tons	50.00	74.00
10	Over 1½ tons to 2 tons	70.00	100.00
11	Over 2 tons to 3 tons	156.00	234.00
12	Over 3 tons to 4 tons	240.00	360.00
13	Over 4 tons to 5 tons	340.00	510.00
14	Over 5 tons to 6 tons	456.00	684.00
15	Over 6 tons to 7 tons	588.00	882.00
16	Over 7 tons to 8 tons	736.00	1104.00
17	Over 8 tons to 9 tons	900.00	1350.00
18	Over 9 tons to 10 tons	1080.00	1620.00
19	For each additional ton over 10 tons	200.00	300.00

Sec. 20-(a). The registration fee for all trailers and semi-trailers used for transportation of property for compensation, other than over a regular route or between fixed termini by common carriers, shall be as follows:

5 6 7	Capacity	Trailers		Semi-trailers	
		Pneumatic Tires	Solid Tires	Pneumatic Tires	Solid Tires
8	One ton or less	\$ 30.00	\$ 45.00	\$ 22.50	\$ 33.75
9	Over 1 ton to 2 tons	70.00	105.00	52.50	78.75
10	Over 2 tons to 3 tons	156.00	234.00	117.00	175.50
11	Over 3 tons to 4 tons	240.00	360.00	180.00	270.00
12	Over 4 tons to 5 tons	340.00	510.00	255.00	382.50
13	Over 5 tons to 6 tons	456.00	684.00	342.00	513.00
14	Over 6 tons to 7 tons	588.00	882.00	441.00	661.50
15	Over 7 tons to 8 tons	736.00	1104.00	552.00	828.00
16	Over 8 tons to 9 tons	900.00	1350.00	675.00	1012.50
17	Over 9 tons to 10 tons	1080.00	1620.00	810.00	1215.00
18	For each additional ton				
19	over 10 tons	200.00	300.00	150.00	225.00

Sec. 20-(b). For purpose of registration of and determining of all fees to be paid for operation of vehicles in transportation of property, the manufacturer's rated capacity of any such vehicle will be accepted: *Provided*, That if the manufacturer warrant or guarantee such vehicle for a capacity greater than such rated capacity, then such warranted capacity shall be taken and considered as the rated capacity of such vehicle.

No vehicle, except by special permit as provided in section twenty of article eight, chapter seventeen of the code, one thousand nine hundred thirty-one, shall be operated upon any public highway of this state, or upon any street or alley within any municipality within this state, with a load thereon more than one hundred per cent greater than the capacity for which such vehicle is registered, if such vehicle is registered for a capacity not exceeding two tons, or fifty per cent if such vehicle is registered for a capacity in excess of two tons and not exceeding four tons; or twenty-five per cent if such vehicle is registered for a capacity exceeding four tons.

Vehicles may carry loads in excess of the foregoing restrictions provided additional registration fees are paid on the excess weight in the same proportion that each ton of excess weight, fractions considered whole tons, bears to the permitted weight for which the vehicle has been registered under sections eleven, twelve, eighteen, twenty and twenty-(a) of this article, but no vehicle may carry any load which com-

26 bined with the weight of the vehicle is in excess of the re-
27 strictions imposed upon axle weights by article eight, section
28 nineteen of this chapter.

29 All vehicles shall be titled and registered for their actual
30 or warranted capacity as required by this section; upon the
31 payment of the additional fees provided for in this section
32 the permissible overload as provided for in this section shall
33 be stamped upon the title and registration card in such man-
34 ner as the commissioner may require. The commissioner is
35 hereby authorized to make an additional charge of one dollar
36 for the change and correction of title and registration cards
37 from actual rated capacity to excess capacity and from excess
38 capacity to actual rated capacity.

39 Any violation of this section shall be a misdemeanor, and
40 upon conviction thereof any owner or operator shall be fined
41 not less than twenty-five nor more than two hundred dollars
42 for the first offense and upon any subsequent offense occurring
43 within the same licensing year, a fine of not less than fifty
44 nor more than five hundred dollars shall be imposed.

Sec. 23. The license or registration fees herein prescribed
2 shall be for the entire fiscal year: *Provided*, That where
3 application for such license and registration is made between
4 the first day of October and the thirty-first day of December,
5 inclusive, in any fiscal year, the charge therefor shall be three-
6 fourths of the sum charged for such yearly license; and where
7 such application is made between the first day of January and
8 the thirty-first day of March, inclusive, in any fiscal year, the
9 charge therefor shall be one-half of such yearly fee; and
10 where such application is made after the thirty-first day of
11 March in any fiscal year, the charge therefor shall be one-
12 fourth of such yearly fee.

13 The registration certificate and the right to use the corre-
14 sponding registration plates shall expire at midnight of the
15 thirtieth day of June of the fiscal year for which issued.

16 In the event of the loss or inadvertent destruction of any
17 plate issued under the provisions of this article, the commis-
18 sioner shall investigate the circumstances of alleged loss or
19 destruction, and if satisfied that the loss or destruction has
20 occurred as alleged, shall issue a duplicate, or duplicates, or
21 may in its discretion issue a new set of plates with appro-

22 priate certificate of registration, at a cost not to exceed one
23 dollar. In the event of the loss or inadvertent destruction
24 of any certificate of registration issued under the provisions
25 of this article, the commissioner may issue a duplicate upon
26 receipt of affidavit of such loss at a cost not to exceed one
27 dollar.

28 Certificates of registration and corresponding registration
29 plates of vehicles operating under a permit or certificate of
30 convenience may be transferred only under the provisions of,
31 and when provided by, the rules and regulations of the com-
32 missioner.

33 Any owner or operator who shall obtain a registration cer-
34 tificate, or registration plates, or other licenses provided for in
35 this article, by misrepresentation or by any other method not
36 authorized by law, or who shall violate any of the other pro-
37 visions of this section, shall be guilty of a misdemeanor, and,
38 upon conviction thereof, shall be fined not less than ten nor
39 more than fifty dollars.

Sec. 25. No person shall operate or permit to be operated
2 on any road or highway in this state a vehicle unless he shall
3 display thereon the registration plate or plates of such vehicle,
4 as in this article provided. No person shall operate or permit
5 to be operated a vehicle registered in this state upon which
6 there is displayed the registration plate of another state, or a
7 fictitious registration plate, or the plate of another vehicle,
8 or the plate of a previous owner of the same vehicle: *Provided*,
9 That in the event of the sale of a vehicle the person purchas-
10 ing the same may, for a period of not more than ten days,
11 operate such vehicle under the registration of its previous
12 owner and display the registration plate thereof: *Provided*
13 *further*, That he shall have and display on the demand of
14 any proper officer the consent in writing of such previous
15 owner so to use such registration. Any person violating any
16 provision of this section shall be deemed guilty of a misde-
17 meanor, and, upon conviction thereof, shall be fined not less
18 than ten nor more than fifty dollars.

19 The commissioner may also, after due hearing, upon not
20 less than five days' notice in writing, sent by registered mail
21 to the address given by the owner of a vehicle when applying
22 for his registration certificate, which shall constitute a suf-

23 ficient form of notice, suspend or revoke the registration cer-
24 tificate and the registration plates issued to such person, upon
25 proof that such plates were used for a purpose or for a form
26 of transportation other than for which issued.

27 In any case where a license or registration is revoked,
28 no license or registration shall again be granted to such per-
29 son within one year from the date of the revocation of such
30 license or registration, except at the discretion of the commis-
31 sioner.

ARTICLE VII

Section 6. In the case of dealers in motor vehicles, in-
2 cluding manufacturers who sell to others than dealers, all of
3 whom are intended to be covered by this and all other pro-
4 visions of this section, a separate certificate of title either
5 of such dealer's immediate vendor, or of the dealer himself,
6 shall be required in the case of each motor vehicle in his
7 possession, and the state road commissioner shall determine
8 the form in which application for such certificate of title and
9 assignments shall be made: *Provided, however,* That no such
10 certificate shall be required in the case of new motor vehicles
11 sold by manufacturers or dealers.

12 The records of all dealers in motor vehicles shall be open
13 to the inspection of members of the department of public
14 safety and to the state road commissioner and his duly author-
15 ized employees for the purpose of ascertaining whether or not
16 the provisions of this section have been violated. Any person,
17 firm or corporation violating any of the provisions of this
18 section shall be guilty of a misdemeanor, and shall, upon con-
19 viction, be punished by a fine of not less than twenty-five
20 nor more than two hundred dollars for the first offense, and
21 for a second or subsequent offense as an additional penalty
22 the state road commissioner may revoke the registration cer-
23 tificates and registration plates issued to such dealer, and the
24 same shall not be reinstated or reissued for a period of at least
25 one year from the date of revocation thereof.

26 If any part, or parts, of this act shall be held to be un-
27 constitutional such unconstitutionality shall not affect the val-
28 idity of the remaining parts of this act.

CHAPTER 63

(House Bill No. 396—By Mr. Hiner)

AN ACT to amend and reenact section twenty-three, article six, chapter sixty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, and to provide for the issuance of motor vehicle licenses and to provide for such license plates to be retained by the owner thereof upon the transfer of ownership of any motor vehicle.

[Passed March 9, 1935; in effect July 1, 1935. Became a law without the approval of the Governor.]

Sec.

23. Registration fees for motor vehicles for fiscal year; quarterly payments; when registration certificate and use of plates expires; duplicate plates, if original lost or destroyed; fee; on transfer of motor vehicles, original owner to retain plates and notify commissioner; how re-

Sec.

tained plates may be used on other vehicles; notice by dealer to commissioner of transfer; copies of notification; penalty for violation by dealer; how certificates of registration and plates transferred; penalty for violation of section by owner or operator.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article six, chapter sixty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended so as to read as follows:

Section 23. Beginning on the first day of July, one thousand 2 nine hundred thirty-four, the registration fees herein prescribed 3 shall be for the entire fiscal year: *Provided*, That where ap- 4 plication for such registration is made between the first day of 5 October and the thirty-first day of December, inclusive, in any 6 fiscal year, the charge therefor shall be three quarters of such 7 yearly fee and when application for such registration is made 8 between the first day of January and the thirty-first day of 9 March, inclusive, in any fiscal year, the charges shall be one- 10 half of such yearly fee and where application for such regis- 11 tration is made between the first day of April and the thirtieth 12 day of June, inclusive, in any fiscal year, the charge shall be 13 one quarter of such yearly fee.

14 The registration certificate and the right to use corresponding 15 registration plates issued after the first day of July, one thou- 16 sand nine hundred thirty-four, shall expire at midnight on the 17 thirtieth day of June of the fiscal year for which issued.

18 In the event of the loss or inadvertent destruction of any

19 plate issued under the provisions of this article, the commis-
20 sioner shall investigate the circumstances of alleged loss or de-
21 struction, and if satisfied that the loss or destruction has oc-
22 curred as alleged, shall issue a duplicate, or duplicates, or may
23 in his discretion issue a new set of plates with appropriate cer-
24 tificate of registration, at a cost not to exceed one dollar. In
25 the event of the loss or inadvertent destruction of any certifi-
26 cate of registration issued under the provisions of this article,
27 the commissioner may issue a duplicate upon receipt of affidavit
28 of such loss at cost not to exceed one dollar. Upon the transfer
29 of ownership of any motor vehicle, it shall be the duty of the
30 original owner to retain the registration plates issued therefor
31 and to immediately notify the state road commissioner of such
32 transfer upon such form as may be provided therefor and to
33 deliver to him the certificate of registration, whereupon the
34 commissioner shall, upon the payment of a fee of one dollar,
35 issue a new certificate showing the use that is to be made of
36 such plates. Such plates may be used by such owner on an-
37 other vehicle of the same class as the vehicle for which they
38 were originally issued if such other vehicle does not require a
39 greater license fee than was required for such original vehicle.
40 If such other vehicle requires a greater license fee than such
41 original vehicle, then such plates may be used by paying such
42 difference to the road commissioner, but it shall be unlawful to
43 use such plates until such difference is paid. When such transfer
44 of ownership is made to a licensed dealer in motor vehicles it
45 shall be the duty of such licensed dealer to immediately execute
46 notification of transfer, in triplicate, to have this notification
47 properly signed by the owner making the transfer. The dealer
48 will also collect the transfer fee of one dollar and any additional
49 fee that may be required under the terms of this act. The
50 dealer will immediately forward to the road commissioner the
51 original copy of the notification of transfer together with all
52 fees collected. One copy of the notification of transfer shall
53 be given to the owner and one shall be retained by the dealer.
54 The owner's copy, properly signed by the dealer, will be the
55 owner's identification until he receives new registration card
56 from the road commissioner.

57 Any licensed dealer who shall fail to comply with the pro-
58 visions of this act will be guilty of a misdemeanor, and upon
59 conviction thereof shall be fined not less than fifty, nor more

60 than three hundred dollars. Certificates of registration and
61 corresponding registration plates of vehicles operating under
62 a permit or certificate of convenience may be transferred only
63 under the provisions of, and when provided by, the rules and
64 regulations of the commissioner.

65 Any owner or operator who shall obtain a registration cer-
66 tificate, or registration plates, or other licenses provided for
67 in this article, by misrepresentation or by any other method
68 not authorized by law, or who shall violate any of the other
69 provisions of this section, shall be guilty of a misdemeanor,
70 and, upon conviction thereof, shall be fined not less than ten
71 nor more than fifty dollars.

CHAPTER 64

(House Bill No. 423—By Mr. LaFon)

AN ACT to amend and reenact section twenty-five, article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the operation of vehicles on public roads or streets while under the influence of intoxicants, drugs or narcotics, and providing penalties for violations.

[Passed March 8, 1935; in effect from passage. Approved by the Governor.]

Sec.

25. Penalty for operating vehicle on public road or street while intoxicated or under the influence of intoxicating liquors, drugs or narcotics, or permitting same, by owner; impounding of car, cancellation of operator's or chauffeur's license, etc.; sale of impounded car; repossession of

Sec.

impounded car by owner, if other than offending person, or seller; rights of holder of lien against impounded car; second offense a felony; penalty; revocation and non-issuance of license; convictions reported to state road commissioner.

Be it enacted by the Legislature of West Virginia:

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

Section 25. No person shall drive or operate any vehicle, 2 motor driven or otherwise, upon any public road or street in 3 this state, while intoxicated or under the influence of intoxi-

4 eating liquor, drugs or narcotics; nor shall the owner of such
5 vehicle, knowingly permit the same to be so operated by one
6 intoxicated, or under the influence of intoxicating liquor, drugs
7 or narcotics.

8 A person violating any of the provisions of this section shall,
9 for the first offense, be guilty of a misdemeanor and upon con-
10 viction thereof the vehicle owned and/or operated by him shall
11 be impounded by the state and placed under lock and key for a
12 period of six months at some place, other than his home, to be
13 designated by the court, and shall pay the costs of the trial and
14 that incurred by the state in carrying out this provision before
15 said vehicle shall be released, except as otherwise provided
16 herein; and his operator's or chauffeur's license shall be can-
17 celled and revoked for a period of six months by the court or
18 justice trying the case; and he may be punished by a fine of not
19 less than twenty-five nor more than one hundred dollars, or by
20 confinement in jail not less than five days nor more than six
21 months, or by both such fine and imprisonment. If either such
22 fine, or the costs of the trial incurred by the state and the costs
23 incurred by the impounding of the car shall not be paid, then
24 after ten days' notice, posted publicly, said vehicle shall be sold
25 at public auction by the officer impounding the same, unless re-
26 possessed as hereinafter provided, and the proceeds of such sale,
27 after deducting the costs of sale, shall be credited on said fine
28 and costs. If the proceeds of such sale exceed said fine and all
29 costs as hereinbefore set out, the remainder shall be paid to the
30 defendant in said action, unless a bona fide lien holder inter-
31 venes as hereinafter provided, or to the actual owner of said
32 vehicle, as the case may be.

33 The seller of such vehicle so impounded may repossess the
34 same as provided by article three, chapter forty of the code, as
35 well also the actual owner if other than offending person, by suit
36 or otherwise in the court having jurisdiction of said vehicle,
37 and in addition to other evidence of right of possession, by
38 showing to the satisfaction of the court that the unlawful use of
39 the vehicle was not with the knowledge and/or consent of such
40 seller or actual owner, the cost of such proceeding, including
41 the cost of impounding, to be paid by the seller or owner.
42 And if repossession is had by the seller under the pro-
43 visions hereof, and the court directs sale of such vehicle,
44 the excess, if any, of the sale price, above the debt in pursuance

45 of which the repossession is had, by order of the court shall be
 46 paid into the hands of the officer impounding said vehicle to be
 47 held by him in its place and stead for disposition thereof as
 48 provided by law: *Provided*, That in any event the holder of a
 49 bona fide lien against said vehicle may appear by petition in the
 50 court having jurisdiction of said vehicle and have his claim
 51 therein adjudicated, and in addition to other evidence of lien,
 52 by showing to the satisfaction of the court that the unlawful use
 53 of the vehicle was not with the knowledge and/or consent of
 54 such lien holder, and if the lien be allowed, and sale be made by
 55 the impounding officer, the proceeds of such sale after paying
 56 the cost and expenses of impounding and sale, shall be applied
 57 as a credit or in satisfaction of such lien, and the excess, if any,
 58 shall be paid to the defendant in said action or to the actual
 59 owner of said vehicle as the case may be.

60 For a second and subsequent offense he shall be guilty of a
 61 felony and upon conviction thereof shall be confined in the peni-
 62 tentiary not less than one nor more than three years and his
 63 operator's or chauffeur's license shall be cancelled and revoked
 64 never to be reissued.

65 All convictions under this section wherein the penalty in-
 66 cludes the revocation of an operator's or chauffeur's license
 67 shall be immediately reported to the state road commission in
 68 the manner provided in section twenty-six, article eight, chapter
 69 seventeen of the code of West Virginia, one thousand nine
 70 hundred thirty-one.

CHAPTER 65

(House Bill No. 472—By Mr. Thomas)

AN ACT to amend and reenact section one, article seven, chapter
 seventeen of the code of West Virginia, one thousand nine
 hundred thirty-one, relating to certificates of title for motor
 vehicles and imposing a tax upon the certification of such
 titles.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

ARTICLE VII.

Sec.

1. Certificate of registration or plates

Sec.

not to issue until applicant has
 official certificate of title; form

Sec.

of application for; tax upon certification of title of two per cent of value of vehicle; how value ascertained when vehicle is new, second-hand or exchanged; tax to be paid before

Sec.

certificate of title issued; exception as to vehicles used exclusively in interstate commerce; tax to be expended for secondary roads; form, authentication and life of certificate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE VII.

Section 1. Certificates of registration of any vehicle or 2 registration plates therefor, whether original issues or dupli- 3 cates, shall not be issued or furnished by the state road com- 4 mission or any other officer charged with such duty, unless the 5 applicant therefor already has received, or shall at the same 6 time make application for and be granted, an official certificate 7 of title of such motor vehicle. Such application shall be upon a 8 blank form to be furnished by the state road commission, and 9 shall contain a full description of the motor vehicle, which 10 description shall contain the manufacturer's number, the motor 11 number and any distinguishing marks, together with a state- 12 ment of the applicant's title and of any liens or encumbrances 13 upon such motor vehicles, the names and addresses of the hold- 14 ers of such liens, and such other information as the state road 15 commission may require. The application shall be signed and 16 sworn to by the applicant. A tax is hereby imposed upon the 17 privilege of effecting the certification of title of each motor 18 vehicle in the amount equal to two per cent of the value of said 19 motor vehicle at the time of such certification. If the motor 20 vehicle is new, the actual purchase price or consideration to the 21 purchaser thereof shall be the value of said vehicle; if the motor 22 vehicle is a used or second-hand vehicle, the actual price or con- 23 sideration paid therefor by the purchaser shall be deemed the 24 value thereof for the purposes of this act: *Provided*, That so 25 much of the purchase price or consideration as is represented 26 by the exchange of other motor vehicle shall be deducted from 27 the total actual price or consideration paid for said vehicle, 28 whether the same be new or second-hand. No certificate of title 29 for any motor vehicle shall be issued to any applicant unless 30 such applicant shall have paid to the state road commissioner 31 the tax imposed by this act; but the tax imposed by this act

32 shall not apply to motor vehicles to be registered under sections
 33 seventeen and eighteen, article six of this chapter, which are
 34 used or to be used exclusively in interstate commerce. The total
 35 amount of revenue collected by reason of this tax shall be paid
 36 into the state road fund and expended by the state road com-
 37 missioner in the maintenance and construction of the state's
 38 secondary roads. In addition to said tax there shall be a charge
 39 of one dollar for each original certificate of title so issued.

40 The state road commission, or other officer charged with such
 41 duty by the commission, if satisfied that the applicant is the
 42 owner of such vehicle, or otherwise entitled to have the same
 43 registered in his name, shall thereupon issue to the applicant an
 44 appropriate certificate of title over the signature of the official
 45 designated by the commission, authenticated by a seal to be
 46 procured and used for such purpose. Such certificates shall be
 47 numbered consecutively, beginning with number one, and shall
 48 contain such description and other evidence of identification of
 49 such motor vehicle as the state road commission may deem
 50 proper.

51 Such certificate shall be good for the life of the car, so long
 52 as the same is owned or held by the original holder of such cer-
 53 tificate, and need not be renewed annually, or at any other time,
 54 except as herein provided.

CHAPTER 66

(Senate Bill No. 4—By Mr. Greene)

AN ACT to amend and reenact section ten, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the general powers of municipal councils, and the extra territorial operation of such powers.

[Passed February 26, 1935; in effect from passage. Approved by the Governor.]

Sec. 10. General and plenary powers of municipal councils; extension of		Sec. powers for not more than one mile beyond corporate limits.
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Be it enacted by the Legislature of West Virginia:

That section ten, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to

the general powers of municipal councils and the extra territorial operation of such powers, be amended and reenacted so as to read as follows:

Section 10. The council shall have plenary power and
2 authority therein by ordinance or resolution as the case may
3 require, (so far as such power or authority is not in conflict
4 with the constitution and laws of this state or the constitution
5 of the United States) to lay off, vacate, close, open, alter,
6 curb, recurb, pave or repave and keep in good repair roads,
7 streets, alleys, sidewalks, crosswalks, drains and gutters, for
8 the use of the public, and to improve and light the same, and
9 have them kept free from obstructions on or over them; to
10 prevent by proper fines and penalties the throwing, depositing
11 or permitting to remain on any street, sidewalk, alley, lane,
12 square or other public place any glass, scrap iron, nails, tacks,
13 wire, other litter, or any offensive matter or anything likely
14 to injure the feet of persons or animals or the tires of vehicles;
15 to regulate the use of streets, alleys, lanes and sidewalks for
16 vehicles propelled by man power, and for other vehicles the
17 use of which is not regulated by general laws; to regulate the
18 width of sidewalks on the streets, and, subject to the pro-
19 visions of article eight of this chapter, to order the sidewalks,
20 footways and crosswalks to be curbed, recurbed, paved, re-
21 paved and kept in good order, free and clean, by the owners
22 or occupants thereof, or of the real property next adjacent
23 thereto; to establish and regulate markets, and prescribe the
24 time of holding the same; to prevent injury or annoyance to
25 the public or individuals from anything dangerous, offensive
26 or unwholesome; to prevent hogs, cattle, horses, sheep or other
27 animals, and fowls of all kinds, from going at large in such
28 town; to protect places of divine worship and to preserve
29 peace and order in and about the premises where held; to
30 arrest, convict and punish any person for keeping a house of
31 ill-fame, or for letting to another person any house or other
32 building for the purpose of being used or kept as a house of
33 ill-fame, or for knowingly permitting any house owned by
34 him, or under his control, to be kept or used as a house of
35 ill-fame, or for loafing, boarding or loitering in a house of
36 ill-fame, or frequenting same; to arrest, convict and punish
37 any person for importing, printing, publishing, selling or

38 distributing any pornographic publication; to arrest, con-
39 vict and punish any person for cruelly, unnecessarily
40 or needlessly beating, torturing, mutilating, killing
41 or overloading or overdriving, or wilfully depriving of
42 necessary sustenance, any horse or other domestic animal;
43 to arrest, convict, and punish any person for gambling or
44-49 keeping gaming tables, commonly called "A, B, C", or "E,
50 O." table or faro bank or keno table, or table of like kind,
51 under any denomination, whether the gaming table be played
52 with cards, dice or otherwise, or any person who shall be a
53 partner or concerned in interest, in keeping or exhibiting
54 such table or bank, or keeping or maintaining any gaming
55 house or place, or betting or gambling for money or anything
56 of value; to license, or for good cause to refuse to license in
57 a particular case, or at its discretion to prohibit in all cases,
58 the operation of pool and billiard rooms and maintaining for
59 hire of pool and billiard tables, notwithstanding the general
60 law as to state licenses for such business. When the council,
61 in the exercise of its discretion, shall have refused to grant a
62 license to operate a pool or billiard room mandamus shall not
63 lie to compel the council to grant such license, unless it shall
64 clearly appear that the refusal of the council to grant such
65 license is discriminatory or arbitrary. In the event that the
66 council decides to license any such business, the council shall
67 have power, and it shall be the duty of the council, to make
68 and enforce reasonable ordinances regulating the licensing
69 and operating of such businesses; the council shall also have
70 such power and authority to arrest, convict and punish any
71 person for carrying about his person any revolver or other
72 pistol, dirk, bowie-knife, razor, sling shot, billy, metallic or
73 other false knuckles, or any other dangerous or other deadly
74 weapon of like kind or character, within such town; to arrest,
75 convict and punish any person for driving or operating, within
76 such town, a motor vehicle when intoxicated or under the
77 influence of liquor, drugs or narcotics; to provide penalties
78 for the offenses and violations of law mentioned herein in
79 addition to the penalties provided in section twenty-three of
80 this article, but which shall not exceed the penalties provided
81 for like offenses and violations in this chapter, and in chapter
82 sixty-one of this code; to abate or cause to be abated anything
82-a which, in the opinion of a majority of the whole council, shall

83 be a nuisance; to regulate the keeping of gunpowder and
84 other combustibles; to acquire, by purchase, condemnation and
85 otherwise, land in or near the town for providing and main-
86 taining proper places for the burial of the dead and to regulate
87 interments therein upon such terms and conditions as to price
88 and otherwise as may be determined by the council, and, in
89 order to carry into effect such provisions the council may
90 acquire any cemetery or cemeteries already established; to
91 provide for the regular building of houses or other structures,
92 and for making of division fences by the owners of adjacent
93 premises and the drainage of lots by the proper drains and
94 ditches; to make regulations guarding against danger or dam-
95 age by fire; to prevent the illegal sale of intoxicating liquors,
96 drinks, mixtures and preparations therein; to protect the per-
97 sons and property of the inhabitants of such town, and to
98 preserve peace and good order therein, and, for this purpose,
99 to appoint, when necessary, a police force to assist the ser-
100 geant in the discharge of his duties; except as otherwise
101 provided, to prescribe the powers and define the duties of the
102 officers appointed by the council, fix their terms of service
103 and compensation, and require and take from them bonds,
104 when deemed necessary, payable to such town, in its corporate
105 name, with such sureties and in such penalty as the council
106 may see fit, conditioned for the faithful discharge of their
107 duties; to require and take from employees and contractors
108 bonds in such penalties, with such sureties and with such
109 conditions, as council may see fit; to erect, or authorize or
110 prohibit the erection of gas works, electric light works, water
111 works, and sewer treatment and disposal works within or with-
112 out the town, or partly within and partly without the town, ex-
113 cept that it shall not erect or authorize the erection of any such
114 works partly without the town to serve persons already ob-
115 taining service from existing works of the character proposed,
116 and where such works are by the municipality erected, or
117 have heretofore been so erected, partly within and partly
118 without the town, it shall have the right to lay and collect
119 charges for service rendered to those served within and those
120 served without the town, and to prevent injury to such works
121 or the pollution of the water and its maintenance in a healthful
122 condition for public use within the town; to regulate and
123 provide for the weighing of hay, coal and other articles sold

124 or for sale in the town; to provide a revenue for the town
 125 and appropriate the same to its expenses, which power shall
 126 include the power to tax dogs; to impose a license tax on
 127 persons or companies keeping for hire carriages, hacks, bug-
 128 gies or wagons, or for carrying passengers for pay in any
 129 such vehicle, in such town; to adopt rules for the transaction
 130 of business, and the government and regulation of its own
 131 body.

132 Wherever the powers herein granted cannot be reasonably
 133 and efficiently exercised by confining the exercise thereof
 134 within the corporate limits, the powers of the corporation shall
 135 extend beyond the corporate limits to the extent necessary to
 136-7 the reasonably efficient exercise of such powers within the
 138 corporate limits. But such powers, unless otherwise provided,
 139 shall not extend more than one mile beyond the corporate
 140 limits, nor shall such powers extend into the corporate limits
 141 of another municipal corporation.

CHAPTER 67

(Com. Sub. for House Bill No. 15—Originating in the Senate Committee
 on Counties and Municipal Corporations)

AN ACT to amend section twenty, chapter sixty, acts of the Legis-
 lature of West Virginia, regular session, one thousand nine
 hundred thirty-three, as amended by chapter seventy-nine,
 acts of the Legislature of West Virginia, second extraordinary
 session, one thousand nine hundred thirty-three.

[Passed February 20, 1935; in effect from passage. Became a law without the
 approval of the Governor.]

Sec. 20.	To what municipalities provisions of civil service law for municl-		Sec. pal fire departments do not apply.
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Be it enacted by the Legislature of West Virginia:

That section twenty, chapter sixty, acts of the Legislature,
 regular session, one thousand nine hundred thirty-three, as
 amended by chapter seventy-nine, acts of the Legislature, second
 extraordinary session, one thousand nine hundred thirty-three, be
 amended and reenacted to read as follows:

Section 20. The provisions of this act shall not apply to the 2 municipality of Parkersburg, and the civil service commission 3 created for the city of Bluefield under an act of the Legislature, 4 regular session, one thousand nine hundred thirty-three, is 5 hereby abolished.

CHAPTER 68

(House Bill No. 165—By Mr. Thomas)

AN ACT to authorize municipalities to establish, construct, acquire, extend, own, operate, equip, maintain and improve municipal public works and to defray the cost of such construction, equipment, acquisition, extensions and improvements by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.	Sec.
1. Definition of words and phrases.	7. Increase protested by thirty per cent of real estate owners.
2. Municipalities authorized to construct, etc., municipal public works as defined in section one and to issue revenue bonds to pay cost of same without further obligation on the municipality; exception when service is being adequately rendered within municipality.	8. Exercise of right of eminent domain by municipality; proceedings for condemnation under general law; municipality not to pay for condemned or purchased property except from funds provided by act; acquisition of works already constructed, except by condemnation; cost of repairs and betterments to be included in provisions of section six.
3. Construction, etc., to be under control of municipal authorities or appointed board; definition of board.	9. Provisions as to revenue bonds for improvement and betterment of works owned previously or acquired under act.
4. Powers of board; what contracts of to be approved by municipal authorities; employment and fixing compensation by board, of engineers, etc.; paid solely from revenue bonds; when bids must be advertised; power of board to operate, extend and improve works; how public works damaged or destroyed by board to be replaced.	10. What items of expense cost of works deemed to include.
5. Payment by, and reimbursement of, municipality for preliminary expenses.	11. Municipality not to incur any obligation not payable from funds provided by issuance of revenue bonds; bonds exempt from taxation by state or political subdivision.
6. What ordinance or resolution of municipal authorities for construction, etc., of works to state; publication of ordinance; hearing on; procedure when or-	12. Interest rate and life of bonds; redemption before maturity; how bonds payable; ordinance authorizing to determine form, denominations, etc.; other provisions as to payment, registration, etc.; sale price of bonds; if proceeds not sufficient to con-

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| <p>Sec. strnet works, additional bonds authorized; interim certificates during preparation of definite bonds.</p> <p>12. Obligations hereunder not to bind municipal official or member of board personally.</p> <p>13. Ordinance by municipal authorities for issuance of additional bonds for extension or improvements of works.</p> <p>14. How proceeds of bond issue applied.</p> <p>15. Bonds may be secured by trust indenture between municipality and corporate trustee; provisions of ordinance and indenture.</p> <p>16. Municipal authorities to provide, by ordinance, out of net revenues of works, for sinking fund, etc., to pay bonds and interest, fiscal charges, etc., which shall be a first lien on net revenues of works; ordinance for purchase of outstanding bonds; transfer of balance of net revenues; remittance of sinking fund and interest to state sinking fund, as fiscal agent.</p> <p>17. Municipal authorities to establish and adjust rates for services rendered by works; amount of charges; publication of notice of hearing on; adoption; schedule of, to be kept on file; extension of, to additional users, without hearing; change or re-</p> | <p>Sec. adjustment; sufficiency of aggregate of rates; recovery and lien of service charge; discontinuance of service.</p> <p>18. Appeal to public service commission from rates fixed.</p> <p>19. Municipality to install proper accounting system; yearly audit; auditor's report open for inspection; municipal treasurer custodian of funds; separate account.</p> <p>20. Municipality to pay from corporate funds established charges and rates for services rendered it.</p> <p>21. Administration and control may be under board provided by council; powers, duties and compensation of board.</p> <p>22. When statutory mortgage lien created; enforcement of lien by bond holders; receivership for works.</p> <p>23. Acquisition of property on which lien exists.</p> <p>24. Action by bond holder or trustee to protect rights; receivership; powers of receiver.</p> <p>25. Act confers additional powers, jurisdiction beyond municipal limits.</p> <p>26. Construction of powers conferred by act.</p> <p>27. Act to be liberally construed.</p> <p>28. Provisions of act separable; if section invalid, remaining section not affected.</p> |
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Be it enacted by the Legislature of West Virginia:

Section 1. (a) The term "municipality", as used in this act, shall be construed to mean any city or incorporated town in the state of West Virginia; (b) the term "municipal authorities", as used in this act, shall be construed to mean the mayor and council, or similar governing body, board or commission of any city or incorporated town; (c) the term "municipal public works", as used in this act, shall be construed to mean and include cemeteries, incinerator plants, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, public markets, stadiums, public recreation parks, swimming pools, tennis courts, golf courses, polo grounds, public buildings, including libraries and museums, common jails, grading and/or paving, and/or re-paving streets and alleys, where such works or projects will be made self-supporting, and the construction and/or acquisition cost thereof, together with interest thereon, will be returned within a reasonable period, not exceeding thirty years, by means of tolls, fees, rents or

18 charges other than taxation, and shall mean and include such
19 system, building, plant or project in its entirety, and all in-
20 tegral parts thereof.

Sec. 2. Every municipality in the state of West Virginia
2 is hereby authorized and empowered to construct, acquire or
3 equip, operate, maintain and/or enlarge, extend or increase
4 any of the municipal public works described in section one
5 of this act, together with all appurtenances necessary, useful or
6 convenient for the maintenance and operation of such works, and
7 shall have authority to acquire by gift, grant, purchase, con-
8 demnation or otherwise, all necessary lands, rights of way and
9 property therefor within and/or without the corporate limits
10 of such municipality, and to issue revenue bonds to pay the
11 costs of such public works and property: *Provided, however,*
12 That this section shall not be construed to authorize any mu-
13 nicipality to construct, acquire, own, equip, operate or main-
14 tain any works which would render a service already being ade-
15 quately rendered within such municipality. No obligation shall
16 be incurred by the municipality in such construction, acquisi-
17 tion, extension or improvement, except such as is payable solely
18 from the funds provided under the authority of this act.

Sec. 3. The construction, acquisition, improvement, exten-
2 sion, equipment, custody, operation and maintenance of any
3 such works, and the collection of revenues therefrom for the
4 service rendered thereby, shall be under the supervision and
5 control of the municipal authorities, or of a board, commission
6 or committee appointed by such municipal authorities as may be
7 determined by general orders. The term "board" when here-
8 after used in this act, shall be construed to mean the munici-
9 pal authorities, or such board, commission or committee, as
10 the case may be.

Sec. 4. The board shall have power to take all steps and
2 proceedings, and to make and enter into all contracts or agree-
3 ments necessary or incidental to the performance of its duties
4 and the execution of its powers under this act: *Provided,* That
5 any contract relating to the financing, or the acquisition, con-
6 struction, extension or improvement of any such works, or any
7 trust indenture as hereafter provided for, shall be approved
8 by the municipal authorities.

9 The board may employ engineers, architects, inspectors,
10 superintendents, managers, collectors, attorneys and such
11 other employees as in its judgment may be necessary in the
12 execution of its powers and duties, and may fix their compensa-
13 tion, all of whom shall do such work as the board may direct.
14 All such compensation and expense incurred in carrying out the
15 provisions of this act shall be paid solely from funds provided
16 under the authority of this act, and the board shall not exer-
17 cise or carry out any authority or power herein given it so
18 as to bind said board or said municipality beyond the extent
19 to which money shall have been, or may be provided under the
20 authority of this act. No contract or agreement with any con-
21 tractor or contractors for labor and/or materials, exceeding in
22 amount the sum of one thousand (\$1,000) dollars shall be made
23 without advertising for bids, which bids shall be publicly opened
24 and award made to the lowest responsible bidder, with power in
25-26 the board to reject any and all bids. After the construction,
27 installations and completion of the works or the acquisition
28 thereof, the board shall operate, manage and control the same,
29 and may order and complete any extensions, betterments and im-
30 provements of and to the works that the board may deem ex-
31 pedient, if funds therefor be available, or are made available, as
32 provided in this act, and shall establish rules and regulations
33 for the use and operation of the works, and do all things nec-
34 essary or expedient for the successful operation thereof. All
35 public ways or public works damaged or destroyed by the
36 board in carrying out its authority under this act, shall be re-
37 stored or repaired by the board and placed in their original
38 condition, as nearly as practicable, if requested so to do by
39 proper authority, out of the funds provided by this act.

Sec. 5. All necessary preliminary expenses actually incurred
2 by the board of any municipality in the making of surveys,
3 estimates of cost and of revenues, employment of engineers or
4 other employees, the giving of notices, taking of options, and
5 all other expenses of whatsoever nature necessary to be paid
6 prior to the issue, sale and delivery of the revenue bonds here-
7 in provided for, may be paid by the municipality, to be re-
8 imbursed and repaid out of the proceeds of the sale of such
9 revenue bonds to be used for the construction, acquisition, ex-
10 tension or improvement of such works as hereinafter provided.

Sec. 6. Before any municipality shall construct, acquire, improve or extend any works under this act, the municipal authorities shall enact an ordinance or ordinances, or shall adopt a proper resolution which shall (a) set forth a brief and general description of the works, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension or improvement of such works; (d) direct that revenue bonds of the municipality be issued pursuant to this act; in such amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary or proper in the premises. Before such ordinance shall become effective, it shall be published once each week for two successive weeks in two newspapers of opposite political faith published in such municipality, or in one newspaper, if only one political faith is represented by newspapers in the said municipality, or, if there be no newspapers so published, then such ordinance shall be posted in at least three public places therein. Said notice shall specify a time and place for a public hearing, the time being not less than ten days after the first publication or posting of said notice at which time and place all parties and interests may appear before the municipal authorities, and may be heard as to whether or not said ordinance shall be put into effect. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premise: *Provided, however,* That if at such hearing written protest is filed by thirty per cent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four-fifths of the members of said governing body assent thereto: *Provided further,* That in case written protest is filed by thirty per cent or more of owners of real estate as herein provided, the governing body shall have authority to appoint a committee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether or not thirty per cent of the property owners have in fact protested and said committee shall report its findings to the governing body.

Sec. 7. Every such municipality shall have power to con-

2 demn any such municipal public works to be acquired, and any
3 land, rights, easements, franchises and other property, real
4 or personal, deemed necessary or convenient for the construc-
5 tion of any such works, or for extensions, improvements or
6 additions thereto, and in connection therewith shall have and
7 may exercise all the rights, power and privileges of eminent
8 domain granted to municipalities under the laws relating there-
9 to. Title to property shall be taken in the name of the munici-
10 pality. Proceedings for such appropriation of property shall
11 be under and pursuant to the general provisions of law relating
12 to condemnation proceedings in the exercise of eminent do-
13 main: *Provided*, That the municipality shall be under no obliga-
14 tion to accept and pay for any property condemned, and shall
15 in no event pay for any property condemned or purchased, ex-
16 cept from the funds provided, pursuant to this act; and in
17 any proceedings to condemn, such orders may be made as may
18 be just to the municipality and to the owners of the property
19 to be condemned; and an understanding or other security may
20 be required securing such owners against any loss or damage
21 which may be sustained by reason of the failure of the munici-
22 pality to accept and pay for the property, but such under-
23 taking or security shall impose no liability upon the munici-
24 pality, except such as may be paid from the funds provided
25 under the authority of this act.

26 In the event of acquisition by purchase, the board may ob-
27 tain and exercise an option from the owners of said property
28 for the purchase thereof, and may enter into a contract for the
29 purchase thereof, and such purchase may be made upon such
30-31 terms and conditions, and in such manner as the board may
32 deem proper: *Provided, however*, That such exercise of option,
33 purchase, or contract for such purchase shall in no event bind
34 or obligate said municipality, or create any debt, liability or
35 claim, except such as may be paid from the funds provided
36 under the authority of this act.

37 In the event of the acquisition of any works already con-
38 structed by purchase or condemnation, the board at or before
39 the time of the adoption of the ordinance or resolution de-
40 scribed in section six hereof, shall cause to be determined what
41 repairs, replacements, additions and betterments will be neces-
42 sary, in order that such works may be effective for their pur-

43 pose, and an estimate of the cost of such improvements shall
44 be included in the estimate of the cost required by section six
45 hereof, and such improvement shall be made upon the acquisi-
46 tion of the works and as a part of the cost thereof: *Provided,*
47 *however,* That no municipality shall, under the authority con-
48 ferred by the act, condemn any existing privately owned works
49 in operation at the date of the condemnation.

Sec. 8. Whenever any municipality now, or hereafter, shall
2 own and operate any of the works herein referred to, whether
3 constructed under the provisions of this act or not, and shall
4 desire to construct improvements, enlargements, extensions and
5 betterments thereto, it may issue revenue bonds, under the pro-
6 visions of this act, to pay for the same, and the procedure there-
7 for, including fixing all rates and the computation of the
8 amount thereof, shall be the same as in this act provided for
9 the issuance of bonds for acquisition or construction of such
10 works in or by the municipality which has not theretofore
11 owned and operated such works: *Provided, however,* That no
12 existing obligations or rights shall be affected or impaired
13 thereby.

Sec. 9. The cost of the works shall be deemed to include
2 the cost of the acquisition or construction thereof, the cost
3 of all property rights, easements and franchises deemed nec-
4 essary or convenient therefor and for the improvements de-
5 termined upon, as provided in section seven of this act; in-
6 terest upon bonds prior to and during construction or acqui-
7 sition and for six months after completion or construction or
8 of acquisition of the improvements last mentioned; engineering
9 and legal expense; expense for estimates of cost and of reve-
10 nues; expenses for plans, specifications and surveys; other
11 expenses necessary or incident to determining the feasibility
12 or practicability of the enterprise, administrative expense, and
13 such other expenses as may be necessary or incident to the
14 financing herein authorized, and the construction or acqui-
15 sition of the works and the placing of the works in operation,
16 and the performance of the things herein required or per-
17 mitted in connection with any thereof.

Sec. 10. Nothing in this act contained shall be so construed
2 as to authorize or permit any municipality to make any con-

3 tract or incur any obligation of any kind or nature, except such
4 as shall be payable solely from the funds provided under this
5 act. Funds for the payment of the entire cost of the works
6 shall be provided by the issuance of revenue bonds of the
7 municipality, the principal and interest of which bonds shall
8 be payable solely from the special fund herein provided for
9 such payment, and said bonds shall not in any respect be a cor-
10 porate indebtedness of such municipality. All such bonds shall
11 be exempt from taxation by the state of West Virginia or any
12 county or municipality therein. All of the details of such bonds
13 and the issuance thereof shall be determined by ordinance or
14 resolution of the municipal authorities.

Sec. 11. Such revenue bonds shall bear interest at not more
2 than six (6%) per cent per annum, payable annually, or at
3 shorter intervals, and shall mature at such time or times, not ex-
4 ceeding thirty years, as may be determined by ordinance or reso-
5 lution. Such bonds may be made redeemable before maturity,
6 at the option of the municipality, to be exercised by said board,
7 at not more than the par value thereof, and the premium of not
8 more than five (5%) per cent, under such terms and conditions
9 as may be fixed by the ordinance or resolution authorizing the is-
10 suance of the bonds. The principal and interest of the bonds
11 may be made payable in any lawful medium. Said ordinance or
12 resolution shall determine the form of the bonds, including
13 the interest coupons to be attached thereto, and shall fix the
14 denomination or denominations of such bonds, and the place or
15 places of the payment of the principal and interest thereof,
16 which may be at any bank or trust company within or with-
17 out the state. The bonds shall contain a statement on their
18 face that the municipality shall not be obligated to pay the
19 same, or the interest thereon, except from the special fund de-
20 rived from the net revenue of the works, or the pro rata part
21 thereof, as provided for in section eight hereof. All such bonds
22 shall be, and shall have, and are hereby declared to have all
23 the qualities and incidents of negotiable instruments, under
24 the negotiable instruments law of this state. Provision may
25 be made for the registration of any of the bonds in the name
26 of the owner as to principal alone; but bonds shall be executed
27 in such manner as the municipal authorities may direct. The
28 bonds shall be sold by the municipal authorities in such manner

29 as may be determined to be for the best interest of the munici-
30 pality: *Provided, however,* That said bonds shall not be nego-
31 tiated at a price lower than a price which computed to maturity
32 upon standard tables of bond values will show a net return of
33 six per cent per annum to the purchaser upon the amount
34 paid therefor. Any surplus of the bonds proceeds over and
35 above the cost of the works shall be paid into the sinking
36 fund hereinafter provided. If the proceeds of the bonds, by
37 error of calculation, or otherwise, shall be less than the cost
38 of the works, additional bonds may in like manner be issued
39 to provide the amount of such deficit, and, unless otherwise
40 provided in the ordinance or resolution authorizing the issuance
41 of the bonds first issued, or in the trust indenture hereinafter
42 authorized, shall be deemed to be of the same issue, and shall
43 be entitled to payment without preference or priority of the
44 bonds first issued, but such preference or priority shall not
45 extend to an amount exceeding ten per cent of the original
46 issue. Prior to the preparation of the definite bonds, interim
47 certificates may, under like restrictions be issued with or with-
48 out coupons exchangeable for definite bonds upon the issuance
49 of the latter.

Sec. 12. No municipal official or member of the board shall
2 in any event be personally liable upon any contract or obliga-
3 tion of any kind or character executed under the authority
4 herein contained, even if said undertaking should hereafter
5 be held *ultra vires*.

Sec. 13. The municipal authorities may provide by the said
2 ordinance or resolution authorizing the issuance of the bonds
3 or in the trust indenture hereinafter referred to, that addi-
4 tional bonds may thereafter be authorized and issued at one
5 time, or from time to time, under such limitations and restric-
6 tions as may be set forth in said ordinance, resolution and/or
7 trust indenture, for the purpose of extending, improving or
8 bettering the works when deemed necessary in the public in-
9 terest, such additional bonds to be secured, and be payable
10 from the revenues of the works, as provided for in section eight
11 of this act.

Sec. 14. All moneys received from the sale of any bonds
2 issued pursuant to this act, after reimbursements and repay-
3 ments to said municipalities of all amounts advanced for pre-

4 liminary expenses, as provided in section five of this act, shall
5 be applied solely to the payment of the cost of the works, ex-
6 tensions, improvements, or betterments, or to the appurtenant
7 sinking fund, and there shall be, and hereby is created and
8 granted a lien upon such money, until so applied, in favor
9 of the holders of the bonds or the trustees hereinafter provided
10 for.

Sec. 15. In the discretion and at the option of the municipi-
2 pal authorities such bonds may be secured by a trust indenture
3 by and between the municipality and a corporate trustee,
4 which may be a trust company or bank having powers of a
5 trust company within or without the state of West Virginia,
6 but no such trust indenture shall convey, mortgage or create
7 any lien upon the works or any part thereof. The ordinance
8 or resolution authorizing the revenue bonds, and fixing the
9 details thereof, may provide that such trust indenture may con-
10 tain such provisions for protecting and enforcing the rights
11 and remedies of bond holders as may be reasonable and proper,
12 not in violation of law, including covenants setting forth the
13 duties of the municipality and the board in relation to the
14 construction or acquisition of the works and the improvement,
15 operation, repair, maintenance and insurance thereof, and the
16 custody, safeguarding and application of all moneys, and may
17 provide that the works shall be contracted for, constructed and
18 paid for, under the supervision and approval of the consulting
19 engineers employed or designated by the board and satis-
20 factory to the original bond purchasers, their successors, as-
21 signees or nominees who may be given the right to require the
22 security given by contractors and by any depository of the pro-
23 ceeds of bonds or revenues of the works or other moneys per-
24 taining thereto be satisfactory to such purchasers, their suc-
25 cessors, assignees or nominees. Such indenture may set forth
26 the rights and remedies of the bond holders and/or such trust-
27 tee. Except as in this act otherwise provided, the municipal
28 authorities may provide by ordinance or resolution or in such
29 trust indenture, for the payment of the proceeds of the sale of
30 the bonds and the revenues of the works to such officer, board
31 or depository, as it may determine, for the custody thereof,
32 and for the method of distribution thereof, with such safe-
33 guards and restrictions as it may determine.

Sec. 16. At or before the issuance of any such bonds, the municipal authorities shall, by ordinance or resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to meet the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into sinking fund at intervals, to be determined by ordinance or resolution adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; and (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time, and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year, shall equal ten (10%) per cent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or resolution, be given the right to use or direct the trustee or the State Sinking Fund Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required, the board may at any time in its discretion, transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund, or into a fund for extensions, betterments and additions to the works.

40 All amounts for sinking fund and interest, as and when set

41 apart for the payment of same, shall be remitted to the State
42 Sinking Fund Commission at such periods as shall be desig-
43 nated in the ordinance, but in any event at least thirty days
44 previous to the time interest or principal payments become
45 due, to be retained and paid out by said commission con-
46 sistent with provisions of this act and the order pursuant to
47 which such bonds have been issued. The State Sinking Fund
48 Commission is hereby authorized to act as fiscal agent for the
49 administration of such sinking fund under any order passed
50 pursuant to the provisions of this act and shall invest all sink-
51 ing funds as provided by general law.

Sec. 17. Municipal authorities shall have the power, and it
2 shall be their duty, by ordinance or resolution, to establish and
3 maintain just and equitable rates or charges for the use and
4 services rendered by such works, to be paid by the person using
5 the same or receiving the services thereof, and may readjust such
6 rates or charges from time to time. Such rates or charges shall
7 be sufficient in each year for the payment of the proper and
8 reasonable expenses of operation, repair, replacements and
9 maintenance of the works, and for the payment of the sums
10 herein required to be paid into the sinking fund.

11 Revenues collected pursuant to this section shall be deemed
12 the revenues of the works. No such rates or charges shall be
13 established until after a public hearing at which all the users
14 of the works and/or owners of the property served, or to be
15 served thereby, and others interested, shall have an opportunity
16 to be heard concerning the proposed rates or charges. After
17 introduction of proposal of the ordinance or resolution fixing
18 such rates or charges and before the same is finally enacted or
19 passed, notice of such hearing, setting forth the proposed
20 schedule of such rates or charges, shall be given by publishing
21 same once each week for two successive weeks in two newspapers
22 of opposite political faith published in such municipality, or in
23 one newspaper, if only one political faith is represented by
24 newspapers in the said municipality, or, if there be no news-
25 papers so published, then such ordinances shall be posted in
26 at least three public places therein, the first publication or
27 posting of said notice to be at least ten days before the date fixed
28 in such notice for the hearing, which hearing may be adjourned
29 from time to time. No other or further notice to parties at in-

30 terest shall be required. After such hearing the ordinance or res-
31 olution establishing rates or charges, either as originally pro-
32 posed or introduced, or as modified and amended, shall be passed
33 or adopted and put into effect. A copy of the schedule of such
34 rates and charges so established shall be kept on file in the office
35 of the board having charge of the operation of such works, and
36 also in the office of the municipal authorities, and shall be open
37 to inspection by all parties interested. The rates or charges so
38 established for any class of users or property served, shall be ex-
39 tended to cover any additional class of users or property there-
40 after served which fall within the same class, without the neces-
41 sity of any hearing or notice. Any change or readjustment of
42 rates may be made in the same manner as such rates or charges
43 were originally established as hereinabove provided. The aggre-
44 gate of the rates or charges shall always be sufficient for such ex-
45 pense of operation, repairs and maintenance, and for such sink-
46 ing fund payments. If any service rate, charge or fee so estab-
47 lished shall not be paid within thirty days after the same is due,
48 the amount thereof may be recovered by the board in a civil
49 action in the name of the municipality, and in the case of
50 charges due for services rendered, such charges, if not paid
51 when due, may, if council so provide in the ordinance provided
52 for under section six of this act, constitute a lien upon the
53 premises served by such works, which lien may be foreclosed
54 against such lot, parcel of land or building so served, in accord-
55 ance with the laws relating to the foreclosure of liens on real
56 property. Upon failure of any person receiving any such serv-
57 ice to pay for same when due, the board may discontinue such
58 service without notice.

Sec. 18. If any party in interest is dissatisfied with the rates
2 fixed under the provisions of the foregoing section, such party
3 shall have the right to appeal to the public service commission
4 of West Virginia at any time within thirty days after the fixing
5 of such rates by the municipal authorities, but the rates so fixed
6 by the municipal authorities under the provisions of the fore-
7 going section shall remain in full force and effect, until set
8 aside, altered or amended by the public service commission.

Sec. 19. Any municipality issuing revenue bonds under the
2 provisions of this act, shall install and maintain a proper system
3 of accounting, showing the amount of revenue received and the

4 application of the same, and the municipal authorities shall, at
5 least once a year, cause such accounts to be properly audited by
6 a competent auditor, and the report of such auditor shall be
7 open for inspection at all proper times to any taxpayer, citizen
8 of said municipality, or person receiving service from said
9 works, or any holder of bonds issued under the provisions of
10 this act, or anyone acting for and in behalf of such taxpayer,
11 citizen or bond holder. The treasurer of such municipality, or
12 other official or institution specifically charged by it with the
13 duty, shall be custodian of the funds derived from income re-
14 ceived from said works, constructed either in whole or in part
15 under the provisions of this statute, and shall give proper bond
16 for the faithful discharge of his or its duties as such custodian,
17 which bond shall be fixed and approved by the municipal au-
18 thorities. All of the funds received as income from said works,
19 constructed in whole or in part under the provisions of this act,
20 and all funds received from the sale of revenue bonds issued to
21 construct such works, shall be kept separate and apart from
22 other funds of the municipality, and separate accounts shall be
23 maintained for the several items required to be set up by section
24 fifteen of this act.

Sec. 20. The municipality shall be subject to the same charges
2 and rates established as hereinbove provided, or to charges and
3 rates established in harmony therewith, for service rendered the
4 municipality, and shall pay such rates and charges, when due.
5 from corporate funds, and the same shall be deemed to be a
6 part of the revenues of the works as herein defined, and may be
7 applied as herein provided for the application of such revenue.

Sec. 21. The municipal authorities may, in their discretion,
2 provide by ordinance that the custody, administration, operation
3 and maintenance of public works shall be under the supervision
4 and control of a board as provided by section three hereof, and
5 in such case, the municipal authorities may provide, by ordi-
6 nance or resolution, for said board to exercise such of the func-
7 tions of the municipal authorities in connection with the matter
8 as they deem proper, and may provide for said board to receive
9 such compensation as such authorities may deem proper, all of
10 which authority and compensation shall be specifically provided
11 for by ordinance or resolution. All compensation and expense

12 of such board shall be paid solely from funds provided under
13 the authority of this act. Such board shall have power to estab-
14 lish by-laws, rules and regulations for its own government.

Sec. 22. In the event bonds issued hereunder are not secured
2 by a trust indenture, provided for in Section 15 of this act,
3 there shall be, and there is hereby, created a statutory mortgage
4 lien upon such municipal public works acquired or constructed
5 under the provisions of this act, which shall exist in favor of
6 the holder of said bonds, and each of them, and to and in favor
7 of the holder of the coupons attached to said bonds, and such
8 municipal public works shall remain subject to such statutory
9 mortgage lien until payment in full of the principal and interest
10 of said bonds. Any holder of bonds issued under the provisions
11 of this act, or of any coupons representing interest accrued
12 thereon, may, either at law or in equity, enforce the statutory
13 mortgage lien hereby conferred and may, by proper suit, compel
14 the performance of the duties of the officials of the municipality
15 set forth in this act. If there be default in the payment of the
16 principal of and/or interest upon any of said bonds, any court
17 having jurisdiction in any proper action may appoint a receiver
18 to administer said municipal public works on behalf of the
19 municipality, with power to charge and collect rents or income
20 sufficient to provide for the payment of said bonds and interest
21 thereon and for the payment of the operating expenses and to
22 apply the income, rents or other revenue in conformity with this
23 act and the order providing for the issuance of said bonds.

Sec. 23. No property shall be acquired under this act upon
2 which any lien or other encumbrance exists, unless at the time
3 such property is acquired a sufficient sum of money be deposited
4 in trust to pay and redeem such lien or encumbrance in full.

Sec. 24. Any holder of any such bonds, or any of the coupons
2 attached thereto, and the trustee, if any, except to the extent of
3 the rights herein given, may be restricted by said ordinance or
4 resolution authorizing issuance of the bonds, or by the trust
5 indenture, may either at law or in equity, by suit, action, man-
6 damus, or other proper proceeding, protect and enforce any
7 and all rights granted hereunder or under such ordinance, reso-
8 lution or trust indenture, and may enforce and compel perform-
9 ance of all duties required by this act, or by such ordinances,

10 resolution or trust indenture to be performed by the municipi-
11 pality issuing the bonds, or by the board or any officer, including
12 the making and collecting of reasonable and sufficient charges
13 and rates for services rendered by the works. If there be any
14 failure to pay the principal or interest of any of the bonds on
15 the date therein named for such payment, any court having
16 jurisdiction may appoint a receiver to administer the works on
17 behalf of the municipality, and the bond holders and/or trustees,
18 except as so restricted, with power to charge and collect rates
19 sufficient to provide for the payment of the expenses of opera-
20 tion, repair and maintenance, and also to pay any bonds and
21 interest outstanding, and to apply the revenues in conformity
22 with this act, and the said ordinance, resolution and/or trust
23 indenture: *Provided, however,* That rates established in the
24 manner provided by section seventeen of this act shall not be
25 changed, except in the manner therein provided, with the right
26 of appeal to the public service commission of West Virginia.

Sec. 25. The authority herein given shall be in addition to
2 and not in derogation of any power existing in any municipality
3 under any constitutional, statutory or charter provisions which
4 it may now have, or may hereafter acquire or adopt. For all
5 purposes of this act, municipalities shall have jurisdiction for
6 ten miles outside of the corporate limits thereof, except where
7 such zone would overlap with another municipality, in which
8 event the meridian line of the overlapping zone shall be the
9 dividing line of their respective jurisdictions.

Sec. 26. This act shall, without reference to any other statute,
2 be deemed full authority for the construction, acquisition, im-
3 provement, equipment, maintenance, operation and repair of the
4 works herein provided for, and for the issuance and sale of the
5 bonds by this act authorized, and shall be construed as an
6 additional alternative method therefor, and for the financing
7 thereof, and no petition or other or further proceeding in respect
8 to the construction or acquisition or improvement of the works,
9 or to the acquisition or sale of bonds to the improvement of the
10 works, or to the issuance or sale of bonds under this act, and no
11 publication of any resolution, ordinance, notice or proceeding
12 relating to such construction, improvement or acquisition, or to
13 the issuance or sale of such bonds shall be required, except such

14 as are prescribed in this act, any provisions of other statutes of
15 the state to the contrary notwithstanding.

Sec. 27. This act being necessary for the public health, safety
2 and welfare, shall be liberally construed to effectuate the pur-
3 poses thereof.

Sec. 28. The sections and provisions of this act are separable,
2 and not matters of mutual essential inducement, and it is the
3 intention to confer the whole or any part of the power herein
4 provided for, and if any section, sections, provision or provisions,
5 or parts thereof, is or are for any reason held to be illegal, it is
6 the intention that the remaining sections and provisions, or parts
7 thereof, shall remain in full force and effect.

CHAPTER 69

(House Bill No. 167—By Mr. Gentry)

AN ACT to amend and reenact sections ten, twelve, thirteen, four-
teen, fifteen, eighteen and twenty, article six, chapter eight of
the code of West Virginia, one thousand nine hundred thirty-
one, relating to firemen's and policemen's pension or relief
fund.

[Passed March 8, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec.	Sec.
10. Pension or relief funds in paid municipal fire and police departments under civil service; board of trustees to administer.	manent physical or mental disability; temporary disability by injury or sickness; medical examination before appointment; exception as to present members; re-examination and restoration of members to duty.
12. Number, selection and terms of board members; the vote; when election held; vacancies; organization of board; compensation and duties of secretary.	20. Retirement upon request, at seventy-five dollars per month, if applicant is fifty years old and has served twenty-three years; pension of ninety dollars per month to permanently disabled members; absence from service because of sickness or injury not construed as time out of service.
13. Procedure for establishment of fund.	
14. Levies to establish fund; payment into fund by members of departments.	
15. Duties and bond of treasurer of fund.	
18. Retirement of members for per-	

Be it enacted by the Legislature of West Virginia:

That section ten, twelve, thirteen, fourteen, fifteen, eighteen,

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

Section 10. In any municipal corporation in this state having, or which may hereafter have, a fire department and a police department, or either of such departments, supported in whole or in part at public expense, the council or other governing body shall, by ordinance provide for the establishment and maintenance of a firemen's pension or relief fund, and for a policemen's pension or relief fund, for the purposes hereinafter enumerated: *Provided, however,* That this act shall not apply to any paid police or fire department that is not under civil service, and thereupon there shall be created boards of trustees who shall administer and distribute the funds authorized to be raised by this section and succeeding sections.

Sec. 12. The said board of trustees of the firemen's pension or relief fund shall consist of the mayor or other chief executive officer of the municipal corporation and four members of the fire department, to be chosen as follows: The mayor or other chief executive officer of such municipal corporation shall give notice of an election to be held on the second Monday of the month following the passage of the ordinance mentioned in the tenth section hereof, or following the passage of this act, which notice shall be served upon each member of the fire department and which shall notify each member that between the hours of nine in the forenoon and six in the afternoon, on the day designated for such election, the election will be held for such purpose and that each member shall send under seal, in writing, the names of four persons, members of such fire department, voted for; and all votes so cast shall be counted and canvassed by the mayor or other chief executive officer and the council for the first election after the passage of this amendment, and thereafter the votes shall be counted by the then existing members of such pension board, who after such election shall announce the result, and the four members of the fire department receiving the highest number of votes shall, with the mayor or other chief executive officer, constitute "The Board of Trustees of the Firemen's Pension or Relief Fund". The four members of the fire department shall be chosen and shall

26 serve as follows: The member receiving the highest number
27 of votes shall serve for a period of four years, the member re-
28 ceiving the second highest number of votes shall serve for a
29 period of three years, the member receiving the third highest
30 number of votes shall serve for a period of two years, and the
31 member receiving the fourth highest number of votes shall
32 serve for a period of one year. After the election specified
33 above the said board of trustees shall hold a similar election
34 each year to elect one member to succeed for a term of four
35 years the retiring member. In the case of a tie vote being
36 received by any two persons for the office of trustee, such tie
37 vote shall be decided by casting lots, or in any other way which
38 may be agreed upon by the persons for whom such tie vote
39 was cast. The result of such election shall be entered in the
40 record of the proceedings of said board and the members so
41 elected shall except as hereinabove specified serve for four
42 years and until their successors are elected and have qualified.
43 The election for such members of the board of trustees shall
44 be held annually upon the second Monday of the same month
45 upon which the first election occurred. In case of vacancy
46 by death, resignation, or otherwise, among the members so
47 elected, the remaining members shall choose the successor, or
48 successors, until the next annual election at which latter time
49 all vacancies shall be filled. The presiding officer of the board
50 of trustees shall be the mayor or other chief executive officer
51 of such municipal corporation, and the secretary thereof shall
52 be appointed by said board. It shall be the duty of such sec-
53 retary to keep a full and permanent record of all the pro-
54 ceedings of the board, and said trustees may fix his compensa-
55 tion for this work, which shall be paid out of the funds of
56 said firemen's pension or relief fund.

Sec. 13. The method of procedure for the establishment of
2 a policemen's pension or relief fund shall be in all respects
3 the same as provided for the formation of the firemen's pen-
4 sion or relief fund in the succeeding section: *Provided, however,*
5 That there shall be a separate board of trustees, composed
6 of the mayor or other chief executive officer of the municipal
7 corporation and four members from the police department, the
8 four members to be elected in the same manner as provided

9 for the election of firemen to the firemen's pension or relief
10 fund in the preceding section.

Sec. 14. In every municipality there shall be a firemen's
2 pension or relief fund and a policemen's pension or relief fund
3 which shall be maintained as follows: The council or other
4 governing body of each municipality shall levy annually in
5 the manner provided by law for other municipal levies, and
6 include within the maximum levy or levies permitted by law,
7 and if necessary in excess of any charter provision, a tax not ex-
8 ceeding one cent on each one hundred dollars of all real and per-
9 sonal property as listed for taxation in such municipality
10 for the firemen's pension or relief fund, and a like levy not ex-
11 ceeding one cent on each one hundred dollars on all real and
12 personal property as listed for taxation in such municipality for
13 a policemen's pension fund. The amount of tax to be levied if
14 less than the one cent provided for above may be fixed and
15 determined by said boards of trustees as aforesaid, and certi-
16 fied to the council or other governing body of such munici-
17 pality. *Provided further*, That in any city or municipality of
18 twenty thousand population or less the laying of the levy herein
19 provided for shall be within the discretion of the common coun-
20 cil or other body of like power and duties in such city or munici-
21-27 pality.

28 The levies authorized under this section, or any part of them,
29 may by the council or other governing body be laid in addition
30 to all other municipal levies, and to that extent beyond the
31 limit of levy imposed by the charter of such municipality;
32 and such levies shall supersede and if necessary exclude levies
33 for other purposes if such priority or exclusion is necessary
34 under limitations upon taxes or tax levies imposed by law.

35 Such corporations are authorized to take by gift, grant,
36 devise or bequest, any money or real or personal property,
37 upon such terms as to the investment and expenditures thereof
38 as may be fixed by the grantor or determined by said trus-
39 tees.

40 In addition to all other sums provided for pensions in this
41 section, it shall be the duty of every municipal corporation
42 to assess and collect from each member of such fire department
43 and police department, the sum of one dollar each month,
44 which sum shall be deducted from the monthly pay of such
45 person, and the amount so collected shall become a regular

46 part of the firemen's pension fund, if collected from a fireman,
47 and of the policemen's pension fund, if collected from a police-
48 man.

Sec. 15. The treasurer of every municipality shall be the
2 custodian of all funds of the firemen's and policemen's pen-
3 sion or relief fund, and shall deposit and pay out the same
4 upon and in accordance with any proper order of the board of
5 trustees. Such treasurer shall be liable upon his official bond
6 as treasurer for the faithful performance of his duties in re-
7 spect to such fund or funds, and the official bond of the trea-
8 surer covering such fund or funds shall be executed with a
9 good and financially responsible surety company, authorized
10 to do business in this state, as surety for such funds. Such
11 fund or funds shall not be used for any other purpose than
12 provided herein.

Sec. 18. If any member of such fire department or police
2 department of any such municipality shall become and be
3 found upon examination by a majority of a board of medi-
4 cal examiners, which board shall consist of not less than three
5 physicians appointed by the board of trustees, to have become
6 so physically or mentally permanently disabled by reason of
7 services rendered in the performance of his duties in such
8 department, as to render necessary his retirement from all
9 service in such department, or if any member who has been
10 such a member of either of such departments for a period
11 of not less than five consecutive years preceding his disability
12 become and be found upon such an examination to have be-
13 come so physically or mentally permanently disabled, re-
14 gardless of the cause therefor, as to render necessary his re-
15 tirement from all services in such department, such board
16 of trustees shall retire such permanently disabled persons from
17 all services in such department; and said board of trustees of
18 such pension or relief fund shall authorize the payment to
19 such permanently disabled persons monthly from the pen-
20 sion fund the amounts as fixed by the rules hereinafter pro-
21 vided for. If any member of such department shall at any
22 time be injured or become sick, so as to render such member
23 temporarily disabled, he shall be paid from said pension or
24 relief fund the amount to be determined by the rules estab-
25 lished, as aforesaid, during such disability for not exceeding

26 twenty-six weeks. No person shall be eligible for any pension
27 unless such member shall have presented himself for an ex-
28 amination at the time of his appointment to the department
29 and his condition was then approved by a majority of a board
30 of medical examiners appointed as aforesaid by such pen-
31 sion board: *Provided, however,* That this provision shall not
32 apply to any person who is a member of either of said depart-
33 ments at the time of the enactment of this act.

34 Any person who has been heretofore, or who shall here-
35 after be, allowed a pension under the provisions of this
36 act may be required by such board to be re-examined at any
37 time and if he is then not disabled as aforesaid he shall be
38 ordered by the mayor or other chief executive officer of the
39 municipality to return to duty in his former position in the
40 fire or police department, as the case may be, and his pen-
41 sion discontinued: *Provided, however,* That this provision
42 shall not apply to any person until such person can and shall
43 be restored to his former position in such department.

Sec. 20. Any member of a municipal fire department or
2 police department who is entitled to the benefits of said fund,
3 and who has been in the continuous service of such depart-
4 ment for twenty-three years, and shall have reached the age
5 of fifty years, may, upon written application to the board
6 of trustees, be retired from all service from such department
7 without medical examination or disability, and on such retire-
8 ment the board of trustees shall authorize the payment to
9 such retired member during the remainder of his life of
10 seventy-five dollars per month. A member of such depart-
11 ment who may have served twenty-three years, but not con-
12 tinuously, and shall have reached the age of fifty years, shall
13 be entitled to the benefits of this section, provided he shall
14 not have been out of the service for a period longer than two
15 years.

16 The sum to be paid to permanently disabled members shall
17 be at the rate of ninety dollars per month, which shall be paid
18 regardless of the position in the department of such disabled
19 member.

20 Absence from service because of sickness or injury shall
21 not be construed as time out of service.

22 All acts and parts of acts, general and special, inconsistent
23 with this act, are hereby repealed.

CHAPTER 70

(Senate Bill No. 22—By Mr. Fleming)

AN ACT to amend article eight, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section seven, providing for the naming of the site of the West Virginia Training School.

[Passed January 23, 1935; in effect from passage. Approved by the Governor.]

Sec.

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| 7. | Name of site of West Virginia training school to be known as Spring Run. |
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Be it enacted by the Legislature of West Virginia:

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

Section 7. The name of the site of the "West Virginia 2 Training School" shall hereafter be known as "Spring Run".

CHAPTER 71

(Senate Bill No. 75—By Mr. Rouss)

AN ACT to amend and reenact chapters forty-seven and forty-eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, creating a West Virginia racing commission, to provide revenue for the general fund by the regulation and licensing of horse racing and the operation of the pari-mutuel system of wagering within the state.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

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| 1. | West Virginia racing commission established; location of office; meetings and report to governor; number: bi-partisan; confirmed by Senate; terms: powers and duties. |
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Sec.

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| 2. | Compensation of members fixed by governor; appointment and compensation of secretary, steward and employees; how compensation paid. |
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| <p>Sec.</p> <p>3. Taxes from operation of pari-mutuel pools deposited in state treasury to credit of general fund.</p> <p>4. License for horse racing for stake, purse or reward; when license not required.</p> <p>5. What application for license to state; granting or rejection of application; reasons for refusal to be given; review by mandamus, of finding of commission.</p> <p>6. Per diem tax on tracks one mile or more in length; on tracks less than one mile in length; exception; amount and payment of tax on total contribution to all pari-mutuel pools; applicant, before license granted, to show ability to pay license fees, purses, etc.; when bond required.</p> | <p>Sec.</p> <p>7. Only pari-mutuel system of wagering permitted; permissible commissions deducted by licensee; breakage calculated to the dime; minors not permitted to wager; appointment, compensation and powers of supervisor of pari-mutuel pools.</p> <p>8. Penalty for conducting race meet without required license.</p> <p>9. Prescribed license tax to be in lieu of all other license, etc., taxes of state; no tax by municipalities.</p> <p>10. Gaming statutes not to apply to licensed pari-mutuel system of wagering.</p> <p>11. Commission to license jockeys, etc.; relief fund for; sources and purposes for which disbursed.</p> <p>12. Definition of words and phrases.</p> |
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Be it enacted by the Legislature of West Virginia:

That chapters forty-seven and forty-eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

- Section 1. There is hereby created the West Virginia racing commission, which shall be a corporation and, as such, may contract and be contracted with, and shall have a corporate seal. Said commission shall have its principal office in the state capitol at Charleston, and shall meet annually at its office in the month of January, and at such other times and places as shall be designated by its chairman. It shall also make and publish annually a report to the governor of the business transacted by it.
- The commission shall consist of three members, not more than two of whom shall at any one time belong to the same political party. They shall be appointed by the governor by and with the advice and consent of the Senate. The term of office of the members of such commission shall be four years, except that of the first appointees, one shall be appointed for two years, one for three years and one for four years, and their appointments shall be made within twenty days after this bill shall become effective, and their successors shall thereafter be appointed for terms of four years each. Said commission shall have all the powers necessary to carry out fully and effectively all the purposes of this act and shall have full power to pre-

22 scribe rules, regulations and conditions under which all races
23 shall be conducted within the state of West Virginia. The com-
24 mission may at any time for the violation of any rule or for any
25 fraudulent practices, require the removal of any official or em-
26 ployee employed by any licensee hereunder, and shall have
27 power to summon witnesses and to administer oaths or affirma-
28 tions to such witnesses and take testimony whenever in the
29 judgment of said commission it may be necessary for the dis-
30 charge of its duties. False swearing on the part of any witness
31 shall be deemed perjury and shall be punished as such.

Sec. 2. The compensation of the members of the commission
2 shall be fixed by the governor. The commission shall appoint
3 a secretary and steward to represent the commission, and such
4 additional help as shall be necessary to administer the details
5 provided for in this act, and shall fix their compensation and
6 actual expenses, and the compensation and actual expenses of
7 the members of the commission, shall be paid from the funds
8 in the hands of the state treasurer collected from the license
9 tax on pari-mutuel wagering when not otherwise provided in
10 the budget; but no such expenses shall be paid unless an itemized
11 account thereof, under oath, be first filed with the state auditor.

Sec. 3. All revenue collected as taxes from the operation of
2 pari-mutuel pools shall be paid directly to the treasurer of the
3 state of West Virginia and be deposited by him to the credit
4 of the general fund of the state.

Sec. 4. No person shall hereafter hold or conduct any horse
2 race meeting within the state of West Virginia whereat horse
3 racing shall be permitted for any stake, purse or reward except
4 under the license of the West Virginia racing commission. How-
5 ever, nothing in this act shall be construed to prevent in any
6 way the use of any grounds, enclosure, or race track owned
7 and controlled by any person for any local, county or state
8 fair, agriculture or live stock exposition, even though racing
9 be conducted thereat, when no wagering or pool selling upon
10 the result of the racing so held thereat is permitted within the
11 knowledge or acquiescence of the person conducting the same
12 and when the pari-mutuel pool system of wagering is not con-
13 ducted.

Sec. 5. Any person desiring to conduct a horse race meeting

2 within the state of West Virginia and to permit or conduct
3 pari-mutuel pools shall apply to the West Virginia racing com-
4 mission for a license to do so. Such application shall be filed
5 with the commission at least thirty days prior to the first day of
6 each horse race meeting which said person proposes to hold or
7 conduct. The commission shall prescribe blank forms in making
8 such applications. Such application shall specify the days upon
9 which said race meeting is to be conducted. It shall state the
10 name of the person making such application, the post office ad-
11 dress of the person making such application, the number of days
12 he intends to hold or conduct such meeting (which shall be
13 successive week days, excluding Sundays,) and the location of
14 the place or track or enclosure where he proposes to hold or
15 conduct such race meeting, and shall supply such other data and
16 information as the commission shall prescribe.

17 Within ten days after the filing of such application with the
18 commission, the commission shall grant or reject any application
19 for a license for any cause deemed by it sufficient. If said
20 license is refused, said commission shall publicly state its reasons
21 for the refusal, and said reasons shall be written in full and
22 attached to the application so refused, which refusal and reasons
23 for same shall, at all times, be subject to inspection upon appli-
24 cation of anyone desiring to inspect same. Said findings shall
25 be subject to review by mandamus in any court of this state
26 having jurisdiction, with the right to appeal to the supreme
27 court of appeals in the manner prescribed by law.

Sec. 6. A person operating any horse race track one mile
2 or more in length shall pay for each day upon which horse races
3 are run a license tax of five hundred dollars; any race track
4 less than one mile in length shall pay for each day upon which
5 horse races are run a license tax of two hundred fifty
6 dollars: *Provided, however,* That the per diem tax shall not
7 apply to horse shows or county fairs at which racing is con-
8 ducted for not more than four days. Any person licensed by
9 the commission to conduct racing and to permit and conduct
10 pari-mutuel wagering under this act, shall in addition to the
11 aforementioned tax, pay to the racing commission of the state
12 of West Virginia a tax therefor of one per cent of the total
13 contribution to all pari-mutuel pools conducted or made at any
14 and every race meeting licensed under this act. Said pay-

15 ments shall be made to the commission or its agent after the
16 last race on each day and every day of each and every race
17 meeting, and shall be made from all contributions to all pari-
18 mutuel pools to each and every race of the day, which payments
19 shall be deposited with the treasurer of the state of West
20 Virginia.

21 Any person making application for a license for a meeting
22 to be held on any track in the state of West Virginia, shall,
23 when required, furnish satisfactory evidence to the commis-
24 sion of his or their ability to pay license fees, purses, salaries
25 of officials and other expenses incident to the meeting. In
26 the event the applicant is not able to furnish such satisfactory
27 evidence of his or their ability to pay such expenses and fees,
28 then the commission may require bond or other adequate se-
29 curity for not more than four successive days before such
30 license is issued.

Sec. 7. A person licensed by the commission shall permit only
2 the pari-mutuel system of wagering within the enclosure at
3 which horse racing is held, and the commission deducted by the
4 licensee from the said pari-mutuel pools shall not exceed ten per
5 cent of the total pari-mutuel pools for the day, including the
6 license fee of the gross amount handled hereinbefore provided
7 for, and the breakage, which shall be made and calculated to the
8 dime: *Provided, however,* That no holder of such license shall
9 permit or allow any person under the age of twenty-one years
10 to wager thereat, knowing or having reason to believe that such
11 person is under the age of twenty-one years. Any violation of
12 this proviso shall be punishable by revocation of license.

13 A supervisor of pari-mutuel pools shall be appointed by the
14 commission and shall be compensated by said commission. Said
15 supervisor shall have free access to the space or enclosure where
16 the pari-mutuel pool system of wagering is conducted or cal-
17 culated at any race meeting to which he shall be assigned for
18 the purpose of ascertaining whether or not said licensee is re-
19 taining only the commission provided for in said section, and
20 shall have general supervisory powers over the operation of the
21 pari-mutuel pools. He shall also, for the same purposes only,
22 have full and free access to all records and papers pertaining
23 to such pari-mutuel pool system of wagering, and shall report
24 to the commission in writing, under oath, whether or not the

25 licensee has retained any commissions in excess of those per-
26 mitted under this act.

Sec. 8. Any person aiding or abetting in the conduct of
2 any meeting in the state of West Virginia at which racing and
3 wagering on the same is permitted, without a license duly
4 issued and not revoked, and not suspended by the commission,
5 shall be guilty of a misdemeanor, and upon conviction, shall
6 be punished by a fine of not less than five thousand dollars and
7 not more than ten thousand dollars, for each day of such un-
8 authorized meeting, or by imprisonment not exceeding one year,
9 or by both fine and imprisonment, in the discretion of the
10 court.

Sec. 9. The license tax herein imposed shall be in lieu of all
2 other license, income, excise, special or franchise taxes of the
3 state of West Virginia, and no county, city, town, or other
4 municipality or other political subdivision of the state of West
5 Virginia shall be authorized or empowered to levy or impose
6 any license, income, excise, special or franchise tax on any
7 such person engaged in the business of conducting a meeting
8 at which horse races are run for stakes, purses or reward
9 under the jurisdiction of and being licensed by the commission,
10 or on the operation or maintenance of any pari-mutuel machine
11 or similar device, or on the sale of any commodity during a
12 meeting at which horse races are run, or at any such horse
13 race track.

Sec. 10. Section one, article ten, chapter sixty-one of the
2 code of West Virginia, one thousand nine hundred thirty-one,
3 relating to gaming tables and devices, shall not apply to the
4 pari-mutuel pool system of wagering in manner and form as
5 provided for in this act at any meeting within the state of
6 West Virginia whereat horse racing shall be permitted for any
7 stake, purse or reward, by any person having license for hold-
8 ing or conducting such horse race meeting as provided by
9 this act.

Sec. 11. The commission may license jockeys, trainers and
2 grooms, register colors, assumed names, apprentice contracts,
3 authorized agents, and charge a fee therefor. All moneys col-
4 lected from fees as well as moneys collected from fines imposed
5 by the stewards, starter or other racing official shall be paid

6 into a relief fund and paid out on order of the commission for
 7 the expenses of hospitalization, medical care, and/or funeral
 8 expenses of jockeys, trainers or other employees at said race
 9 meeting, who become ill or are injured while in the discharge
 10 of their duties under the jurisdiction of the commission. If at
 11 any time, this fund has a balance greater than is deemed neces-
 12 sary for the payment of expenses, the commission may apply
 13 the remainder to the operating expenses of the commission.

Sec. 12. Definitions and explanations of certain technical
 2 terms and words used in this act are as follows:

3 "Pari-mutuel" is a French word meaning, "a mutuel or
 4 collective pool that can be divided among those who have con-
 5 tributed their wagers to one central agency, the odds to be
 6 reckoned in accordance to the collective amounts wagered upon
 7 each contestant running in a race upon which the pool is made,
 8 but the total to be divided among the first three contestants on
 9 the basis of the number of wagers on these". A pool is, "a
 10 combination of interests in a joint wagering enterprise, or a
 11 stake in such enterprise." In the division of a pool there
 12 occurs a percentage left over. This is known as "legitimate
 13 breakage." "To the dime" is defined to mean that wagers
 14 shall be figured to and paid to the dime.

15 All other acts, whether general or local, public or private, or
 16 previous grants or franchises, inconsistent with the provisions
 17 of this act are hereby repealed.

CHAPTER 72

(Senate Bill No. 117—By Mr. Paull, by request)

AN ACT to amend and reenact sections one and five, chapter four,
 acts of the Legislature of West Virginia, regular session, one
 thousand nine hundred thirty-one, relating to the state board
 of aeronautics.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without
 the approval of the Governor.]

Sec.
 1. West Virginia board of aeronau-
 ties to consist of three mem-
 bers to be appointed by the
 governor; number; term; bi-
 partisan; state road commis-

Sec.
 stoner to be member.
 5. (a) Federal license required for
 operation of aircraft; excep-
 tions; (b) pilot's license; ex-
 ceptions.

Be it enacted by the Legislature of West Virginia:

That sections one and five, chapter four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 1. There is hereby created a board of aeronautics, 2 to be known as "The West Virginia Board of Aeronautics," 3 to consist of three members to be appointed by the governor for 4 the term of two years, to serve without pay, no more than two 5 of whom shall be members of the same political party, and one 6 of whom shall be the state road commissioner.

Sec. 5. (a) The public safety requiring and the advantages 2 of uniform regulation making it desirable in the interest of 3 aeronautical progress that aircraft operating within this state 4 should conform with respect to design, construction, and air- 5 worthiness to the standards prescribed by the United States gov- 6 ernment with respect to navigation of civil aircraft subject to its 7 jurisdiction, any person shall not operate, or pilot, or navigate, 8 or cause or authorize to be operated, piloted, or navigated, any 9 aircraft within the state unless such aircraft has an appropriate 10 effective license, issued by the department of commerce of the 11 United States: *Provided, however,* That this restriction shall 12 not apply to public aircraft of the United States, or public 13 aircraft of any state, territory or possession thereof, or to air- 14 craft licensed by a foreign country with which the United 15 States has a reciprocal agreement covering the operations of 16 such licensed aircraft: *Provided further,* That the West Vir- 17 ginia board of aeronautics may, in its discretion, waive this 18 provision in the interest of a non-passenger carrying flight 19 solely for inspection or test purposes.

20 (b) The public safety requiring and the advantages of uni- 21 form regulation making it desirable in the interest of aero- 22 nautical progress that a person engaging within this state in 23 navigating aircraft in any form of navigation, shall have the 24 qualifications necessary for obtaining and holding a pilot's 25 license issued by the department of commerce of the United 26 States, any person shall not pilot any aircraft in this state, 27 unless such person is the holder of a correct, effective pilot's 28 license issued by the department of commerce of the United 29 States: *Provided, however,* That this restriction shall not apply

30 to those persons operating public aircraft of the United States,
 31 or public aircraft of any state, territory, or possession thereof,
 32 or operating any aircraft licensed by a foreign country with
 33 which the United States has a reciprocal agreement covering
 34 the operation of such licensed aircraft.

35 All acts or parts of acts inconsistent herewith are hereby
 36 repealed.

CHAPTER 73

(Senate Bill No. 118—By Mr. Paull, by request)

AN ACT to amend and reenact section nine, article two-(a), chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to roads and highways.

[Passed March 9, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 9.	Powers of state road commissioner, including construction		Sec. and maintenance of airports and landing fields.
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Be it enacted by the Legislature of West Virginia:

That section nine, article two-(a), chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 9. The commissioner, in addition to the other powers granted by this chapter, shall have the sole authority to:

- 3 (1) Exercise general supervision over the state road program and the construction and maintenance of the state roads;
- 5 (2) Make rules and regulations for the government of his department;
- 7 (3) Sign and execute, in the name of the "The State Road Commission" any contract or agreement with the federal government or its departments, subdivisions of the state, corporations, associations, copartnerships and individuals;

- 11 (4) Supervise the fiscal affairs and responsibilities of the
12 department;
- 13 (5) Make a general road or highway plan of the state and
14 compile and publish information relative to the mileage,
15 character and condition of the roads;
- 16 (6) Determine the various methods of road construction best
17 adapted to the various sections in the state and establish
18 standards for the construction and maintenance of roads and
19 highways;
- 20 (7) Conduct investigations and experiments, hold public
21 meetings and attend meetings and conventions inside or out-
22 side of the state as may, in his judgment, tend to promote better
23 highway construction;
- 24 (8) Cooperate with state and national organizations in
25 experiments and work for the advancement of highway con-
26 struction;
- 27 (9) Enter private lands to make surveys or inspections for
28 road purposes;
- 29 (10) Acquire land necessary for roads and road main-
30 tenance;
- 31 (11) Procure photostatic copies of any or all public records
32 on file at the state capitol of Virginia which the commissioner
33 may deem necessary or proper in ascertaining the location of
34 rights-of-way of public roads located or established in what
35 is now the state of West Virginia. A copy of any such photo-
36 static copies so made, when certified by the commissioner, may
37 be admitted as evidence in lieu of the original in any of the
38 courts of this state;
- 39 (12) Administer the motor vehicle law of this state as pro-
40 vided in section twelve, article two-(a), chapter seventeen of
41 the code of West Virginia, one thousand nine hundred thirty-
42 one, as amended by chapter forty, acts of the Legislature,
43 first extraordinary session, one thousand nine hundred thirty-
44 three;
- 45 (13) Keep a complete and accurate record of all proceed-
46 ings, record and file all bonds and contracts taken or entered
47 into, and assume responsibility for the custody and preserva-
48 tion of all papers and documents pertaining to his office.
49 Rules and regulations shall be recorded in a book especially
50 kept for that purpose, and may be, in his discretion, published
51 for general circulation. All other records and entries necessary

52 to show the official conduct of the department shall be preserved
53 and shall be public records and open for inspection during
54 business hours;

55 (14) Purchase as provided by law all equipment necessary
56 for the conduct of his department, and dispose of any equip-
57 ment either by public or private sale when such equipment
58 can no longer be used to advantage. The proceeds of such
59 sale shall be paid to the state treasurer and credited to the
60 state road fund;

61 (15) Conduct hearings as provided by this chapter;

62 (16) Report to the governor each year all information
63 relative to the operation of the department and the construction
64 and maintenance of the state roads, and make such other re-
65 ports and recommendations as may be required by the governor
66 or which, in his judgment, would be beneficial to the general
67 public;

68 (17) Exercise any other power that may be necessary or
69 proper for the orderly conduct of his business and the effective
70 discharge of his duties, and invoke any legal or equitable
71 remedies for the enforcement of his orders or the provisions
72 of this department; and

73 (18) As a member of the West Virginia board of aeronautics,
74 exercise general supervision of construction and maintenance
75 of such airports and landing fields as are under the jurisdiction
76 of said board, and make a study and general plan of a state-
77 wide system of airports and landing fields.

78 All acts or parts of acts inconsistent herewith are hereby
79 repealed.

CHAPTER 74

(Senate Bill No. 253—By Mr. Jones, by request)

AN ACT to amend and reenact section three, chapter two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, relating to the department of public welfare.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

3. Advisory board to director of department of public welfare; advisory staff of orthopedic surgeons; divisions in depart-

Sec.

ment; additional divisions to participate with federal government in matters of public welfare.

Be it enacted by the Legislature of West Virginia:

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

Section 3. For the purpose of keeping public interest in 2 the various phases of welfare work sustained, the director shall 3 maintain close contact with an advisory council, with which he 4 shall confer on matters of major policy, composed of the presi- 5 dent and three vice presidents of the West Virginia crippled 6 children's society, the head of each veterans' organization in 7 the state, and the president and vice president of the state 8 organization of county welfare boards, and the president and 9 two vice presidents of the West Virginia federation of woman's 10 clubs, which council shall serve without pay. On recommenda- 11 tion of the West Virginia crippled children's society, the direc- 12 tor shall appoint an advisory staff of three orthopedic sur- 13 geons, who shall, while acting in such advisory capacity, serve 14 without pay, for the purpose of examining the credentials, 15 and recommending the appointment, of orthopedic surgeons, 16 to be engaged by the department. The director shall provide 17 a division for crippled children, a division for dependent and 18 neglected children, and a division for veterans' affairs within 19 the department, and each division shall be charged specifically 20 with the conduct of its own affairs. The director is authorized 21 to provide such additional divisions as he may deem necessary 22 by reason of the participation of his department jointly with 23 the federal government in matters of public welfare.

CHAPTER 75

(Senate Bill No. 254—By Mr. Jones, by request)

AN ACT to repeal section ten, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-

one, and to amend and reenact sections twelve, fourteen and nineteen of said article three, all relating to child welfare.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec. 12. Physical and mental examination of children before commitment to board; acceptance or refusal by board.</p> <p>14. Committed children to remain public wards until married or</p>	<p>Sec. twenty-one years old, unless returned to parents or guardian by court order.</p> <p>19. Placing of children in private homes or private boarding homes.</p>
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Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that sections twelve, fourteen and nineteen of said article three be amended and reenacted to read as follows:

Section 12. All children, before being committed to the board, shall be given a physical and mental examination, using blank forms prepared and furnished by the board for the purpose, and the board, in its discretion, after considering the results of said examination, may accept or refuse to accept any child for commitment to the board.

Sec. 14. All children who are declared public wards under the provisions of this article shall remain public wards until they attain the age of twenty-one years or are married, whichever shall first occur, unless by order of the court or judge by whom such children were so declared, upon a proper showing, they shall be returned to their parents, or other guardian, or shall be adopted in the manner prescribed by law.

Sec. 19. The state board of children's guardians may, when in its discretion it shall appear proper, place any children in its care or custody in suitable private homes, and in such cases the said board, and the person or persons with whom said child or children are placed, shall observe and be governed by all of the provisions of the laws of this state concerning the placing of children in private homes and the rules and regulations of said board; and when necessary said board may place such children as need special care or supervision in private boarding homes.

CHAPTER 76

(Com. Sub. for Senate Bill No. 270—Originating in the Senate Committee
on the Judiciary)

AN ACT to repeal section fifteen, article one, and all of article two, chapter twenty-five, and to add a new chapter twenty-five-(a) to the code of West Virginia, one thousand nine hundred thirty-one, to create a department of purchases.

[Passed March 9, 1935; in effect from passage. Became a law without the
approval of the Governor.]

ARTICLE I

- | Sec. | |
|------|--|
| 1. | Definition of words and phrases. |
| 2. | Department of purchases created. |
| 3. | To what departments act applies. |
| 4. | Appointment, confirmation and term of director of purchases. |
| 5. | Oath and bond of director. |
| 6. | Qualifications of director. |
| 7. | Offices, office hours, books and records of director. |
| 8. | Salary and traveling expenses of director. |
| 9. | Assistants and employees appointed by director to serve during his pleasure. |
| 10. | Employees may exercise powers and duties of director, except signing contracts; director responsible for acts. |
| 11. | Powers and duties of director. |
| 12. | Approval by the governor of rules and regulations of director; purposes of rules and regulations. |
| 13. | Standardization committee; number and selection of members. |
| 14. | Duties of committee; standard specifications adopted to govern purchases; exception. |
| 15. | Annual report by director to governor. |
| 16. | Preference to be given commodities and printing produced in state. |
| 17. | Director to advise with heads of state institutions producing commodities. |
| 18. | Facilities of department to be furnished to local governmental bodies in state. |

ARTICLE II.

- | Sec. | |
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| 1. | Competitive bids for purchases and for sale of obsolete property. |

Sec.

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|-----|---|
| 2. | Publication of solicitation for sealed bids for expenditures over two thousand dollars. |
| 3. | Purchases in open market on competitive bids. |
| 4. | Bids to be based on adopted standard specifications; open market orders on contracts to lowest responsible bidder; action when bids uniform; record of bids open to inspection. |
| 5. | Contracts to be signed by director; form approved; filing with auditor. |
| 6. | When, except in emergency, order for delivery on open market not to be awarded. |
| 7. | Authorization by director of emergency purchase in open market; report of, to director, by head of department. |
| 8. | Revolving fund for volume purchases; amount; accumulation and administration of fund. |
| 9. | When purchase or contract of a department void; when head of department personally liable. |
| 10. | Purchase, or substitution, of particular trade name or brand. |

ARTICLE III.

- | Sec. | |
|------|--|
| 1. | Director to contract for public printing and printing paper for departments. |
| 2. | Director to supply departments with printing; printing plants at state institutions. |
| 3. | Provisions of section twelve of article one to apply to this article. |
| 4. | Director to furnish legislative printing; legislative joint supervisor of printing. |
| 5. | Director to have charge of printing of decisions of supreme court of appeals; number of volumes; provisions as to pub- |

- Sec. lication of reports.
6. Limitation on number of copies of departmental annual or biennial reports.
 7. Printing, binding and stationery to be paid from current expense appropriations for department.
 8. Printing paper and stationery to be issued by director as needed.
 9. Director to be custodian of West Virginia reports and acts of the legislature; delivery to state law librarian; sale of remaining volumes.
 10. Provisions as to furnishing state paper stock to contractor for state printing.

ARTICLE IV.

- Sec.
1. Stock for liquor stores to be purchased by liquor control commission; present right of a

- Sec.
- department to acquire property other than commodities or printing not affected by this act; duties of director in purchase of textbooks by state board of education.
 2. Director, his assistants or employees, not to be financially interested in purchase of commodities, printing or contractual services, not to receive money, etc., from person to whom a contract is awarded; penalty for violation of section.
 3. Penalty for violation of provisions of chapter.
 4. Section fifteen, article one, chapter twenty-five of code repealed.
 5. Article two, chapter twenty-five of code repealed.
 6. Other provisions of code repealed.
 7. If section invalid, remaining parts not affected.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, and all of article two, chapter twenty-five, be repealed, and a new chapter twenty-five-(a) be added to the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

ARTICLE I

Section 1. For the purpose of this chapter:

- 2 (1) "Director" shall mean the state director of purchases;
- 3 (2) "Committee" shall mean the standardization committee;
- 4 (3) "Department" shall mean an office, department, in-
- 5 stitution or any other agency of the state government;
- 6 (4) "Commodities" shall include supplies, materials, equip-
- 7 ment and any other articles or things used by or furnished
- 8 to a department;
- 9 (5) "Contractual services" shall include telephone, tele-
- 10 graph, electric light and power, water, and similar services;
- 11 (6) "Printing" shall include printing, binding, ruling,
- 12 lithographing, engraving and any other similar process.

Sec. 2. In order that every possible economy in the purchase of commodities, printing and contractual services may be realized through a system of centralized purchasing, there is hereby created the department of purchases.

Sec. 3. The provisions of this chapter for the purchase of commodities, printing and contractual services shall apply to

3 all of the departments of the state government, except as is
4 otherwise provided by this chapter or by law.

Sec. 4. There is hereby created the office of director of pur-
2 chases. The director shall be appointed by the governor, by
3 and with the advice and consent of the senate, and shall serve
4 during the will and pleasure of the governor.

5 The director shall devote his entire time to the duties of his
6 office.

Sec. 5. The director, before entering upon the duties of his
2 office, shall take and subscribe to the oath prescribed by section
3 five, article four of the constitution. He shall execute a bond
4 in the penalty of twenty-five thousand dollars, approved by the
5 governor, in form prescribed by the attorney general, and con-
6 ditioned upon the faithful performance of his duties and the
7 accounting for all money and property coming into his custody
8 by virtue of his office. The bond and oath shall be filed with
9 the secretary of state.

Sec. 6. The governor shall select the director with special
2 reference to his ability and fitness to perform the duties of his
3 office.

Sec. 7. The offices of the director shall be located at the
2 state capitol. The director shall keep his offices open at all
3 reasonable times for the transaction of public business. He
4 shall keep, in his offices, accurate books, accounts and records
5 of all transactions of his department, and such books, accounts
6 and records shall be public records and shall at all proper times
7 be available for inspection by any taxpayer of the state except
8 as to private bids or quotations provided for in section four,
9 article two of this chapter.

Sec. 8. The director shall receive an annual salary of five
2 thousand dollars. He shall also receive necessary traveling
3 expenses incident to the performance of his duties. Requisitions
4 for traveling expenses shall be accompanied by a sworn and
5 itemized statement which shall be filed with the auditor and
6 preserved as a public record.

Sec. 9. The director shall appoint or employ such assistants
2 and employees as may be necessary to the efficient operation

3 of his department and fix their salaries. All assistants and
4 employees shall be appointed or employed to serve during the
5 will and pleasure of the director.

Sec. 10. All powers and duties vested in the director, except
2 the power to sign contracts, may be exercised by the appointees
3 or employees of the director under his direction, but the director
4 shall be responsible for their acts.

Sec. 11. The director shall be the executive officer of the
2 department of purchases and shall have the following powers
3 and duties:

- 4 (1) Purchase or contract for, in the name of the state, the
5 commodities, printing and contractual services required by the
6 departments of the state government;
- 7 (2) Apply and enforce standard specifications established in
8 accordance with section fourteen of this article;
- 9 (3) Negotiate for all grounds, buildings, office or other space
10 required by state departments;
- 11 (4) Have charge of central storerooms for the supply of
12 departments;
- 13 (5) Transfer to or between departments or sell commodities
14 that are surplus, obsolete or unused;
- 15 (6) Make and keep current an inventory of all removable
16 equipment belonging to the state;
- 17 (7) Establish and maintain a laboratory for the testing of
18 commodities, and make use of existing facilities in state in-
19 stitutions for that purpose.

Sec. 12. The director, with the approval of the governor,
2 shall adopt and amend rules and regulations for the following
3 purposes:

- 4 (1) Authorize a department to purchase directly, specified
5 commodities and contractual services and prescribe the manner
6 in which such purchases shall be made;
- 7 (2) Authorize, in writing, a department to purchase com-
8 modities or contractual services in the open market for im-
9 mediate delivery in emergencies, define such emergencies, and
10 prescribe the manner in which such purchases shall be made
11 and reported to the director; and for the purposes mentioned
12 in paragraphs one and two of this section, the head of any

13 department, or the financial governing board of any institution,
14 may, with the approval of the director, make requisition upon
15 the auditor for a sum to be known as an advance allowance
16 account, in no case to exceed five per cent of the total of the
17 appropriations for any such department; and the auditor shall
18 draw his warrant upon the treasurer for such amounts. All
19 such advance allowance accounts shall be accounted for by the
20 head of the department or institution once every thirty days
21 or oftener if required by the state auditor or director or the
22 governing board or the head of the department, and requisitions
23 and warrants may likewise be drawn for reimbursing such
24 advance allowance accounts as the expenditures therefrom have
25 been accounted for;

26 (3) Prescribe the manner in which commodities shall be
27 purchased, delivered, stored and distributed;

28 (4) Prescribe the time for making requisitions and estimates,
29 the future period which they are to cover, the form in which
30 they shall be submitted, and the manner of their authentica-
31 tion;

32 (5) Prescribe the manner of inspecting all deliveries of
33 commodities, and of making chemical and physical tests of
34 samples submitted with bids, and samples of deliveries to
35 determine compliance with specifications;

36 (6) Require monthly reports by departments of stocks of
37 commodities on hand, and prescribe the form of such reports;

38 (7) Provide for the transfer to or between departments of
39 commodities which are surplus with one department but which
40 may be needed by another, and for the disposal by sale, after
41 receipt of competitive bids, of commodities which are obsolete
42 or unused;

43 (8) Prescribe the amount of deposit or bond to be sub-
44 mitted with a bid or contract, and the amount of deposit to
45 be given for the faithful performance of a contract;

46 (9) Prescribe the manner in which claims for commodities
47 and contractual services delivered to departments shall be
48 submitted, examined, approved and paid;

49 (10) Provide for such other matters as may be necessary
50 to give effect to the foregoing rules and regulations and the
51 provisions of this chapter.

Sec. 13. There is hereby created a standardization com-

2 mittee which shall be composed of not more than seven members
3 including the director, as chairman, and one representative of
4 each of the following: The state road commission, the depart-
5 ments of the state government other than institutions, the state
6 educational institutions, and the state charitable and correct-
7 ional institutions. The members of the committee, other than
8 the chairman, shall be designated by the governor from among
9 the officers and employees of the state, who are best informed
10 with regard to the requirements of their departments and of
11 the state government.

12 The members of the committee shall serve without additional
13 compensation.

Sec. 14. The duties of the committee shall be:

2 (1) Advise the director and the governor in the adoption
3 and amendment of the rules and regulations which shall pre-
4 scribe the purchasing policy of the state;

5 (2) Classify the requirements of the state government for
6 commodities and contractual services;

7 (3) Adopt as standards, the minimum number of qualities,
8 sizes and varieties of commodities and contractual services con-
9 sistent with the successful operation of state government;

10 (4) Prepare and adopt written specifications describing such
11 standards.

12 In the preparation and revision of standard specifications,
13 the committee shall seek the advice, assistance and cooperation
14 of the departments concerned, to ascertain their precise require-
15 ments. Each specification for commodities or contractual
16 services shall, so far as possible, satisfy the requirements of
17 the majority of the departments. After adoption, standard
18 specifications shall, until revised or rescinded, apply alike in
19 terms and effect to every future purchase or contract for the
20 commodities or contractual services described in the specifica-
21 tions; but the director, with the approval of the governor,
22 may, for good cause, exempt a department from the standard
23 specifications.

Sec. 15. The director shall annually report to the governor
2 concerning the conduct of his department, the purchases made
3 by him for state departments, and such other information as

4 the governor may request. He shall make such other reports
5 as the governor may require.

Sec. 16. The director shall, in the purchases of commodities
2 and printing, give preference, so far as may be practicable,
3 and not conflicting with the provisions of this chapter, to com-
4 modities and printing produced in this state.

Sec. 17. The director shall advise with the heads of the
2 various state institutions producing commodities, with the view
3 to making these articles suitable for the needs of state depart-
4 ments.

Sec. 18. The director shall make available the facilities and
2 services of his department to county, school, municipal and
3 other local government bodies within this state. The actual
4 expenses incurred thereby shall be paid by the local govern-
5 ment body.

ARTICLE II

Section 1. A purchase of, and contract for commodities and
2 contractual services, and a sale of personal property that has
3 become obsolete and unusable, shall be based, wherever possible,
4 on competitive bids.

Sec. 2. The director shall solicit sealed bids for an expendi-
2 ture or sale that is estimated to exceed two thousand dollars.
3 Bids shall be obtained by public notice inserted at least twice
4 in a newspaper of statewide circulation, at least two weeks
5 before the final date of submitting bids. The director may also
6 solicit sealed bids by sending requests by mail to prospective
7 suppliers and by posting notice on a bulletin board in his
8 office.

Sec. 3. The director may make a purchase or sale of less
2 than two thousand dollars in amount in the open market, but
3 such purchase or sale shall, wherever possible, be based on at
4 least three competitive bids.

Sec. 4. Bids shall be based on the standard specifications
2 adopted by the committee in accordance with the provisions
3 of section fourteen of article one of this chapter. All open
4 market orders or contracts made by the director or by a state

5 department shall be awarded to the lowest responsible bidder,
6 taking into consideration the qualities of the articles to be
7 supplied, their conformity with specifications, their suitability
8 to the requirements of the state government, and the delivery
9 terms. Any or all bids may be rejected. If all bids received
10 on a pending contract are for the same unit price or total
11 amount, the director shall have authority to reject all bids,
12 and to purchase the required commodities or contractual services
13 in the open market, if the price paid in the open market does
14 not exceed the bid prices.

15 Each bid, with the name of the bidder, shall be entered on
16 a record, and each record, with the successful bid indicated
17 thereon, shall, after the award of the order or contract, be
18 open to public inspection.

Sec. 5. Contracts shall be signed by the director in the
2 name of the state. They shall be approved as to form by the
3 attorney general. A contract that requires more than six
4 months for its fulfillment shall be filed with the state auditor.

Sec. 6. Except in emergency, an order for delivery on a
2 contract or open market order for commodities or contractual
3 services for a state department shall not be awarded until it
4 has been certified to the director that the unencumbered balance
5 in the appropriation concerned, in excess of all unpaid obliga-
6 tions, is sufficient to defray the cost of such order.

Sec. 7. The director may authorize, in writing, a state de-
2 partment to purchase in the open market, without filing
3 requisition or estimate, specific commodities for immediate
4 delivery to meet bona fide emergencies arising from unforeseen
5 causes, including delays by contractors, delays in transporta-
6 tion, and unanticipated volume of work. A report of any such
7 purchase, together with a record of the competitive bids upon
8 which it was based, shall be submitted at once to the director
9 by the head of the state department concerned, together with
10 a full account of the circumstances of the emergency. Such
11 report shall be entered on a record and shall be open to public
12 inspection.

Sec. 8. For the purpose of permitting volume purchases of
2 standard commodities there is hereby created a revolving fund

3 for the use of the department of purchases. The amount of
4 the fund shall be fixed by the governor upon the recommenda-
5 tion of the director, but shall not exceed thirty-five thousand
6 dollars. The fund shall be accumulated and administered as
7 follows:

8 (1) At the beginning of each fiscal year the director shall
9 allocate the amount of the revolving fund to the several depart-
10 ments purchasing through the department of purchases in sub-
11 stantial proportion to the relative volume of purchases of
12 standard commodities by each department during the previous
13 fiscal year;

14 (2) The allocation shall be submitted to the governor for
15 his approval and if approved by him, the auditor shall charge
16 against the current expense appropriation for each department,
17 the amount of the allocation for that department, and shall
18 transfer the amounts to the revolving fund;

19 (3) The revolving fund shall be used by the director of
20 purchases to maintain a stock of commodities in current use
21 in state departments;

22 (4) When a department requisitions commodities that have
23 been purchased from the revolving fund, the department shall
24 pay for such purchases by reimbursing the revolving fund in
25 the amount of the requisition;

26 (5) When the director determines that the purchases of a
27 department for the remainder of the fiscal year, of commodities
28 kept in stock will not exceed the amount that the department
29 has advanced to the revolving fund, he shall notify the auditor,
30 and requisitions from the department after that date shall be
31 credited against the department's pro rata share of the re-
32 volving fund, so that, at the close of the fiscal year, the fund
33 shall be exhausted and each department shall have had the
34 full use of the moneys advanced by it to the revolving fund.
35 But if, at the end of a fiscal year, a balance remains to the
36 credit of a department, the balance shall revert to the appro-
37 priation for that department.

Sec. 9. If a department purchases or contracts for com-
2 modities or contractual services contrary to the provisions of
3 this chapter or the rules and regulations made thereunder,
4 such purchase or contract shall be void and of no effect. The
5 head of such department shall be personally liable for the

6 costs of such purchase or contract, and, if already paid for
7 out of state funds, the amount thereof may be recovered in
8 the name of the state in an appropriate action instituted there-
9 for.

Sec. 10. If a department requests the purchase of a com-
2 modity bearing a particular trade name or brand, and if the
3 commodity is covered by standard specifications adopted as
4 provided by section fourteen of article one, the director may
5 substitute a commodity bearing a different trade name or brand,
6 if the substituted commodity conforms to the same specifica-
7 tions and can be obtained at a lower price.

ARTICLE III

Section 1. The director shall contract for public printing
2 and for printing paper for the use of departments in the
3 manner provided for contracts under article two of this chapter,
4 and in accordance with the specifications adopted as provided
5 by section fourteen of article one.

Sec. 2. The director shall supply the departments with
2 printing in the same manner as provided for commodities and
3 contractual services under article two. But the provisions of
4 this section shall not be construed to prohibit the state from
5 maintaining at educational, benevolent, penal or correctional
6 institutions printing plants for the purpose of instruction or
7 for printing for a state department.

Sec. 3. The provisions of section twelve of article one, re-
2 lating to the rules and regulations of the director, shall apply
3 so far as applicable, to this article.

Sec. 4. The director shall furnish such printing as may be
2 ordered by either house of the legislature.

3 The clerks of the house of delegates and of the senate shall
4 appoint a supervisor of printing who shall have general over-
5 sight and direction of the printing of the two houses, under
6 the direction and supervision of the clerks. One-half of his
7 compensation shall be paid by the senate and one-half by the
8 house of delegates at a rate of not more than fifteen dollars
9 per day.

Sec. 5. The director shall have charge and supervision of

2 the printing and binding of the reports of the decisions of the
3 supreme court of appeals of the state, and shall contract for
4 their publication in the manner provided for contracts under
5 article two. The contract shall provide for the publication of
6 fifteen hundred copies of each volume of the reports ordered
7 by the court to be printed on paper selected by the reporter of
8 the court and bound in the best quality of calf or standard
9 buckram. The size of type and page shall be prescribed by
10 the reporter. A volume shall be published according to the
11 terms of the contract whenever ordered by the court. The
12 reporter shall secure the copyright of each volume for the
13 benefit of the state. The reports shall be styled "West Vir-
14 ginia Reports".

15 The printing and binding of the reports shall be done under
16 the direction of and in the manner prescribed by the reporter,
17 subject to the control of the court. The reporter shall prefix
18 to the printed report of each case the dates when the same was
19 submitted and decided. Each volume shall, if practicable,
20 contain the reports of at least eighty cases decided by the
21 court, and shall contain not more than nine hundred pages,
22 exclusive of the index and table of cases reported and cited.
23 Proof sheets shall be furnished by the printer to the reporter
24 and to each judge of the court, and such corrections and
25 modifications shall be made by the printer as the reporter or
26 any of the judges shall direct. If the work is not done in the
27 manner required by law, the reporter shall not approve the
28 volume and the director shall not accept it.

Sec. 6. Subject to the approval of the governor, the director
2 shall have the authority to limit the number of copies of annual
3 or biennial reports, bulletins and other publications ordered to
4 be printed by each department.

Sec. 7. Beginning with the fiscal year one thousand nine
2 hundred thirty-six, printing, binding and stationery for all
3 departments shall be paid for from the current expense appro-
4 priations for such departments.

Sec. 8. All printing paper and stationery shall be delivered
2 to the director, who shall have charge of the same and issue
3 it as needed.

Sec. 9. The director shall be custodian of the West Virginia

2 reports after they are printed and bound and approved by the
3 reporter, and of the acts of the legislature after they are
4 printed and bound and approved by the clerk of the house
5 of delegates. As soon as practicable after any new volume of
6 such reports or acts has been delivered to the director, not
7 including reprints of former volumes, he shall deliver to the
8 state law librarian sufficient copies to enable him to make
9 distribution thereof in the manner prescribed by sections five
10 and six, article eight, chapter fifty-one of the code of one
11 thousand nine hundred thirty-one.

12 The director shall sell such copies of the reports and acts as
13 remain after the distribution provided by law has been made
14 at a price to be fixed by him with the approval of the governor;
15 but in no case shall such price be less than the actual cost to
16 the state of the publication thereof. The proceeds of such
17 sales shall immediately be paid into the treasury.

Sec. 10. Paper stock, if furnished by the state to the con-
2 tractor, shall be billed at the current market price for the
3 grade furnished in the quantity furnished. It shall be un-
4 lawful and discriminatory for the director to furnish the con-
5 tractor with paper for any state work, unless all bidders are
6 notified in advance of placing their bids at the prices at which
7 the state will supply such stock. It shall also be unlawful for
8 the director to furnish the contractor any paper for other than
9 the state work under contract.

ARTICLE IV

Section 1. The application of this chapter shall be subject
2 to the following conditions:

3 (1) The purchases of stock for state liquor stores shall be
4 made by the West Virginia Liquor Control Commission;

5 (2) Whenever the authority to acquire property other than
6 commodities and printing, by lease, agreement, condemnation
7 or otherwise, is now specifically vested by law in a department,
8 that authority shall not be affected by the provisions of this
9 chapter;

10 Whenever this authority is not now specifically vested in a
11 department, such authority shall be exercised by the director
12 of purchases;

13 (3) In the purchase and contracting for textbooks by the

14 state board of education, the director shall perform only such
15 duties as may be required by law.

Sec. 2. The director, an assistant or employee shall not be
2 financially interested, or have any beneficial personal interest,
3 directly or indirectly, in the purchase of any commodities,
4 printing or contractual services, nor in any firm, partnership,
5 corporation or association furnishing them. The director, an
6 assistant or employee shall not accept or receive directly or
7 indirectly from any person, firm or corporation to whom a
8 contract may be awarded, by rebate, gift or otherwise, any
9 money or other thing of value whatsoever, or any promise.
10 obligation or contract for future reward, or compensation.

11 A person who violates this section shall be guilty of a mis-
12 demeanor, and upon conviction, shall be confined in jail not
13 less than three months nor more than one year, or fined not less
14 than fifty nor more than one thousand dollars, or both, in the
15 discretion of the court.

Sec. 3. A person who violates a provision of this chapter
2 shall be guilty of a misdemeanor and upon conviction shall be
3 confined in jail not less than ten days nor more than one year,
4 or fined not less than ten nor more than five hundred dollars,
5 or both, in the discretion of the court.

Sec. 4. Section fifteen, article one, chapter twenty-five of
2 the code of West Virginia, one thousand nine hundred thirty-
3 one, relating to the powers of the board of control, is hereby
4 repealed.

Sec. 5. Article two, chapter twenty-five of the code of West
2 Virginia, one thousand nine hundred thirty-one, is hereby re-
3 pealed.

Sec. 6. Except as is otherwise specifically provided by this
2 chapter, a provision of the code of West Virginia, one thousand
3 nine hundred thirty-one, or of a statute that vests in a depart-
4 ment the authority to purchase commodities, printing or con-
5 tractual services, is hereby repealed.

Sec. 7. If any part of this chapter is held to be unconstitu-
2 tional or for any other reason invalid, the remaining parts shall
3 not be affected thereby.

CHAPTER 77

(House Bill No. 128—By Mr. Gentry)

AN ACT to amend and reenact section thirty-eight, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to the appropriations for Huntington State Hospital.

[Passed March 4, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 38. Amending appropriations for Huntington state hospital for fiscal year ending June 30, 1935, to permit use of collections for		Sec. FERA projects and for purchase of farm for use of hospital.
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Be it enacted by the Legislature of West Virginia:

That section thirty-eight, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to appropriations for Huntington State Hospital, be amended and reenacted so as to read as follows:

Huntington State Hospital

	1934	1935
Sec. 38. Current general expenses	83,000.00	83,000.00
2 Current General Expenses—PAYABLE		
3 OUT OF COLLECTIONS.....	50,000.00	50,000.00
4 Repairs and improvements.....	6,000.00	6,000.00
5 (a) <i>Provided, however,</i> That in the event general collection		
6 at said hospital shall, during the fiscal year ending June thirty,		
7 one thousand nine hundred thirty-five, exceed the sum of fifty		
8 thousand dollars hereinbefore appropriated for current general		
9 expenses from collections, then there is appropriated, payable		
10 only out of such surplus collections, the sum of twenty thou-		
11 sand dollars for the purpose of making repairs and improve-		
12 ments in connection with FERA or other federal work relief		
13 projects at said hospital, and to reimburse the current general		
14 expense fund for expenditures already made on FERA im-		
15 provements.		
16 (b) There is appropriated, payable solely from the Execu-		

17 tive Emergency Fund at said hospital, accumulated and held
 18 under the provisions of section two, article two, chapter twelve
 19 of the code, one thousand nine hundred thirty-one, the sum of
 20 thirty thousand dollars, or so much thereof as may be necessary,
 21 for the purpose of purchasing agricultural or farm lands for
 22 use, ownership and operation in conjunction with Huntington
 23 State Hospital and properly equipping same with livestock, ma-
 24 chinery, implements, building and such other equipment as may
 25 be necessary.

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CHAPTER 78

(Com. Sub. for House Bill No. 160—Originating in the House Committee
 on the Judiciary)

AN ACT to amend and reenact sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, and to add to said article a new section designated nine-(a); and to amend and reenact section one, article five, and to add to said article new sections to be known as sections two, three, four, five and six, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to workmen's compensation law and the administration thereof.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

ARTICLE IV.

Sec.

3. (a) Payment from workmen's compensation fund for medicine, hospital treatment, artificial limbs, etc., not to exceed eight hundred dollars in any case.
- (b) Payment to injured employee or to person furnishing services.
- (c) When employee entitled under employment contract to medical and other treatment, expenses paid from compensation fund.
4. Payment of funeral expenses from fund; to whom may be paid.
5. When compensation to be paid for first week of disability.
6. Schedule of amounts and periods of compensation and classification of injuries.
8. Commissioner may order claim-

Sec.

- ant to appear for medical examination.
9. Vocational rehabilitation; expense in any case not to exceed eight hundred dollars; must be authorized by commissioner.
- 9-(a) Credits to employer when partial permanent disability, by reason of second injury, becomes total permanent disability.
10. Amounts, and to whom paid, of benefits when injury causes death within six years and disability has been continuous.
13. When payment may or may not be made to widow or widower.
14. For what period before injury the average weekly wage is taken as basis to compute benefits.

Sec.

15. Forms for, and time of applications for compensation; time extended when employer failed to report injury; when consular officers may represent non-resident aliens.
16. Jurisdiction of commissioner continuing; modification of former findings or orders; time limitations on further awards; application for further adjustment to be decided within ninety days after filing; appeal from final determination.
18. Compensation payments made only to employees or dependents; paid in periodical installments; exempt from claims of creditors; counsel fees under contract, amount and protection of.

ARTICLE V.

Sec.

1. Commissioner to notify employer,

Sec.

- employee, etc., of his action; time and place of hearing, if objection filed; decision of commissioner after hearing; appeal from, to board.
2. Workmen's compensation appeal board created; number, qualifications, appointment, terms, per diem, meetings and organization.
3. Procedure for an appeal to the board; action on by board.
4. Appeal from decision of board to supreme court of appeals; procedure for; bond of nonresident if review granted him; docketing and trial of appeal; attorney general to represent board; costs.
5. Protection of claimant's attorney in collection of fee.
6. Article applies also to all cases arising under section nine, article two of this chapter.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, be amended and reenacted, and that a new section designated section nine-(a) be added thereto; that section one, article five, be amended and reenacted, and new sections to be known as sections two, three, four, five and six, be added thereto, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

ARTICLE IV.

Sec. 3. The commissioner shall disburse and pay from the 2 fund for such personal injuries to such employees as may be 3 entitled thereto hereunder as follows:

4 (a) Such sums for medicine, medical, surgical, dental, hos- 5 pital treatment, crutches, artificial limbs and such other and ad- 6 ditional approved mechanical appliances as may be reasonably 7 required, not however, in any case to exceed the sum of eight 7-a hundred dollars.

8 (b) Payment for such medicine, medical, surgical, dental, 9 hospital treatment, crutches, artificial limbs and such other 10 and additional approved mechanical appliances authorized 11 under subdivision (a) hereof may be made to the injured em- 12 ployee, or to the person or persons who have furnished such 13 service, or who have advanced payment for same, as the com- 14 missioner may deem proper.

15 (c) When an employee is entitled, under contract connected
16 with his employment or by reason of a hospital subscription
17 list, to medical, surgical, dental, or hospital treatment, for in-
18 juries sustained in the course of, resulting from, or arising out
19 of his employment compensable under the provisions of this
20 chapter, shall be paid for from the compensation fund, as
21 therein provided.

Sec. 4. In case the personal injury causes death, and dis-
2 ability is total and continuous from the date of such injury
3 to date of death, reasonable funeral expenses, not to exceed
4 one hundred and fifty dollars, shall be paid from the fund, pay-
5 ment to be made to the persons who have furnished the service
6 and supplies, or to the persons who have advanced payment for
7 same, as the commissioner may deem proper, in addition to such
8 award as may be made to the employee's dependents.

Sec. 5. If the period of disability does not last longer than
2 one week from the day the employee leaves work as the result
3 of the injury, no award shall be allowed, except the disburse-
4 ments provided for in the two next preceding sections, but if
5 the period of disability last longer than twenty-one days from
6 the day the employee leaves work as a result of the injury, an
7 award shall be allowed for the first week of such disability.

Sec. 6. Where compensation is due an employee under the
2 provisions of this chapter, such compensation shall be provided
3 in the following schedule:

4 (a) If the injury causes temporary total disability, the
5 employee shall receive during the continuance thereof sixty-
6 six and two-thirds per cent of his average weekly earnings, not
7 to exceed a maximum of sixteen dollars per week nor to be
8 less than a minimum of eight dollars per week;

9 (b) Subdivision (a) shall be limited as follows: Aggre-
10 gate award for a single injury causing temporary disability
11 shall be for a period not exceeding fifty-two weeks: *Provided,*
12 That in case an injured employee, by reason of having an
13 ununited fracture or having undergone a surgical operation
14 to correct a vicious union following a fracture, or for the
15 repair of an ununited fracture, or having suffered an injury
16 to the spine or pelvic bones which is of a temporary nature,
17 or for any ankylose joint, is disabled for a longer period than

18 fifty-two weeks, the period during which compensation shall
19 be paid may be, but shall not exceed, seventy-eight weeks;

20 (c) If the injury causes permanent disability, the percent-
21 age of disability to total disability shall be determined and
22 the award computed and allowed as follows:

23 For a two per cent disability, sixty-six and two-thirds per
24 cent of the average weekly earnings for a period of eight
25 weeks,

26 For a five per cent disability, sixty-six and two-thirds per
27 cent of the average weekly earnings for a period of twenty
28 weeks,

29 For a ten per cent disability, sixty-six and two-thirds per
30 cent of the average weekly earnings for a period of forty weeks.

31 For a fifteen per cent disability, sixty-six and two-thirds
32 per cent of the average weekly earnings for a period of sixty
33 weeks,

34 For a twenty per cent disability, sixty-six and two-thirds
35 per cent of the average weekly earnings for a period of eighty
36 weeks,

37 For a thirty per cent disability, sixty-six and two-thirds
38 per cent of the average weekly earnings for a period of one
39 hundred and twenty weeks,

40 For a forty per cent disability, sixty-six and two-thirds per
41 cent of the average weekly earnings for a period of one
42 hundred and sixty weeks,

43 For a fifty per cent disability, sixty-six and two-thirds per
44 cent of the average weekly earnings for a period of two
45 hundred weeks,

46 For a sixty per cent disability, sixty-six and two-thirds per
47 cent of the average weekly earnings for a period of two
48 hundred and forty weeks,

49 For a seventy per cent disability, sixty-six and two-thirds
50 per cent of the average weekly earnings for a period of two
51 hundred and eighty weeks,

52 For an eighty per cent disability, sixty-six and two-thirds
53 per cent of the average weekly earnings for a period of three
54 hundred and twenty weeks,

55 For an eighty-five per cent disability, sixty-six and two-
56 thirds per cent of the average weekly earnings for a period of
57 three hundred and forty weeks,

58 For a disability from eighty-five to one hundred per cent,
59 sixty-six and two-thirds per cent of the average weekly earn-
60 ings during the remainder of life,

61 Awards for permanent disability of from two per cent to
62 eighty-five per cent shall be computed on the basis of four
63 weeks' compensation for each per cent of disability deter-
64 mined;

65 (d) If the injury results in the total loss by severance of
66 any of the members named in this subdivision, the percentage
67 of disability shall be determined in accordance with the fol-
68 lowing table, and award made as provided in subdivision (c)
69 of this section:

70 The loss of a great toe shall be considered a ten per cent
71 disability,

72 The loss of a great toe (one phalange) shall be considered a
73 five per cent disability,

74 The loss of other toes shall be considered a four per cent
75 disability,

76 The loss of other toes (one phalange) shall be considered a
77 two per cent disability,

78 The loss of all toes shall be considered a twenty-five per cent
79 disability,

80 The loss of forepart of foot shall be considered a thirty per
81 cent disability,

82 The loss of foot shall be considered a thirty-five per cent
83 disability,

84 The loss of leg shall be considered a forty-five per cent
85 disability,

86 The loss of thigh shall be considered a fifty per cent dis-
87 ability,

88 The loss of thigh at hip joint shall be considered a sixty
89 per cent disability,

90 The loss of little or fourth finger (one phalange) shall be
91 considered a three per cent disability,

92 The loss of little or fourth finger shall be considered a five
93 per cent disability,

94 The loss of ring or third finger (one phalange) shall be con-
95 sidered a three per cent disability,

96 The loss of ring or third finger shall be considered a five
97 per cent disability,

- 198 The loss of middle or second finger (one phalange) shall be
199 considered a three per cent disability,
- 200 The loss of middle or second finger shall be considered a
201 seven per cent disability,
- 202 The loss of index or first finger (one phalange) shall be con-
203 sidered a six per cent disability,
- 204 The loss of index or first finger shall be considered a ten per
205 cent disability,
- 206 The loss of thumb (one phalange) shall be considered a
207 twelve per cent disability,
- 208 The loss of thumb shall be considered a twenty per cent
209 disability,
- 210 The loss of thumb and index finger shall be considered a
211 thirty-two per cent disability,
- 212 The loss of index and middle finger shall be considered a
213 twenty per cent disability,
- 214 The loss of middle and ring finger shall be considered a
215 fifteen per cent disability,
- 216 The loss of ring and little finger shall be considered a ten
217 per cent disability,
- 218 The loss of thumb, index and middle finger shall be con-
219 sidered a forty per cent disability,
- 220 The loss of index, middle and ring finger shall be considered
221 a thirty per cent disability,
- 221-a The loss of middle, ring and little finger shall be considered
222 a twenty per cent disability,
- 223 The loss of four fingers shall be considered a thirty-two per
224 cent disability,
- 225 The loss of hand shall be considered a fifty per cent dis-
226 ability,
- 227 The loss of forearm shall be considered a fifty-five per cent
228 disability,
- 229 The loss of an arm shall be considered a sixty per cent
230 disability;
- 231 (e) The total loss of one eye, or the total and irrecoverable
232 loss of the sight thereof shall be considered a thirty-three per
233 cent disability, and the injured employee shall be entitled to
234 compensation for a period of one hundred and thirty-two
235 weeks,
- 236 For the partial loss of vision in one, or both eyes, the per-

137 centage of disability shall be determined by the commissioner,
138 using as a basis the total loss of one eye;

139-149 (f) The award for permanent disabilities intermediate to
150 those fixed by the foregoing schedule and permanent dis-
151 ability of from two per cent to eighty-five per cent shall be in
152 the same proportion and shall be computed and allowed by
153 the commissioner;

154 (g) The percentage of all permanent disabilities other than
155 those enumerated in subdivisions (c), (d), (e), and (f) of
156 this section shall be determined by the commissioner, using as
157 a basis the loss of an arm at or above the elbow, and award
158 made in accordance with the schedule in subdivision (c);

159 (h) Compensation payable under any subdivision of this
160 section shall be limited as follows: Not to exceed a maximum
161 of sixteen dollars per week, nor to be less than a minimum of
162 eight dollars per week;

163 (i) Where an injury results in temporary total disability
164 for which compensation is awarded under subdivision (a) of
165 this section, and such injury is later determined permanent
166 partial disability under subdivision (c), the amount of com-
167 pensation so paid shall be considered as payment of the com-
168 pensation payable for such injury in accordance with the
169 schedule in subdivision (c). Compensation under this section
170 shall be payable only to the injured employee, and the right
171 thereto shall not vest in his or her estate; except that such
172 compensation as may have accrued to the date of his or her
173 death shall be paid to the dependents of such injured employee,
174 if there be such dependents at the time of death;

175 (j) The following permanent disabilities shall be conclu-
176 sively presumed to be total in character:

177 Loss of both eyes or the sight thereof,

178 Loss of both hands or the use thereof,

179 Loss of both feet or the use thereof,

180 Loss of one hand and one foot,

181 Any injury resulting in total disability.

182 In all other cases permanent disability shall be determined
183 by the commissioner in accordance with the facts in the case,
184 and award made in accordance with the schedule in subdivi-
185 sion (c): *Provided*, That the claimant shall have the right of

186 appeal from the decision of the commissioner as provided by
187 article five of this chapter.

Sec. 8. The commissioner shall have authority, after due
2 notice to the employer and claimant whenever in his opinion
3 it shall be necessary, to order a claimant to appear for exami-
4 nation before a medical examiner selected by the commissioner.

Sec. 9. In cases where an employee has sustained a perma-
2 nent disability and such fact has been determined by the com-
3 missioner, and the employee can be physically and vocationally
4 rehabilitated and returned to remunerative employment by vo-
5 cational training, by the use of crutches, artificial limbs, and/or
6 other approved mechanical appliances, or by medicines, medical,
7 surgical, dental or hospital treatment, the commissioner shall
8 forthwith, after due notice to the employer, expend such an
9 amount as may be necessary for the aforesaid purposes, not,
10 however, in any case, to exceed the sum of eight hundred dol-
11 lars. No payment, however, shall be made for such purposes
12 as provided by this section unless authorized by the commis-
13 sioner prior to the rendering of such treatment.

Sec. 9-(a). Where an employee in the course of his employ-
2 ment has suffered the loss, or loss of use of a hand, arm, foot,
3 leg or eye, and in the event of subsequent accidental injury
4 received in the course of his employment while employed by the
5 same employer, resulting in total permanent disability, the com-
6 missioner in estimating the total costs of such permanent total
7 disability shall allow the subscriber credit on his account for
8 the partial permanent disability already received, and where an
9 employee in the course of his employment has suffered the loss,
10 or loss of use of a hand, arm, foot, leg or eye, and in the event
11 of subsequent accidental injury received in the course of his
12 employment while employed by another employer, resulting in
13 total permanent disability, the costs of such total permanent
14 disability shall be paid by the commissioner out of any funds
15 in his hands and at his disposal, after charging to such sub-
16 scriber an amount equal to the partial permanent disability
17 theretofore received.

Sec. 10. In case the personal injury causes death within the
2 period of six years and the disability is continuous from date
3 of such injury until date of death, the benefits shall be in the
4 amounts, and to the persons, as follows:

5 (a) If there be no dependents, the disbursements shall be
6 limited to the expense provided for in sections three and four
7 of this article;

8 (b) If the deceased employee be under the age of twenty-one
9 years and unmarried and leave a wholly dependent father or
10 mother, the father, or if there be no father, the mother shall
11 be entitled to a payment of sixty-six and two-thirds per cent of
12 the average weekly wages of the deceased employee, not to ex-
13 ceed a maximum of seven dollars per week, to continue for such
14 period of six years after the date of death as the commissioner
15 in the case may determine: *Provided, however,* That in case the
16 deceased employee be under the age of sixteen years at such
17 time of death, payment shall continue until such employee would
18 have been twenty-one years of age: *Provided, however,* That
19 payment of compensation awarded under this subdivision to a
20 dependent father shall be continued and paid to his surviving
21 widow, mother of the deceased employee, to continue as per orig-
22 inal award to father. Compensation in either case shall cease
23 upon the death of the dependent;

24 (c) If the deceased employee be under the age of twenty-
25 one and unmarried and leave a partially dependent father or
26 mother, the father, or if there be no father, the mother shall
27 be entitled to a payment of sixty-six and two-thirds per cent
28 of the average weekly wages, not to exceed a maximum of seven
29 dollars per week, to continue until such employee would have
30 been twenty-one years of age;

30-a (d) If the deceased employee leaves a dependent widow or
30-b invalid widower, the payment shall be thirty dollars per month
30-c until death or remarriage of such widow or widower, and in ad-
30-d dition five dollars per month for each child under sixteen years
30-e of age, to be paid until such child reaches such age, or, if an in-
31 valid child, to continue as long as such child remains an invalid:
32 *Provided,* That if such widow or invalid widower shall remarry
33 within two years from the date of the death of such employee,
34 such widow or widower shall be paid at the time of remarriage
35 twenty per cent of the amount that would be due for the period
36 remaining between the date of such remarriage and the end of
37 ten years from the date of death of said employee, and such
38 widow or widower shall be advised in writing by the commis-
39 sioner of his or her rights under this proviso at the time of
40 making the original award: *Provided further,* That if upon

41 investigation and hearing, as provided in article five of this
42 chapter, it shall be ascertained that said widow or widower is
43 living with a man or woman, as the case may be, as man and
44 wife and not married, or the widow living a life of prostitution,
45 the commissioner may stop the payment of the benefits herein
46 provided to said widow or widower.

47 If the deceased employee be a widow or widower and leave a
48 child or children under the age of sixteen years, the payment
49 shall be ten dollars per month to each child until he or she
50 reaches the age of sixteen years.

51 In all awards of compensation to children, the award shall
52 be until they reach the age of sixteen years or their death prior
53 thereto;

54 (e) If the deceased employee be an adult and there be no
55 dependent widow, or widower, or child under sixteen years of
56 age, but there are wholly dependent persons at the time of death,
57 the payment shall be fifty per cent of the average monthly sup-
58 port actually received from the employee during the preced-
59 ing twelve months, to continue for the remainder of the period
60 between the date of death and six years after the date of in-
61 jury, and shall not amount to more than a maximum of twenty
62 dollars per month;

63 (f) If the deceased employee be an adult and there be no
64 dependent widow, widower or child under sixteen years of age,
65 or wholly dependent person, but there are partly dependent
66 persons at the time of death, the payment shall be fifty per
67 cent of the average monthly support actually received from
68 the employee during the preceding twelve months, and to con-
69 tinue for such portion of the period of six years after the date
70 of death as the commissioner in the case may determine, and
71 not to amount to more than a maximum of twenty dollars per
72 month.

73 Compensation under subdivisions (e) and (f) hereof shall
74 cease upon the death of the dependent, and the rights thereto
75 shall not vest in his or her estate;

76 (g) Dependent, as used in this chapter, shall mean a widow,
77 invalid widower, child under sixteen years of age, invalid child,
78 or a posthumous child, who, at the time of the injury causing
79 death, is dependent in whole or part for his or her support upon
80 the earnings of the employee; also, the following persons who
81 are and continue to be residents of the United States or its

82 territorial possessions: step child under sixteen years of age;
83 child under sixteen years of age legally adopted prior to the in-
84 jury causing death; father, mother, grandfather or grand-
85 mother, who, at the time of the injury causing death, is depend-
86 ent in whole or in part for his or her support upon the earn-
87 ings of the employee; an invalid brother or sister wholly de-
88 pendent for his or her support upon the earnings of the em-
89 ployee at the time of the injury causing death.

Sec. 13. Notwithstanding anything herein contained, no sum
2 shall be paid to a widow or widower who shall have abandoned
3 the employee before the injury causing death, but nothing here-
4 in contained shall be construed to preclude a widow or widower
5 from receiving compensation in accordance with section ten of
6 this article, if such widow or widower has been abandoned
7 within a period of two years by said employee for any reason
8 except such reason as would have entitled the deceased employee
9 to an annulment, a divorce from the bonds of matrimony or a
10 divorce from bed and board as provided in article two, chapter
11 forty-eight of this code.

Sec. 14. The average weekly wage earnings of the injured
2 person at the time of the injury shall be taken as the basis
3 upon which to compute the benefits. The time of injury with-
4 in the meaning of this section shall be sixty days, six months,
5 or twelve months immediately preceding the date of the in-
6 jury, whichever is most favorable to the injured employee.

Sec. 15. To entitle any employee or dependent of a de-
2 ceased employee to compensation under this chapter, the appli-
3 cation therefor must be made on a form or forms prescribed
4 by the commissioner and filed in the office of the commissioner
5 within six months from and after the date of injury or death,
6 as the case may be, and all proofs of dependency in fatal cases
7 must be filed with the commissioner within nine months from
8 and after the date of death: *Provided*, That in case an em-
9 ployer fails to report an injury within six months from and
10 after the date such injury is received, the commissioner shall
11 accept the application for compensation filed by the employee
12 after the expiration of six months but within twelve months
13 from the date of such injury: *Provided further*, That if such
14 employee shows by competent evidence that the employer had

15 knowledge of such injury and failed to file a report thereof,
16 then such employee shall have an additional year within which
17 to file his application for compensation, and the commissioner
18 shall receive such application so filed by such employee, and
19 award compensation to an employee who would have been so
20 entitled had the injury been reported and application filed
21 within the prescribed period of six months. Nonresident aliens
22 may be officially represented by the consular officers of the
23 country of which such aliens may be citizens or subjects, but no
24 compensation shall be paid to any nonresident aliens in fatal
25 cases through the consular officers of the country of which such
26 aliens may be citizens or subjects until such consular officer or
27 a representative of such consular officer is appointed personal
28 representative of the deceased party by proper authority in the
29 county in which the deceased resided, or in which, the seat of
30 government is located. Nothing herein contained shall be con-
31 strued as giving such consular officer the right to make appli-
32 cation for compensation in behalf of nonresident aliens.

Sec. 16. The power and jurisdiction of the commissioner
2 over each case shall be continuing, and he may from time to
3 time, after due notice to the employer, make such modifications
4 or changes with respect to former findings or orders as may be
5 justified: *Provided*, That no further award may be made in
6 fatal cases except within two years after the death of the em-
7 ployee, or, in cases of non-fatal injuries, except within three
8 years after payments for temporary disability shall have ceased
9 and within one year after the commisisoner shall have made
10 the last payment in any permanent disability case.

11 In any case where an injured employee under this section
12 shall make application in writing for a further adjustment of
13 his claim, the commissioner shall finally pass upon and de-
14 termine the merits of such claim within ninety days after the
15 filing thereof, and after such final determination the claimant
16 shall have the right of an appeal as provided by article five of
17 this chapter.

Sec. 18. Except by this section provided compensation shall
2 be paid only to such employees or their dependents, and shall
3 be exempt from all claims of creditors and from any attachment,
4 execution, or assignment other than compensation to counsel
5 for legal services under a bona fide contract between such coun-

6 sel and the claimant not exceeding twenty-five per cent of the
7 total amount of the award in favor of the claimant. Payments
8 may be made in such periodical installments as may seem
9 best to the commissioner in each case, not exceeding one month
10 apart. In all cases where compensation is awarded or increased,
11 the amount thereof shall be calculated and paid from the date
12 of disability. The counsel representing the claimant under
13 lawful contract may file with the commissioner a copy thereof
14 and it shall be the duty of the commissioner to protect such
15 attorney in the collection of the amount provided for therein
16 from any award made by the commissioner in favor of the
17 claimant, if the amount agreed be not in conflict with the pro-
18 visions of this chapter.

ARTICLE V.

Section 1. The commissioner shall have full power and
2 authority to hear and determine all questions within his juris-
3 diction, but upon the making or refusing to make any award, or
4 upon the making or refusing to make any modification or change
5 with respect to former findings or orders, as provided by section
6 sixteen, article four, of this chapter, the commissioner shall
7 give notice in writing to the employer, employee, claimant, or
8 dependent, as the case may be, of his action, which action shall
9 state the time allowed for an appeal to the board and such
10 action shall be final unless the employer, employee, claimant, or
11 dependent shall, within thirty days after receipt of such notice,
12 object in writing to such finding. Upon receipt of such objection
13 of the employer, employee, claimant, or dependent, the commis-
14 sioner shall, within thirty days from the receipt of any objec-
15 tion to his action or finding as aforesaid, set a time and place
16 for the hearing of evidence. Any such hearing may be by the
17 commissioner or by his duly authorized representative at the
18 county seat of the county wherein the employer resides, or at
19 any other place which may be agreed upon by the interested par-
20 ties, having due regard for the convenience of witnesses. Both
21 the employer and claimant shall be notified of such hearing at
22 least ten days in advance. The evidence taken at such hearing
23 shall be transcribed and become a part of the record of the pro-
24 ceedings, together with other records thereof in the commis-
25 sioner's office. After such hearing the commissioner, within sixty
26 days, shall render his decision affirming, reversing or modifying

27 his former action, which shall be final: *Provided, however,*
28 That the claimant or the employer may, within ninety days after
29 notice of the final action of the commissioner, apply to the board
30 herein created for a review of such decision.

Sec. 2. There is hereby created a board to be known as the
2 "Workmen's Compensation Appeal Board", which shall be re-
3 ferred to in this article as the "board", to be composed of three
4 members, none of whom shall be a contributor of the compen-
5 sation fund or in any way connected with a contributor thereto
6 and none of whom shall be a beneficiary of the compensation
7 fund or in any way connected with a beneficiary thereof. Two
8 members of such board shall be of opposite politics to the
9 third, and all three shall be citizens of this state who have re-
10 sided therein for a period of at least five years. All members
11 of said board shall be appointed by the governor for a term of
12 six years, except that the persons first appointed under this act
13 shall be appointed to serve, one for two, one for four and one
14 for six years. The governor is hereby vested with power to re-
15 move any member of the board according to section four, article
16 four, chapter six of this code. The members of such board
17 shall be paid for their services a compensation of twenty dol-
18 lars per day for each day they are in session, which shall be the
19 total compensation, including any and all expenses, of such
20 member or members. The governor shall designate one of the
21 members of said board as chairman thereof, and said board
22 shall meet at the capital or at such other places throughout the
23 state as it may determine in regular sessions to be fixed by the
24 board. No more than six sessions shall be held during any one
25 year and no session shall continue more than twenty consec-
26 utive calendar days. All clerical services required by the board
27 shall be paid by the compensation commissioner from any funds
28 at his disposal.

Sec. 3. Any employer, employee, claimant, or dependent who
2 shall feel aggrieved at any action of the commissioner under
3 this chapter shall have the right to appeal to the board cre-
4 ated in section two of this article for a review of such action.
5 The aggrieved party shall file a written notice of appeal with
6 the compensation commissioner, directed to said board, within
7 a period of ninety days from the date of the action complained
8 of, and the commissioner shall notify the other party immedi-

9 ately upon the filing of said notice of appeal. The commis-
10 sioner shall also notify the members of said board and shall
11 make up a transcript of the record of the proceedings before
12 him, and the board shall review the action of the commissioner
13 complained of within thirty days after the filing of such pe-
14 tition or at the next meeting of said board after the expiration
15 of thirty days therefrom. At any such hearing the board shall
16 consider the record before it as furnished by the commissioner
17 and upon motion of either party or upon its own motion said
18 board may remand said cause to the commissioner for the
19 taking of such new, additional or further evidence as in the
20 opinion of the board may be necessary to arrive at a fair and
21 just decision; and thereupon the board shall sustain the finding
22 of the commissioner or enter such order or make such award
23 as the commissioner should have made and shall thereupon
24 certify the same to the commissioner, who shall proceed in ac-
25 cordance therewith. All evidence taken before the board shall
26 be transcribed and become a part of the record in the case, and
27 either party before the board may be represented by counsel.
28 All appeals from the action of the commissioner shall be de-
29 cided by said board within sixty days after the date of the
30 filing thereof.

Sec. 4. From any decision of the board an appeal may be
2 prosecuted by either party to the supreme court of appeals.
3 After any hearing before the board the applicant desiring to ap-
4 peal to the supreme court of appeals shall file a petition before
5 said court against the board and other party (claimant or em-
6 ployer, as the case may be), within a period of ninety days,
7 and the board and other party shall be notified of the foregoing
8 by the clerk of said court of the filing of such petition and re-
9 view. And the board shall, within ten days after receipt of
10 such notice, file with the clerk of said court the record of the
11 proceedings had before it, including a transcript of the evi-
12 dence. The court, or any judge thereof, may thereupon decide
13 whether a review shall be granted or not, and if such review
14 be granted to a nonresident of this state he shall execute and
15 file before the clerk of said court, before such proceedings for
16 review becomes effective, a bond with security to be approved
17 by said clerk conditioned to pay all costs which may be
18 awarded against him on such review. If a review be granted,
19 the board and the opposing party (claimant or employer), or

20 their attorneys, shall be notified of the fact by mail, by the
21 clerk of said court. If a review be granted as aforesaid, the
22 case shall be heard by said court in the same manner as other
23 cases before it, save and except that neither the record nor
24 briefs need be printed and that every such review granted prior
25 to thirty days before the beginning of any term shall be placed
26 upon the docket for such term. The attorney general, without
27 extra compensation, shall represent the board on such review.
28 The supreme court on such review shall determine the matter
29 and certify its decision to the board and the commissioner. The
30 cost of such proceedings, including a reasonable attorney's fee,
31 not exceeding one hundred dollars, to the claimant's attorney,
32 shall be fixed by the court and taxed against the employer if the
33 latter be unsuccessful, and if the claimant be unsuccessful, such
34 costs, not including attorney's fees, shall be taxed against the
35 commissioner, payable out of any funds available in his hands,
36 or shall be taxed against the claimant, in the discretion of the
37 court.

Sec. 5. In the event that an attorney shall appear for any
2 claimant in any proceedings had before the commissioner, the
3 board, or the supreme court of appeals, such attorney may file
4 with the commissioner a copy of his contract of employment
5 with such claimant, and it shall be the duty of the commis-
6 sioner to protect such attorney in the collection of his fees
7 from any award made by the commissioner, the board or the
8 supreme court of appeals under rules and regulations to be fixed
9 by said commissioner, having due regard to the rights of both
10 claimant and attorney.

Sec. 6. The provisions of this article shall also apply to all
2 cases arising under section nine, article two, of this chapter.

CHAPTER 79

(House Bill No. 331—By Mr. Wysong, by request)

AN ACT to amend chapter twenty-three of the code of West
Virginia, one thousand nine hundred thirty-one, relating to
workmen's compensation by the addition of a new article
thereto designated as article six, consisting of sections one to

eighteen, inclusive; providing for compensation for disability, disablement or death resulting from silicosis, and defining silicosis.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

ARTICLE VI.

Sec.

1. Provisions of article to be administered by compensation commissioner; provisions of article one to apply; expenses paid from silicosis fund.
2. (a) Classification of industries and premium rates to provide compensation for silicosis; employers not electing to come within provisions of article; workmen's compensation silicosis fund
(b) How fund created.
(c) Reports by employer to commissioner.
(d) Provisions concerning workmen's compensation fund to apply to silicosis fund.
3. Employer electing to pay premiums to post notices of such election as notice to employees; when such employer released from common law or statutory damages.
4. (a) Workmen's compensation silicosis fund established; sources; rules and regulations concerning.
(b) Creation of surplus fund; amount.
(c) Duties of employers electing to directly compensate employees as to reports, etc., to commissioner.
(d) Custody, investment and disbursement of fund.
5. Fund disbursed to employees (or to their dependents if death ensues), contracting silicosis in this state resulting from their employment; in what cases compensation payable; definition of silicosis.
6. No compensation payable when disease contracted by wilful misconduct or self-exposure of employees, etc.; posting of rules for protection of employees and use of safety appliances; when disease, or death therefrom, caused by deliberate intent of employer; definition of deliberate intention and wilful self-exposure.
7. Three stages of silicosis defined; amount of benefits for each

Sec.

- stage.
8. Commissioner may order claimant to appear for medical examination; traveling and other expenses paid from fund.
9. (a) Form of and time limit on filing application for compensation.
(b) Consular officers may represent nonresident aliens.
10. When compensation not allowed for failure to act within specified time.
11. Nonmedical questions to be determined by commissioner on hearing.
12. Silicosis medical board created; appointment, qualifications, terms, duties and per diem of members.
13. Notice of and hearing by medical board; autopsies; representation by attorneys and physicians.
14. Reports, in triplicate, by medical board of findings; objections by either party to findings and conclusions; procedure when objections filed; appearance and examination of board members upon hearing after objections filed; when physician dead or physically unable to attend, use of another physician as witness.
15. Act does not apply when last injurious exposure occurred before effective date of act; election by employer to pay compensation in such cases; notice of; notice by employee not consenting; procedure when employer and former employee agree to accept provisions of act; compensation and charges in such case assessed to the particular employer.
16. Compensation to be paid only to or for use of employee, or dependents; exempt from claim of creditors; periodical payments.
17. Penalties for certain specified offenses.
18. Provisions of section one, article five, to apply to this article; if any section invalid, other sections not affected.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be, and the same is hereby,

amended by the addition of a new article thereto designated as article six, consisting of sections one to eighteen, inclusive, so as to read as follows:

ARTICLE VI.

Section 1. The provisions of this article shall be administered by the state compensation commissioner, and the provisions of article one of this chapter are applicable hereto. All charges and expenses peculiar to the administration of this article shall in the proportionate amount be chargeable to and paid out of the workmen's compensation silicosis fund.

Sec. 2. (a) In order that compensation for the disease of silicosis as herein defined might be paid to all persons employed within this state in interstate or intrastate work as defined by section ten, article two of this chapter, and in the service of those employers legally doing or authorized to do business in this state and who elect to qualify under and subject themselves to the provisions of this article, the commissioner shall make the necessary separate classifications of the various industries for those employers who so elect, and the commissioner shall make such classifications and fix the rate of premiums in the manner provided by section four of article two of this chapter. Those employers who do not elect to come within the provisions of this article shall not be subject to the provisions of article two of this chapter except as otherwise specifically provided in this article. The assessments and premiums paid by such employers so electing shall be kept by the commissioner in a separate fund to be known and designated as "workmen's compensation silicosis fund."

(b) For the purpose of creating the workmen's compensation silicosis fund, each employer electing to become subject thereto under the provisions of this article shall make his election and pay the premiums in the manner provided by section five of article two of this chapter.

(c) Every employer electing to come under the provisions of this article shall give the information, and make the necessary reports, to the commissioner as provided by sections two and three of article two of this chapter.

(d) Except as otherwise herein specifically provided, all the provisions of this chapter relating to premiums and assessments

30 paid into, and disbursements for benefits, compensation, medi-
31 cal and hospital treatment, funeral expenses, and other charges
32 from, the fund designated as "workmen's compensation fund,"
33 and the limitations of the amounts to be thereby expended, shall
34 likewise apply to the fund designated as "workmen's compen-
35 sation silicosis fund;" and the term "workmen's compen-
36 sation fund" as used in this chapter, whenever applicable,
37 shall be construed to mean and include the term "workmen's
38 compensation silicosis fund."

Sec. 3. Each employer electing to pay the premiums pro-
2 vided by this article into the workmen's compensation silicosis
3 fund, or electing to make direct payments of compensation as
4 provided by section nine of article two of this chapter, shall
5 post, and keep posted, in conspicuous places about his place
6 or places of business, typewritten or printed notices in the
7 form prescribed by the commissioner, stating the fact that such
8 employer has made such election, and the same when so posted
9 shall constitute sufficient notice to all his employees, and to the
10 parents of any minor employees, of the fact that the employer
11 has made such election; and any employer who makes such
12 election shall not thereafter be liable to respond in damages at
13 common law or by statute for the disease or death of any
14 employee because of silicosis during the period in which such
15 employer shall not be in default in the payment of such premi-
16 ums and shall have complied fully with all other provisions of
17 this article.

Sec. 4. (a) The commissioner shall establish a fund, to be
2 known as "workmen's compensation silicosis fund," from the
3 premiums and other funds paid thereto by employers who
4 have elected to pay and have paid the premiums applicable to
5 such employers under the provisions of this article relating to
6 silicosis, for the benefit of employees of employers who have
7 paid the premiums applicable to such employers, and have
8 otherwise complied fully with the provisions of section five,
9 article two of this chapter, and for the benefit of the depend-
10 ents of such employees, and for the payment of the adminis-
11 tration expenses of this article, and shall adopt rules and regu-
12 lations in respect to the collection, maintenance and disburse-
13 ment of such funds not in conflict with the provisions of this
14 chapter.

15 (b) Ten per cent of all that shall hereafter be paid into the
16 workmen's compensation silicosis fund shall be set aside for the
17 creation of a sufficient surplus fund, within the discretion of
18 the commissioner, not exceeding one hundred thousand dollars,
19 after which time the sum of five per cent of all the money paid
20 into such fund shall be credited to such surplus fund until
21 such time as in the judgment of the commissioner such surplus
22 fund shall be sufficiently large to cover the catastrophe hazard
23 and all losses not otherwise specifically provided for in this
24 article.

25 (c) Employers electing as provided by this chapter to in-
26 dividually and directly compensate their employees having
27 silicosis, or their dependents, shall do so in the manner pre-
28 scribed by the compensation commissioner, and shall make all
29 reports and execute all blanks, forms and papers as directed
30 by said commissioner and as herein provided in this chapter.

31 (d) The custody, investment and disbursement of the work-
32 men's compensation silicosis fund shall be in the manner and
33 form prescribed by section two, article three, of this chapter,
34 and any and all amendments thereto.

Sec. 5. The commissioner shall disburse the workmen's com-
2 pensation silicosis fund to the employees of such employers as
3 are not delinquent in the payment of premiums for the last
4 month in which said employees have been exposed to silicon
5 dioxide dust in harmful quantities and who have otherwise
6 complied fully with the provisions of this article, and which
7 employees shall have contracted silicosis in this state in the
8 course of and resulting from their employment, or to the de-
9 pendants, if any, of such employees, in case death has ensued,
10 according to the provisions hereinafter made.

11 Where an employee suffers from the disease of silicosis as
12 hereinafter defined, or dies as the result of such disease, and
13 the disease is due to the nature of an occupation or process in
14 which he was employed at any time within one year previous
15 to such disease, and claim therefor has been made within one
16 year after the last exposure of said employee to silicon dioxide
17 dust in harmful quantities, the employee, or in case of death
18 his dependents, shall be entitled to compensation for silicosis
19 as provided herein: *Provided, however,* That compensation

20 shall not be payable for the disease of silicosis, or death re-
21 sulting therefrom, unless the employee has been exposed to
22 the inhalation of silicon dioxide dust in harmful quantities
23 over a period of not less than two years in the same employment
24 in this state.

25 For the purpose of this article, silicosis is defined as an insidi-
26 ous fibrotic disease of the lung or lungs due to the prolonged
27 inhalation and accumulation sustained in the course of and
28 resulting from his employment, of minute particles of dust
29 containing silicon dioxide (SiO_2) over such a period of time
30 and in such amounts as result in the substitution of fibrous
31 tissue for normal lung tissues; and the term "silicosis" as used
32 herein shall also include silicosis accompanied by tuberculosis
33 of the lungs evidenced by the presence of tubercle bacillus in
34 the sputum.

Sec. 6. Notwithstanding anything hereinbefore or herein-
2 after contained, no employee or dependent of any employee
3 shall be entitled to receive any sum from the workmen's com-
4 pensation silicosis fund, or to direct compensation from any
5 employer making the election and receiving the permission
6 mentioned in section nine, article two of this chapter, or other-
7 wise under the provisions of this chapter, on account of con-
8 tracting the disease of silicosis caused by wilful misconduct,
9 wilful self-exposure as defined herein, disobedience to such
10 rules and regulations as may be adopted by the employer and
11 approved by the commissioner, and which rules and regula-
12 tions have been and are kept posted in conspicuous places in
12-a and about the premises, or the failure of such employee to use
13 or make use of any protective or safety appliance or appliances
14 prescribed by the commissioner and furnished by the employer
15 for the use of or applicable to such employee; nor shall any
16 employee or dependent thereof maintain any action for dam-
17 ages on account of disability arising from the disease of silico-
18 sis contracted through wilful self-exposure as defined herein.
19 For the purposes of this article and to prevent employees from
20 contracting silicosis, the commissioner may require all em-
21 ployers to adopt rules which have been approved by him for
22 the protection and safety of his employees, and keep the same
23 posted in conspicuous places in and about the premises; and
24 the commissioner shall require employers to install, use or adopt

25 such protective or safety appliance or appliances as in the
26 commissioner's opinion are necessary for the protection of the
27 employees. If silicosis or death therefrom result to any em-
28 ployee from the deliberate intention of his employer to produce
29 silicosis or death therefrom, the employee, the widow, widower,
30 child or dependent of the employee, shall have the privilege
31 to take under this article, and shall also have cause of action
32 against the employer as if this chapter had not been enacted
33 for any excess of damages over the amount received or receiv-
34 able under this chapter. As used in this section, the term,
35 "deliberate intention," shall mean conscious and wilful de-
36 termination.

37 As used in this section, the term "wilful self-exposure,"
38 causing the contraction of the disease of silicosis, shall include:
39 (1) Failure or omission on the part of an employee to observe
40 such rules and regulations as may be adopted by the employer
41 and approved by the commissioner and which rules and regu-
42 lations have been and are kept posted in a conspicuous place
43 in and about the premises; (2) Failure or omission on the part
44 of an employee truthfully to state to the best of his knowledge
45 in answer to inquiry made by the employer the place, dura-
46 tion, and nature of previous employment; (3) Failure or
47 omission on the part of an employee truthfully to answer to
48 the best of his knowledge in answer to an inquiry made by the
49 employer full information about the previous status of his
50 health, habits, and medical attention that he or his blood rela-
51 tives may have heretofore received.

Sec. 7. An employee shall, for the purposes hereof, be
2 deemed to have silicosis: (1) In the first stage when it is
3 found by the commissioner that the earliest detectable specific
4 signs of silicosis are present, whether or not capacity for work
5 is or has been impaired by such silicosis; (2) In the second
6 stage when it is found by the commissioner that definite and
7 specific physical signs of silicosis are present, and that capacity
8 for work is or has been impaired by that disease; (3) In the
9 third stage when it is found by the commissioner that the em-
10 ployee has silicosis accompanied by tuberculosis of the lungs
11 evidenced by the presence of tubercle bacillus in the sputum.

12 Where compensation for silicosis is due an employee under
13 the provisions hereof, such compensation shall be provided in

14 the following schedule: (a) If the employee is suffering from
15 silicosis in the first stage, the employee shall receive the sum
16 of five hundred dollars as compensation in full for said disease
17 that he has sustained as a result of and in the course of his
18 employment, said sum to be payable as a lump sum or in
19 periodic installments in the discretion of the commissioner,
20 and shall be a final payment and operate as a full release by
21 the employee for compensation and for any claim against the
22 employer that the employee may thereafter have for silicosis,
23 and irrespective of whether the employee thereafter continues
24 in the same employment, he shall not have the right to receive
25 any or further compensation or make any claim because of
26 silicosis either to the compensation commissioner or against his
27 employer, anything to the contrary in this chapter notwith-
28 standing; (b) If the employee is suffering from silicosis in the
29 second stage, the employee shall receive the sum of one thou-
30 sand dollars as compensation in full for said disease that he
31 has sustained as a result of and in the course of his employ-
32 ment, said sum to be payable as a lump sum or in periodic
33 installments in the discretion of the commissioner, and shall
34 be a final payment and operate as a full release by the em-
35 ployee for compensation and for any claim against the employer
36 that the employee may thereafter have for silicosis, and irre-
37 spective of whether the employee thereafter continues in the
38 same employment, he shall not have the right to receive any or
39 further compensation or make any claim because of silicosis
40 either to the commissioner or against his employer, anything
41 to the contrary in this chapter notwithstanding; (c) If the
42 employee is suffering from silicosis in the third stage, the com-
43 pensation shall be paid therefor in the same manner and at
44 the same rate as is provided for permanent disability under
45 the provisions of subdivisions (c), (f) and (h) of section six,
46 article four, of this chapter; (d) If the employee dies from
47 silicosis within one year from the date of the last exposure of
48 the employee to silicon dioxide dust in harmful quantities, the
49 benefits shall be in the amounts and to the persons provided
50 for in section one, article four of this chapter; as to such bene-
51 fits sections eleven to fourteen, inclusive, of article four of this
52 chapter shall apply.

Sec. 8. The commissioner shall have power, after due notice

2 to the employer, and whenever in his opinion it shall be neces-
3 sary, to order a claimant to appear for examination before the
4 medical board hereinafter provided. Claimant shall be en-
5 titled to reasonable traveling and other expenses necessarily
6 incurred by him in obeying such order, which shall be paid out
7 of the workmen's compensation silicosis fund within the amount
8 allowed for medical, surgical and hospital treatment.

Sec. 9. (a) To entitle any employee to compensation for
2 silicosis under the provisions hereof, the application therefor
3 must be made on a form or forms prescribed by the commis-
4 sioner and filed in the office of the commissioner within one
5 year from and after the date of the last injurious exposure to
6 silicon dioxide dust, or in case of death, the application shall
7 be filed as aforesaid by the dependent of such employee within
8 one year from and after the date of the last injurious exposure
9 to silicon dioxide dust.

10 (b) Nonresident aliens may be officially represented by the
11 consular officers of the country of which such aliens may be
12 citizens or subjects: *Provided*, That nothing herein contained
13 shall be construed as giving such consular officer the right to
14 make application for compensation in behalf of the nonresident
15 aliens.

Sec. 10. Unless the employer during the continuance of
2 employment shall have actual knowledge that the employee has
3 contracted silicosis, or unless the employee or some one on his
4 behalf or his dependents shall give written notice of a claim
5 that such employee has contracted silicosis, within a period
6 of one year from the date when said employee shall have ceased
7 to be a subject to injurious exposure to silicon dioxide dust in
8 employment with said employer, no compensation shall be
9 allowed and paid on account of death or disability of such em-
10 ployee by reason of silicosis.

Sec. 11. On the hearing of a claim for compensation for
2 silicosis, the commissioner shall hear, determine and file findings
3 covering, but not limited thereto, the following nonmedical
4 questions:

5 (a) Whether the employee was in fact, within one year prior
6 to the filing of his claim, in the employ of the employer, and,
7 if so, the duration of such employment and whether or not
8 such employment was subject to the provisions hereof:

9 (b) The occupation or occupations, process or processes in
10 which the employee was engaged during such employment, and
11 the approximate periods of work in each such occupation or
12 process;

13 (c) The employments, previous and subsequent to the em-
14 ployment out of which the claim arose, the duration thereof,
15 and the exposure therein to the hazard of silicon dioxide dust;

16 (d) Whether such employee contracted said disease through
17 wilful self-exposure;

18 (e) The average weekly wages of the employee at the time
19 of his last injurious exposure to silicon dioxide dust in the
20 employment of the employer;

21 (f) The date of the last injurious exposure to silicon dioxide
22 dust in the employment with the employer, and if the employee
23 is no longer in the service of the employer, the date upon
24 which said employee ceased so to work; and, if the employee
25 has died, the date and place of such death and the place of
26 interment of the body.

Sec. 12. There shall be a medical board, known as the
2 "silicosis medical board," which shall consist of three licensed
3 physicians, who shall be appointed by the commissioner. No
4 person shall be appointed as a member of said board, or as a
5 consultant thereto, who has not by special study or experience,
6 or both, acquired special knowledge of pulmonary diseases.
7 All members of the silicosis medical board shall be physicians
8 of good professional standing, admitted to practice medicine
9 and surgery in this state, and two of said physicians shall be
10 roentgenologists. One of the board shall be designated an-
11 nually as chairman by the commissioner. The term of office
12 of each member of such board shall be six years, except that
13 the terms of the members first appointed shall be two, four and
14 six years, respectively. The function of such board shall be
15 to determine all medical questions to cases of compensation for
16 silicosis under the direction and supervision of the commis-
17 sioner. The commissioner, from time to time, shall fix the per
18 diem salary, computed on the basis of actual time devoted to
19 the discharge of their duties, to be paid each member of such
20 board, and they shall also be entitled to reasonable and neces-
21 sary traveling and other expenses incurred while actually en-
22 gaged in the performance of their duties.

Sec. 13. The silicosis medical board, upon reference to it

2 by the commissioner of a case of silicosis, shall notify the em-
3 ployee, or in case he is dead the claimant, and the employer,
4 to appear before such board at a time and place stated in the
5 notice. If the employee be living, he shall appear before the
6 board at the time and place specified and submit to such ex-
7 aminations, including clinical and X-ray examinations, as the
8 board may require. If a physician licensed to practice medi-
9 cine in the state shall make affidavit that the employee is phys-
10 ically unable to appear at the time and place designated by
11 the board, such board shall, on notice to the proper parties,
12 change the place and time of examination to such other place
13 and time as may reasonably facilitate the hearing or exam-
14 ination of the employee. The employee, or in case he is dead,
15 the claimant, and the employer shall also produce as evidence
16 to the board all reports of medical and X-ray examinations
17 which may be in their respective possession or control, showing
18 the past or present condition of the employee. If the employee
19 be dead, the notice of the board shall further require that the
20 claimant produce necessary consents and permits so that an
21 autopsy may be performed, if the board shall so direct. When
22 in the opinion of the board an autopsy is deemed necessary to
23 accurately and scientifically ascertain and determine the cause
24 of death, such autopsy examination shall be ordered by the
25 board, which shall designate a duly licensed physician, a path-
26 ologist, or such other specialists as may be deemed necessary
27 by the board, to make such examination and tests to determine
28 the cause of death and certify his or their written findings,
29 in triplicate, with said board, and which findings shall be public
30 records. In the event that a claimant for compensation for
31 such death refuses to consent and permit such autopsy to be
32 made, all rights for compensation shall thereupon be forfeited.
33 The employee, or if he be dead, the claimant, and the em-
34 ployer, shall be entitled to be present at all examinations con-
35 ducted by the board, and to be represented by attorneys and
36 physicians.

Sec. 14. The silicosis medical board, as soon as practicable,
2 after it has completed its investigation, shall make its written
3 report, in triplicate, to the commissioner of its findings and
4 conclusions on every medical question in controversy, and the
5 commissioner shall send one copy thereof to the employee or
6 claimant and one copy to the employer, and the said board shall

7 also return to and file with the commissioner all the evidence,
8 as well as all statements under oath, if any, of the persons who
9 appeared before it on behalf of the employee or claimant, or
10 employer, and also all medical reports and X-ray examinations
11 produced by or on behalf of the employee or claimant, or
12 employer.

13 The findings and conclusions of the said board shall set forth,
14 among other things, the following:

15 (a) Whether or not the claimant or the deceased employee
16 has contracted silicosis, and, if so, the stage thereof;

17 (b) If the claimant or the deceased employee has contracted
18 such disease, whether or not the exposure in the employment,
19 with said employer, was sufficient to have caused silicosis or to
20 have injuriously aggravated an existing silicosis;

21 (c) What, if any, physician appeared before the board on
22 behalf of the claimant, and what, if any, X-rays were produced
23 by or on behalf of the claimant, and what, if any, physician
24 appeared before the board on behalf of the employer, and what,
25 if any, X-rays were produced by or on behalf of the employer.

26 If either party object to the whole or any part of such find-
27 ings and conclusions of the board, he shall file with the com-
28 missioner, within ten days of the mailing of said copy to him
29 unless for good cause shown the commissioner extends said
30 time, his objections, in writing, thereto, specifying the partic-
31 ular statements of the board's findings and conclusions to which
32 he objects. After the time has expired for the filing of ob-
33 jections to the findings and conclusions of the board, the com-
33-a missioner shall proceed to act as provided in this chapter.
33-b If after the time has expired for the filing of objections to
33-c the findings and conclusions of the board no objections
33-d have been filed, the report of a majority of the board
34 of its findings and conclusions on any medical question shall be
35 taken to be plenary and conclusive evidence of the findings
36 and conclusions therein stated. If objection has been filed to
37 the findings and conclusions of the board, notice thereof shall
38 be given to the board, and the members thereof joining in
39 such findings and conclusions shall appear at the time fixed
40 by the commissioner for the hearing to submit to examination
41 and cross-examination in respect to such findings and con-
42 clusions. At such hearing evidence to controvert the findings
43 and conclusions of the board shall be limited to examination
44 and cross-examination of the members of the board appearing,

45 and in addition thereto only the testimony of such physician
46 or physicians as may have appeared before the board on behalf
47 of the claimant or the employer, or each, and participated in
48 all of the examinations conducted by such board: *Provided*,
49 That if such physician shall have died or is physically unable
50 to attend, after appearing before said board, the party whom
51 he represented may select any other duly licensed physician of
52 West Virginia and may introduce his testimony in addition to
53 that of the one who has so died or is so physically unable to
54 attend.

Sec. 15. The provisions hereof shall not apply to cases of
2 silicosis in which the last injurious exposure to silicon dioxide
3 dust in harmful quantities occurred before the provisions
4 hereof shall have taken effect: *Provided*, That any employer
5 hereunder may elect to provide and pay compensation here-
6 under for silicosis in which the last injurious exposure to the
7 hazards of such disease occurred before the provisions hereof
8 shall have taken effect by filing notice of such election with the
9 commissioner and posting copies of said notice in conspicuous
10 places on his premises, and every employee who is employed
11 at the time of posting such notice shall be deemed to have ac-
12 cepted all the provisions hereof and shall be bound thereby
13 unless within thirty days after the filing and posting of such
14 notice such employee shall file a notice to the contrary with the
15 commissioner, whose duty it shall be to immediately notify the
16 employer: *Provided further*, That any employer and any for-
17 mer employee thereof prior to the date the provisions hereof
18 take effect, when such former employee claims to have con-
19 tracted silicosis, may by an agreement in writing elect to accept
20 the provisions hereof, whereupon such former employee shall
21 file his application with the commissioner, and the commissioner
22 is hereby authorized to act in such cases, in which event all
23 charges for administration and other expenses shall be charged
24 to the particular employer, and if the commissioner finds that
25 compensation should be paid, he shall determine the total
26 amount and all administration charges thereof and assess same
27 against the particular employer, who shall at once make pay-
28 ment of the full amount thereof into the workmen's compen-
29 sation silicosis fund, and such amount so awarded shall be
30 disbursed by the commissioner as in any other case arising under
31 the provisions hereof.

Sec. 16. Compensation shall be paid only to or for the use of such employees, or their dependents, as herein provided, and shall be exempt from all claims of creditors and from any attachment, execution or assignment. Payments shall be made in such periodical installments as may seem best to the commissioner in each case.

Sec. 17. Any person who shall knowingly and with fraudulent intent secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from the workmen's compensation silicosis fund, or knowingly and with like intent secure or attempt to secure compensation from such fund when he is not entitled thereto, or shall knowingly and with like intent aid or abet anyone in the commission of the offenses herein set forth, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and if the person so convicted is receiving compensation from such fund, he shall from and after such conviction cease to receive such compensation.

Sec. 18. The provisions of section one, article five of this chapter, providing for the finality of the commissioner's rulings and the review by the supreme court of appeals, are applicable to the provisions of this article.

All acts and parts of acts in conflict with this act, or any part thereof, are hereby repealed. The various provisions of this act shall be construed as separable and several, and should any of the provisions, sentences, clauses or parts thereof be construed or held unconstitutional, or for any other reason invalid, the remaining provisions of this act shall not be thereby affected.

CHAPTER 80

(House Bill No. 476—By Mr. Thomas)

AN ACT to amend and reenact sections ninety-one and ninety-two, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three,

relating to the appropriations from the state road commission fund to the state road commission.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 91.	Appropriations for administrative expense, state road commission, fiscal year 1934-1935.		Sec. 92.	Appropriations for automobile bureau.
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Be it enacted by the Legislature of West Virginia:

That sections ninety-one and ninety-two, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

STATE ROAD COMMISSION

Administrative Expense

	1934	1935
Sec. 91. Salary of the Com-		
2 missioner	6,000.00	6,000.00
3 To pay the honorarium per diem		
4 of four members of the State		
5 Road Commission	1,200.00	1,200.00
6 Salaries of engineers, clerks,		
7 stenographers, property account-		
8 ing, recording and other assist-		
9 ants	100,000.00	120,000.00
10 Traveling expenses.....	16,000.00	16,000.00
11 Office rent, including heat, light,		
12 water and janitor service, in-		
13 cluding automobile bureau.....	10,000.00	10,000.00
14 Current general expenses, includ-		
15 ing automobile bureau	50,000.00	65,000.00
16 Federal Aid Supervision	3,000.00	3,000.00
17 For operation of toll bridges,		
18 clerk hire, office and traveling		
19 expenses	3,500.00	4,500.00
20 Furniture and fixtures.....	5,000.00	6,500.00
21 To pay salaries of county road su-		
22 pervisors and assistant road su-		
23 pervisors	175,000.00	126,000.00

Automobile Bureau

2	Sec. 92. For cost of manufac-		
3	turing license tags for sale to		
4	automobile owners, including		
5	cost of storage, envelopes for		
6	mailing, postage, freight, ex-		
7	press and cartage.....	50,000.00	50,000.00
8	Salaries of clerks, stenographers		
9	and other necessary assistants..	96,000.00	106,000.00
10	To pay salaries and expenses for		
11	the enforcement of traffic, li-		
12	cence, and permit laws to be dis-		
13	bursed on the requisition of the		
14	Department of Public Safety		
15	and West Virginia Board of		
16	Control	30,000.00	30,000.00
17	To pay cost of printing and bind-		
18	ing official list of licenses issued		
19	by Automobile Bureau, State		
	Road Commission.....	3,500.00	5,000.00

CHAPTER 81

(House Bill No. 532—By Mr. Davis)

AN ACT to amend and reenact section five, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the board of the school fund.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.
5. Sources of the school fund; board of the school fund to manage fund; authorized investments; organization of board; state treasurer custodian of invest-

Sec.
ments; records; board may acquire, hold and sell real estate for designated purposes; board to determine time and manner of sales.

Be it enacted by the Legislature of West Virginia:

That section five, article nine, chapter eighteen of the code of

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

Section 5. All such sums as have accrued to this state from
2 the several sources enumerated in section four, article twelve
3 of the constitution, not in excess of one million dollars, shall
4 be set apart as a separate fund to be called "the school fund,"
5 and the governor, state superintendent of free schools, auditor
6 and treasurer shall be a corporation under the name of "The
7 Board of the School Fund," and shall have the management,
8 control and investment of said fund, as provided by section
9 four, article twelve of the constitution. Such fund shall be
10 invested in the interest-bearing securities of the United States,
11 or securities, the payment of which as to both principal and
12 interest, has been guaranteed by the United States, or of this
13 state, or of any county, city, town or village, or school district
14 of this state, or, if such interest-bearing securities cannot be
15 obtained, then such fund shall be invested in such other solvent
16 interest-bearing securities as shall be approved by such board.
17 The governor shall be president of the board, and in his ab-
18 sence the board shall choose one of their number to preside
19 temporarily in his place. The auditor shall be secretary of
20 the board. The state treasurer shall be custodian of all invest-
21 ments made by such board. A record shall be kept of all the
22 proceedings and be signed by the president and secretary, and
23 a copy thereof, certified by the secretary of the board, shall be
24 evidence in all cases in which the original would be. A majority
25 of the board shall constitute a quorum for the transaction of
26 business.

27 The board may acquire, own, hold, use, receive rents and
28 issues from, dispose of and convey, real estate, subject to the
29 following limitations, and for the following purposes:

30 (a) Such as shall have been mortgaged to it, or conveyed
31 to trustees, as security for debts in its favor;

32 (b) Such as shall be conveyed to it in satisfaction of debts,
33 or in partial payment of debts, previously contracted;

34 (c) Such as it has heretofore purchased, or shall hereafter
35 purchase, at sales under judgments, decrees, trust deeds or
36 mortgages in its favor, or shall purchase at private sale, to
37 secure and effectuate the payment of debts due to it.

38 Any real estate acquired by the board under clauses (b) and
39 (c) shall be disposed of by the board at the earliest practicable

40 date, but the board shall have a reasonable discretion in the
 41 matter of the time to dispose of such property in order to pre-
 42 vent unnecessary losses; and such property, in the discretion
 43 of the board, may be sold either at public sale or at private
 44 sale and for cash or on such other terms as the board may
 45 deem expedient.

CHAPTER 82

(Senate Bill No. 119—By Mr. Paull, by request)

AN ACT to amend and reenact section twenty, article fourteen,
 chapter eleven of the code of West Virginia, one thousand
 nine hundred thirty-one, relating to taxation of gasoline.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without
 the approval of the Governor.]

Sec.

20. Refund of tax on gasoline used
 for certain designated pur-
 poses: how refund obtained;
 time limit on application for;
 no refund when gasoline re-

Sec.

used to propel motor vehicle;
 tax not refunded, kept in sep-
 arate account, when gasoline
 used for navigation.

Be it enacted by the Legislature of West Virginia:

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

Section 20. Any person who shall buy, in quantities of twenty-
 2 five gallons or more at any one time, any gasoline as defined in
 3 this article, for the purpose of, and the same is actually used
 4 for, operating and propelling boats, aeroplanes, tractors used
 5 for agricultural or other purposes, road rollers, steam shovels,
 6 compressors, pumps, stationary gas engines, threshing machines
 7 or other gasoline operated machinery, except motor vehicles,
 8 or who shall purchase and use such gasoline for cleaning and
 9 dyeing or for manufacturing or other commercial uses, except
 10 in motor vehicles, which gasoline shall have been previously
 11 included in the measure by which the excise tax imposed by
 12 this article is determined, shall be reimbursed and repaid a sum
 13 equal to the amount of such tax, upon presenting to the tax
 14 commissioner an affidavit accompanied by a ticket or invoice

15 from the distributor or retail dealer, showing such purchase,
 16 which affidavit shall set forth the total amount of such gasoline
 17 purchased and used by such consumer, other than in motor
 18 vehicles operated in this state, and how used; and the tax
 19 commissioner upon the receipt of such affidavit and ticket or
 20 invoice shall cause to be refunded to such consumer such tax
 21 paid on gasoline purchased and used other than for motor
 22 vehicles as aforesaid: *Provided*, That the tax commissioner shall
 23 cause refund to be made under authority of this section only
 24 when application for refund, as herein provided, is filed with
 25 the tax commissioner, upon forms prepared and furnished by
 26 the tax commissioner, within sixty days from the date of pur-
 27 chase or delivery of the gasoline: *Provided further*, That no
 28 refund shall be allowed under authority of this section on
 29 gasoline purchased and used for any purpose when the same
 30 shall be reused for the purpose of propelling motor vehicles:
 31 *Provided further*, That any excise tax which has been imposed
 32 upon gasoline purchased for and actually used in avigation,
 33 and for which application for refund, as herein provided, has
 34 not been filed with the tax commissioner, as herein provided,
 35 shall be transferred to the separate account provided by section
 36 six, chapter four, acts of the Legislature of West Virginia,
 37 regular session, one thousand nine hundred thirty-one.
 38 All acts or parts of acts inconsistent herewith are hereby
 39 repealed.

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CHAPTER 83

(Senate Bill No. 146—By Mr. Hodges)

AN ACT to amend and reenact section six, article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, relating to the payment of special license fees by public utilities.

[Passed February 20, 1935; in effect from passage. Approved by the Governor.]

Sec.
6(a) Special license fees of eighty thousand dollars to be paid by public utilities; fixed, levied and collected by auditor; kept in treasury as public service

Sec.
(b) commission fund; uses of fund. Special license fees of one hundred fifty thousand dollars to be paid by public utilities; fixed, levied and collected by

Sec.	auditor; method of determining assessment; when to be paid; kept in treasury, appropriated and used as provided		Sec.	in sub-section (a). (c) Use of any balance remaining at end of fiscal year as credit on levies for succeeding year.
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Be it enacted by the Legislature of West Virginia:

Section 6. (a) All public utilities subject to the provisions 2 of this chapter shall pay a special license fee in addition to 3 those now required by law. The amount of such fees shall be 4 fixed by the auditor and levied by him upon each of such public 5 utilities according to the value of its property as ascertained 6 by the last assessment, and shall be apportioned among such 7 public utilities upon the basis of such valuation, so as to produce 8 a revenue of eighty thousand dollars per annum, which fees shall 9 be paid on or before the twentieth day of January in each year. 10 Such sum of eighty thousand dollars, together with that provided 11 in sub-section (b) hereof shall be paid into the state treasury 12 and kept as a special fund, designated "Public Service Commis- 13 sion Fund", to be appropriated as provided by law for the 14 purpose of paying the expenses of the commission, and salaries, 15 compensations, costs and expenses of its employees.

16 (b) All public utilities subject to the provisions of this 17 chapter shall pay a special license fee in addition to any and 18 all fees now required by law. The amount of such fees shall 19 be fixed by the auditor and levied by him upon each of such 20 public utilities, in the proportion which the total gross revenue 21 derived from intra-state business done by each of such public 22 utilities in the calendar year next preceding bears to the total 23 gross revenue derived from intra-state business done in such 24 year by all public utilities subject to regulation by the public 25 service commission, so as to produce a revenue of one hundred 26 and fifty thousand dollars per annum, in addition to such fees 27 as may be fixed by the auditor under the provisions of sub- 28 section (a) hereof and which fees shall be paid on or before 29 the first day of July in each year. Such sum of one hundred 30 and fifty thousand dollars shall be paid into the state treasury 31 and be kept, appropriated and used as provided in sub-section 32 (a) hereof.

33 (c) Any balance remaining in said fund at the end of any 34 fiscal year shall not revert to the treasury but shall be credited 35 by the auditor upon the amounts to be raised for the next

36 fiscal year, under sub-sections (a) and (b), on the same basis
37 and in the same proportion as said fund was raised under said
38 sub-sections.

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CHAPTER 84

(Senate Bill No. 211—By Mr. Hodges)

AN ACT to continue the application of surtaxes on sales, privileges, productions, business and incomes, and the general consumers sales tax.

[Passed March 9, 1935; in effect July 1, 1935. Approved by the Governor.]

ARTICLE I.

Sec.

1. Reason for continuation of emergency surtaxes.
2. How act cited.
3. Upon whom surtax laid; amount; exemptions from surtax.
4. Upon whom surtax laid; amount.
5. Taxes for privilege of doing business in state from July 1, 1935, to June 30, 1937.
6. Payable quarterly.
7. What provisions apply to administration, collection and enforcement of taxes imposed by section three.
8. What provisions apply to administration, collection and enforcement of taxes imposed by section four.
9. Proceeds of tax paid into state fund, general revenue.
10. Provisions of article terminate June 30, 1937.

ARTICLE II.

Sec.

1. General consumers sales tax continued.
2. Definition of words and phrases.
3. Amount of tax; purchaser to pay tax to retailer; retailer to account to state for total of all taxes collected.
4. Burden of proof on seller that sale was not at retail; presumption.
5. Tax on gross proceeds of retail sales of natural resources, product or manufactured product.
6. Tax on furnishing services, except professional and personal,

Sec.

- and services furnished by certain corporations.
7. Exemptions from tax.
8. Tax to be passed on to and paid by consumer as part of the price.
9. Seller not to absorb all or any part of tax; penalty for violation.
10. Rules and regulations by competing taxpayers not to involve price fixing; tax commissioner to cooperate in making, or to make such rules and regulations.
11. Tax on sales on credit basis to be paid by purchaser at time of sale or within thirty days.
12. Seller at retail also engaged in business not taxable hereunder to keep transactions separate; on failure, tax levied on gross proceeds of all business.
13. Tax commissioner to prescribe rules to ascertain tax on sales from one to another affiliated companies or persons, etc.
14. When tax payable to tax commissioner; reports; penalty for failure to remit tax or make report.
15. Permission to file return at other time.
16. Quarterly return.
17. Annual return and remittance of any balance due.
18. Consolidated returns by one in same business in two or more places.
19. Duty of taxpayer as to records, statement, etc., required by tax commissioner.

Sec.	
20.	Tax commissioner to keep records of all moneys received by him; to preserve returns for five years.
21.	Facts obtained in administration of act not to be divulged; exceptions.
22.	Proceeds of tax for support of free schools.
23.	Provisions of article terminate on June 30, 1937.

ARTICLE III.

Sec.	
1.	Rules and regulations of tax commissioner for enforcement and administration of act.
2.	What powers and duties of tax commissioner hereunder may be exercised by his appointees.
3.	Penalty for violation of act or rules and regulations.
4.	If provision invalid, remaining provisions not affected.

Be it enacted by the Legislature of West Virginia:

ARTICLE I.

Section 1. Because the enabling legislation under the "Tax Limitation Amendment" has required adjustments which have greatly reduced the revenue of the state, it is necessary that emergency surtaxes be continued to provide funds essential to the conduct of government.

Sec. 2. This act may be cited as "The Supplemental (Emergency) Revenue Act of one thousand nine hundred thirty-five."

Sec. 3. Every person taxable under subsections (a), (b), (c), (d) and (g) of section two, article thirteen, chapter eleven, code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, shall pay, in addition to the taxes imposed by that act, and in addition to all other taxes, an additional emergency surtax of three-tenths of each tax imposed by subsections (a), (b), (c), (d) and (g), section two, article thirteen, chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, but there shall be no additional tax on any public service or utility business conducted wholly within the state by a corporation organized under the laws of this state with a capital stock of fifty thousand dollars or less and which does not generate its own current or any part thereof, nor on water companies or upon privileges taxed under subsection (c), except in case of wholesalers or jobbers.

Sec. 4. Each person taxable under sections two, three, four, or five, article twelve-(a), chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three,

4 acts of the first extraordinary session, one thousand nine hun-
5 dred thirty-three, shall pay, in addition to that tax and all
6 other taxes, an additional emergency surtax of three-tenths of
7 the tax imposed by the above mentioned article.

Sec. 5. The taxes imposed by this title are for the privilege
2 of doing business within this state during the operation of this
3 act and shall be calculated for a period beginning July first,
4 one thousand nine hundred thirty-five, and ending June
5 thirtieth, one thousand nine hundred thirty-seven, in the same
6 manner as the taxes imposed by articles twelve-(a) and thirteen,
7 chapter eleven, code of one thousand nine hundred thirty-one,
8 as amended by chapter thirty-three, acts of the first extraordi-
9 nary session, one thousand nine hundred thirty-three.

Sec. 6. The taxes imposed by sections three and four, shall
2 be paid quarterly on the first of November, February, May
3 and August.

Sec. 7. Except as otherwise provided by this act, the pro-
2 visions for the administration, collection, and enforcement of
3 taxes imposed by article thirteen, chapter eleven of the code
4 as amended by chapter thirty-three, acts of the first extraordi-
5 nary session, one thousand nine hundred thirty-three, shall
6 apply, so far as applicable, to the administration, collection and
7 enforcement of the taxes imposed by section three of this
8 article.

Sec. 8. Except as otherwise provided by this act, the pro-
2 visions for the administration, collection and enforcement of
3 taxes imposed by article twelve-(a), chapter eleven of the code,
4 as amended by chapter thirty-three, acts of the first extraordi-
5 nary session, one thousand nine hundred thirty-three, shall
6 apply so far as applicable to the administration, collection and
7 enforcement of the taxes imposed by section four of this article.

Sec. 9. The proceeds of the taxes imposed by this title shall
2 be paid into the state fund, general revenue, and be expended
3 in such manner as may be provided by law.

Sec. 10. All provisions of this article shall terminate and
2 cease to be of effect upon the thirtieth day of June, one thousand
3 nine hundred thirty-seven. The termination of this article
4 shall not affect the enforcement of any right, liability, or duty
5 arising during or out of the operation thereof.

Contin

ARTICLE II.

Section 1. In order to meet the fiscal needs created by shifting the base of taxation from general property, it is declared essential that a general consumers sales tax be continued.

Sec. 2. For the purposes of this article :

1. "Person" shall mean any person, firm, partnership, association, corporation, guardian, or committee;

2. "Tax commissioner" shall mean the state tax commissioner;

3. "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales at retail within this state, without deduction on account of the cost of the property sold, amounts paid for interest or discounts, or other expenses whatsoever. Losses shall not be deducted, but deductions may be made to the amount of credits or refunds for returned goods and of the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in "gross proceeds";

4. "Sales at retail" shall mean any transaction by which the ownership of tangible personal property is transferred for a consideration, when the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use or any other purpose, save resale, without change or processing, in the form of tangible personal property. "Sale at retail" includes conditional sales and transactions under whatever name whereby title is ultimately to pass, although possession is retained for security;

5. "Sale at retail" shall not include an isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof, or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner or on his account by such representative;

6. "Retail dealer" shall mean a person engaged in the business of sale at retail in this state, or one who furnishes services taxed by this article;

7. "Wholesale dealer" shall mean a person engaged in this state in the business of selling to a retail dealer in this state

36 for resale only, or of selling machinery, supplies and material,
37 in wholesale quantities, to contractors, or to persons engaged
38 in manufacturing in this state or in the production of natural
39 resources;

40 8. "Business" shall include all activities engaged in or
41 caused to be engaged in with the object of gain or economic
42 benefit, direct or indirect;

43 9. "Tax" shall include all taxes, interest or penalties levied
44 hereunder;

45 10. "Purchaser" shall mean a person who purchases tangible
46 personal property, or a service taxed by this article;

47 11. "Personal services" shall include those:

48 (a) Compensated by the payment of wages in the ordinary
49 course of employment;

50 (b) Rendered to the person of an individual without, at
51 the same time, selling tangible personal property or the use of
52 such property, such as nursing, barbering, shoe shining, mani-
53 curing, and similar services;

54 12. "Taxpayer" shall mean a retail dealer.

Sec. 3. For the privilege of engaging in the business of
2 selling tangible personal property at retail, and of dispensing
3 certain selected services defined in section six of this article,
4 a retail dealer shall collect from a purchaser a tax of two
5 per cent of the gross proceeds of each separate transaction,
6 and shall pay the amount collected to the tax commissioner in
7 accordance with the provisions of this article.

8 A purchaser shall pay the amount of the tax to the retail
9 dealer. The retail dealer shall keep the tax paid by the pur-
10 chaser separate and apart from the proceeds of sale and shall
11 account to the state for all the tax paid by the purchaser.
12 There shall be no tax on sales where the monetary considera-
13 tion is five cents or less. On each sale where the monetary
14 consideration is from six cents to fifty cents, both inclusive, the
15 tax payable by the purchaser shall be one cent; on each sale
16 where the monetary consideration is from fifty-one cents to one
17 dollar, both inclusive, the tax payable by the purchaser shall
18 be two cents, and on each fifty cents of such monetary con-
19 sideration, or fractional part thereof, in excess of one dollar,
20 the tax payable by the purchaser shall be one cent.

21 No profit shall accrue to any person by virtue of the pro-

22 visions of this section, as a result of the collection of the tax
23 herein levied upon purchasers, notwithstanding that the total
24 amount of such taxes collected may be in excess of the amount
25 for which such person would be liable by the application of
26 the levy of two per cent to the gross proceeds of his sales,
27 and the total of all taxes collected by any such person shall
28 be returned and remitted to the tax commissioner as herein-
29 after provided.

Sec. 4. The burden of proving that a sale was not at retail
2 shall be upon the seller, unless he takes from the purchaser a
3 certificate signed by and bearing the address of the purchaser
4 to the effect that the property was purchased for resale. To
5 prevent evasion, it shall be presumed that all proceeds are
6 subject to the tax until the contrary is clearly established.

Sec. 5. A person exercising the privilege of producing for
2 sale, profit or commercial use, any natural resources, product
3 or manufactured product, and engaging in the business of
4 selling at retail any such product not otherwise exempted here-
5 in shall make returns of the gross proceeds of such retail sales
6 and pay the tax imposed by this title.

Sec. 6. The provisions of this title shall apply not only to
2 selling tangible personal property, but also to the furnishing
3 of all services, except professional and personal services, and
4 except those services furnished by corporations subject to the
5 control of the public service commission and the state road
6 commission.

Sec. 7. The provisions of this title shall not apply to:

2 1. Sales of gasoline, taxable under article fourteen, chapter
3 eleven of the code of one thousand nine hundred thirty-one;

4 2. Sales of gas, steam and water delivered to consumers
5 through mains or pipes, and sales of electricity;

6 3. Sales of school books required to be used in any of the
7 schools of this state;

8 4. Sales by or to the state, its institutions or subdivisions,
9 and sales to the United States, including sales to agencies of
10 federal, state or local governments for distribution in public
11 welfare or relief work;

12 5. Sales on motor vehicles which are titled by the state road
13 commission.

Sec. 8. It is the intent of this article that the tax levied 2 hereunder shall be passed on to and be paid by the consumer. 3 The amount of the tax shall be added to the sales price, and 4 shall constitute a part of that price and be collectible as such.

Sec. 9. A person engaged in any business taxable here- 2 under shall not advertise or hold out to the public, in any 3 manner, directly or indirectly, that he will absorb all or any 4 part of the tax, or that the tax imposed by this article is not 5 to be considered an element in the price to the consumer. A 6 person who violates this provision shall be guilty of a mis- 7 demeanor and upon conviction shall be punishable by a fine 8 of not less than fifty, nor more than one thousand dollars, 9 or imprisonment in the county jail for not exceeding one year, 10 or both in the discretion of the court.

Sec. 10. To provide uniform methods of adding the average 2 equivalent of the tax to the selling price in each sale or trans- 3 action subject to the tax, appropriate rules and regulations, 4 except as otherwise herein provided, may be agreed upon or 5 adopted by competing taxpayers or associations of taxpayers, 6 except that all collections shall be made on the basis of the 7 total transaction at the time of sale, without regard to the 8 value of the separate items making up the total amount of the 9 sale. Such rules and regulations, if they do not involve price 10 fixing, shall not be deemed illegal as in restraint of trade or 11 commerce. The tax commissioner shall cooperate in formulat- 12 ing such rules and regulations, and, in the event appropriate 13 rules and regulations are not submitted to him within thirty 14 days after this act takes effect, or within a reasonable extended 15 period fixed by the tax commissioner, he shall himself formu- 16 late and promulgate appropriate rules and regulations to 17 effectuate the purpose of this section.

Sec. 11. A taxpayer doing business wholly or partly on a 2 credit basis shall require the purchaser to pay the full amount 3 of tax due upon a credit sale, at the time such sale is made, or 4 within thirty days thereafter. This section shall not operate 5 to relieve from the tax, credit business done during the oper- 6 ation of this title but realized on in money or money's worth 7 thereafter.

Sec. 12. Any person engaged in the business of making

2 sales at retail who is at the same time engaged in some other
3 kind of business, occupation, or profession, not taxable under
4 this title, shall keep books to show separately the transactions
5 used in determining the tax base herein taxed. In the event
6 of such person failing to keep such separate books, there
7 shall be levied upon him a tax based upon the entire gross
8 proceeds of both or all of his business.

Sec. 13. In determining gross proceeds of sales from one
2 to another of affiliated companies or persons, or under other
3 circumstances where the relation between the buyer and the
4 seller is such that gross proceeds from a sale are not indicative
5 of the true value of the subject matter of the sale, the tax
6 commissioner shall prescribe uniform and equitable rules for
7 determining the amount upon which the tax shall be levied,
8 corresponding as nearly as possible to gross proceeds from
9 the sale of similar products of like quality or character where
10 no common interest exists between the parties.

Sec. 14. The taxes levied hereunder shall be a personal
2 obligation of the taxpayer and shall be due and payable in
3 monthly installments, on or before the fifteenth day of the
4 month next succeeding the month in which the tax accrued.
5 The taxpayer shall, on or before the fifteenth day of each
6 month, make out and mail to the tax commissioner a return
7 for the preceding month, in the form prescribed by the tax
8 commissioner, showing (a) the total gross proceeds of his
9 business for that month; (b) the gross proceeds of his business
10 upon which the tax is computed; (c) the amount of the tax
11 for which he is liable; and (d) any further information neces-
12 sary in the computation and collection of the tax which the
13 tax commissioner may require. A remittance for the amount
14 of the tax shall accompany the return. A monthly return
15 shall be signed by the taxpayer or his duly authorized agent.
16 A taxpayer who fails to file his return and remit the tax as
17 prescribed in this section shall, in addition to all other penalties,
18 pay a penalty of six per cent of the amount of the tax collected
19 during the period reported. The tax commissioner shall in all
20 cases collect this penalty.

Sec. 15. The tax commissioner may, upon written request,
2 authorize a taxpayer whose books and records are not kept

3 on a monthly basis to file returns at other times than those
4 specified in the preceding section, but in no event shall a
5 taxpayer make less than one return a calendar month, except
6 as provided by section sixteen.

Sec. 16. When the total tax for which a person is liable
2 does not exceed ten dollars for any month, he may make quar-
3 terly return on or before the fifteenth day of the first month
4 in the next succeeding quarter in lieu of monthly returns.

Sec. 17. On or before thirty days after the end of the tax
2 year, each person liable for the payment of a tax hereunder
3 shall make an annual return in such form as may be required
4 by the tax commissioner, showing total gross proceeds of his
5 business for the preceding tax year, gross proceeds upon
6 which the tax for that year was computed, and any other
7 information necessary in the computation or collection of the
8 tax that the tax commissioner may require. After deducting
9 the amount of prior payments during the tax year, the tax-
10 payer shall transmit the return with a remittance for any
11 remaining tax, payable by him during the preceding tax year,
12 to the tax commissioner. The taxpayer or his duly authorized
13 agent, shall verify the return under oath. The tax commis-
14 sioner for good cause shown, may, on written application of
15 a taxpayer, extend the time for making his annual return.

Sec. 18. A person engaging in two or more places in the
2 same business or businesses of like character, taxable here-
3 under, shall file consolidated returns covering all such business
4 activities engaged in within this state.

Sec. 19. A person liable for the tax imposed hereunder
2 shall keep the records, render under oath the statements,
3 make returns, and comply with the rules and regulations that
4 the tax commissioner may, from time to time, require. The
5 tax commissioner may require such records, statements or
6 returns, upon notice, from any person in order to determine
7 whether he is liable to the tax hereunder. The tax commis-
8 sioner may require preservation of records for not to exceed
9 five years, and may, at any time, through his authorized
10 agents, inspect all books and accounts of the taxpayer, in-
11 cluding banking accounts, which in any way enter into the

12 record of the business out of which the tax imposed herein
13 arises.

Sec. 20. The tax commissioner shall keep full and accurate
2 records of all moneys received by him. He shall preserve all
3 returns filed with him hereunder for five years.

Sec. 21. Unless, in compliance with a judicial order, or
2 as may be required by the proper administration hereof, the
3 tax commissioner, his agents and employees and former tax
4 commissioners, agents and employees shall not divulge facts
5 or information obtained in the administration hereof.

Sec. 22. The proceeds of the tax imposed by this article
2 shall be devoted to the support of the free schools, and be
3 expended in such manner as may be provided by law.

Sec. 23. All provisions of this article shall terminate and
2 cease to be of effect upon the thirtieth day of June, one
3 thousand nine hundred thirty-seven. The termination thereof
4 shall not affect the enforcement of any right, liability, or duty
5 arising during or out of the operation hereof.

ARTICLE III.

Section 1. The tax commissioner shall have the authority
2 to promulgate and enforce reasonable rules and regulations
3 necessary to the administration and enforcement of the pro-
4 visions of this act.

Sec. 2. Except for the promulgation of rules and regula-
2 tions, any power or duty conferred upon the tax commissioner
3 by this act may be exercised under his direction by his em-
4 ployees or appointees; but the tax commissioner shall be
5 responsible for their acts.

Sec. 3. Except as herein otherwise provided a person who
2 wilfully violates any of the provisions of this act, or any lawful
3 rule or regulation promulgated under it, shall be guilty of
4 a misdemeanor and upon conviction, shall be fined not less
5 than fifty nor more than five thousand dollars.

Sec. 4. The provisions of this act shall be construed as
2 severable and if any part is held to be unconstitutional, or for
3 any other reason invalid, the remaining provisions shall not

4 be affected. If the application of the tax imposed by this act
5 to any particular taxpayer or to any period of time is held
6 to be invalid, its application to other taxpayers and to other
7 periods of time shall not be affected thereby.

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CHAPTER 85

(Senate Bill No. 233—By Mr. Barnhart)

AN ACT to provide for the collection of delinquent corporation
license taxes.

[Passed March 8, 1935; in effect from passage. Approved by the Governor.]

- | Sec. | Sec. |
|---|---|
| 1. Charter rights and franchises of corporation dissolved or charter rights forfeited for nonpayment of charter tax restored if tax paid prior to December 1, 1935. | 2. Auditor to receive and deposit in treasury delinquent charter taxes; certificate by auditor of reinstatement of charter rights, franchises and privileges. |

Be it enacted by the Legislature of West Virginia:

Section 1. Any corporation, delinquent in the payment of its
2 annual license (charter) tax, and which has been dissolved or
3 its charter rights forfeited in any suit or proceeding brought
4 under the provisions of section seventy-seven, article twelve,
5 chapter eleven of the code of West Virginia, one thousand nine
6 hundred thirty-one, may be reinstated and restored to all of its
7 charter rights and franchises by payment to the auditor of the
8 license taxes so levied and assessed, together with all license
9 taxes which would have been levied and assessed against such
10 corporation had there been no such dissolution or forfeiture,
11 without interest, penalties, and costs, if the same shall be paid
12 prior to December thirty-first, one thousand nine hundred
13 thirty-five.

Sec. 2. The auditor shall receive payment of all delinquent
2 license (charter) taxes on corporations, and shall account for
3 and deposit the same in the state treasury. Upon payment of
4 such taxes as aforesaid the auditor shall execute and deliver to
5 the corporation paying the same a certificate of reinstatement,
6 which certificate shall have the effect of reinstating and re-
7 storing such corporation to all of its charter rights, franchises,
8 and privileges.

CHAPTER 86

(Senate Bill No. 283—By Mr. Hodges, by request)

AN ACT to amend section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and to amend said article thirteen by adding thereto sections two-(a) to two-(i), inclusive, relating to business, occupation and privilege taxes.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec.	Sec.
2. Annual privilege taxes, levied on account of business and other activities; basis for tax on products shipped out of the state before sale; rules and regulations by tax commissioner to determine value of sales from one to another affiliated company or person; provision as to gross income; gross proceeds of retail sales of natural resources or manufactured products taxed; when such sales at wholesale not taxed; sale of manufactured products outside state; coal, etc., used or consumed in producer's business.	2-(c). Measure and amount of tax on selling tangible property; exceptions.
2-(a). Amount of tax on production of coal and other natural resource products.	2-(d). Measure and amount of tax on public service or utility business; exceptions.
2-(b). Measure of tax on manufactured or compounded products.	2-(e). Amount of tax on business of contracting.
	2-(f). Amount of tax on business of banking.
	2-(g). Amount of tax on business of operating theatre and other amusements.
	2-(h). Amount of tax on service business or calling not otherwise specifically taxed.
	2-(i). Amount of tax on business of collecting rentals, royalties, etc.; exceptions when included in personal net income tax; act to take effect January 1, 1935, and tax to be for calendar year of 1935.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted and that said article thirteen be amended by the addition thereto of sections two-(a) to two-(i), inclusive, to read as follows:

Section 2. There is hereby levied and shall be collected 2 annual privilege taxes against the persons, on account of the 3 business and other activities, and in the amounts to be deter-

4 mined by the application of rates against values or gross income
5 as set forth in sections two-(a) to two-(i) inclusive, of this
6 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 thereof
9 out of the state without making sale of such products, the
10 value of the products in the condition or form in which they
11 exist immediately before transportation out of the state shall
12 be the basis for the assessment of the tax imposed in said sec-
13 tions. The tax commissioner shall prescribe equitable and
14 uniform rules for ascertaining such value.

15 In determining value, however, as regards sales from one
16 to another of affiliated companies or persons, or under other
17 circumstances where the relation between the buyer and seller
18 is such that the gross proceeds from the sale are not indicative
19 of the true value of the subject matter of the sale, the tax
20 commissioner shall prescribe uniform and equitable rules for
21 determining the value upon which such privilege tax shall be
22 levied, corresponding as nearly as possible to the gross proceeds
23 from the sale of similar products of like quality or character
24 where no common interest exists between the buyer and seller
25 but the circumstances and conditions are otherwise similar.

26 Gross income included in the measure of the tax under sec-
27 tions two-(a) and two-(b) of this article, except in the case
28 of production of natural gas, shall neither be added nor de-
29 ducted in computing the tax levied under the other sections of
30 this article.

31 A person exercising any privilege taxable under sections
32 two-(a) or two-(b) of this article and engaging in the business
33 of selling his natural resources or manufactured products at
34 retail in this state shall be required to make returns of the
35 gross proceeds of such retail sales and pay the tax imposed in
36 section two-(c) of this article for the privilege of engaging
37 in the business of selling such natural resources or manu-
38 factured products at retail in this state. But any person
39 exercising any privilege taxable under sections two-(a) or
40 two-(b) of this article and engaging in the business of selling
41 his natural resources or manufactured products to manufac-
42 turers, wholesalers or jobbers, and in the case of limestone,
43 sand, gravel or other mineral product, to commercial con-
44 sumers, shall not be required to pay the tax imposed in section

45 two-(c) of this article for the privilege of selling such natural
46 resource products or manufactured products at wholesale.

47 Manufacturers exercising any privilege taxable under section
48 two-(b) of this article shall not be required to pay the tax
49 imposed in section two-(c) of this article for the privilege of
50 selling their manufactured products for delivery outside of this
51 state, but the gross income derived from the sale of such manu-
52 factured products outside of this state shall be included in
53 determining the measure of the tax imposed on such manu-
54 facturer in section two-(b).

55 A person exercising privileges taxable under the other sec-
56 tions of this article, producing coal, oil, natural gas, minerals,
57 timber or other natural resource products the production of
58 which is taxable under section two-(a), and using or consuming
59 the same in his business, shall be deemed to be engaged in the
60 business of mining and producing coal, oil, natural gas, minerals,
61 timber or other natural resource products for sale, profit or
62 commercial use, and shall be required to make returns on
63 account of the production of the business showing the gross
64 proceeds or equivalent in accordance with uniform and
65 equitable rules for determining the value upon which such
66 privilege tax shall be levied, corresponding as nearly as pos-
67 sible to the gross proceeds from the sale of similar products of
68 like quality or character by other taxpayers, which rules the
69 tax commissioner shall prescribe.

Sec. 2-(a). Upon every person engaging or continuing within
2 this state in the business of producing for sale, profit, or com-
3 mercial use any natural resource products, the amount of such
4 tax to be equal to the value of the articles produced as shown
5 by the gross proceeds derived from the sale thereof by the
6 producer, except as hereinafter provided, multiplied by the
7 respective rates as follows: Coal, one per cent; limestone or
8 sandstone, quarried or mined, one and one-half per cent; oil,
9 three per cent; natural gas, in excess of the value of five thou-
10 sand dollars, six per cent; blast furnace slag, three per cent;
11 sand, gravel or other mineral product, not quarried or mined,
12 three per cent; timber, one and one-half per cent; other natural
13 resource products, two per cent. The measure of this tax is
14 the value of the entire production in this state, regardless of
15 the place of sale or the fact that delivery may be made to
16 points outside the state.

Sec. 2-(b). Upon every person engaging or continuing within 2 this state in the business of manufacturing, compounding, or 3 preparing for sale, profit, or commercial use, either directly or 4 through the activity of others in whole or part, any article 5 or articles, substance or substances, commodity or commodities, 6 or electric power not produced by public utilities taxable 7 under other provisions of this article, the amount of the tax 8 to be equal to the value of the article, substance, commodities 9 or electric power manufactured, compounded or prepared for 10 sale, as shown by the gross proceeds derived from the sale 11 thereof by the manufacturer or person compounding or pre- 12 paring the same except as hereinafter provided, multiplied by 13 a rate of three-tenths of one per cent. The measure of this tax 14 is the value of the entire product manufactured, compounded, 15 or prepared in this state for sale, profit or commercial use, 16 regardless of the place of sale or the fact that deliveries may 17 be made to points outside the state.

Sec. 2-(c). Upon every person engaging or continuing within 2 this state in the business of selling any tangible property what- 3 soever, real or personal, except sales by any person engaging 4 or continuing in the business of horticulture, agriculture or 5 grazing, or if selling stocks, bonds or other evidences of in- 6 debtedness, there is likewise hereby levied, and shall be col- 7 lected, a tax equivalent to one-half of one per cent of the gross 8 income of the business, except that in the case of a wholesaler 9 or jobber, the tax shall be equal to fifteen one-hundredths of 10 one per cent of the gross income of the business.

Sec. 2-(d). Upon any person engaging or continuing within 2 this state in any public service or utility business, except rail- 3 road, railroad car, express, pipe line, telephone and telegraph 4 companies, water carriers by steamboat or steamship and motor 5 vehicle carriers, there is likewise hereby levied and shall be 6 collected taxes on account of the business engaged in equal to 7 the gross income of the business multiplied by the respective 8 rates as follows: Street and interurban and electric railways, 9 one per cent; water companies, four per cent, except as to in- 10 come from municipally owned water plants; electric light and 11 power companies, four per cent on sales and demand charges 12 for domestic purposes and commercial lighting and three per 13 cent on sales and demand charges for all other purposes, except

14 as to income from municipally owned plants producing or pur-
15 chasing electricity and distributing same; natural gas com-
16 panies, three per cent on the gross income, said gross income
17 for this purpose to be determined by deducting from gross
18 income from all sales to consumers the amount of the tax paid
19 by the taxpayers under section two-(a) of this article; toll
20 bridge companies, three per cent; and upon all other public
21 service or utility business, two per cent. The measure of this
22 tax shall not include gross income derived from commerce
23 between this state and other states of the United States or
24 between this state and foreign countries.

Sec. 2-(e). Upon every person engaging or continuing within
2 this state in the business of contracting, the tax shall be equal
3 to two per cent of the gross income of the business.

Sec. 2-(f). Upon every person engaging or continuing within
2 this state in the business of banking, the tax shall be equal to
3 five-tenths of one per cent of the gross income of the business.

Sec. 2-(g). Upon every person engaging or continuing within
2 this state in the business of operating a theatre, opera house,
3 moving picture show, vaudeville, amusement park, dance hall,
4 skating rink, race track, radio broadcasting station or any
5 other place at which amusements are offered to the public, the
6 tax shall be equal to one half of one per cent of the gross income
7 of the business.

Sec. 2-(h). Upon every person engaging or continuing within
2 this state in any service business or calling not otherwise specifi-
3 cally taxed under this act, there is likewise hereby levied and
4 shall be collected a tax equal to one per cent of the gross income
5 of any such business.

Sec. 2-(i). Upon every person engaging or continuing within
2 this state in the business of collecting incomes from the use of
3 real or personal property or of any interest therein, whether
4 by lease, conveyance or otherwise, and whether the return be
5 in the form of rentals, royalties, fees, interest or otherwise, the
6 tax shall be one per cent of the gross income of any such
7 activity: *Provided*, That any person who shall make return of
8 and pay a personal net income tax on the incomes covered by

9 this section two-(i) shall not be required to pay the tax herein
10 imposed upon said incomes.

11 This act shall take effect as of January first, one thousand
12 nine hundred thirty-five, and the first tax assessed under it
13 shall be upon the calendar year one thousand nine hundred
14 thirty-five.

CHAPTER 87

(Senate Bill No. 291—By Mr. Hodges, by request)

AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding section two-(a), relating to the refunding of excess payment of taxes.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

2-(a). Refund by collecting official of taxes unlawfully required and paid into state treasury; peti-

Sec.

tion for to be filed within one year from payment; procedure; when refund not to be made.

Be it enacted by the Legislature of West Virginia:

That article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding section two-(a), relating to the refunding of excess payment of taxes, to read as follows:

Section 2-(a). On and after the effective date of this act, any taxpayer claiming to be aggrieved through being required to pay any tax into the treasury of this state, may, within one year from the date of such payment, and not after, file with the official or department through which the tax was paid, a petition in writing to have refunded to him any such tax, or any part thereof, the payment whereof is claimed by him to have been required unlawfully; and if, on such petition, and the proofs filed in support thereof, the official collecting the same shall be of the opinion that the payment of the tax collected, or any part thereof was improperly required, he shall refund the same to the taxpayer by the issuance of his or its requisition on the treasury; and the auditor shall issue his warrant on the treasurer therefor, payable to the taxpayer entitled to the refund,

15 and the treasurer shall pay such warrant out of the fund into
 16 which the amount so refunded was originally paid: *Provided*,
 17 *however*, That no refund shall be made, at any time, on any
 18 claim involving the valuation, assessment or appraisal of
 19 which was fixed at the time the tax was originally paid.

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CHAPTER 88

(Com. Sub. for House Bill No. 197—Originating in the House Committee
 on the Judiciary)

AN ACT to amend and reenact section fifty-seven, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter fifty-five, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, and as last amended and reenacted by chapter thirty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, relating to hawkers and peddlers.

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec.

57. Tax on hawker or peddler traveling without vehicle; traveling with vehicle, tax dependent on capacity of vehicle; carrying of license and markings on vehicle; license co-extensive with state; definition of hawker or peddler; exceptions; exempted person to secure license receipt

Sec.

showing exemption; penalties for violation of act; jurisdiction of offenses under act; duty of department of public safety to enforce act; tax commissioner to promulgate rules and regulations; if part of section invalid, remainder of section not affected.

Be it enacted by the Legislature of West Virginia:

That section fifty-seven, article twelve, chapter eleven of the code of the West Virginia, one thousand nine hundred thirty-one, as amended by chapter fifty-five, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, and as last amended and reenacted by chapter thirty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 57. On every license to act as hawker or peddler,
 2 if the person licensed travel without a vehicle, ten dollars; if he
 2-a travels with a vehicle of not more than one-half ton capacity,
 3 fifteen dollars; if he travel with a vehicle of not more than one

4 ton capacity, twenty-five dollars; if he travel with a vehicle of
5 more than one ton capacity, but not exceeding two tons' capac-
6 ity, seventy-five dollars; if he travel with a vehicle of more than
7 two tons' capacity, but not exceeding three tons' capacity, one
8 hundred fifty dollars; and if he travel with a vehicle of more
9 than three tons' capacity, two hundred fifty dollars, plus one
10 hundred dollars for each additional ton or fraction thereof
11 over four tons' capacity; and the person licensed shall pay at
12 the same rates for each and every vehicle. Such person shall
13 carry his license in some conspicuous place in his vehicle or
14 about his pack; and in addition thereto such licensee shall cause
15 to be painted or stencilled in a conspicuous place on the left-
16 hand side of his vehicle the number of such license and the
17 words "West Virginia Hawker and Peddler" and the fiscal
18 year for which said license is issued, which said information
19 shall be in black letters on a white background, and the whole
20 thereof shall be at least eight by twenty inches in size. Such
21 license shall be co-extensive of and with the entire state.

22 All persons, firms and corporations who shall carry goods,
23 wares or merchandise from place to place, either in person or
24 by agent or employee, and offer to sell or barter, or actually
25 sell or barter, and at the same time deliver, any of said goods,
26 wares or merchandise to any purchaser, at wholesale or retail,
27 shall be deemed a hawker or peddler under this article, except
27-a that nothing in this article shall be construed as levying a
27-b license tax on an agent or traveling salesman of a manufac-
27-c turer or wholesaler who may directly supply articles manu-
27-d factured or handled by such manufacturer or wholesaler to
27-e customer engaged in merchandising at retail at bona fide,
27-f fixed, and stationary places of business.

28 All persons, firms or corporations who do have and keep
29 a regular place of business in this state with a stock of goods,
30 wares or merchandise thereat for sale, and whether or not said
31 place is open at all times during the usual business hours for
32 business, who shall, elsewhere than at such regular place of
33 business, personally, or through their agents, offer for sale, or
34 sell, and at the same time of such offering for sale, deliver
35-6 goods, wares and merchandise, shall also be deemed hawkers
37 or peddlers as aforesaid; and all persons, firms or corpora-
38 tions who do not have and keep a regular place of business
39 in this state as aforesaid and who in person or by agent offer

40 for sale, or sell, and at the same time of such sale have for de-
41 livery, and deliver, goods, wares or merchandise, shall also be
42 deemed hawkers or peddlers as aforesaid; but nothing con-
43 tained in this article shall apply to those who sell, or offer for
44 sale, in person or by their employees, petroleum products, ice,
44-a wood, meats, milk, bread, cakes, pies and other bakery prod-
45 ucts, butter, eggs, poultry, vegetables, fruits or other family or
46 farm supplies, grown or produced by them, and not purchased
47 by them for sale. Nothing in this article shall be construed as
48 requiring a license of a person or persons engaged or continu-
49 ing in the business or calling of agriculture, horticulture or
50 grazing, to sell or offer to sell individually or collectively,
51 one or more for the other or others, the products derived from
52 his or their business or calling aforesaid; nor of a person or
53 persons engaged in the business of operating a retail merchan-
54 dise store in a rural community to exchange goods from such
55 store for agricultural products or to sell or offer to sell agri-
56 cultural products acquired by such store in the due course of
57 business of barter and sale; nor as requiring a license of a
58 wholesaler or jobber engaged in the sale of soft drinks, ice
59 cream, or nonintoxicating beer duly licensed under other pro-
60 visions of the law relating thereto; nor of a mechanic or others
61 to sell or offer to sell articles of his or their own production:
62 *Provided*, That each farmer or other person exempt from
63 license as above provided, shall obtain from the clerk of the
64 county court of the county of his residence or from the clerk
65 of the county where he proposes to sell, a license receipt, with-
66 out cost, showing that he is so exempt, and which shall run
67 for a period of one year after the issuance thereof and be co-
68 extensive of and with the entire state; but to obtain such
69 license receipt he shall make an affidavit as to the facts en-
70 titling him to such exemption on a form to be prescribed by
71 the tax commissioner of this state.

72 If any person for himself or for another person shall act as
73 hawker or peddler without having a license or carry on his
74 vehicle a greater load than is called for by his license as
75 above required, he shall be guilty of a misdemeanor, and upon
76 conviction thereof shall be fined not less than twenty-five dol-
77 lars nor more than one hundred dollars, or be confined in the
78 county jail not exceeding sixty days or both such fine and
79 imprisonment, in the discretion of the court; and each day or

80 part thereof upon which said person or persons shall act as
81 hawker or peddler without such license or shall carry on his
82 vehicle a greater load than his license permits, shall constitute
83 a separate offense hereunder.

84 Justices of the peace shall have concurrent jurisdiction with
85 the circuit and other courts having jurisdiction for the trial
86 of all offenses arising under this section.

87 It shall be the duty of the superintendent of the department
88 of public safety and the police force under his control, city
89 police, sheriffs and other public officers to apprehend and cause
90 to be punished violators of this section.

91 The tax commissioner shall have the power and authority
92 to promulgate rules and regulations necessary to carry out
93 the provisions of this act, including the following:

94 (a) Rules and regulations with reference to application
95 for license and the issuance of such license;

96 (b) Rules and regulations for the revocation of license in
97 in case of violation of this section, or any rules or reg-
98 lations issued in pursuance of authority hereby given.

99 In the event that any clause or part of this section shall be
100 declared invalid, such adjudication shall not affect the rest of
101 the section.

102 All acts or parts of acts inconsistent herewith are hereby
103 repealed.

CHAPTER 89

(House Bill No. 441—By Mr. Pelter)

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto article thirteen-A, relating to a personal net income tax.

[Passed March 9, 1935; in effect ninety days from passage. Approved by the Governor.]

ARTICLE XIII—A.

Sec.

1. How act cited.
2. Definitions of words and phrases.
3. Graduated tax on net income of resident of state.
4. Graduated tax on net income of

Sec.

5. nonresident from designated sources.
6. On what income tax first levied.
7. On income of what estates and trusts tax levied.
8. Return by fiduciary.

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| <p>Sec. 8. How net income of estate or trust computed; exemptions.</p> <p>9. When fiduciary's return to include distributive shares.</p> <p>10. How net income of estate or trust determined and paid; exemptions; trust created by, or for nonresident.</p> <p>11. Tax when distribution of income is in discretion of fiduciary; when distributive share computed in net income of beneficiary.</p> <p>12. Tax on distribution from trust created by employer for employees.</p> <p>13. When income from trust included in computing income of settler.</p> <p>14. When income of trust may be applied in certain ways by settler.</p> <p>15. Definition of the term "in the discretion of the grantor".</p> <p>16. Distributive share of income from partnership charged to individual partners.</p> <p>17. Return of partnership business by members; how net income of partnership determined.</p> <p>18. How net income of taxpayer computed.</p> <p>19. When net income computed on basis of calendar year.</p> <p>20. When accounting period changed by taxpayer.</p> <p>21. What gross income includes.</p> <p>22. What gross income of nonresident includes.</p> <p>23. When all items of gross income included in return for year in which received.</p> <p>24. What items not to be included in gross income nor taxed.</p> <p>25. Deductions allowed in computing net income.</p> <p>25-(a). Deduction or non-deduction of loss from sale of stocks or securities.</p> <p>26. Deductions not allowed in computing net income.</p> <p>27. Return by taxpayer regularly selling personal property on installment plan.</p> <p>28. Return in case of casual sale of personal property when price does not exceed five hundred dollars, or of sale of real property.</p> <p>29. Definition of "initial payments."</p> <p>30. Determination of gain or loss from sale of property.</p> <p>31. When exchange of property deemed a conversion of assets without gain or loss; stock or securities received on organization of corporation; reorganization, merger or consolidation of corporation.</p> <p>32. Commissioner may require inventory.</p> | <p>Sec. 33. Allowable deductions from net income.</p> <p>34. When credits allowed nonresident on income tax.</p> <p>35. Who required to make returns of gross income.</p> <p>36. Separate or joint returns by husband and wife living together; when returns not required from married persons, dependents, minors or incompetents.</p> <p>37. Return by agent, etc., when taxpayer unable to make.</p> <p>38. Return by non-resident to show gross income from sources both within and without state.</p> <p>39. What return of partnership to show.</p> <p>40. What return of fiduciary to show.</p> <p>41. Form, and time of filing, of return.</p> <p>42. Report to tax commissioner by employer of yearly salary and other payments exceeding six hundred dollars.</p> <p>43. When commissioner may require filing of return or supplementary return.</p> <p>44. When tax to be paid; interest, if time extended; when check for, not paid.</p> <p>45. Commissioner to compute tax; procedure and penalties when return understates amount of tax; refund of excess payment.</p> <p>46. Assessment by commissioner of back taxes for five years; notice to taxpayer.</p> <p>47. Levy by sheriff, upon warrant of commissioner, for tax: filing with clerk of circuit court; entries by clerk in judgment docket; lien, after entry; duty of sheriff; action, if warranty not satisfied in full.</p> <p>48. Tax a personal debt to state.</p> <p>49. Action by attorney general to recover tax.</p> <p>50. Commission may waive or reduce additional tax or interest.</p> <p>51. Penalties assessed by commissioner upon failure, without fraudulent intent, to pay tax: when done with fraudulent intent; criminal liability and penalty; when failure to do any required act, deemed committed at office of tax commissioner in Charleston; certificate of commissioner prima facie evidence.</p> <p>52. Assessment of tax and penalty when taxpayer, after notice, fails to file, or correct, return.</p> <p>53. Application by taxpayer for revision of tax assessed against him; hearing and adjustment; refund, if found excessive; when double amount to be collected.</p> <p>54. Appeal to circuit court from determination of tax commissioner.</p> <p>55. Powers of commissioner in ascer-</p> |
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Sec.	Sec.
	section.
56. taining correctness of return or in estimating income.	49. Commissioner to make rules and regulations to enforce act.
56. Appointment by commissioner, with approval of governor, of agents, etc., and delegation of duties and powers; oath and bond of appointees; premium on bond.	50. All taxes, fees, etc., to be paid into state treasury.
57. When information obtained under act deemed confidential: exceptions; penalty for violation of	60. If part of act invalid, remainder not affected.
	61. Act takes effect January 1, 1935, and first tax to be on income for calendar year of 1935.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended by the addition thereto of article thirteen-A, to read as follows:

ARTICLE XIII-A.

Section 1. Short Title. This act shall be known and may be cited as the "Personal Income Tax Act."

Sec. 2. Definitions. For the purpose of this act, the word:

"Commissioner" means the state tax commissioner.

"Taxpayer" includes any individual or fiduciary, subject to a tax imposed by this article, or whose income is in whole or in part subject to a tax imposed by this article.

"Individual" means a natural person.

"Person" includes individuals, fiduciaries and partnerships.

"Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity, for any person, trust or estate.

"Resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this article upon or with reference to the income of any taxable year, any person domiciled in the state of West Virginia, and any other person who maintains a permanent place of abode within the state, and spends in the aggregate more than six months of the taxable year within the state.

"Non-resident" when used in connection with this article shall apply only to natural persons whose domicile is without the state of West Virginia, or who maintains a place of abode without the state, and spends in the aggregate more than six months of the taxable year without the state.

"Tax year" means the calendar year in which the tax is payable.

26 "Income year" means the calendar year or the fiscal year,
27 upon the basis of which the net income is computed under this
28 article, if no fiscal year has been established it means the cal-
29 endar year.

30 "Fiscal year" means an accounting period of twelve months,
31 ending the last day of any month other than December.

32 "Paid" for the purpose of the deductions under this article
33 means "paid or accrued" or "paid or incurred" and the words
34 "paid or accrued", "paid or incurred" shall be construed
35 according to the methods of accounting upon the basis of which
36 the net income is computed under this article.

37 "Received" for the purpose of the computation of the net
38 income under this article means "received or accrued" and
39 the words "received or accrued" shall be construed according
40 to the methods of accounting upon the basis of which the net
41 income is computed under this article.

42 "Net income" shall mean the gross income as defined in sec-
43 tions twenty-one and twenty-four less the deductions allowed
44 by section twenty-five.

45 "Gross income" means such income as defined in sections
46 twenty-one and twenty-four of this article.

47 "Dividend" means any distribution made by a corporation
48 out of its earnings or profits to its shareholders or members,
49 whether in cash or in other property or in stock of the corpora-
50 tion, other than stock dividends.

51 "Stock dividends" means new stock issued for surplus or
52 profits capitalized, to shareholders in proportion to their
53 previous holdings.

54 "Withholding agent" includes all individuals, corporations,
55 associations and partnerships, in whatever capacity acting, in-
56 cluding leasees, or mortgagors of real or personal property,
57 fiduciaries, employers, and all officers and employees of the
58 state, or of any municipal corporation or political subdivision
59 of the state, having the control, receipt, custody, disposal or
60 payment, of interest, rent, salaries, wages, premiums, annuities,
61 compensations, remunerations, emoluments or other fixed or
62 determinable annual or periodical gains, profits, and income
63 taxable under this article.

64 "Includes" and "including" when used in a definition con-
65 tained in this article shall not be deemed to exclude other
66 things otherwise within the meaning of the term defined.

Sec. 3. Every resident of this state, annually shall pay, upon
2 his entire net income, after deducting the exemptions provided
3 in section thirty-three of this article, a tax computed on the
4 following rates:

5 On the first one thousand dollars of net income or any part
6 thereof one per cent.

7 On the second one thousand dollars of net income or any
8 part thereof one and one-fourth per cent.

9 On the third one thousand dollars of net income or any part
10 thereof one and one-half per cent.

11 On the fourth one thousand dollars of net income or any
12 part thereof one and three-fourths per cent.

13 On the fifth one thousand dollars of net income or any part
14 thereof two per cent.

15 On all net income in excess of the sixth thousand, three
16 per cent.

Sec. 4. Every individual not a resident of this state, an-
2 nually, shall pay upon his entire net income from all tangible
3 property owned and all intangible property having a business
4 situs within the state and from every business, trade, pro-
5 fession or occupation carried on in this state, after deducting
6 the exemptions provided in section thirty-three of this article,
7 a tax at the rates specified in section three of this article.

Sec. 5. The tax imposed by this article shall first be levied,
2 collected and paid in the year one thousand nine hundred
3 thirty-six with respect to the taxable income for the calendar
4 year one thousand nine hundred thirty-five, or in the case of
5 any taxable year ending during the year one thousand nine
6 hundred thirty-five, the portion of such taxable year beginning
7 January first, one thousand nine hundred thirty-five.

Sec. 6. The tax imposed by this article shall apply to estates
2 and trusts, and shall be levied, collected and paid annually upon
3 the net income of estates or any kind of property held in trust,
4 including net income:

5 1. Received by estates of deceased persons during the period
6 of administration or settlement of the estate.

7 2. Accumulated in trust for the benefit of unborn or un-
8 ascertained persons or persons with contingent interests.

9 3. Held for future distribution under the terms of a will or
10 trust.

11 4. To be distributed to the beneficiaries periodically whether
12 or not at regular intervals.

13 5. Collected by a guardian of an infant to be held or dis-
14 tributed as the court may direct.

15 6. Of an estate during the period of administration or settle-
16 ment which section ten of this article permits to be deducted
17 from the net income upon which the tax is to be paid by the
18 fiduciary.

Sec. 7. The fiduciary shall make the return of income for
2 the estate of trust for which he acts, whether such income be
3 taxable to the estate or trust or to the beneficiaries.

Sec. 8. The net income of an estate or trust shall be com-
2 puted in the same manner and on the same basis as provided
3 in this article for individual taxpayers, except that there shall
4 also be allowed as a deduction, any part of the gross income
5 which pursuant to the terms of the will or deed creating the
6 trust, is paid to or held for:

7 1. The United States, any state, territory or any political
8 subdivision thereof, or the District of Columbia.

9 2. Any corporation or association organized and operated
10 exclusively for religious, charitable, scientific or educational
11 purposes, no part of the net income of which inures to the
12 benefit of any private stockholder or individual.

Sec. 9. In cases under subdivisions four, five and six of
2 section six, the fiduciary shall include in the return a state-
3 ment of each beneficiary's distributive share of such net in-
4 come, whether or not distributed before the close of the taxable
5 year for which the return is made.

Sec. 10. In cases under subdivisions one, two and three of
2 section six, the tax shall be imposed upon the estate or trust
3 with respect to the net income of the estate or trust and shall
4 be paid by the fiduciary, except that in determining the net
5 income of the estate of any deceased person during the period
6 of administration or settlement there may be deducted the
7 amount of any income property held for or credited to any
8 legatee, heir or other beneficiary. In such cases the estate or
9 trust shall be allowed the exemptions allowed to single per-
10 sons under section thirty-three, and in such cases an estate
11 or trust created by a person not a resident or for the benefit

12 of a person not a resident shall be subject to tax only to the
13 extent to which individuals other than residents are liable
14 under section twenty-five.

Sec. 11. In cases under subdivisions four, five and six of
2 section six, if the distribution of income is in the discretion
3 of the fiduciary, either as to the beneficiaries to whom pay-
4 able or as to the amounts to which any beneficiary is entitled,
5 the tax shall be imposed upon the estate or trust in the manner
6 provided in section ten but without the deduction of any
7 amounts of income paid or credited to any such beneficiary.
8 In all other cases under subdivisions four, five and six of sec-
9 tion six, the tax shall not be paid by the fiduciary, but there
10 shall be included in computing the net income of each bene-
11 ficiary his distributive share whether distributed or not, of
12 the net income of the estate or trust for the taxable year,
13 or if his net income for such taxable year is computed upon
14 the basis of a period different from that upon the basis of
15 which the net income of the estate or trust is computed, then
16 his distributive share of the net income of the estate or trust
17 for any accounting period of such estate or trust ending within
18 the fiscal or calendar year upon the basis of which such bene-
19 ficiary's net income is computed. In such cases the income
20 of a beneficiary not a resident, derived through such estate
21 or trust, shall be taxable only to the extent provided in section
22 twenty-two, for individuals other than residents.

Sec. 12. A trust created by an employer as a part of a stock
2 bonus, pension or profit-sharing plan for the exclusive benefit
3 of some or all of his employees, to which contributions are
4 made by such employer, or employees, or both, for the purpose
5 of distributing to such employees the earnings and principal
6 of the fund accumulated by the trust in accordance with such
7 plan, shall not be taxable under section six, but any amount
8 actually distributed or made available to any distributee shall
9 be taxable to him in the year in which so distributed or made
10 available to the extent that it exceeds the amounts paid in by
11 the employee, whether he, his designee or successor be the
12 distributee.

Sec. 13. Where at any time the power to revest in the
2 settler title to any part of the corpus of the trust is vested
3 in the settler alone, or in a person not having a substantial

4 adverse interest in the disposition of such part of the corpus
5 or the income therefrom, then the income of that part of the
6 trust shall be included in computing the net income of the
7 settler.

Sec. 14. The net income or that part of the net income of
2 a trust shall be computed as a part of the income of the
3 settler if in the discretion of the settler it is or may be:

4 1. Held or accumulated for future distribution to the set-
5 tler.

6 2. Distributed to the settler.

7 3. Applied to the payment of premiums of policies of in-
8 surance upon the life of the settler (except policies of insur-
9 ance irrevocably payable for the purposes and in the manner
10 specified in subdivision two, section eight of this article).

Sec. 15. As used in sections thirteen and fourteen, the term
2 "in the discretion of the grantor" means "in the discretion
3 of the grantor, either alone or in conjunction with any person
4 not having a substantial adverse interest in the disposition of
5 the part of the income in question."

Sec. 16. Individuals carrying on business in partnerships
2 shall be liable for income tax only as individuals. There shall
3 be included in computing the net income of each partner his
4 distributive share, whether distributed or not, of the net in-
5 come of the partnership for the taxable year, or if his net
6 income for such taxable year is computed upon the basis of
7 a period different from that upon the basis of which the net
8 income of the partnership is computed, then his distributive
9 share of the net income of the partnership for any accounting
10 period of the partnership ending within the fiscal or calendar
11 year upon the basis of which the partner's net income is
12 computed.

Sec. 17. The commissioner may require taxpayers who are
2 members of partnerships to make a return, stating the gross
3 receipts and net gains or profits of the partnership for any
4 taxable year. The net income of the partnership shall be com-
5 puted in the same manner and on the same basis as the net
6 income of individuals, except that the personal exemptions
7 provided for in section thirty-three shall be allowed only to
8 the individual partners.

Sec. 18. Net income shall be computed upon the basis of
2 the taxpayer's annual accounting period and shall be made:

3 1. In accordance with the methods of accounting regularly
4 employed by the taxpayer in keeping his books, unless no
5 method of accounting has been employed or if the method
6 employed does not clearly reflect the income, then

7 2. Upon such basis and in such manner as in the opinion
8 of the commissioner clearly and fairly reflects the taxpayer's
9 income.

Sec. 19. If the taxpayer's annual accounting period is other
2 than a fiscal year, or if the taxpayer has no annual accounting
3 period or does not keep books, net income shall be computed
4 on the basis of the calendar year.

Sec. 20. If the taxpayer changes his accounting period from
2 fiscal year to calendar year, from calendar year to fiscal year,
3 or from one fiscal year to another, the net income shall, with
4 the approval of the commissioner and subject to the provisions
5 of section eighteen be computed on the basis of the new
6 accounting period.

Sec. 21. "Gross income" includes gains, profits, and income
2 derived from:

3 1. Salaries, wages, or compensation for personal service, of
4 whatever kind and in whatever form paid.

5 2. Professions, vocations, trades, businesses, commerce or
6 sales.

7 3. Dealings in property, whether real or personal, growing
8 out of the ownership, use of, or interest in such property.

9 4. Interest, rent, dividends, securities.

10 5. The transaction of any business, carried on for gain or
11 profit.

12 6. Any source whatever, including gain, profit or income
13 derived through estates or trusts by the beneficiaries thereof,
14 whether as distributed or distributable shares.

Sec. 22. In the case of non-resident tax-payers; "gross
2 income" includes only the gross income from sources set forth
3 in section four of this article.

Sec. 23. The taxpayer shall include all items of gross in-
2 come in his return for the tax year in which the items were
3 received, unless under the methods of accounting permitted

4 by this article such items may be accounted for at a different
5 period.

Sec. 24. The following items shall not be included in gross
2 income and shall be exempt from taxation under this article:

3 1. Amounts received under a life insurance contract paid by
4 reason of the death of the insured, whether in a single sum or
5 installments (but if such amounts are held by the insurer
6 under an agreement to pay interest thereon, the interest pay-
7 ments shall be included in gross income).

8 2. The amount received by the insured as a return of pre-
9 mium paid by him under life insurance, endowment or annuity
10 contract either during the term or at the maturity of the term
11 mentioned in the contract or upon the surrender of the con-
12 tract.

13 3. The value of property acquired by gift, bequest, devise
14 or descent (but the income from such property shall be in-
15 eluded in gross income).

16 4. Interest upon the obligations of the United States or its
17 possessions, the District of Columbia, or upon obligations of
18 the state of West Virginia or any political subdivision thereof.

19 5. Salaries, wages, and other compensation received from the
20 United States.

21 6. Any amount received through accident, or health insur-
22 ance, or under workman's compensation acts, as compensation
23 for personal injury or sickness, plus the amount of damages
24 received whether by suit or agreement on account of such
25 injury or sickness or through the war risk insurance act or
26 any law for the benefit or relief of injured or disabled mem-
27 bers of the military or naval forces of the United States.

28 7. Stock dividends when received by a shareholder, unless
29 before or after the distribution of the dividend the corporation
30 proceeds to cancel or redeem its stock so as to make the distri-
31 bution and cancellation or redemption in whole or in part
32 essentially equivalent to the distribution of a taxable dividend
33 in which case the amount so distributed shall be treated as a
34 taxable dividend and included in gross income; and stock
35 dividends shall be considered in computing gain, profit or
36 income upon the sale, exchange, or other disposition of stock
37 upon which a stock dividend has been declared or of the stock
38 included in such stock dividend.

39 8. Money and property received or derived from suit,

40 settlement or compromise because of injury to reputation,
41 property or person.

42 9. The value of food and goods produced by the taxpayer
43 and consumed or used by his immediate family.

Sec. 25. In computing net income the taxpayer may
2 deduct:

3 1. Ordinary and necessary expenses (including a reason-
4 able allowance for salaries and other compensation for
5 personal services actually rendered, and rentals or other pay-
6 ments required to be made as a condition to the continued
7 use or possession of property to which the taxpayer has
8 not taken or is not taking title or in which he has no equity)
9 if paid for or incurred during the tax year in

10 (a) Carrying on a trade or business

11 (b) The production of income required to be included in
12 gross income under this article.

13 2. All interest paid or accrued during the taxable year on
14 indebtedness.

15 3. Income taxes payable to the United States upon income
16 earned in West Virginia; property taxes upon real and per-
17 sonal property situated in this state, except those assessed
18 against local benefits of a kind tending to increase the value
19 of the property assessed.

20 4. Losses sustained during the tax year and not compen-
21 sated for by insurance or otherwise, if incurred in trade or
22 business. The basis for determining the amount of the deduc-
23 tion under this subdivision or under subdivisions five and
24 six of this section shall be the same as is provided in section
25 thirty-one of this article.

26 5. Losses sustained during the tax year and not compen-
27 sated for by insurance or otherwise, if incurred in any
28 transaction entered into for profit, except wagering trans-
29 actions though not connected with trade or business; but in
30 the case of a taxpayer other than a resident of the state, only
31 as to such transactions in real property or in tangible per-
32 sonal property having an actual situs within the state.

33 6. Losses sustained during the tax year on property not
34 connected with the trade or business (but in case of a tax-
35 payer other than a resident, only of real property or tangible
36 personal property having an actual situs within the state)

37 if arising from fires, storms, or other casualty or from theft,
38 and not compensated for by insurance or otherwise.

39 7. Debts ascertained to be worthless and charged off
40 within the tax year. In the case of a debt existing on Janu-
41 ary first, one thousand nine hundred thirty-five, no more
42 than its fair market value on that date shall be deducted.
43 A worthless debt arising since January first, one thousand
44 nine hundred thirty-five, from unpaid wages, salary,
45 rent, or any other similar item of taxable income, is not an
46 allowable deduction, unless the income which such item repre-
47 sents has been included as income by the taxpayer in a return
48 rendered under this article, or under chapter thirty-three, acts
49 of the first extraordinary session of one thousand nine hun-
50 dred thirty-three.

51 8. A reasonable allowance for the exhaustion, wear and
52 tear of property, the income from which is required to be in-
53 cluded in gross income under this article, used in the trade
54 or business, including a reasonable allowance for obsolescence.
55 In case of property held by one person with remainder to
56 another person, the deduction shall be computed as if the life
57 tenant were the absolute owner of the property and shall be
58 allowed to the life tenant. In the case of property held in
59 trust the allowable deduction shall be apportioned between
60 the income beneficiaries and the trustee in accordance with
61 the pertinent provisions of the instrument creating the trust
62 or in the absence of such provisions, on the basis of the trust
63 income allocable to each.

64 9. In the case of timber, mines, and other natural deposits,
65 except oil and gas wells, a reasonable allowance for depletion
66 and for depreciation of improvements, according to the
67 peculiar conditions in each case, based upon cost including
68 cost of development not otherwise deducted. In case of such
69 properties acquired prior to January first, one thousand nine
70 hundred thirty-five, the fair market value of the tax-
71 payer's interest in the property on that date shall be taken
72 in lieu of cost up to that date except in the case of mines
73 discovered by the taxpayer on or after January first, one
74 thousand nine hundred thirty-five, and not acquired as
75 the result of a purchase of a proven tract or lease, where
76 the fair market value of the property is materially dispro-
77 portionate to the cost, the depletion allowance shall be based

78 upon the fair market value of the property at the date of
79 discovery or within thirty days thereafter; but such deple-
80 tion allowance based on discovery value shall not exceed
81 fifty per cent of the net income of the taxpayer (computed
82 without allowance for depletion) from the property upon
83 which the discovery was made, except that in no case shall
84 the depletion allowance be less than it would be if computed
85 without reference to discovery value. Discoveries shall in-
86 clude minerals in commercial quantities contained in veins or
87 deposits discovered in an existing mine or mining tract by
88 the taxpayer after January first, one thousand nine hundred
89 thirty-five, if the vein or deposit thus discovered was not
90 merely the uninterrupted extension of a continuing com-
91 mercial vein or deposit already known to exist, and if the
92 discovered minerals are of sufficient value and quantity that
93 they could be separately mined and marketed at a profit.

94 In the case of oil and gas wells the allowance for depletion
95 shall be twenty-five per cent of the gross income from the
96 property during the tax year. Such allowance shall not ex-
97 ceed fifty per cent of the net income of the taxpayer (com-
98 puted without allowance for depletion) from the property,
99 except that in no case shall the depletion allowance be less
100 than it would be if computed without reference to this para-
101 graph. Such reasonable allowance in all the above cases to
102 be made under rules and regulations to be prescribed by the
103 commissioner. In the case of leases the deductions allowed
104 by this subdivision shall be equitably apportioned between
105 the lessor and the lessee.

106 10. In the case of a taxpayer other than a resident of the
107 state the deduction allowed in this section shall be allowed
108 only if, and to the extent that, they are connected with in-
109 come arising from sources within the state and taxable under
110 this chapter to a non-resident taxpayer; the apportionment
111 and allocation of deductions with respect to sources of income
112 within and without the state shall be determined under the
113 rules and regulations to be prescribed by the commissioner.

Sec. 25-(a). In the case of any loss claimed to have been
2 sustained from any sale or other disposition of shares of stock
3 or securities where it appears that, within a period beginning

4 thirty days before the date of such sale or disposition and
5 ending thirty days after such date, the taxpayer has acquired
6 by purchase or by an exchange upon which the entire amount
7 of gain or loss was recognized by law, or has entered into a
8 contract or option so to acquire, substantially identical stock
9 or securities, then no deduction for the loss shall be allowed
10 under section 25 (5). If the amount of stock or securities
11 acquired or covered by contract or option to acquire is less
12 than the amount of stock or securities sold or otherwise dis-
13 posed of, then the particular shares of stock or securities, the
14 loss from the sale or other disposition of which is not de-
15 ductible, shall be determined under rules and regulations
16 prescribed by the commissioner. If the amount of stock or
17 securities acquired or covered by a contract or option to ac-
18 quire is less than the amount of stock or securities sold or
19 otherwise disposed of, then the particular shares of stock or
20 securities, the acquisition of which or the contract or option
21 to acquire which resulted in the non-deductibility of the loss,
22 shall be determined under rules and regulations prescribed by
23 the commissioner.

Sec. 26. In computing net income no deduction shall in any
2 case be allowed in respect of:

- 3 1. Personal living or family expenses;
- 4 2. An amount paid out for new buildings or for permanent
5 improvements or betterments made to increase the value of
6 any property or estate;
- 7 3. An amount expended in restoring property or in making
8 good the exhaustion thereof for which an allowance is or has
9 been made.
- 10 4. Premiums paid on any life insurance policy, covering the
11 life of any officer or employee, or of any person financially
12 interested in any trade or business carried on by the taxpayer,
13 when the taxpayer is directly or indirectly a beneficiary under
14 such policy.

Sec. 27. A taxpayer who regularly sells or otherwise dis-
2 poses of personal property on the installment plan may return
3 as income therefrom in any tax year that proportion of the
4 installment payments actually received in that year which the
5 total profit realized or to be realized when the payment is com-
6 pleted, bears to the total contract price.

Sec. 28. In the case of a casual sale or other casual disposition of personal property for a price exceeding five hundred dollars, or of a sale or other disposition of real property, if in either case the initial payments do not exceed one-fourth of the purchase price, the income may be returned on the basis and in the manner prescribed in section twenty-seven.

Sec. 29. As used in section twenty-eight the term "initial payments" means the payments received in cash or property at the time of sale, or other disposition, plus all payments made up to and at the time of transfer of title, provided that both the sale, or other disposition, and the transfer of title occur in the same taxable period. The term "initial payments" shall not include evidence of indebtedness of the purchaser of amounts secured by the property sold or otherwise disposed of.

Sec. 30. The basis for determining the gain or loss from the sale or other disposition of property, real or personal or mixed, shall be, in the case of property:

1. Acquired before January first, one thousand nine hundred thirty-five, the fair market price or value as of that date, if the price or value exceeds the original cost, and in all other cases the cost.

2. Included in the last preceding inventory used in determining net income in a return under this article, the inventory value.

The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him and the gain or loss shall be computed accordingly.

Sec. 31. When property is exchanged for other property, the property received in exchange, for the purpose of determining gain or loss, shall be treated as the equivalent of cash to the amount of its fair market value, if a market exists in which all the property so received can be disposed of at the time of exchange for a reasonably certain and definite price in cash; otherwise, such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of

12 property transferred therefor and no gain or loss shall be
13 deemed to arise therefrom.

14 Where in connection with the reorganization, merger or con-
15 solidation of a corporation, a taxpayer receives, in the place of
16 stock or securities owned by him new stock or securities, the
17 basis of computing the gain or loss, if any, shall be, in case
18 the stock or securities owned were acquired before January
19 first, one thousand nine hundred thirty-five, the fair market
20 price or value thereof as of that date, if such price or value
21 exceeds the original cost, and in all other cases the cost thereof.

Sec. 32. The commissioner may direct a taxpayer to prepare
2 an inventory, conforming to the best accounting practice of
3 the trade or business and clearly reflecting the taxpayer's in-
4 come when he believes an inventory is necessary to determine
5 the income of the taxpayer.

Sec. 33. There shall be deducted from net income the fol-
2 lowing exemptions:

3 1. In the case of a single individual, a personal exemption
4 of six hundred dollars;

5 2. In the case of the head of a family or a married person
6 living with husband or wife, a personal exemption of one thou-
7 sand three hundred dollars. A husband and wife living to-
8 gether shall receive but one personal exemption. If such hus-
9 band and wife make separate returns, the personal exemption
10 may be taken by either or divided between them;

11 3. Two hundred dollars for each individual (other than hus-
12 band or wife) dependent upon and receiving his chief support
13 from the taxpayer, if such dependent individual is under
14 eighteen years of age or is incapable of self-support because
15 mentally or physically defective;

16 4. If the status of the taxpayer, in so far as it affects the
17 exemptions allowed by this section, changes during the tax
18 year, and exemptions shall be apportioned, under rules and
19 regulations prescribed by the tax commissioner.

Sec. 34. If the law of the domicile of a non-resident tax-
2 payer:

3 1. Grants a credit to residents of this state which is sub-
4 stantially simliar to the one granted by this section, or

5 2. Imposes a tax upon the personal income of its residents
6 derived from sources in this state and exempts from taxation

7 the personal incomes of residents of this state, the tax commis-
8 sioner shall credit the amount of income tax payable by him
9 under this article with such proportion of the tax payable by
10 him to the state or county of his domicile as his income subject
11 to taxation under this article bears to his entire income upon
12 which the tax payable to the state or county of his domicile was
13 imposed.

Sec. 35. Every person whose gross income, annually, exceeds
2 the amount of the exemption of net income under section thirty-
3 three of this article, except for exemptions for dependents,
4 shall make under oath a return stating specifically the items
5 of his gross income and the deductions and credits allowed
6 by this article.

Sec. 36. In the case of husband and wife living together
2 each shall make such a return, or the income of each shall be
3 included in a single joint return, in which case the tax shall be
4 computed on the aggregate income. But no return shall be
5 required in the following cases:

6 1. In the case of a married person living with husband or
7 wife on the last day of the tax year whose income was included
8 in a joint return.

9 2. In the case of a married woman living with her husband
10 on the last day of the tax year, who had no separate gross
11 income for the tax year.

12 3. Dependent individuals who receive their chief support
13 from a head of a family and who are under twenty-one years
14 of age or incapable of self-support because mentally or physi-
15 cally defective and whose income, if any, is included in the
16 gross income of such head of a family.

17 4. Minor or incompetent individuals whose income, if any,
18 would be taxable to or subject to a return by a head of a
19 family, guardian or other fiduciary.

Sec. 37. If a taxpayer is unable to make his own return the
2 return shall be made by his authorized agent or by his guardian
3 or other person charged with the care of his person or property.

Sec. 38. A non-resident taxpayer shall not be entitled to
2 the deductions authorized by section twenty-five unless he
3 makes under oath a complete return of his gross income from
4 sources both within and without the state.

Sec. 39. Every partnership shall make a return for each tax year, stating the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by at least one of the partners.

Sec. 40. Every fiduciary (except a receiver legally in possession of part only of the property of a taxpayer) shall make under oath a return for the individual or estate or trust for whom he acts, as follows:

1. If he acts for an individual whose entire income from whatever sources derived is in his charge.

2. If he acts (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of the estate during the period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests; or (c) for an estate or trust the income of which is held for future distribution or is distributable in the discretion of the fiduciary under the terms of a will or trust.

3. If he acts (a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically; or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct.

The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions, and credits allowed by this article. Under such regulations as the tax commissioner may prescribe, a return made by one or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of the individual, estate or trust for whom or which he acts, to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to taxpayers.

Sec. 41. Returns shall be in the form the commissioner may
2 prescribe, and shall be filed with the commissioner on or before
3 the fifteenth day of March of each year, if the return is made
4 on the basis of the calendar year, or if the return is made on
5 the basis of a fiscal year, then within thirty days following
6 the close of the fiscal year. On application, the tax commis-
7 sioner may grant a reasonable extension of time, not exceeding
8 two months, for filing returns whenever in his judgment good
9 cause exists therefor.

Sec. 42. In order to aid in the effective administration of
2 this article and the procurement of a complete set of returns,
3 the tax commissioner, under such reasonable rules and regula-
4 tions as are necessary, may require a person who pays during
5 the calendar year to another person within this state, six hun-
6 dred dollars or more, as salary, compensation for personal serv-
7 ices, or for fixed or determinable gain, profit or income, to
8 report every such payment and the name and address of the
9 recipient, if known.

Sec. 43. If the commissioner shall be of the opinion that
2 any taxpayer has failed to file a return, or to include in a
3 return filed, either intentionally or through error, items of
4 taxable income, he may require from such taxpayer a return,
5 or a supplementary return, under oath, in such form as he
6 shall prescribe, of all the items of income which the taxpayer
7 received during the year for which the return is made, whether
8 or not taxable under the provisions of this article. If from a
9 supplementary return, or otherwise, the commissioner finds
10 that any items of income, taxable under this article, have been
11 omitted from the original return, he may require the taxpayer
12 to add the item to his original return. The supplementary
13 return and the correction of the original return, shall not re-
14 lieve the taxpayer from any of the penalties to which he may
15 be liable under any provision of this article. The commissioner
16 may proceed under the provisions of section forty-six of this
17 article whether or not he requires a return or a supplementary
18 return under this section.

Sec. 44. The full amount of the tax shall be paid to the
2 commissioner at the time fixed by section forty-one for filing
3 the return. If the time for filing the return is extended,
4 interest at the rate of six per cent per year, from the time

5 when the return was originally due shall be added and paid.
6 Under such regulations as the commissioner may prescribe
7 the tax may be paid with uncertified check, but if such a check
8 is not paid by the bank on which it is drawn, the taxpayer by
9 whom the check is tendered shall remain liable for the payment
10 of the tax and for all legal penalties, the same as if such check
11 had not been tendered.

Sec. 45. As soon as practicable after the return is filed, the
2 commissioner shall examine it and compute the tax, and the
3 amount so computed by the commissioner shall be the tax. If
4 the tax found due shall be greater than the amount paid, the
5 excess shall be paid to the commissioner within thirty days
6 after notice of the amount is mailed by the commissioner.

7 If the return is made in good faith and the understatement
8 of the tax is not due to any fault of the taxpayer, there shall
9 be no penalty or additional tax added because of such under-
10 statement, but interest shall be added to the amount of the
11 deficiency at the rate of one per cent for each month or fraction
12 of a month.

13 If the understatement is due to negligence on the part of
14 the taxpayer, but without intent to defraud, there shall be
15 added to the amount of the deficiency five per cent thereof,
16 and in addition, interest at the rate of one per cent per month
17 or fraction of a month shall be added.

18 If the understatement is false or fraudulent, with intent to
19 evade the tax, the tax on the additional income discovered to
20 be taxable shall be doubled and an additional one per cent per
21 month or fraction of a month shall be added.

22 The interest provided for in this section shall in all cases be
23 computed from the date the tax was originally due to the date
24 of payment.

25 If the amount of the tax found due shall be less than the
26 amount paid, the excess shall be refunded by the commissioner
27 out of the proceeds of the tax retained by him.

Sec. 46. If the commissioner discovers that the income of
2 a taxpayer, or a portion thereof, has not been assessed, at
3 any time within five years after the time when the return was
4 due, he may assess the same and give notice to the taxpayer
5 of such assessment, and such taxpayer shall thereupon have
6 an opportunity, within thirty days, to confer with the com-

7 missioner as to the proposed assessment. The limitation of two
8 years to the assessment of such tax or additional tax shall not
9 apply to the assessment of additional taxes upon fraudulent
10 returns. After the expiration of thirty days from such notifi-
11 cation the commissioner shall assess the income of such tax-
12 payer or any portion thereof which he believes has not there-
13 tofore been assessed and shall give notice to the taxpayers so
14 assessed, of the amount of the tax and interest and penalties,
15 if any, and the amount thereof shall be due and payable within
16 thirty days from the date of the mailing of such notice. The
17 provisions of this article with respect to revision and appeal
18 shall apply to a tax so assessed.

Sec. 47. If any tax imposed by this article or any portion of
2 such tax be not paid within sixty days after it becomes due, the
3 commissioner shall issue a warrant directed to the sheriff of
4 any county of the state commanding him to levy upon and
5 sell the real and personal property found within his county
6 of the person owing the tax, for the payment of the amount
7 thereof, with the added penalties, interests and the cost of
8 executing the warrant, and to return such warrant to the
9 commissioner and pay to him the money collected by virtue
10 thereof within sixty days after the receipt of such warrant.

11 The sheriff shall within five days after the receipt of the
12 warrant, file with the clerk of the circuit court a copy thereof,
13 and thereupon the clerk shall enter in the judgment docket,
14 in the column for judgment debtors the name of the taxpayer
15 mentioned in the warrant, and in appropriate columns the
16 amount of the tax or portion thereof and penalties for which
17 the warrant is issued and the date when such copy is filed, and
18 thereupon the amount of such warrant so docketed shall become
19 a lien upon the title to and interest in real property or chattels
20 real of the person against whom it is issued in the same manner
21 as a judgment duly docketed in the office of such clerk. The
22 said sheriff shall thereupon proceed upon the same in all re-
23 spects, with like effect, and in the same manner prescribed by
24 law in respect to executions issued against properties upon
25 judgment of a court of record, and shall be entitled to the
26 same fees for his services, in executing the warrant, to be
27 collected in the same manner. If a warrant be returned not
28 satisfied in full, the commissioner shall have the same remedies
29 to enforce the claim for taxes against the taxpayer as if the

30 state had recovered judgment against the taxpayer for the
31 amount of the tax.

Sec. 48. Every tax imposed by this article and all increases,
2 interest and penalties thereon, shall become, from the time it is
3 due and payable, a personal debt, from the person liable to pay
4 the same, to the state of West Virginia.

Sec. 49. Action may be brought at any time by the attorney
2 general at the instance of the commissioner, in the name of the
3 state to recover the tax, penalty or interest due under this
4 article.

Sec. 50. Upon a record of his reasons therefor, the commis-
2 sioner may waive or reduce any of the additional taxes or in-
3 terest provided for in section forty-five of this article.

Sec. 51. If a person without fraudulent intent fails to pay
2 a tax or to make a return or supply information within the
3 time required by this article, he shall be liable to a penalty,
4 in addition to all other taxes, interests and penalties, provided
5 for by this article, of not more than one hundred dollars, to be
6 assessed by the commissioner and collected in the same manner
7 as an additional tax found due under section forty-six.

8 If a person with intent to evade a requirement of this article
9 or a lawful requirement of the commissioner thereunder, fails
10 to pay a tax or to make a return or supply information re-
11 quired by this article, or with like intent, makes a false or
12 fraudulent return or statement, or supplies false or fraudulent
13 information, he shall be liable to a penalty of not more than
14 one thousand dollars. This penalty shall be recovered by the
15 attorney general in the name of the state, by action in a court
16 of competent jurisdiction.

17 In addition to such penalty, the taxpayer shall be guilty of
18 a misdemeanor and, upon conviction, shall be fined not to
19 exceed one thousand dollars or be imprisoned not to exceed one
20 year, or both, in the discretion of the court.

21 The failure to do any act required by or under the pro-
22 visions of this article shall be deemed to be an act committed
23 in part at the office of the tax commissioner in Charleston.
24 The certificate of the commissioner that a taxpayer has not
25 complied with the provisions of this section shall be prima facie
26 evidence of that fact.

Sec. 52. If a taxpayer, who has failed to file a return or 2 has filed an incorrect or insufficient return and has been notified 3 by the commissioner of his delinquency, refuses or neglects 4 within twenty days after such notice to file a proper return, 5 or files a fraudulent return, the commissioner shall determine 6 the income of such taxpayer according to his best information 7 and belief and assess the same at not more than double the 8 amount so determined. The commissioner may in his discretion 9 allow further time for the filing of a return in such case.

Sec. 53. A taxpayer may apply to the commissioner for 2 revision of the tax assessed against him, at any time within 3 one year from the time of the filing of the return or from the 4 date of the notice of the assessment of an additional tax. The 5 commissioner shall grant a hearing thereon and if, upon such 6 hearing, he determines that the tax is excessive or incorrect, 7 he shall resettle the same according to the law and the facts 8 and adjust the computation of tax accordingly. The commis- 9 sioner shall notify the taxpayer of his determination and shall 10 refund to the taxpayer the amount, if any, paid in excess of 11 the tax found by him to be due. If the taxpayer has failed, 12 without good cause, to file a return within the time prescribed 13 by section forty-one, or has filed a fraudulent return, or, having 14 filed an incorrect return, has failed, after notice, to file a proper 15 return, the commissioner shall not reduce the tax below double 16 the amount for which the taxpayer is found to be properly 17 assessed.

Sec. 54. A taxpayer may appeal from the determination 2 of the commissioner any time within thirty days after the 3 determination. He shall file a complaint in the circuit court 4 of the county in which he resides, or if not a resident, in which 5 he conducts his business, trade or occupation, or has taxable 6 income. Thereupon, appropriate proceedings shall be had and 7 the relief, if any, to which the taxpayer may be entitled may 8 be granted and any taxes, interest or penalties found by the 9 court to be in excess of those legally assessed shall be ordered 10 refunded to the taxpayer, with interest from time of payment.

Sec. 55. The commissioner, for the purpose of ascertaining 2 the correctness of a return or for the purpose of making an 3 estimate of the taxable income of a taxpayer, may by an agent:

- 4 1. Examine books, papers, records or memoranda, bearing
5 upon the matters required to be included in the return.
- 6 2. Require the attendance of the taxpayer or of any other
7 person having knowledge of his income.
- 8 3. Take testimony and require proof material for his infor-
9 mation.
- 10 4. Administer oath necessary for the administration of this
11 article.

Sec. 56. The commissioner may, with the approval of the
2 governor, appoint such officers, agents and employees as are
3 necessary for the administration of this article; and he may
4 delegate to them such duties and powers as he may from time
5 to time prescribe.

6 The commissioner may require such of the officers, agents
7 and employees as he may designate, to take the constitutional
8 oath and to give bond for the faithful performance of their
9 duties. All premiums on such bonds shall be paid by the
10 commissioner out of money appropriated for the purpose of
11 this article.

Sec. 57. The commissioner or any officer, agent or employee,
2 except when necessary to the enforcement of this article or as
3 required by judicial or legislative process, shall not divulge
4 or make known:

- 5 1. The business affairs, operations or information obtained
6 by an investigation of records and equipment of any person
7 visited or examined in the discharge of official duty.
 - 8 2. The amount or sources of income, profits, losses, expendi-
9 tures or any particular thereof, set forth or disclosed in any
10 return.
 - 11 3. Permit any return or copy thereof to be seen or examined
12 by any person except as provided by law.
- 13 However, the commissioner may authorize examination of
14 such returns by other state officers, or if a reciprocal arrange-
15 ment exists, by tax officials of another state, or the federal
16 government.
- 17 A person violating a provision of this section shall be guilty
18 of a misdemeanor, and upon conviction, punished by a fine
19 not to exceed one thousand dollars or by imprisonment not
20 exceeding one year, or both, at the discretion of the court.

Sec. 58. The commissioner may make such rules and regu-

2 lations, not inconsistent with this article, as are necessary to
3 enforce its provisions.

Sec. 59. The commissioner shall pay all taxes, fees, interest,
2 and penalties collected under this article into the state treasury.

Sec. 60. If any part of this article shall, for any reason,
2 be adjudged by a court to be invalid, such judgment shall not
3 affect, impair or invalidate the remainder of this article, but
4 shall be confined in its operation to the part thereof directly
5 involved in the controversy in which such judgment was ren-
6 dered.

Sec. 61. This article shall take effect as of January first,
2 one thousand nine hundred thirty-five, and the first tax to be
3 assessed under this article shall be computed upon income re-
4 ceived during the calendar year one thousand nine hundred
5 thirty-five.

CHAPTER 90

(Senate Bill No. 138—By Mr. Paull, by request)

AN ACT to amend and reenact section one, article four, chapter
thirty-seven of the code of West Virginia, one thousand nine
hundred thirty-one, relating to partition of lands owned in
common by several persons, or persons and the state, pro-
viding for jurisdiction of courts to try such cases, and per-
mitting the state to be made a party thereto.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without
the approval of the Governor.]

Sec.

1. Partition by tenants in common,
etc.: state, when owner of
undivided interest, as party
plaintiff in action for parti-
tion: notification to official

Sec.

having charge of state land;
costs of partition or sale: duty
of official having charge of
state land.

Be it enacted by the Legislature of West Virginia:

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

Section 1. Tenants in common, joint tenants and copar-

2 ceners, shall be compellable to make partition, and the circuit
3 court of the county wherein the land or estate, or any part
4 thereof, may be, shall have jurisdiction, in cases of partition,
5 and in the exercise of such jurisdiction, may take cognizance
6 of all questions of law affecting the legal title, that may arise
7 in any proceedings.

8 The state hereafter shall, whenever it is an owner of an
9 undivided interest in any land or real estate together with
10 other persons, become a party plaintiff in any proceeding by
11 any person entitled to demand partition under the first sen-
12 tence of this section. Before instituting suit for partition the
13 person entitled to demand it shall notify the proper official
14 who has supervision of such state land and thereafter they
15 shall proceed as they deem best. In all such cases resulting
16 in partition or sale the costs of suit shall come from the pro-
17 ceeds of sale. No state official in charge of state lands shall
18 refuse to perform his duty in any case where any person is
19 entitled to demand a partition, or sale under this article.

CHAPTER 91

(House Bill No. 44—By Mr. Strouss)

AN ACT to amend and reenact sections thirty-two and thirty three, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to the redemption of any portion or portions of, or any undivided interest or interests in any tract or tracts of land or town or city lot, returned delinquent for the nonpayment of taxes thereon and purchased by the state of West Virginia.

[Passed March 8, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

32. Redemption of part of tract of land or city lot, purchased by state for non-payment of taxes; survey and plat to be made, filed and recorded in proper deed book; redemption to have assessment divided by assessor; certified to auditor.
33. Affidavit of surveyor to plat and description; certificate of clerk; filing clerks' certificate with auditor; certificate of redemp-

Sec.

tion; if redeemed in separate parcels to be assessed separately; auditor's records and notices to county clerk and assessor; certificate of assessor to be presented to auditor; preservation of certificate by auditor; certificate by auditor to commissioner of school lands; redemption from commissioner.

Be it enacted by the Legislature of West Virginia:

That sections thirty-two and thirty-three, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and the same are hereby amended and reenacted to read as follows:

Section 32. Any person having a right to redeem any tract
2 or part of a tract of land, or any town or city lot purchased
3 by the state at a sale therefor for the nonpayment of the taxes
4 thereon, who may desire to redeem a less quantity than the
5 whole amount sold, may have the part or parts thereof which
6 he desires to redeem surveyed and laid off by metes and bounds,
7 and shall return a plat and description thereof to the clerk of
8 the county court of the county in which the same was so sold,
9 who shall record the same in the deed book in his office together
10 with the affidavits thereto attached, required by the next suc-
11 ceeding section.

12 Any person having a right to redeem any undivided interest
13 in any tract of land, town or city lot purchased by the state
14 at a sale therefor for the nonpayment of the taxes thereon, who
15 may desire to redeem such undivided interest, may have the
16 assessment divided by the assessor of said county who shall
17 certify to the auditor the former owners of all interests there-
18 in and the interests so owned by each and the proportionate
19 part of the assessed value of each interest.

Sec. 33. To every such plat and description there shall be
2 an affidavit appended by the surveyor or person making the
3 same, that such plat and description and the quantity of land
4 mentioned therein is, as he verily believes, correct; and the clerk
5 shall give to the person filing the same a certificate of the fact
6 of the filing of such plat or plats, and of the quantity of land
7 contained therein, and, if there be more than one such plat,
8 the quantity contained in each. Upon the presentation of such
9 certificate to the auditor, and the payment into the treasury of
10 the proper proportion of the taxes and interest due on such
11 part or parts of the land or undivided interest in the land, so
12 sold, as the quantity so proposed to be redeemed bears to the
13 whole tract or part of a tract sold and purchased by the state
14 as aforesaid, the auditor shall issue his certificate of redemption
15 as hereinbefore provided for the part or parts of such real

16 estate or undivided interest in the land, so redeemed. If such
17 real estate be redeemed in separate parcels, the same shall be
18 entered and charged with taxes on the land books of the proper
19 county in separate parcels, as contained in the plats and de-
20 scriptions thereof filed and recorded in the office of the clerk of
21 the county court as aforesaid.

22 The auditor shall issue certificates of redemption for undi-
23 vided interests hereunder, and alter and correct the records in
24 his office to show the facts as its interests redeemed and unre-
25 deemed, and notify the county clerk and assessor accordingly.
26 Every such certificate of any assessor showing the former
27 owners of the undivided interests and the proportions formerly
28 owned or held by each as required in the last preceding section,
29 shall be likewise presented to the auditor and upon the payment
30 of the proportionate amount of tax due on such undivided in-
31 terest so to be redeemed according to the valuations placed
32 thereon by said assessor the auditor shall likewise issue his cer-
33 tificate of redemption the same as hereinbefore provided for.

34 Every such certificate so presented to the auditor shall be
35 by him carefully preserved in his office and the fact of such
36 redemption, with the amount of taxes so redeemed, the name
37 and interest of the person or persons so redeeming, and the
38 names and interest of owners of the remaining undivided in-
39 terests not so redeemed shall be certified by the auditor to the
40 commissioner of school lands of said county with the list of
41 lands purchased by the state for such year, and not redeemed,
42 that the remaining interests only may be disposed of by said
43 commissioner of school lands in the manner provided by law.
44 And in like manner it shall be the duty of the commissioner of
45 school lands to allow the redemption of any such portion of a
46 tract or tracts of land, or of a town or city lot, or of an undi-
47 vided interest in such tract, or lot after the list of lands so pur-
48 chased by the state and not redeemed from the auditor shall be
49 certified to him by the auditor, in the same manner and time as
50 is provided for the redemption of entire tracts or lots from him.

CHAPTER 92

(House Bill No. 45—By Mr. Strouss)

AN ACT to amend and reenact section twenty-three, article nine, chapter seventeen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to the redemption of any portion or portions of any undivided interest or interests in any tract or tracts of land or town or city lot, returned delinquent for nonpayment of taxes thereon.

[Passed March 8, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

23. Sheriff's lists of property delinquent for non-payment of taxes; examination by county court and certification to auditor; recordation by clerk of delinquent real estate; redemp-

Sec.

tion before sale by sheriff; payment of taxes on undivided interest; procedure when undivided interest is town or city lot; how value computed.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article nine, chapter seventeen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 23. The sheriff or collector of every county shall, at 2 or before the session of the county court at which the county 3 levy is to be laid, present to such court three lists, mentioned 4 in section twenty of this article, for examination. The court 5 having become satisfied of the correctness of such lists, or 6 having corrected them if erroneous, shall direct their clerk to 7 certify copies thereof to the auditor. The original lists shall 8 be preserved by the clerk in his office, and the list of real 9 estate delinquent shall be recorded by the clerk in a well- 10 bound book to be kept by him for the purpose. Such taxes 11 shall bear interest at the rate of three-fourths of one per cent per 12 month, and the sheriff shall collect the taxes and interests. If 13 any taxpayer, whose property is returned delinquent shall pay 14 the taxes and interest before the sale hereinafter provided for,

15 the sheriff shall give him a duplicate receipt one of which shall
16 be filed with the clerk of the county court, who shall note such
17 payment in the margin of the record of such delinquency. The
18 sheriff shall account for all delinquent tax collections in the
19 same way he accounts for other taxes.

20 Any person owning any part of a tract or parcel of land
21 or of any town or city lot, the whole of which has been returned
22 delinquent in the name of another, or any person owning any
23 undivided interest in a tract or parcel of land, or in any town
24 or city lot, assessed in its entirety to one, more or all of the
25 owners thereof, may, if he or they desire to pay the taxes on such
26 portion of said property or on his undivided interest in the same,
27 do so upon complying with the requirements of sections thirty-
28 two and thirty-three, article ten, chapter eleven in reference
29 to the redemption of land where the same has been sold and
30 purchased by the state: *Provided, however,* That if the part
31 upon which any such person desire to pay the tax shall be a
32 town or city lot and the same shall be designated by number or
33 other definite description upon any plat of such town or addition
34 thereto filed in the county clerk's office, and there shall be any
35 data on the land books where such land is charged from which
36 the sheriff can correctly ascertain the taxes properly charge-
37 able to such lot, it shall be his duty to compute the proper
38 proportion of taxes chargeable to such lot or part of lot, and
39 upon payment of the same such lot shall be discharged from
40 said delinquency without any other proceeding being necessary.

41 And if there be no such data on the land books where such
42 land or town or city lot is charged, such person so desiring
43 to redeem such portion or undivided interest in the same may
44 secure from the assessor of said county a certificate showing
45 a division of the values of the part or interest so to be re-
46 deemed, and the owner or owners thereof, from which the
47 sheriff shall compute the proper proportion of taxes upon the
48 part, lot, part of lot or undivided interest so to be redeemed. The
49 sheriff shall return all such certificates to the clerk of the county
50 court of his said county, where the same shall be filed for preser-
51 vation.

CHAPTER 93

(House Bill No. 264—By Mr. Reed)

AN ACT to amend chapters eleven and thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as heretofore amended, by amending and reenacting section nine, article four, chapter forty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to assessments of land, estates in land and undivided interests therein authorizing the separate assessment of undivided interests therein to the respective owners or groups of same on request to the county assessor, and validating former assessments of such interests, advertisements, delinquencies, sales, forfeitures, redemptions and tax deeds thereunder, so far as the state is concerned, in each such undivided interest; protecting the owner of an undivided interest therein who has or shall pay his portion of the taxes thereon, and rendering liable separately such undivided interest not in any way appearing on the land books for any year or years on which the taxes have not been or shall from time to time not be paid as if such an undivided interest were separately assessed as a separate tract, and facilitating the collection of taxes on an undivided interest where the tax on such undivided interest has not already been paid.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

9. Separate assessment of undivided interests in land; when so assessed, such interest considered as separate tract; validation of separate assessment heretofore made; revesting of title acquired by state through forfeiture or sale; rights of third party acquiring valid title; entry and back taxing of undivided interest; estoppel, when taxes unpaid; separate assessment of surface and sub-surface or timber rights; separate assessment of undivided interest in any such rights; definition of "owner;"

Sec.

laws as to taxation, redemption, etc., to apply to undivided interests; tax purchase by co-tenant of all interests, when no fiduciary relationship; in tax sales, title to only the part sold passes; redemption of state's title to part or all of tract from auditor; auditor's certificate of redemption; time of redemption; lien of redeemer of co-owner's interest; rights of parties in adjudicated or pending suits not affected by act; if part of act invalid, remaining part not affected.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, chapter forty, acts of the Legis-

lature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 9. Whenever in chapter eleven or chapter thirty-seven, the words land or lands or tract or tracts of lands, or lot or lots, or real estate, or part or parcel of a tract or lot, or estate or estates in land or aliquot part of land, are used, they shall be read to include an undivided interest in land and an undivided interest in any estate in land, and such interests may be by the assessor charged to such owner on the land books separately to each owner according to his interest therein and shall be subject to all the provisions of chapters eleven and thirty-seven in relation to assessments, advertisements, delinquencies, sales, forfeitures, redemptions and tax deeds as now apply to entire tracts, so far as the state is concerned. Each such undivided interest so separately assessed shall be considered as if such undivided interest were a separate tract. And any such assessment of an undivided interest heretofore made upon which the taxes shall have been duly paid, and any return of delinquency or sale for taxes based on such an assessment, shall, so far as the state is concerned, be treated and held as valid and sufficient; and in such case any and all title which has become vested in the state because of any forfeiture or sale of any such interest when so assessed shall be vested in the party who would have had the title and been entitled to said interest if this section had been valid and in force when such assessment was made, but such validation shall not extend to the deprivation of title of such a third party as shall have meanwhile acquired valid title thereto by virtue of other provisions of law. Upon proper showing to the assessor, such an undivided interest shall be entered on the land books at the instance of the owner or the state and be back-taxed as if it were a separate tract; but any person whose land or undivided interest therein is delinquent or as to which there is a purported assessment on which the taxes are unpaid for any of the years one thousand nine hundred twenty-six to one thousand nine hundred thirty-four, inclusive, shall be estopped from pleading at law or in equity any defect in the assessment, advertisement, delinquency, sale, forfeiture, redemption or tax deed so long as the taxes or any part of same on such land or undivided interest therein are unpaid. When any person be-

39 comes the owner of the surface, and another or others become
40 the owner of the coal, oil, gas, ore, limestone, fireclay, or other
41 minerals or mineral substances in and under the same, or of the
42 timber thereon, the assessor shall assess such respective estates,
43 or any undivided interest therein, to the respective owners
44 thereof, or to groups of same requesting such group assessment,
45 at their true and actual value, according to the rule prescribed
46 in this chapter. When any person or persons are, or become,
47 the owner or owners of any undivided interest or interests in
48 land, or in the surface, coal, oil, gas, ore, limestone, fireclay,
49 timber or other estate or estates therein, the owner or owners
50 of such undivided interest or interests shall have their land,
51 or estate or interest or undivided interest in such land, or in
52 such estate in land, entered on the land books of the county
53 in which it or a part of it is situated, and cause himself to be
54 charged with taxes legally levied on such interest or undivided
55 interest, but may on request of such owner to the assessor, and
56 without consent or acquiescence of the other joint owner or
57 owners of the other undivided interest or interests have such
58 undivided interest or interests assessed to him or them sepa-
59 rately and independently of the other undivided interest or
60 interests therein; and all such assessments of undivided in-
61 terests heretofore entered on the assessment books are hereby
62 validated in so far as the same are now in, or liable to vest in
63 the state. The words "owner or owners" as used in this section
64 shall include any claimant or claimants who now appear as
65 such on the assessment books or are entitled to have the land
66 or interest in land or interest in an estate in land claimed by
67 him or them to be entered and assessed for taxation. All acts
68 and parts of acts relating to the taxation, delinquency, sale,
69 procuring of tax deeds by individual purchasers, advertise-
70 ment, forfeiture and redemption of lands or real estate shall
71 also apply with the same force to said estates in land, and any
72 cotenant, coparcener or joint tenant, in the absence of satis-
73 factory proof of a fiduciary relationship, shall be entitled to
74 acquire by tax purchase for his own account the interest of
75 any, or all of his co-owners in any tract, lot, estate or parcel
76 of land, without being required to hold the same under any
77 constructive trust; and the burden of proof shall rest on any

78 person alleging such a constructive trust, and such a construc-
79 tive trust shall prima facie be non-existent.

80 In any tax sale by a sheriff, school commissioner or commis-
81 sioner of forfeited lands, only the tract, lot, estate, interest
82 or undivided interest proceeded against in that particular
83 instance shall pass to the purchaser, so far as the state is
84 concerned, so that any other estate, interest or undivided
85 interest in the same tract not embraced in such sale shall not
86 be affected by such sale, nor shall the title, or rights of the
87 owners or claimants of such other estate, interest, or undivided
88 interest in land be affected thereby.

89 When for any year or years after one thousand nine hun-
90 dred twenty-five, the undivided interest of any person shall not
91 have been entered and taxed on the land books, or where such
92 interest may have been assessed, and taxes thereon for any one
93 or more, or all, of said years shall not have been paid to the
94 state, such person, or his successor in title, or a co-owner of
95 same, shall be entitled to redeem his and/or any or all of his co-
96 owners' interest from the state, so far as the state has title or
97 claim thereto by reason of such non-entry or nonpayment of
98 taxes, and the same has not been vested in third persons under
99 the laws of West Virginia, upon application to the auditor in
100 writing, and payment of such amount as the auditor shall find
101 to be due the state on account of taxes that should have been
102 paid; and in such cases the auditor shall issue certificates of
103 redemption in manner and form provided by law for redemp-
104 tion of land, and such redemption shall thereafter estop the
105 state from asserting any claim to such interest on account of
106 such non-entry or nonpayment of taxes: *Provided, however,*
107 That redemption under this section shall be made prior to the
108 time the state shall sell the same, in any proceeding for the
109 purpose, or before January first, one thousand nine hundred
110 thirty-nine, whichever first occurs; but the failure of any per-
111 son, owning, claiming, or having the right to redeem any other
112 undivided interest in the land, or estate in land, to redeem as
113 aforesaid, shall in nowise affect, impair the right of, or preclude
114 any co-owner from redeeming his interest under this section.
115 The owner may be permitted by the auditor, upon application
116 in writing, to redeem said land or estate in land or his undi-
117 vided interest therein, to the extent that the title thereto has

118 not passed to strangers, by payment of such an amount as the
119 taxes on same respectively would have been with interest and
120 penalties. If one co-owner redeems the undivided interest of
121 one or more of his co-owners by paying the taxes on same as
122 above, such co-owner so redeeming shall be subrogated to the
123 lien of the state for so much of such taxes as should have been
124 paid by such other co-owner against the interest of such other
125 co-owner in such property. He shall lose his right to such lien,
126 however, unless within one year after such redemption by him
127 he shall file with the clerk of the county court his claim in
128 writing against such other co-owner, accompanied by the tax
129 receipt or a duplicate thereof. The clerk shall docket such
130 claim on the judgment lien docket in his office and properly
131 index the same. Such lien may be enforced as other liens are
132 enforced.

133 Nothing in this act shall affect the right of any party to
134 any action or suit heretofore finally adjudicated, or that may
135 be now pending or that may be instituted on or before the
136 first day of July, one thousand nine hundred thirty-five.

137 If any part of this act is, for any reason, declared unconsti-
138 tutional, the decision of the court shall not affect the validity
139 of any of the remaining portions.

140 All acts or parts of acts inconsistent herewith are hereby
141 repealed.

CHAPTER 94

(Senate Bill No. 30—By Mr. Spillers)

AN ACT to amend article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be known as section six, providing for the creation and validation of perpetual trusts for the care, preservation, maintenance, improvement or embellishment of cemetery or burial lots, public or private, and structures and growths thereon.

[Passed February 23, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

6. Purposes for which express trusts for perpetual care of cemetery or burial lot may be created; when trustee may use

Sec.

income for general upkeep; who may act as trustee; investment of funds.

Be it enacted by the Legislature of West Virginia:

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

Section 6. Express trusts may hereafter be created for the perpetual care, preservation, maintenance, improvement and/or embellishment of any cemetery or burial lot, public or private, and of the appurtenances of any such lot, including the erection, repair, preservation and/or removal of mausoleums, tombs, monuments, gravestones, fences, railings, walks, and/or other structure or structures thereon, and the planting, trimming, watering and/or removing of any tree, shrub or other plant or plants thereon. Any such trust heretofore created shall be valid. Any such trust whether created heretofore or hereafter, may provide for the accumulation of income for any of the aforesaid purposes, but if and when the accumulations so authorized exceed the replacement cost of all structures upon such lot, the trustee of such trust may, either with or without authorization of any court having jurisdiction in the premises, divert the excess thereover to the general upkeep of the cemetery. Any person or any association of persons or corporation authorized by the laws of this state to act as trustee, may serve as trustee of any such trust. The funds in any such trust shall be invested in the manner provided in the instrument creating same, but, in the absence of any such provisions, in the manner provided by article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one.

CHAPTER 95

(Senate Bill No. 37—By Mr. Randolph)

AN ACT to amend and reenact chapter fifty-seven, acts of the Legislature of West Virginia, regular session, one thousand

nine hundred thirty-three, relating to the rate of wages to be paid to workmen and mechanics employed in construction of public improvements.

[Passed February 22, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <p>1. Definitions of words and phases.</p> <p>2. A fair minimum rate of wages to be paid workmen on public improvement; how ascertained; printed on bidding blanks.</p> <p>3. Contract between public authority and contractor to provide for a wage rate not less than the one fixed.</p> <p>4. Wage rates for the several classes employed to be kept</p>	<p>Sec.</p> <p>5. posted at site of work.</p> <p>5. Penalty for violation of act by contractor; action by employee against contractor if paid less than minimum wage.</p> <p>6. Act not to apply to PWA contracts or those involving federal grant regulations.</p> <p>7. If section invalid, remainder not affected.</p>
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Be it enacted by the Legislature of West Virginia:

That chapter fifty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to the rate of wages to be paid to workmen and mechanics employed in construction of public improvements, be amended and reenacted, to read as follows:

Section 1. The term "public authority," as used in this act, shall mean any officer, board or commission of the state of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement. The term "construction," as used in this act, shall mean any construction, reconstruction, improvement, enlargement or repair of any public improvement. The term "public improvement," as used in this act, shall include all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or works constructed by the state of West Virginia or any political subdivision thereof. The term "locality," as used in this act, shall mean the county wherein the physical work upon any public improvement is being performed.

Sec. 2. Any public authority authorized to contract for a public improvement, shall, before advertising for bids for the construction thereof, fix and determine a fair minimum rate of wages to be paid by the successful bidder to the employees in the various branches or classes of the work, to be performed. The "fair minimum rate of wages," for the intents and

7 purposes of this act, shall be the rate of wage paid in the
8 locality as hereinbefore defined to the majority of workmen,
9 laborers or mechanics in the same trade or occupation. In the
10 event that it be determined that there is not a majority in the
11 same trade or occupation paid at the same rate, then the rate
12 paid to the greater number in such trade or occupation shall
13 be the minimum rate, provided such greater number constitutes
14 at least forty per cent of the laborers, workmen or mechanics
15 engaged in such trade or occupation; in the event that there is
16 less than forty per cent of the laborers, workmen or mechanics
17 engaged in the same trade or occupation in the same locality
18 paid the same rate, then the average rate paid such laborers,
19 workmen or mechanics in the same trade or occupation shall
20 be the minimum rate. The minimum rate of wages so fixed
21 shall be printed on the bidding blanks.

Sec. 3. In all cases where any public authority shall fix a
2 fair minimum rate or rates of wages as herein provided, the
3 contract executed between the public authority and the suc-
4 cessful bidder shall contain a provision requiring the successful
5 bidder and all his subcontractors to pay a rate or rates of
6 wages which shall not be less than the minimum rate or rates
7 of wages so fixed. It shall be the duty of the successful bidder
8 and all his subcontractors to strictly comply with such pro-
9 visions of the contract.

Sec. 4. A clearly legible statement of all minimum wage rates
2 to be paid the several classes of labor employed on the work
3 shall be kept posted in a prominent and easily accessible place
4 at the site of the work.

Sec. 5. Any contractor or subcontractor who shall violate the
2 wage provisions of such contract, or who shall suffer, permit or
3 require any employee to work for less than the minimum rate
4 of wages so fixed, shall be fined not less than fifty dollars nor
5 more than five hundred dollars. Any employee upon any public
6 improvement who is paid less than the fixed minimum rate of
7 wages applicable thereto may recover from the contractor or
8 subcontractor the difference between the fixed minimum rate
9 of wages and the amount paid to him, and in addition thereto
10 a penalty equal in amount to such difference.

Sec. 6. The provision of this act shall not apply to contracts

2 participated in by the United States public works administra-
3 tion or involving federal grant regulations.

Sec. 7. Each section of this act and every part thereof is
2 hereby declared to be an independent section or part of a sec-
3 tion, and if any section, subsection, sentence, clause or phrase
4 of this act shall for any reason be held unconstitutional, the
5 validity of the remaining phrases, clauses, sentences, subsec-
6 tions, and sections of this act shall not be affected thereby.

7 All acts and parts of acts in conflict with the provisions of
8 this act are hereby repealed.

CHAPTER 96

(Senate Bill No. 42—By Mr. Beacom, by request)

AN ACT to amend and reenact section three, article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, and to amend and reenact section four, article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, relating to forest fires, duties of commission and others in regard thereto, and payment for services rendered at forest fires.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

3. Duty and power of commission, chief forester and forest protectors in regard to forest fires; summoning or employing of assistance; rate per hour of payment; penalty for refusing to assist.
4. Compensation for forest fire

Sec.

fighters to be paid by the state; sworn report by forest protector to commission within twenty days, of fire fighters and those furnishing subsistence, supplies or transportation; how payment made.

Be it enacted by the Legislature of West Virginia:

That section three, article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, and section four, article nine, chapter twenty of the code of West Virginia, one

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

Section 3. The commission shall have authority and power 2 to protect the forests against injury or destruction by fire, and 3 it shall be the duty of the commission, the chief forester and 4 forest protectors, upon receiving notice of any such forest fire, 5 to employ all the necessary means to confine or extinguish the 6 same. For this purpose authority is given to destroy fences, 7 plow lands, or, in case of extreme emergency, to set backfires. 8 The chief forester and forest protectors may, under the general 9 supervision of the commission, in case of emergency, summon 10 or employ persons to assist in fighting fires, who shall be paid 11 for the actual time so employed in fighting fires, at a rate per 12 hour to be determined from time to time for each county by 13 the director of conservation: *Provided, however,* That such 14 rate per hour so to be paid shall not exceed the rate per hour 15 paid at such time for common labor by the state road commis- 16 sion in the county wherein such services are rendered. Any 17 person who shall fail or refuse to assist in the fighting of such 18 fires shall, unless such failure is due to physical inability, be 19 guilty of a misdemeanor, and, upon conviction, be fined not 20 less than ten nor more than twenty dollars for each offense.

Sec. 4. Compensation for all services rendered in confining, 2 extinguishing or suppressing forest fires, except compensation 3 for services rendered by the chief forester, district foresters and 4 forest protectors, shall be charged against the state of West 5 Virginia, and shall be paid out of the sum of fifty thousand 6 dollars annually appropriated under the provisions of section 7 nine, article nine, chapter twenty of the code of West Virginia, 8 one thousand nine hundred thirty-one, as amended by chapter 9 twenty-nine, acts of the Legislature, regular session, one thou- 10 sand nine hundred thirty-one. Each forest protector shall 11 render to the commission at Charleston, within twenty days 12 after the occurrence of a fire requiring payment for services 13 above mentioned out of said fund, a sworn statement with the 14 name or names of all persons who were summoned and assisted 15 in the confining, extinguishing or suppressing of any such forest 16 fire, the time spent by each, as well as the names of persons 17 who furnished subsistence or supplies, or transportation there- 18 for, and the amount of money due each for such services, sub-

19 sistance, supplies or transportation. Requisitions shall be issued
 20 and payment of the sums due for the services above mentioned
 21 shall be made in the same manner as is provided for the making
 22 of other expenditures by the commission under section ten,
 23 article seven, chapter twenty of the code of West Virginia, one
 24 thousand nine hundred thirty-one.

CHAPTER 97

(Senate Bill No. 49—By Mr. Fleming)

AN ACT to encourage state and national industrial recovery by cooperating with the national government in fostering fair competition and for other purposes.

[Passed March 8, 1935; In effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Existence of national and state emergencies declared; purposes of act and policies of state.
2. (a) Approval by Governor of codes of fair competition, after hearings and findings of certain facts; restrictions on code provisions; state codes, except as to administrative provisions, to conform to corresponding national codes; to be no duplication or overlapping of agencies or costs; governor, as condition of approval, to require conformity with national legislation and national codes.
- (b) Provisions of codes as to collective bargaining, hours of labor and rates of pay; governor to prescribe orders, etc., to maintain conformity with national codes; violation of such orders, etc., a violation of act.
- (d) Governor to cancel or modify code, order, etc., from time to time, to insure conformity to national code and national legislation.
- (e) Provisions of approved code to be standards of fair competition; violation of standards, a violation of act.
3. (a) Presumption as to national codes; effective as state codes.
- (b) Provisions of approved national code to be standards of fair competition; violation

Sec.

- of standards, a violation of act.
- (c) Powers and duties of code authority administering national code as a state code; power to levy and collect assessments to support administration.
 4. Provisions of approved agreements to be standards of fair competition; violation of standards, a violation of act.
 5. Approved codes, orders, etc., to be filed with secretary of state; secretary to maintain a file of all national codes.
 6. (a) Penalty for violation of any provision of act; conviction or acquittal under federal laws bar to prosecution hereunder; when such an acquittal not deemed an acquittal on the merits.
 - (b) Who may institute suit to prevent or restrain violations; jurisdiction.
 - (c) Duty of attorney general and prosecuting attorneys to enforce act; proceedings in name of state.
 7. Provisions of approved code exempt from provisions of anti-trust laws of state.
 8. Action by employee receiving wages below minimum fixed by code to recover difference between wages received and minimum wages; additional sum

Sec.		Sec.	
	as penalty; jurisdiction of action.		state or political subdivision to contain as to code compliance; provisions as to contracts or purchase orders.
9.	When copies of national code, orders, etc., prima facie evidence without certification or exemplification.	12.	Act in effect for two years unless NIRA sooner expires or is repealed.
10.	Governor may utilize national agencies and agree to use of state agencies by federal government, to carry out provisions of act.	13.	Definition of words and phrases.
11.	What invitation to bidders by	14.	If provision invalid, remainder not affected.
		15.	How act cited.

Be it enacted by the Legislature of West Virginia:

Section 1. The existence of a national emergency, productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people is hereby recognized, and it is hereby declared that such national emergency contributes to the existence of a similar state-wide emergency productive of similar conditions in this state, which affect the industry and commerce of this state and the welfare of its citizens, and that the existence of the state-wide emergency contributes to the existence of the national emergency. It is hereby declared to be the purposes of this act and the policies of this state, to supplement and to cooperate in effectuating national policy, to meet the emergency, to insure uniformity of state regulation of commerce with national regulations, to remove obstructions to the free flow of commerce which tend to diminish the amount thereof, and to provide for the general welfare, by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restricting of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products by increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry and conserving natural resources. The foregoing policies shall be the standards for, and limitations upon the exercise by the governor of powers provided for in the subsequent sections of this act.

Sec. 2. (a) Upon application to the governor by one or more trade or industrial associations or groups, the governor shall approve a code or codes of fair competition for the trade or industry or subdivision thereof represented by the applicant or applicants, if the governor after such hearing as he may deem necessary finds: (1) That such associations or groups impose no inequitable restrictions on admission to membership therein, and are truly representative of such trades or industries or subdivisions thereof; and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this act: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval of such code or codes: *Provided further*, That such code, or codes, except as to administrative provisions, conforms to the corresponding national code of fair competition and agreement, if any, upon all matters which are the subject of provisions of such national code and agreement, and that the administrative provisions do not provide for any agency duplicating, overlapping or conflicting with any provided for in such national code and agreement, and that no provision is contained therein for assessing costs of code administration on members of the trade or industry or subdivision thereof if assessment of costs of code administration is provided for in such national code or agreement: *Provided further*, That the provisions of any such code are not inconsistent with any national legislation designed to effectuate policies corresponding to those set forth in section one of this act. The governor shall, as a condition of his approval of any code, require that the provisions thereof shall conform to any such national legislation and impose such other conditions (including requirements for the making of reports and the keeping of accounts), for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and shall provide such exceptions to and exemptions from the provisions of such code, as he finds necessary to effectuate the policy and requirements herein declared: *Provided further*, That where there is a corresponding national code, he shall

42 impose conditions and provide exceptions and exemptions to
43 maintain the conformity of such code and of his approval
44 thereof with such corresponding national code and the order of
44-a approval thereof, respectively.

45 (b) Every code of fair competition approved under the pro-
46 visions of this act shall contain the following conditions: (1)
47 That employees shall have the right to organize and bargain
48 collectively through representatives of their own choosing, and
49 shall be free from the interference, restraint, or coercion of
50 employers of labor, or their agents, in the designation of such
51 representatives or in self-organization or in other concerted
52 activities for the purpose of collective bargaining or other
53 mutual aid or protection; (2) that no employee and no one seek-
54 ing employment shall be required as a condition of employment
55 to join any company union or to refrain from joining, organiz-
56 ing or assisting a labor organization of his own choosing; and
57 (3) that employers shall comply with the maximum hours of
58 labor, minimum rates of pay, and other conditions of employ-
59 ment approved or prescribed by the governor.

60 (c) The governor shall prescribe such orders, rules and regu-
61 lations as he finds necessary to carry out the purposes and pro-
62 visions of this act and to maintain conformity of such codes to
63 the corresponding national codes and agreements, if any. and
64 any violation of any such order, rule, or regulation shall be a
65 violation of this act.

66 (d) The governor shall, from time to time, cancel or modify
67 any code, order, approval, rule or regulation approved or issued
68 under this act as he finds necessary to effectuate the policy and
69 requirements herein declared and to maintain conformity to
70 the corresponding national code, agreement, order, approval,
71 rule, or regulation, and to national legislation designed to effec-
72 tuate policies corresponding to those set forth in section one of
73 this act, and such code of fair competition approved by the
74 governor shall contain an express provision to this effect, in
75 lieu of any similar corresponding provision in the corresponding
76 national code, if any.

77 (e) After the governor shall have approved any such code,
78 the provisions thereof shall be the standards of fair competition
79 for such trade or industry or subdivision thereof, and any viola-
80 tion of such standards shall be deemed an unfair method of
81 competition and a violation of this act.

Sec. 3. (a) National codes of fair competition for trades or
2 industries or subdivisions thereof shall be presumed to effectu-
3 ate the policy and requirements of this act and shall be effective
4 as state codes for such trades or industries or subdivisions
5 thereof with the same force and effect as if applied for and
6 approved pursuant to section two hereof.

7 (b) After a national code of fair competition shall have been
8 approved, issued or prescribed, the provisions of such code shall
9 be effective as the standards of fair competition for such trade
10 or industry or subdivision thereof and any violation of such
11 standards shall be deemed an unfair method of competition
12 and a violation of this act.

13 (c) Any code authority administering a national code of fair
14 competition effective under this act as a state code shall have
15 powers and duties for the administration of such code, cor-
16 responding to the powers and duties vested in it as a code
17 authority for the administration of a national code. When a
18 state code, or a national code effective as a state code, contains
19 provisions for the levy of assessments upon members of the
20 trade or industry or subdivision thereof, to support the ad-
21 ministration of the code and such levy has been duly approved
22 pursuant to the provisions of the applicable code, orders, rules,
23 and regulations, the code authority administering such code is
24 empowered to levy such assessments and to institute actions
25 therefor in its own name in the justices' courts and in other
26 courts of competent jurisdiction of this state.

Sec. 4. Agreements, as hereinafter defined, when duly entered
2 into or approved, shall be presumed to effectuate the policy
3 of this act and shall be effective as the standards of fair
4 competition for the persons, organizations, or groups, parties
5 thereto, and any violations of any such standards shall be
6 deemed an unfair method of competition and a violation of
7 this act.

Sec. 5. All codes of fair competition, orders, rules, and regu-
2 lations which are approved, issued or prescribed by the gover-
3 nor, pursuant to this act, shall be filed with the secretary of
4 state. The secretary of state shall maintain a file of all national
5 codes of fair competition.

Sec. 6. (a) Any violation of any provision of this act, shall
2 be a misdemeanor and upon conviction thereof, an offender shall

3 be subject to a fine of not more than five hundred dollars for
4 each offense, and each day such violation continues shall be
5 deemed a separate offense. A judgment of conviction or ac-
6 quittal on the merits under the laws of the United States shall be
7 a bar to any prosecution hereunder for the same act or acts.
8 Acquittal on the ground that the defendant was not engaged
9 in a transaction subject to federal regulation shall not be deemed
10 an acquittal on the merits for the purpose of this section.

11 (b) Any person whose interests may be affected, the attorney
12 general, his assistants, or any prosecuting attorney of this state,
13 may institute a suit to prevent and to restrain any violation of
14 this act. The circuit courts of this state and other courts of com-
15 petent jurisdiction shall have jurisdiction of such suits.

16 (c) It shall be the duty of the attorney general and also of
17 the several prosecuting attorneys of this state to enforce this
18 act by proceedings as herein provided for. For such purpose,
19 the attorney general may appear in person or by his duly
20 authorized deputy or assistant, or by any prosecuting attorney
21 of this state acting pursuant to his direction, in any court of
22 this state having jurisdiction, and conduct proceedings in the
23 name of the state.

Sec. 7. While any code or agreement under this act is in
2 effect, and for sixty days thereafter, such code or agreement,
3 and any action taken during such period complying with the
4 provisions of such code or agreement, shall be exempt from the
5 provisions of the anti-trust laws of this state.

Sec. 8. Any employer, subject to the provisions of any code
2 of fair competition or agreement, who pays any employee wages
3 at a rate below the minimum provided for therein shall be
4 liable to pay and shall pay to any such employee the difference
5 between the wages actually received by such employee and those
6 to which such employee would have been entitled if paid at the
7 minimum rate provided for by such code or agreement, and
8 such employee may bring an action to recover such sum. In any
9 such action the employer shall be liable to pay and shall pay
10 by way of damages an additional sum equal to the amount of
11 wages found to be due and payable to such employee. Justices
12 of the peace and the intermediate, common pleas and circuit
13 courts of this state shall have jurisdiction of the action pro-
14 vided for by this section.

Sec. 9. Any copy of a national code of fair competition, any
2 amendment thereof or any order, rule or regulation relating
3 thereto and any agreement which bears the imprint of the
4 United States government printing office, Washington, D. C.,
5 shall be admissible in evidence in the courts of this state, with-
6 out certification or exemplification of any kind, as prima facie
7 evidence of the contents of the original.

Sec. 10. To effectuate the policy and requirements of this act,
2 the governor is hereby authorized with the consent of the
3 national government to utilize such national agencies, officials
4 and employees, and to consent to the utilization of such state
5 and local officers and employees by the President and agencies
6 of the United States as the governor may deem necessary for
7 the administration of national codes of fair competition and
8 agreements in so far as they are effective in this state under
9 this act.

Sec. 11. In furtherance of the purposes of this act, all invita-
2 tions to bidders hereafter made by this state, any political sub-
3 division thereof, or any municipal corporation, or by an insti-
4 tution, agency, or department of any of them, shall contain a
5 provision to the effect that no bid shall be considered unless
6 it is accompanied by a certificate, duly executed by the bidder,
7 stating that the bidder is complying with and will continue
8 to comply with, each approved code of fair competition to which
9 he is subject, or, if he is engaged in any trade or industry for
10 which there is no such code, stating that as to such trade or
11 industry, he has become a party to and is complying with and
12 will continue to comply with an agreement as hereinafter de-
13 fined. All contracts and purchase orders authorized by this
14 state, any political subdivisions thereof, or any municipal cor-
15 poration, or by any department, agency, or institution of any
16 of them, shall contain a provision to the effect that the party
17 awarded any such contract or purchase order shall comply with
18 each approved code of fair competition to which he is subject,
19 and if engaged in a trade or industry for which there is no
20 such code, then as to such trade or industry, with an agreement,
21 as aforesaid.

Sec. 12. This act shall remain in effect for a period of two
2 years from the effective date hereof, unless prior to such date
3 the National Industrial Recovery Act as passed and amended by
4 the Congress of the United States or as may hereafter be passed

5 and amended by the Congress of the United States shall expire
6 or be repealed, in which event and at the time of such expiration
7 or appeal, this act shall cease to be in force and effect.

Sec. 13. As used in this act: The term, "national code of fair
2 competition," means any code of fair competition which has
3 been or may be approved, issued or prescribed by the President
4 of the United States or by any national agency duly authorized
5 for that purpose, as the standards of fair competition for any
6 trade, industry or subdivision thereof, if such code will meet
7 the requirements set forth in the clauses numbered one and two
8 of paragraph (a) and the clauses numbered one, two and three,
9 of paragraph (b) of section two of this act, and said term in-
10 cludes any limited code of fair competition so approved, issued
11 or prescribed.

12 The word, "agreement", means any agreement which the
13 President of the United States or any national agency duly
14 authorized for that purpose has entered into with, or approved,
15 between and among, persons engaged in a trade or industry,
16 labor organizations and trade or industrial organizations, or
17 groups, relating to any trade or industry, to aid in effectuating
18 the policy of this act, if such agreement will meet the require-
19 ments set forth in clauses one, two and three of paragraph (b)
20 of section two of this act.

21 The terms, "code of fair competition", "limited code of fair
22 competition", and "agreement", include all supplements,
23 amendments, modifications, exemptions and exceptions and
24 all orders, rules and regulations applying to such code or
25 agreement, or affecting its application or construction.

26 The word, "person", includes, but without limitation, any
27 individual, partnership, association, trustee, receiver, assignee
28 for the benefit of creditors, or corporations.

29 The word, "conform", means imposing identical duties, obli-
30 gations, rights and powers by the use of identical language, as
31 near as may be.

Sec. 14. If any provision of this act or the application thereof
2 to any person or circumstance is held invalid, the remainder of
3 this act, and the application of such provision to other persons
4 or circumstances, shall not be affected thereby.

Sec. 15. This act may be known and cited as "The West
2 Virginia Industrial Recovery Act."

CHAPTER 98

(House Bill No. 54—By Mr. Paull, by request)

AN ACT to amend article one, chapter forty-eight, of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section twenty-three, prohibiting ministers from soliciting the celebration of marriages and providing penalties for the violation thereof.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

23. Unlawful for minister to solicit celebration of marriage or to give any tip, present, etc., to have holders of marriage licenses brought or directed to

Sec.

him; penalty for violation; duty of prosecuting attorney to institute proceedings for revocation of minister's license to celebrate marriages.

Be it enacted by the Legislature of West Virginia:

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

Section 23. It shall be unlawful for any minister to solicit 2 in any manner the celebration of any marriage ceremony and 3 it shall be unlawful for a minister, by giving or making di- 4 rectly or indirectly, any tip, gift, present, subscription, con- 5 tribution, loan or anything of value to reward any person who 6 may accompany, bring, send or direct the holders of a mar- 7 riage license to such minister. The penalty for a violation of 8 the foregoing provisions shall be a revocation of the license 9 of such minister to celebrate marriages and no such license 10 shall thereafter be issued to him. It shall be the duty of the 11 prosecuting attorney of the county wherein the violation oc- 12 curs, to institute proceedings before the judge of the circuit 13 court of said county to revoke said license, after reasonable 14 notice thereof has been given to said minister. Said proceed- 15 ings may be in term or vacation and the court shall determine 16 all questions of law and fact.

CHAPTER 99

(Senate Bill No. 55—By Mr. Garrett)

AN ACT to amend and reenact section twenty, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-three, relating to the payment of premiums on official bonds.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 20.	Maximum payment by state or political subdivision of five dollars per thousand per annum	}	Sec. on premiums on official bonds and of seven and one-half dollars on sheriffs' bonds.
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Be it enacted by the Legislature of West Virginia:

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

Section 20. Every officer or employee who is paid a salary, 2 and who is required to give an official bond by virtue of the 3 provisions of this article, and who furnishes a surety com- 4 pany bond, shall be reimbursed by the state, county, munici- 5 pality or board of education, as the case may be, for the 6 premium charged by the surety company for such bond, in an 7 amount not exceeding five dollars per thousand per annum: 8 *Provided, however,* That the sheriff, of any county shall, with 9 respect to bonds given after the year one thousand nine hundred 10 thirty-five, be reimbursed for the premiums thereon, in an 11 amount not to exceed seven dollars and a half per thousand per 12 annum.

CHAPTER 100

(Senate Bill No. 70—By Mr. Sandridge, by request)

AN ACT making disposition of the exhibit of the State of West

Virginia, used at the Century of Progress Exhibition at Chicago.

[Passed March 9, 1935: in effect ninety days from passage. Approved by the Governor.]

Sec.

1. State exhibit at century of progress exhibition at Chicago committed to custody of board

Sec.

of governors of West Virginia university to be kept at Four-H camp at Jackson's Mill.

Be it enacted by the Legislature of West Virginia:

Section 1. The exhibit heretofore had at the century of progress exhibition, assembled and erected at Chicago by the commissioner of agriculture pursuant to the provisions of senate concurrent resolution six, regular session, one thousand nine hundred thirty-three, which has been returned to the state of West Virginia as provided by said resolution and is now located at the state four-H camp at Jackson's Mill, is hereby committed to the custody of the board of governors of West Virginia University, to be kept and preserved by said board at said state four-H camp at Jackson's Mill, as other property of the state located at said camp and subject to the same laws and regulations applicable thereto.

CHAPTER 101

(Senate Bill No. 121—By Mr. Fleming)

AN ACT to provide for the registration and protection of the names, badges, mottoes, buttons, decorations, charms, emblems, rosettes, and other insignia of associations, lodges, orders, fraternal societies, beneficial societies, or fraternal and beneficial societies or associations, historical, military, or veterans' organizations, labor unions, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof; to prohibit the wearing,

exhibition, display, or use of the same, by any person not entitled to wear, exhibit, display, or use the same; and fixing a penalty for the violation of this act.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <p>1. Registration in office of secretary of state of badge, button, etc., of fraternal society, etc.</p> <p>2. Secretary of state to furnish blank applications for registration; what organizations registration to include.</p> <p>3. Secretary of state to keep record of registration. alteration or cancellation.</p> <p>4. When registration or alteration</p>	<p>Sec.</p> <p>not permitted.</p> <p>5. Certificate of registration to petitioners.</p> <p>6. Penalty for wearing or using registered button, badge, etc., when not entitled to do so.</p> <p>7. Amount of secretary of state's fees; payment into state treasury.</p> <p>8. Inconsistent acts repealed.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. Any association, lodge, order, fraternal society, 2 beneficial association, or fraternal and beneficial society or asso- 3 ciation, historical, military or veterans' organization, labor 4 union, foundation, federation, or any other society, organiza- 5 tion or association, degree, branch, subordinate lodge, or 6 auxiliary thereof, whether incorporated or unincorporated, the 7 principles and activities of which are not repugnant to the 8 constitution and laws of the United States or this state, may 9 register, in the office of the secretary of state, a facsimile, 10 duplicate, or description of its name, badge, motto, button, 11 decoration, charm, emblem, rosette or other insignia, and may, 12 by reregistration, alter or cancel the same.

Sec. 2. Application for such registration, alteration, or can- 2 cellation, shall be made by the chief officer or officers of said 3 association, lodge, order, fraternal society, beneficial associa- 4 tion, or fraternal and beneficial society or association, his- 5 torical, military, or veterans' organization, labor union, founda- 6 tion, federation, or any other society, organization, or associa- 7 tion, degree, branch, subordinate lodge, or auxiliary thereof, 8 upon blanks to be provided by the secretary of state; and such 9 registration shall be for the use, benefit, and on behalf of all 10 associations, degrees, branches, subordinate lodges, and 11 auxiliaries of said association, lodge, order, fraternal society, 12 beneficial association, or fraternal and beneficial society or 13 association, historical, military, or veterans' organization, labor 14 union, foundation, federation, or any other society, organiza-

15 tion or association, degree, branch, subordinate lodge, or
16 auxiliary thereof, and the individual members and those here-
17 after to become members thereof, throughout this state.

Sec. 3. The secretary of state shall keep a properly indexed
2 record of the registration provided for by this act, which record
3 shall also show any altered or cancelled registration.

Sec. 4. No registration shall be granted or alteration per-
2 mitted to any association, lodge, order, fraternal society, bene-
3 ficial association, or fraternal and beneficial society or associa-
4 tion, historical, military, or veterans' organization, labor union,
5 foundation, federation, or any other society, organization, or
6 association, degree, branch, subordinate lodge, or auxiliary
7 thereof, having a name, badge, motto, button, decoration, charm,
8 emblem, rosette or other insignia, similar to, imitating, or so
9 nearly resembling as to be calculated to deceive, any other
10 name, badge, button, decoration, charm, emblem, rosette, or
11 other insignia whatsoever, already registered pursuant to the
12 provisions of this act.

Sec. 5. Upon granting registration as aforesaid, the secre-
2 tary of state shall issue his certificate to the petitioners, setting
3 forth the fact of such registration.

Sec. 6. Any person who shall wilfully wear, exhibit, display,
2 print, or use, for any purpose, the badge, motto, button, decor-
3 ation, charm, emblem, rosette or other insignia, of any such
4 association or organization, herein mentioned, duly registered
5 hereunder, unless he or she shall be entitled to use and wear
6 the same under the constitution and by-laws, rules and regula-
7 tions of such association and organization, shall be guilty of a
8 misdemeanor, and, upon conviction, shall be punished by a
9 fine not exceeding twenty dollars, and, in default of payment,
10 committed to jail for a period of not to exceed ten days.

Sec. 7. The fees of the secretary of state for registration,
2 alteration, cancellation, searches made by him, and certificates
3 issued by him, pursuant to this act, shall be the same as pro-
4 vided by law for similar services. The fees collected under
5 this act shall be paid by the secretary of state into the state
6 treasury.

Sec. 8. All acts or parts of acts inconsistent herewith are
2 hereby repealed.

CHAPTER 102

(Senate Bill No. 122—By Mr. Beacom)

AN ACT requiring owners of coal mines that have been abandoned to give ten days' notice to the conservation commission to reopen such old or abandoned mine wherein water or mine seepage has collected, providing for the proper manner to prevent destruction of fish in any stream, and providing penalties therefor.

[Passed February 27, 1935: In effect from passage. Approved by the Governor.]

Sec.

1. When old or abandoned mine shall not be reopened without ten days notice to director of conservation; what notice to

Sec.

state: reopening to be under direction of director: penalty for violation of act.

Be it enacted by the Legislature of West Virginia:

Section 1. Any person, without first giving to the director of conservation ten days' notice thereof in writing, shall not reopen for any purpose whatsoever, any old or abandoned mine wherein water or mine seepage has collected or become impounded or exists in such manner or quantity that upon the opening of such mine such water or seepage may drain into any stream or water course. Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of any such notice, the conservation commission shall send its representative or deputized agent to be present at the mine at the time designated in the notice for such opening, who shall have full supervision of the work of opening such mine with full authority to direct said work in such manner as to him seems proper and necessary to prevent the flow of mine water or seepage from such mine in such manner or quantity as will kill or be harmful to the fish in any stream or water course into which such mine water or seepage may flow directly or indirectly.

Any person failing to give notice as herein provided, or failing or refusing to submit to the supervision by the conservation commission of the work of any such opening, from which shall result harmful effects to or destruction of fish in any stream,

25 shall be guilty of a misdemeanor and upon conviction thereof
 26 shall be fined not less than five hundred dollars nor more than
 27 five thousand dollars.

CHAPTER 103

(Senate Bill No. 131—By Mr. Barnhart)

AN ACT to amend and reenact sections two, seven, nine, ten, eleven and fourteen, article thirteen, chapter thirty of the code of West Virginia, one thousand, nine hundred thirty-one, as amended by chapter ten, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to the registration of professional engineers.

[Passed March 1, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.		Sec.	
2.	Definitions of words and phrases.	10.	Expiration and renewal of certificate; fee.
7.	What application for registration to show; registration fee.	11.	When firm, corporation, etc., may engage in practice of professional engineering in state.
9.	Certificate of registration; registrant to use a seal of the design authorized by board, on plans, plats, etc.; unlawful use of seal.	14.	Who are exempted from registration.

Be it enacted by the Legislature of West Virginia:

That sections two, seven, nine, ten, eleven and fourteen, article thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter ten, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended to read as follows:

Section 2. The term "professional engineer", as used in
 2 this article, shall mean a person who, by reason of his knowl-
 3 edge of mathematics, the physical sciences, and the principles
 4 of engineering, acquired by professional education and prac-
 5 tical experience, is qualified to engage in engineering practice
 6 as hereinafter defined.

7 The practice of professional engineering within the meaning
 8 and intent of this article includes any professional service, such
 9 as consultation, investigation, evaluation, planning, design, or
 10 responsible supervision of construction or operation, in con-

11 nection with any public or private utilities, structures, build-
12 ings, machines, equipment, processes, work, or projects, wherein
13 the public welfare, or the safe-guarding of life, health or
14 property is concerned or involved, when such professional serv-
15 ice requires the application of engineering principles and data.
16 The term "board", as used in this article, shall mean the
17 state board of registration for professional engineers, provided
18 for by this article.

Sec. 7. Applications for registration shall be on forms pre-
2 scribed and furnished by the board, shall contain statements
3 made under oath showing the applicant's education and detail
4 summary of his technical work, and shall contain not less than
5 five references, of whom three or more shall have personal
6 knowledge of his engineering experience.

7 The registration fee for professional engineers shall be ten
8 dollars, five dollars of which shall accompany application, the
9 remaining five dollars to be paid upon issuance of certificate.
10 Should the board deny the issuance of a certificate of registra-
11 tion to any applicant the initial fee deposited shall be retained
12 as an examination fee.

Sec. 9. The board shall issue a certificate of registration
2 upon payment of registration fee as provided for in this article,
3 to any applicant who, in the opinion of the board, has satis-
4 factorily met all the requirements of this article. In case of
5 such registration, the certificate shall authorize the practice of
6 professional engineering in the branch or branches of engineer-
7 ing for which, in the opinion of the board, said applicant shows
8 proper qualifications.

9 The issuance of a certificate of registration by this board
10 shall be evidence that the person named therein is entitled to
11 all the rights and privileges of a registered professional engi-
12 neer, while the said certificate remains unrevoked or unex-
13 pired.

14 Each registrant hereunder shall upon registration obtain a
15 seal of the design authorized by the board, bearing the regis-
16 trant's name and the legend, "registered professional engi-
17 neer". Plans, specifications, plats, and reports, issued by a
18 registrant shall be stamped with the said seal during the life
19 of registrant's certificate, but it shall be unlawful for anyone
20 to stamp or seal any document with said seal after the certificate

21 of the registrant named thereon has expired or has been re-
22 voked, unless said certificate shall have been renewed or re-
23 issued.

Sec. 10. Certificates or registration shall expire on the last
2 day of the month of June following their issuance or removal
3 and shall become invalid on that date unless renewed. It shall
4 be the duty of the secretary of the board to notify every person
5 registered under this article, of the date of the expiration of his
6 certificate and the amount of the fee that shall be required for
7 renewal for one year; such notice shall be mailed at least one
8 month in advance of the date of the expiration of said certificate.
9 Renewal may be effected at any time during the month of June
10 by the payment of a uniform fee to be annually fixed by the
11 board, the amount thereof not to exceed five dollars. The failure
12 on the part of any registrant to renew his certificate annually in
13 the month of June as required above shall not deprive such
14 person of the right of renewal, but the fee to be paid for the
15 renewal of a certificate after the month of June shall be in-
16 creased ten per cent for each month or fraction of a month that
17 payment of renewal is delayed: *Provided, however,* That the
18 maximum fee for delayed renewal shall not exceed twice the
19 normal renewal fee.

Sec. 11. A firm, or a copartnership, or a corporation, or a
2 joint stock association may engage in the practice of profes-
3 sional engineering in this state only provided such practice is
4 carried on by professional engineers registered in the state.

Sec. 14. The following persons shall be exempted from regis-
2 tration under the provisions of this article, to-wit:

3 (a) A person not a resident of and having no established
4 place of business in this state, practicing or offering to prac-
5 tice herein the profession of engineering, when such practice
6 does not exceed in the aggregate more than sixty days in any
7 calendar year: *Provided,* That such person is legally qualified
8 by registration to practice the said profession in his own state
9 or country in which the requirements and qualifications for
10 obtaining a certificate of registration are not lower than those
11 specified in this article;

12 (b) A person not a resident of and having no established
13 place of business in this state, or who has recently become a
14 resident thereof, practicing or offering to practice herein for

15 more than sixty days in any calendar year the profession of
 16 engineering if he shall have filed with the board an application
 17 for a certificate of registration and shall have paid the fee
 18 required by this article. Such exemption shall continue only
 19 for such time as the board requires for the consideration of the
 20 applicant for registration: *Provided*, That such a person is
 21 legally qualified to practice said profession in his own state
 22 or country;

23 (c) An employee of a person holding a certificate of registra-
 24 tion in this state who is engaged in the practice of the pro-
 25 fession of engineering and an employee of a person exempted
 26 from registration by classes (a) and (b) of this section: *Pro-*
 27 *vided*, That such practice does not include responsible charge
 28 of design or supervision.

29 (d) Officers and employees of the government of the United
 30 States of America while engaged within the state in the prac-
 31 tice of the profession of engineering for said government.

CHAPTER 104

(Senate Bill No. 165—By Mr. Randolph)

AN ACT to amend and reenact chapter thirty-two of the code of
 West Virginia, one thousand nine hundred thirty-one, as
 amended by chapter forty-one, acts of the Legislature, first
 extraordinary session, one thousand nine hundred thirty-three,
 relating to speculative securities and fraudulent sales.

[Passed March 6, 1935; in effect ninety days from passage. Became a law without
 the approval of the Governor.]

ARTICLE I.

Sec.

1. Auditor as state commissioner of securities with power to employ assistants.
2. Definition of words and phrases.
3. To what classes of securities act does not apply.
4. To what transactions act does not apply.
5. Registration by qualification of securities to be sold in state, unless exempt or sold in an exempt transaction; register of securities to be kept in office

Sec.

- of commissioner; open to public inspection.
6. Manner of registration by qualification; information required from applicant before registration; verification by applicant of statements, etc.; conditions and restrictions on registration; prospectus to be approved by commissioner; fee for registration; what commissioner must find before registration; expiration and renewal of certificate; renewal fee; separate registration for different types.

- Sec. etc., of securities.
7. Examinations by commissioner; expense of examination to be paid by applicant or issuer.
 8. Limitation, by commissioner, of sale price of securities and commissions.
 9. Written consent under seal, by non-resident issuer of appointment of commissioner as attorney in fact for service of process or pleading; commissioner to send issuer copy of process or pleading.
 10. Revocation of certificate upon certain findings by commissioner; examination to ascertain facts; suspension of certificate during examination; notice of suspension to issuer and dealer.
 11. Securities issued in reorganization, etc., to be registered prior to offer of plan; information to be furnished commissioner.
 12. Registration of dealers or salesmen; what application for to show; commissioner as attorney for dealer for service of process; showing of good character and payment of fee; when partners and executive officers of corporation may act as salesmen; register of dealers and salesmen open to public inspection; renewals of registration; fee; changes in registration; examination of financial condition, etc., of dealers; copies of bills, confirmations, etc., of bank official or employee to be sent to president of institution and to commissioner of banking; registration revoked for failure; personal liability for loss; selling own contracts, if exempt; sale of undivided interests in mineral rights by unincorporated owner.
 13. Refusal or revocation of registration under section twelve after hearing, on notice; notice to dealer of charges against salesman; hearing after revocation; suspension of registration pending hearing; examination of books of dealer during suspension.
 14. Examination and audit of dealer or salesman, at his expense; receivership; jurisdiction of appointment of receiver.
 15. In indictment, etc., under article, need not negative exceptions:

- Sec. burden of proof as to exceptions and right to registration.
16. Securities issued for patent right, etc., to be placed and held in escrow.
 17. Fraudulent or fictitious sales of securities; injunction against; jurisdiction.
 18. Sales in violation of article voidable; liability of seller; action must be brought within one year; right of action lost upon refusal of refund.
 19. Court review of commissioner's orders; pleading and proof; when additional evidence, by court order, before commissioner.
 20. Fees turned into state treasury; commissioner to keep record of receipts and expenditures.
 21. Commission to make, amend and rescind rules and regulations to carry out act and to cooperate with federal government.
 22. When no presumption exists as to accuracy of documents filed with application for registration.
 23. Stipulation waiving compliance with provisions of chapter void.
 24. Penalty for fraudulent sales or schemes; form of indictment.
 25. Penalty for false statements or concealing material fact.
 26. Penalty for signing verified statement knowing it to contain false representation.
 27. Penalty for knowingly evading provisions of this chapter in selling securities.
 28. How act cited.

ARTICLE II.

- Sec.
1. When detailed description and title of subdivisions, cemetery lots, mineral claims, etc., involving future improvements, to be filed with commissioner; registration as salesman; sale by owner.
 2. Penalty for false advertising of merchandise, securities, service, etc.
 3. In indictment, need not negative exceptions; presumption as to knowledge by accused.
 4. If word, section, etc., invalid, remainder not affected.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

ARTICLE I.

Section 1. The auditor of this state is hereby made, and shall be, the commissioner of securities of this state, and he shall have power and authority to employ such assistants as are necessary for the administration of this chapter.

Sec. 2. When used in this chapter the following terms shall, unless the text otherwise indicates, have the following respective meanings:

(a) "Security" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, interests or shares in a patent right, copyright, trade mark, process or formula, collateral trust certificate, preorganization certificate or subscription, investment contract, certificate or share of or in an investment trust, certificate of deposit for a security, voting trust certificate, share, subscription or certificate of interest in oil, gas or other mineral rights, leaseholds, property or royalties, or any beneficial interest in or title to property, trustee shares, investment participating bonds and contracts covering or pertaining to the sale and/or purchase of securities on the installment plan, or any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing;

(b) "Person" shall include a natural person, a corporation, created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a syndicate, a joint stock company, a trust and any unincorporated organization. As used herein the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security;

(c) "Sale" or "sell" shall include every contract of sale or disposition of, attempt or offer to dispose of, or the solicitation of an offer to buy a security or interest in a security for value, including contracts and agreements whereby securities are sold, traded or exchanged for money, property and thing of value, or any transfer or agreement to transfer in trust or otherwise. Any security given or delivered with,

36 or as a bonus on account of any purchase of securities or
37 any other things shall be conclusively presumed to constitute
38 a part of the subject of such purchase and to have been sold
39 for value. "Sale" or "sell" shall also include an exchange,
40 an attempt to sell, an option of sale, a solicitation of a sale,
41 a subscription or an offer to sell, directly or by an agent,
42 or by a circular, letter, advertisement or otherwise;

43 (d) "Dealer" shall include every person other than a
44 salesman who, in this state engaged either for all or part of
45 his time, directly or through an agent, in the business of
46 selling any securities issued by such person or another person
47 or purchasing, exchanging or otherwise acquiring such secu-
48 rities from another for the purpose of reselling them or offer-
49 ing them for sale to the public, or offering, buying, selling,
50 or otherwise dealing or trading in securities as agent or
51 principal for a commission or at a profit, or buying, selling
52 or otherwise dealing or trading in securities listed on any
53 exchange or in consummating any contract between buyer
54 or seller of securities, or who deals in futures or differences
55 in market quotations of prices or value of any securities or
56 accepts margins on purchases or sales of pretended purchases
57 or sales of such securities, and shall include any person, group
58 or committee acting for or agreeing or proposing to act for
59 or in the interest of any security-holders in connection with
60 or under the terms of or proposed terms of a plan, agree-
61 ment, indenture, contract, deposit or trustee arrangement for
62 a reorganization, capitalization or any other plan or proposal
63 for the readjustment of finances of a person: *Provided*, That
64 the word "dealer" shall not include a person having no place
65 of business in this state who sells or offers to sell securities
66 exclusively to brokers or dealers actually engaged in buying
67 and selling securities as a business, and shall not include a
68 bank or trust company dealing in securities for the benefit
69 of its clients or depositors, and when such bank or trust
70 company is not attempting to profit by such transactions but
71 it shall be permitted to charge a reasonable service fee or
72 reasonable commission only sufficient to cover the cost of pro-
73 viding such service;

74 (e) "Issuer" shall mean and include every person who
75 issues or proposes to issue any security. Any natural person
76 who acts as a promoter for and on behalf of a corporation,

77 trust or unincorporated association or partnership of any
78 kind to be formed shall be deemed to be an issuer;

79 (f) "Salesman" shall include every natural person, other
80 than a dealer, employed or appointed or authorized by a
81 dealer or issuer to sell securities in any manner in this state.
82 The partners of a partnership and the executive officers of
83 a corporation or unincorporated organization or association
84 registered as a dealer shall not be salesman within the meaning
85 of this definition, nor shall such clerical or other employees
86 of an issuer or dealer as are employed for work to which
87 sale of securities is secondary and incidental and for which
88 they receive no commission or salary: *Provided, however*, That
89 the commissioner shall have authority to require registration
90 of any partner, executive officer or employee herein above
91 exempted if he determines that protection of the public necessi-
92 tates such registration;

93 (g) "Agent" shall mean salesman as hereinabove defined;

94 (h) "Broker" shall mean dealer as hereinabove defined;

95 (i) "Commissioner" shall mean the commissioner of
96 securities;

97 (j) The term "prospectus" shall mean and include any
98 prospectus, notice, circular, advertisement, letter or communi-
99 cation written or by radio, which offers any security for sale
100 except that:

101 (1) A communication shall not be deemed a prospectus if
102 it is proved that prior to or at the same time with such com-
103 munication a written prospectus, meeting the requirements of
104 this act, was sent or given to the person to whom the com-
105 munication was made, by the person making such communi-
106 cation or his principal; and,

107 (2) A notice, circular, advertisement, letter or communica-
108 tion in respect of a security shall not be deemed to be a
109 prospectus, if it states from whom a written prospectus meet-
110 ing the requirements of this act may be obtained and in addi-
111 tion does no more than identify the security, state the price
112 thereof and state by whom orders will be executed.

Sec. 3. Except as hereinafter expressly provided, the pro-
2 visions of this chapter shall not apply to any of the following
3 classes of securities:

4 (a) Any security issued or guaranteed by the United States

5 or any territory or insular possession thereof, or by the Dis-
6 trict of Columbia, or by any state or political subdivision or
7 agency thereof;

8 (b) Any security issued by a national bank or by any
9 federal land bank or by a corporation created or acting as
10 an instrumentality of the government of the United States
11 pursuant to authority granted by the congress of the United
12 States, or any security issued by provisions of the federal
13 laws: *Provided*, That such corporation is subject to super-
14 vision or regulation by the government of the United States;

15 (c) Any security issued or guaranteed either as to principal,
16 interest or dividend by a corporation owning or operating a
17 railroad engaged in interstate commerce and under supervision
18 of the interstate commerce commission;

19 (d) Any security issued by a person organized and oper-
20 ated exclusively for educational, benevolent, fraternal, charit-
21 able or reformatory purposes and not for pecuniary profit, and
22 no part of the net earnings of which inures to the benefit of
23 any person, private stockholder or individual;

24 (e) Any security which has been regularly and continuously
25 listed on the New York stock exchange, the New York curb
26 exchange or the Chicago stock exchange for a period of not
27 less than two years: *Provided*, That the commissioner shall
28 have power and authority at any time to withdraw such exemp-
29 tion for any security or group of securities so listed, pending an
30 investigation and hearing on securities included in such order.
31 A date for hearing shall be set by the commissioner not more
32 than twenty days after such withdrawal order. The commis-
33 sioner, by ruling, may grant this same exemption to securities
34 listed on any other exchange following an application from
35 such exchange and after an investigation and examination has
36 been made by him. The expense of all hearings, investigations
37 and examinations shall be paid by the exchange making appli-
38 cation or receiving a hearing;

39 (f) Any security issued by a state bank, trust company,
40 building and loan association or savings institution, incorpo-
41 rated under the laws of and subject to the examination, super-
42 vision and control of any state or territory of the United
43 States or any insular possession thereof;

44 (g) Any insurance or endowment policy or annuity con-

45 tract or optional annuity contract, issued by a person licensed
46 and supervised by the insurance commissioner of this state;
47 (h) Any security other than common stock outstanding and
48 in the hands of the public for a period of not less than three
49 years upon which no default in payment of principal, interest
50 or dividend exists and upon which no such default has occurred
51 for a continuous immediately preceding period of three years:
52 *Provided*, That the issuer of such securities has continued
53 such payments of principal, interest or dividends as provided
54 at the time of original issue: *Provided further*, That no plan
55 or proposal of recapitalization, reorganization, rearrangement
56 of capitalization, or other form of readjustment of issuer's
57 finances, has been made or a petition of voluntary or involun-
58 tary bankruptcy has been filed in any court by or for such
59 issuer within the preceding period of three years;
60 (i) Any securities bought or sold upon customers' orders:
61 *Provided*, That such securities are bought or sold on an
62 exchange which, at the time of such transaction, is registered
63 as a national exchange by the securities and exchange commis-
64 sion: *Provided further*, That no solicitation is made of the
65 orders so executed.

Sec. 4. The provisions of this chapter shall not apply to any
2 of the following transactions:

3 (a) Any judicial, executor's, administrator's, guardian's or
4 conservator's sale or any sale by a receiver or trustee in in-
5 solvency or bankruptcy;

6 (b) An isolated transaction in which any security is sold
7 offered for sale, subscription or delivery by the owner thereof,
8 such sale or offer for sale, subscription or delivery not being
9 made in the course of repeated and successive transactions of
10 a like character by such owner;

11 (c) A sale upon a customer's order of any security, if
12 sale is made to a person outside this state: *Provided*, That
13 such sale in another state is not a violation of the securities
14 laws of that state;

15 (d) The distribution by a corporation actively engaged in
16 the business authorized by its charter, of capital stock, bonds
17 or other securities to its stockholders or its other security-
18 holders as a stock dividend or other distribution out of earn-
19 ings or surplus;

20 (e) The sale, transfer or delivery to any broker or dealer:
21 *Provided*, That such broker or dealer is actually engaged in
22 buying and selling securities as a business;

23 (f) Bonds or notes secured by mortgage upon real estate
24 where the entire mortgage together with all of the bonds or
25 notes secured thereby are sold to a single purchaser at a
26 single sale;

27 (g) The issue and delivery of any security in exchange
28 for any other security of the same issuer pursuant to a right
29 or conversion entitling the holder of the security surrendered
30 in exchange to make such conversion: *Provided*, That the
31 security so surrendered has been registered under the provisions
32 of this act or was, when sold, exempt through the provisions
33 of said act;

34 (h) Subscriptions to capital stock made by incorporators
35 in a West Virginia corporation, such incorporators not exceed-
36 ing five in number: *Provided*, That no public offering is made
37 or commissions received for such subscriptions.

Sec. 5. No securities except of a class exempt under a
2 provision of section three hereof or unless sold in any trans-
3 action exempt under a provision of section four hereof shall
4 be sold within this state unless such securities shall have been
5 registered by qualification as hereinafter defined.

6 A record of the registration of securities shall be kept in a
7 register of securities to be kept in the office of the commis-
8 sioner, in which register of securities shall also be recorded
9 any order entered by the commissioner with respect to such
10 securities. Such register and all information with respect to
11 the securities registered therein shall be open to public in-
12 spection.

Sec. 6. All securities required by this article to be
2 registered before being sold in this state, shall be registered
3 only by qualification in the manner provided by this section.

4 The commissioner shall receive and act upon applications
5 to have securities registered by qualification, and may pre-
6 scribe forms on which he may require such application to be
7 submitted. Applications shall be in writing and shall be
8 duly signed by applicant and sworn to by any person having
9 knowledge of the facts, and filed in the office of the com-
10 missioner and may be made either by the issuer of the

11 securities for which registration is applied or by any registered
12 dealer desiring to sell the same within the state.

13 The commissioner may require the applicant to submit to
14 him the following information respecting the issuer or the
15 security or the person or persons obligated by such security,
16 and such other information as he may deem necessary to
17 enable him to ascertain whether such securities shall be
18 registered pursuant to the provisions of this section:

19 (a) The name under which the issuer is doing or intends
20 to do business;

21 (b) The name of the state or other sovereign power under
22 which the issuer is organized;

23 (c) The location of the issuer's principal business office,
24 and if the issuer is a foreign or territorial person, the name
25 and address of its agents in the United States authorized to
26 receive notices;

27 (d) The names and addresses of the directors or persons
28 performing similar functions, and the chief executive, financial
29 and accounting officers chosen or to be chosen if the issuer
30 be a corporation, association, trust or other entity, of all
31 partners, if the issuer be a partnership, and of the issuer,
32 if the issuer be an individual, and of the promoters in the
33 case of a business to be formed, or formed within two years
34 prior to the filing of the application;

35 (e) Names and addresses of the underwriters;

36 (f) The names and address of all persons, if any, owning
37 of record or beneficially, if known, more than ten per cent
38 of any class of stock of the issuer or more than ten per cent
39 in the aggregate of the outstanding stock of the issuer as of
40 a date within twenty days prior to the filing of the applica-
41 tion;

42 (g) The amount of securities of the issuer held by any
43 person specified in subsections (d), (e) and (f) of this
44 section, as of a date within twenty days prior to the filing
45 of the application, and, if possible, as of one year prior there-
46 to, and the amount of the securities, for which the applica-
47 tion is filed, to which such persons have indicated their in-
48 tent to subscribe;

49 (h) The general character of the business actually trans-
50 acted or to be transacted by the issuer;

51 (i) A statement of the capitalization of the issuer, includ-
52 ing the authorized and outstanding amounts of its capital
53 stock and the proportion thereof paid up, the number of
54 classes of shares in which such capital stock is divided, par
55 value thereof, or, if it has no par value, the stated or assigned
56 value thereof, a description of the respective voting rights,
57 preferences, conversion and exchange rights, rights to
58 dividends, profits, or capital of each class, with respect to
59 each other class, including the retirement and liquidation
60 rights or values thereof;

61 (j) A statement of the securities, if any, covered by
62 options outstanding or to be created in connection with the
63 securities to be offered;

64 (k) The amount of capital stock of each class issued or
65 included in the shares of stock to be offered;

66 (l) The amount of funded debt outstanding and to be
67 created by the securities to be offered and a description of
68 such;

69 (m) The specific purposes, in detail, and the approximate
70 amounts to be devoted to such purposes so far as determin-
71 able, for which the securities to be offered are to supply
72 funds, and if the funds are to be raised in part from other
73 sources the amounts thereof and the sources thereof shall be
74 stated;

75 (n) The remuneration, paid or estimated to be paid, by
76 the issuer or its predecessors, directly or indirectly during
77 the past year, and ensuing year, to all officers and directors
78 and to any other individuals if required by the commis-
79 sioner;

80 (o) The price at which it is proposed that the securities
81 shall be offered to the public or the methods by which such
82 price is computed and a detailed statement as to all com-
83 missions paid or to be paid, directly or indirectly, in respect
84 of the sale of the securities to be offered. Commissions shall
85 include all cash, securities, contracts or anything else of
86 value, paid, to be set aside, disposed of, or understandings
87 with or for the benefit of any person in connection with
88 the sale of such securities;

89 (p) The amount or estimated amounts, itemized in reason-

90 able detail, of all expenses other than commissions specified
91 in subsection (o) of this section;

92 (q) The amount paid within two years preceding the
93 filing of the application or intended to be paid to any pro-
94 moter and the consideration for any such payment;

95 (r) Full particulars of the nature and extent of the
96 interest, if any, of every director, principal executive officer,
97 and of every stockholder holding more than ten per cent
98 of any class of stock or more than ten per cent in the
99 aggregate of the stock of the issuer, in any property acquired,
100 not in the ordinary course of business of the issuer, within
101 two years preceding the filing of the application or proposed
102 to be acquired at such date;

103 (s) The dates of and parties to, and the general effect
104 concisely stated of every material contract made, not in the
105 ordinary course of business, which contract is to be executed
106 in whole or in part at or after the filing of the application
107 or which contract has been made not more than two years
108 before such filing;

109 (t) A detailed balance sheet as of a date not more than
110 ninety days prior to the date of the filing of the application,
111 and in the case of a new corporation or organization a pro
112 forma balance sheet shall be submitted showing what the
113 conditions of the company will be after the financing is com-
114 pleted and as of a date when the company begins business
115 as authorized by its charter. Additional details and infor-
116 mation regarding any item or items in the balance sheet shall
117 be submitted as prescribed by the commissioner. There shall
118 also be submitted a profit and loss statement of the issuer
119 showing earnings and income, the nature and source thereof,
120 and the expenses and fixed charges in such detail and such
121 form as the commissioner shall prescribe, giving an estimated
122 profit and loss statement for a new company or organiza-
123 tion;

124 (u) A copy of any agreement or agreements made or to
125 be made, including contracts or options effective at the time
126 of registration or at some future date if such are in con-
127 nection with, refer to or material to the sale of securities,
128 (no public disclosure shall be required of any portion of
129 any such contracts or agreements if the commissioner deter-

130 mines that the disclosure of such portion would impair the
131 value of the contract or agreement and would not be neces-
132 sary for the protection of the investors), a copy of the articles
133 of incorporation with all amendments thereof and of the
134 existing by-laws or instruments corresponding thereto, what-
135 ever the name, if the issuer be a corporation, a copy of all
136 instruments by which the trust is created or declared, if the
137 issuer is a trust, a copy of the articles of partnership or
138 association and all other papers pertaining to its organiza-
139 tion, if the issuer is a partnership, unincorporated associa-
140 tion, joint stock company, or any other form of organiza-
141 tion;

142 (v) A detailed statement prescribed by the commissioner
143 of all individuals who are officers, or who are employed as
144 promoters by the issuer, underwriter or dealer in securities;

145 (w) A copy of prospectus;

146 (x) Any other information as required and prescribed by
147 the commissioner as he may deem necessary and pertinent
148 in determining whether the applicant or issuer shall be
149 registered pursuant to the provisions of this section.

150 All of the statements, exhibits and documents of every
151 kind required by the commissioner under this section except
152 properly certified public documents, shall be verified by the
153 oath of the applicant or of the issuer in such manner and
154 form as may be prescribed by the commissioner.

155 The commissioner shall have power and authority to place
156 such conditions, limitations and restrictions on any registra-
157 tion as may be necessary to carry out the purposes of this
158 chapter.

159 The commissioner may require the use of a prospectus by
160 registered issuer and may require the printing therein of all
161 or any parts of the information required by this section to
162 be submitted with the application and may designate by
163 ruling how such prospectus may be used. Every prospectus
164 used, distributed or made available in this state must first
165 have the approval of the commissioner.

166 At the time of filing of application the applicant shall
167 pay to the commissioner one twentieth of one per cent of
168 the aggregate par value or offering price, whichever is
169 greater, of the securities to be sold in this state for which

170 the applicant is seeking registration, but in no case shall
171 such fees be less than twenty-five dollars, nor more than three
172 hundred dollars. In case of a stock having no par value,
173 the offering price to the public shall be deemed to be the
174 par value of such stock.

175 If, upon examination of any application, the commissioner
176 shall find that the sale of the security referred to therein
177 will not be fraudulent or will not work or tend to work a
178 fraud upon the purchaser, or that the enterprise or business
179 of the issuer is not based upon unsound business principles
180 and that it is in every respect equitable, just and fair to
181 the investor and after all provisions of this article have
182 been complied with, the commissioner shall record the regis-
183 tration of such security in the register of securities and
184 thereupon such security so registered may be sold by the
185 issuer or by any registered dealer who has notified the com-
186 missioner of his intention to do so, in the manner hereinafter
187 provided, subject, however, to the further order of the com-
188 missioner as hereinafter provided.

189 Every registration under this section shall expire on the
190 thirtieth day of June in each year, but new registrations
191 for the succeeding year shall be issued upon written appli-
192 cation, the applicant furnishing the commissioner, upon re-
193 quest, information as hereinbefore provided in this section,
194 and by paying to the commissioner a fee of one twentieth
195 of one per cent of the aggregate par value or offering price,
196 whichever is greater, of the securities to be sold in this state
197 within the year authorized by registration, but in no case
198 shall the fee be less than twenty-five dollars or more than
199 three hundred dollars. Applications for renewals must be
200 made not less than thirty days before the first day of the
201 ensuing registration year, otherwise they shall be treated as
202 original applications.

203 Each different type, class, series or kind of securities not
204 exempt by sections three and four of this article shall require
205 separate registration and the same requirements and regula-
206 tions shall apply to each, and the registration fee paid by
207 each. This does not apply to a serial issue of securities
208 where the entire amount is issued at one time and where
209 the only difference is in the maturity or interest date.

210 Investment trust securities shall be registered separately
211 as herein provided where there is any change or difference
212 from the registered security other than the maturity date of
213 the trust.

Sec. 7. Every issuer whose securities have been registered
2 for sale under section six of this article shall be subject to
3 examination as to its methods of business and examination of
4 its books and records by the commissioner or by his duly
5 authorized representative at any time the commissioner may
6 deem it advisable as a safeguard to investors, and any appli-
7 cant for registration shall also be subject to such examination.
8 The expense of such examination shall be paid by such appli-
9 cant or issuer and the failure or refusal of such applicant or
10 issuer to pay such expense upon the demand of the commis-
11 sioner shall work a forfeiture of its right to registration in
12 this state.

Sec. 8. The commissioner may limit the price at which
2 securities, to be registered under section six hereof, either of
3 par or no par value, may be sold, and may prescribe the amount
4 of commission to be allowed on such sales, but this in no
5 instance to exceed twenty per cent of the sale price, such per-
6 centage to include all expenses incidental to such sale including
7 advertising or any other expense chargeable in any way to the
8 sale of such securities.

Sec. 9. Upon any application for registration by qualifica-
2 tion, under section six hereof, made by an issuer or registered
3 dealer, where the issuer is not domiciled in this state, there
4 shall be filed with such application the irrevocable written
5 consent of the issuer that suits and actions growing out of
6 the violation of any provision or provisions of this chapter,
7 may be commenced against it in the proper court of any
8 county in this state in which a cause of action may arise or
9 in which the plaintiff may reside, by the service of any process
10 or pleading authorized by the laws of this state, on the com-
11 missioner of securities, and by the acceptance of such service
12 of process by the commissioner for and on behalf of such issuer,
13 such consent stipulating and agreeing that such service of
14 such process or pleading on such commissioner, or such accept-
15 ance by the commissioner, shall be taken and held in all courts

16 to be as valid and binding as if due service had been made
17 upon the issuer himself and said written consent shall be authen-
18 ticated by the seal of said issuer, if it has a seal, and by the
19 acknowledged signature of a member of the copartnership or
20 company, or by the acknowledged signature of any officer of
21 the incorporated or unincorporated association, duly authorized
22 by the resolution of the board of directors, trustees or managers
23 of the corporations or association, and shall in such case be
24 accompanied by a duly certified copy of the resolution of the
25 board of directors, trustees or managers of the corporation or
26 association, authorizing the officers to execute the same, but no
27 such process shall be served on the commissioner or accepted
28 by him less than ten days before the return thereof. In case
29 any process or pleadings mentioned in this chapter are served
30 upon the commissioner, or accepted by him, it shall be by dupli-
31 cate copies, one of which shall be filed in the office of the com-
32 missioner and another immediately forwarded by registered
33 mail to the principal office of the issuer against which such
34 process or pleadings are directed.

Sec. 10. The commissioner may revoke the registration of
2 any security by entering an order to that effect, with his find-
3 ings in respect thereto, if upon examination into the affairs
4 of the issuer of such security it shall appear that the issuer:
5 (1) Is insolvent; or (2) has violated any of the provisions of
6 this chapter or any order of the commissioner of which such
7 issuer has notice; or (3) has been or is engaged or is about
8 to engage in fraudulent transactions; or (4) is in any other
9 way dishonest or has made any fraudulent representations in
10 any prospectus, or in any circular or other literature that has
11 been distributed concerning the issuer or its securities; or
12 (5) is of bad business repute; or (6) does not conduct its
13 business in accordance with law; or (7) that its affairs are in
14 an unsound condition; or (8) that it would be detrimental to
15 the interests of investors or prospective investors of the issuer
16 to permit the continued sale of such securities already regis-
17 tered.

18 In making such examination the commissioner shall have
19 access to and may compel the production of all the books and
20 papers of such issuer, and he or his deputy commissioner may
21 administer oaths to and examine the officers of such issuer or
22 any other person connected therewith as to its business and

23 affairs, and may also require of such issuer any information or
24 exhibits provided for in section six of this article.

25 If any issuer shall refuse to permit an examination to be
26 made by the commissioner, it shall be proper ground for revo-
27 cation of registration.

28 The commissioner may enter an order suspending the right
29 to sell securities pending an investigation: *Provided*, That the
30 order shall state the commissioner's grounds for taking such
31 action.

32 Notice of the entry of such order shall be given personally
33 or by telephone, telegraph, or mail to the issuer and every
34 registered dealer who shall have notified the commissioner of
35 an intention to sell such security.

Sec. 11. Securities issued or to be issued to the security
2 holders or creditors of any person in the process of a bona fide
3 reorganization, recapitalization, merger, rearrangement of
4 capitalization or any other plan or proposal for the readjust-
5 ment of finances of such person including such plans resulting
6 from receivership or bankruptcy of such person shall be
7 registered as provided by section six of this article.

8 Registration must be made prior to the time of solicitation
9 and prior to the offer or proposal of any plan, agreement, con-
10 tract, indenture, deposit or trustee arrangement to the security
11 holders or creditors of such person.

12 The commissioner may require for such registration, informa-
13 tion and exhibits as provided in section six hereof for the
14 person issuing or to issue the new securities and also the person
15 having securities to be included in or affected by any such new
16 issue or proposed issue. The commissioner may also require
17 information about or related to any plan, indenture, agreement,
18 contract, deposit or trustee arrangement offered or proposed
19 and the commissioner may require any changes to be made in
20 such plan, indenture, agreement, contract, deposit or trustee
21 arrangement as he deems necessary for the protection of the
22 interests of investors.

Sec. 12. No dealer or salesman shall engage in business
2 in this state as such dealer or salesman or sell any securities,
3 including securities exempted in section three of this article,
4 or transact a brokerage or trading business or doing a
5 business of buying or selling securities listed or traded in

6 on any stock exchange, except in transactions exempt under
7 section four of this article, unless he has been registered as
8 a dealer or salesman in the office of the commissioner pursuant
9 to the provisions of this section.

10 An application for registration as a dealer shall be filed
11 in writing with the commissioner, in such form as he may
12 prescribe, duly verified by oath, which shall state the prin-
13 cipal office of the applicant, wherever situated, and the loca-
14 tion of the principal office and all branch offices in this state,
15 if any, the name or style of doing business, the names,
16 residences and business addresses of all persons interested in
17 the business as principals, copartners, officers and directors,
18 specifying as to each his capacity and title, the general plan
19 and character of business and the length of time the dealer
20 has been engaged in business, a financial statement in detail
21 showing the actual conditions of the dealer, classification and
22 condition of all margin or installment accounts, partner,
23 officer and director accounts, a list of securities sold in
24 West Virginia during the preceding year and so far as
25 possible a list of those to be sold or offered for sale when
26 the registration is completed, and such information to be
27 given in such detail as the commissioner may require. The
28 commissioner may also require such additional information
29 as to the applicant's previous history, record and associa-
30 tion, as he may deem necessary to establish the good repute
31 in business of the applicant.

32 Every dealer shall file with his application an irrevocable
33 written consent to the service of process upon the commissioner
34 of securities in action against such dealer in manner and
35 form as hereinabove provided in section nine of this article.

36 If the commissioner shall find that the applicant is of
37 good repute, is solvent and has complied with the provisions
38 of this section including the payment of the fee hereinafter
39 provided he shall register such applicant as a dealer.

40 Upon the written application of a registered dealer and
41 general satisfactory showing as to good character and the
42 payment of the proper fee the commissioner shall register
43 as salesman of such dealer such natural persons as the dealer
44 may request.

45 The partners of a partnership and the executive officers
46 of a corporation or other association registered as a dealer

47 may act as salesmen during such time as such partnership,
48 corporation or association is so registered without further
49 registration as salesmen. The salesmen registered by a dealer
50 may sell any securities for which the dealer registering such
51 salesmen is registered.

52 The names and addresses of all persons approved for
53 registration as dealers or salesmen and all orders with respect
54 thereto shall be recorded in a register of dealers and sales-
55 men kept in the office of the commissioner, together with all
56 information and data secured by the commissioner relative
57 to such dealers or salesmen, which shall be open to public
58 inspection. Every registration under this section shall expire
59 on the thirtieth day of June in each year, but new registrations
60 for the succeeding years shall be issued upon written appli-
61 cation and upon payment of the fee as hereinafter provided,
62 and by filing of further statements or furnishing any further
63 information specifically required by the commissioner. Ap-
64 plications for renewals must be made not less than thirty
65 days before the first day of the ensuing year, otherwise they
66 shall be treated as original applications. The fee for such
67 registration and for each annual renewal shall be twenty-
68 five dollars for each dealer and five dollars for each salesman.

69 Changes in registration occasioned by changes in personnel
70 of a partnership or in the principals, copartners, officers
71 or directors of any dealer may be made from time to time
72 by written application setting forth the facts with respect to
73 such change.

74 Every dealer registered under this section shall be sub-
75 ject to examination as to his financial condition or methods
76 of business by the commissioner or by his duly authorized
77 representative at the time the commissioner may deem it
78 advisable, but not more than one such examination shall be
79 made within each fiscal year. The expense of the examination
80 shall be paid by the applicant and the failure or refusal of
81 such applicant to pay such expense upon the demand of the
82 commissioner shall work a forfeiture of his right to registra-
83 tion under this section.

84 Every dealer or salesman shall send a copy of all bills,
85 confirmations or orders on transactions with any employee or
86 active official of any bank, trust company or savings insti-
87 tution, to the president of the institution by which the per-

88 son is employed or in which the person is an official, and a
89 copy shall also be sent to the commissioner of banking of
90 the state of West Virginia. These copies of bills, confirma-
91 tions or orders shall be in the same form and detail as the
92 original and shall be sent at the same time as the original.
93 Any dealer or salesman violating the provisions of this para-
94 graph shall have his registration revoked by the commissioner
95 and shall be liable to such bank, trust company or savings
96 institution for any losses or damages incurred in any case
97 where such dealer or salesman failed to comply with this
98 provision.

99 This section shall not apply to a person or its agents selling
100 exclusively its own contracts, if such contracts are exempt
101 from this act by section three, paragraph (g) of this chapter.

102 This section shall not apply to an unincorporated person
103 selling exclusively undivided interests in oil, gas or other
104 mineral rights if such unincorporated person is the bona fide
105 owner of the lease, interest, royalty or property in which he
106 is selling interests.

Sec. 13. Registration under section twelve of this article
2 may be refused or any registration granted may be revoked by
3 the commissioner if, after a reasonable notice and a hearing, the
4 commissioner determines that such applicant or registrant so
5 registered: (1) Has violated any provisions of this chapter or
6 any regulation made hereunder; (2) has made a material false
7 statement in the application for registration; (3) has been
8 guilty of a fraudulent act in connection with any sale of secu-
9 rities, or has been or is engaged or is about to engage in making
10 fictitious or pretended sales or purchases of any of such secu-
11 rities or has been or is engaged or is about to engage in any
12 practice or sales of securities which is fraudulent or in violation
13 of the law; (4) has demonstrated his unworthiness to transact
14 the business of dealer or salesman; (5) has been convicted of a
15 felony or any misdemeanor in which an essential element is
16 fraud; (6) has made any misrepresentations or false state-
17 ment to, or concealed any essential or material facts from any
18 person in the sale of a security to such person; (7) has failed
19 to account, to persons interested, for all money and property
20 received; (8) has not delivered, after a reasonable time, to
21 persons entitled thereto, securities held or agreed to be delivered
22 by the dealer or broker, as and when paid and due to be de-

23 lived; (9) has made or is making misrepresentation of any
24 essential or material fact to the commissioner or has violated
25 the provisions of the laws of foreign state regulating the sale
26 of securities therein; (10) is insolvent; (11) is selling, or
27 offering for sale securities through any solicitor and agent not
28 registered in compliance with the provisions of this act; (12)
29 has been refused a license in any state or that any license in
30 any state theretofore granted the applicant or registrant or
31 any officer, director, member, partner, manager or trustee
32 thereof has been cancelled, suspended, revoked or withdrawn
33 for fraudulent conduct or violation of the law of such state
34 regulating the sale of securities therein; (13) is or has been
35 using practices in the sale of securities that work or tend to
36 work a fraud; or (14) has refused to furnish or give pertinent
37 data concerning the business of such dealer or salesman to the
38 commissioner.

39 In cases of charges against the salesman notice thereof shall
40 also be given the dealer employing such salesman.

41 The commissioner shall immediately notify the dealer or
42 salesman his registration has been revoked, giving the reasons
43 therefor and set a date, not later than ten days following the
44 date of the revocation order, for a hearing and pending the
45 hearing the commissioner shall have the power to order the
46 suspension of such dealer's or salesman's registration. Such re-
47 vocation is to become permanent twenty days following the
48 date of the original revocation order unless otherwise specified
49 or ordered by the commissioner. At the time that such revocation
50 order becomes permanent, the commissioner shall issue a final
51 order thereon and record with his findings in the register of
52 dealers and salesmen.

53 During the period of suspension and pending a hearing the
54 commissioner shall have access to and may make a thorough
55 examination of all books and papers of such dealer or salesman
56 and he or his deputy may administer oaths to and examine the
57 officer of such dealer or any other person connected therewith,
58 as to its business and affairs. If any dealer or salesman shall
59 refuse to permit such examination to be made by the commis-
60 sioner it shall be sufficient grounds for revocation of registra-
61 tion.

Sec. 14. The commissioner may make an examination, investi-
2 gation and audit of any dealer or salesman including dealer

3 and salesman whose registration has been suspended or revoked
4 and at the expense of such dealer or salesman. If, upon exami-
5 nation, it is found that the dealer is insolvent or if the records
6 are in such condition that the commissioner is unable to deter-
7 mine the financial condition of the dealer the commissioner
8 may ask the appointment of a receiver to safeguard the interests
9 of the public; the circuit court of Kanawha county or the
10 county in which such dealer has its principal place of business
11 shall have authority to appoint such receiver.

Sec. 15. It will not be necessary to negative any of the
2 exemptions in this article provided in any complaint, informa-
3 tion, indictment or any other writ or proceedings laid or
4 brought under this article and the burden of proof of any such
5 exemptions shall be upon the party claiming the benefit of such
6 exemption and any person claiming the right to register under
7 section six or section twelve, hereof, shall also have the burden
8 of proving the right to register.

Sec. 16. If the statement containing information as to
2 securities, as provided for in section six of this article, shall
3 disclose that any such securities shall have been or shall be
4 intended to be issued for any patent right, copyright, trade-
5 mark, process, lease, formula or good will, or for promotion
6 fees or expenses or for other intangible assets, the amount and
7 nature thereof shall be fully set forth and the commissioner
8 may require that such securities so issued in payment of such
9 patent right, copyright, trademark, process, lease, formula or
10 good will, or for promotion fees or expenses, or for other intan-
11 gible assets, shall be delivered in escrow to the commissioner un-
12 der an escrow agreement that the owners of such securities shall
13 not be entitled to withdraw such securities from escrow until all
14 other stockholders who have paid for their stock in cash shall
15 have been paid a dividend or dividends aggregating not less than
16 six per cent, shown to the satisfaction of said commissioner to
17 have been actually earned on the investment in any common
18 stock so held, and in case of dissolution or insolvency during the
19 time such securities are held in escrow, that the owners of such
20 securities shall not participate in the assets until after the
21 owners of all other securities shall have been paid in full. The
22 commissioner may require the owner of any securities placed
23 in escrow to enter into an agreement that he will not sell or

24 otherwise dispose of such securities during the time they are
25 held in escrow.

Sec. 17. Whenever it shall appear to the commissioner,
2 either upon complaint or otherwise, that in the issuance, sale,
3 promotion, negotiation, advertisement or distribution of any
4 securities within this state, including any security exempted
5 under the provisions of section three, or in any transaction
6 exempted under the provisions of section four hereof, any
7 person, as defined in this article, shall have employed or em-
8 ploys, or is about to employ any device, scheme or artifice
9 to defraud or for obtaining money or property by means of
10 any false pretense, representation or promise, or that any such
11 person shall have made, makes or attempts to make in this
12 state fictitious or pretended purchase or sales of securities or
13 shall have engaged in or engages in or is about to engage
14 in any practice or transaction or course of business relating
15 to the purchase or sale of securities which is fraudulent or
16 in violation of law and which has operated or which would
17 operate as a fraud upon the purchaser, any one or all of
18 which devices, schemes, artifices, fictitious or pretended pur-
19 chases or sales of securities, practices, transactions and courses
20 of business which are hereby declared to be and are herein-
21 after referred to as fraudulent practices, the commissioner
22 may investigate, and whenever he shall believe from evidence
23 satisfactory to him that any such person has engaged in, is
24 engaged or about to engage in any of the practices or trans-
25 actions heretofore referred to, he may in addition to any other
26 remedies, bring an action in the circuit court of Kanawha
27 county in the name and on behalf of the state of West Vir-
28 ginia against such person and any other person or persons
29 heretofore concerned in or in any way participating in or
30 about to participate in such fraudulent practices, to enjoin
31 such person, and such other person or persons from continuing
32 such fraudulent practices or engaging therein or doing any
33 act or acts in furtherance thereof. In such action a judgment
34 may be entered awarding such injunction as may be proper.
35 In no case shall the commissioner incur any official or personal
36 liability by instituting injunction or other proceedings or
37 issuing rules, orders or regulations or by suspension, revoca-
38 tion or cancellation of any registration under this chapter.

Sec. 18. Every sale or contract for sale made in violation of any of the provisions of this article shall be voidable at the election of the purchaser and the person making such sale or contract for sale shall be liable to such purchaser in an action at law in any court of competent jurisdiction upon tender to the seller of the securities sold or of the contract made for the full amount paid by such purchaser, together with all taxable court costs and reasonable attorney's fees in any action or tender under this section: *Provided*, That no action shall be brought for the recovery of the purchase price after one year from the date of such sale or contract for sale: *Provided further*, That no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept a written offer of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed as follows:

- 20 (a) In case such securities consist of interest bearing obligations, at the same rate as provided in such obligations;
- 22 (b) In case such securities consist of other than interest bearing obligations, at the rate of six per cent per annum, less, in every case, the amount of any income from such securities that may have been received by such purchaser.

Sec. 19. Any person aggrieved by an order of the commissioner in a proceeding under this act to which such person is a party may obtain a review of such order in the circuit court of Kanawha county, West Virginia, by filing in such court within thirty days after entry of such order a written petition praying that the order of the commissioner be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the commissioner shall be considered by the court unless such objection shall have been urged before the commissioner. The finding of the commissioner as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for

16 leave to adduce additional evidence and shall show to the
17 satisfaction of the court that such additional evidence is
18 material and that there were reasonable grounds for failure
19 to adduce such evidence in the hearing before the commis-
20 sioner, the court may order such additional evidence to be
21 taken before the commissioner and to be adduced upon the
22 hearing in such manner and upon such terms and conditions
23 as to the court may seem proper. The commissioner may
24 modify his findings, as to the facts, by reason of the additional
25 evidence so taken and he shall file such modified or new find-
26 ings, which, if supported by evidence, shall be conclusive and
27 his recommendations, if any, for the modification or setting
28 aside of the original order. The jurisdiction of the court
29 shall be exclusive and its judgment and decree, affirming,
30 modifying or setting aside, in whole or in part, any order of
31 the commissioner, shall be final, subject to an appeal from
32 the judgment of the said circuit court on the same terms and
33 conditions as an appeal is taken in civil actions. The com-
34 missioner shall not, by any court order be barred from there-
35 after revoking or altering such order for any proper cause
36 which may thereafter accrue or be discovered. If an order
37 of the commissioner shall be affirmed by the said circuit court
38 the person contesting such order shall not be barred after
39 thirty days from filing a new application provided such
40 application is not otherwise barred or limited.
41 The commencement of proceedings under this section shall
42 not, unless specifically ordered by the court, operate as a stay
43 of the commissioner's order.

Sec. 20. All fees herein provided for shall be collected by
2 the commissioner and shall be turned into the state treasury,
3 and the commissioner shall keep a record of the receipts and
4 expenditures incurred in carrying out the provisions of this
5 article.

Sec. 21. The commissioner shall have authority to make,
2 amend and rescind such rules and regulations as may be
3 necessary to carry out the provisions of this chapter and to
4 prescribe the form or forms in which required information
5 shall be set forth.

6 The securities commissioner shall have the power to make

7 any reasonable rules and regulations he may deem necessary
8 to cooperate effectively with the securities and exchange commis-
9 sion or any other agency of the United States government
10 which may have supervision or control over the sale of securities
11 in interstate commerce under any law of the United States,
12 now or hereafter enforced, and which are not or would not be
13 in conflict with the laws of this state.

Sec. 22. Neither the fact that the application for registra-
2 tion of a security or of a dealer has been filed or is in effect
3 nor the fact that a stop order or other order is not in effect
4 with respect thereto, shall be deemed a finding by the com-
5 missioner that the application and all exhibits and documents
6 filed therewith are true and accurate on their face or that
7 they do not contain an untrue statement of fact or omit to
8 state a material fact or be held to mean that the commissioner
9 has in any way passed upon the merits of or given approval
10 to such issuer or dealer. It shall be unlawful to make, or
11 cause to be made, to any prospective purchaser, any representa-
12 tion contrary to the foregoing provisions of this section.

Sec. 23. Any condition, stipulation or provisions binding
2 any person acquiring any security to waive compliance with
3 any provisions of this chapter or of the rules and regulations
4 of the commissioner shall be void.

Sec. 24. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, or any or all of the
3 officers or agents thereof, alone or in conjunction with others,
4 having devised or intending to devise any scheme or artifice
5 to defraud any person or persons by or through the sale of
6 any securities, as defined in said section two, including securities
7 exempted from registration under section three of this article
8 and including transactions exempt under section four of this
9 article, or through the sale of real estate situate outside of
10 this state, who shall, for the purpose of executing or attempt-
11 ing to execute such scheme or artifice, commit any overt act
12 within this state shall be guilty of a felony, and upon con-
13 viction thereof, shall be punished by a fine of not more than
14 five thousand dollars, or by imprisonment in the penitentiary
15 for not more than five years, or by both such fine and im-
16 prisonment, in the discretion of the court.

17 An indictment under this section shall be sufficient if sub-
18 stantially as follows:

19 State of West Virginia,

20 County of.....to-wit:

21 In the.....court of said county.

22 The grand jurors of the state of West Virginia in and for
23 the body of the county of.....and now attending
24 said court, upon their oaths present that.....

25 as.....(Issuer, dealer, salesman, agent
26 or officer, as the case may be), having devised or intending
27 to devise a scheme or artifice to defraud, by or through the
28 sale of certain securities, to-wit, (set out the security or
29 securities here as defined in section two of this act), and
30 who for the purpose of executing or intending to execute such
31 scheme or artifice to defraud, on the.....day of.....
32 19....., and in the county of.....did unlaw-
33 fully and feloniously induce.....to subscribe
34 and pay for.....shares of the capital stock of
35at.....dollars per
36 share, making in all.....dollars worth of stock
37 for which the said.....subscribed and
38 paid, (or state briefly any other overt act committed in
39 pursuance of such scheme or artifice to defraud) against the
40 peace and dignity of the state.

Sec. 25. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, who shall, with intent to
3 induce the purchase of any securities, as defined in said section
4 two, including securities exempted from registration under sec-
5 tion three of this article and including transactions exempt
6 under section four of this article, or of any real estate situate
7 outside of this state, knowingly or recklessly make any false
8 statement, either oral or written, or knowingly or recklessly
9 conceal any fact materially affecting the value of such secu-
10 rities, or of such real estate, shall be guilty of a felony, and
11 upon conviction thereof, shall be punished by a fine of not
12 more than five thousand dollars, or by imprisonment in the
13 penitentiary for not more than five years, or by both such fine
14 and imprisonment, in the discretion of the court.

Sec. 26. Any person signing any application form, state-
2 ment, exhibit or document required to be verified and sworn to,

3 knowing any representation therein contained to be false or
4 untrue (and the depositing of any such statement or document
5 in the office of the commissioner in connection with any regis-
6 tration under this chapter, shall be deemed prima facie evi-
7 dence of knowledge of the falsity thereof or of any representa-
8 tion therein contained, and of the willful signing of such state-
9 ment or document), shall be guilty of a felony and upon con-
10 viction thereof shall be punished by a fine of not more than
11 five thousand dollars or by imprisonment in the penitentiary
12 for not more than five years, or by both such fine and imprison-
13 ment in the discretion of the court.

Sec. 27. Any person subject to the provisions of this chapter,
2 who shall knowingly and with intent to evade the provisions of
3 this chapter, sell any securities within this state without com-
4 plying with the provisions of this chapter or who knowingly
5 and with intent to evade the provisions of this chapter continues
6 to sell, offer for sale or knowingly and with intent to evade
7 the provisions of this chapter after his registration has been
8 revoked or suspended, by the commissioner, or who shall other-
9 wise neglect or refuse to comply with any of the provisions of
10 this chapter, shall be guilty of a felony, and upon conviction
11 thereof, shall be punished by a fine of not more than five
12 thousand dollars, or by imprisonment in the penitentiary for
13 not more than five years, or by both such fine and imprison-
14 ment, in the discretion of the court.

Sec. 28. This act may be cited as "The Act Regulating and
2 Supervising the Sale of Securities".

ARTICLE II.

Section 1. Any person, partnership or corporation shall not
2 sell or offer for sale, in this state, any lands, situate out of this
3 state, which are to be planted in trees or vines or divided into
4 town or suburban lots, or any unimproved or undeveloped lands,
5 or any lands, including cemetery lots, cemetery privileges, burial
6 rights or privileges, the value of which materially depends on
7 the future performance of any stipulation or promise to fur-
8 nish irrigation, transportation facilities, streets, sidewalks,
9 sewers, gas, light or other value enhancing utility or improve-
10 ment of any undivided part or share, whether an aliquot part
11 or a part designated on any other basis, of any mine, mineral

12 claim, or other estate in any mine, or in the lands containing
13 the same, regardless of where located or situated, the value of
14 which materially depends on the future discovery or develop-
15 ment and production of the minerals, without first having filed
16 with the commissioner of securities a detailed description of
17 the property which, or any interest or part of share of which,
18 is proposed to be sold, and such information with respect to
19 the value thereof, and the title to such property or properties
20 as the commissioner of securities shall require, and without
21 causing such property to be registered by the commissioner of
22 securities in the manner provided for registration of securities
23 by qualification under article one of this chapter; and no per-
24 son shall sell or offer any such property for sale until he has
25 been registered as a salesman by the commissioner of securities
26 under the provisions for registering dealers and salesmen of
27 securities, contained in article one of this chapter. All of the
28 provisions contained in article one of this chapter governing
29 the registration of securities by qualification, and the registra-
30 tion of dealers and salesmen, and penalties provided therein,
31 shall apply to the registration of properties and salesmen under
32 this section: *Provided*, That nothing herein shall prevent any
33 bona fide owner of any such land, mine, mining lease, mineral
34 claim, or other property, or interest therein, from selling the
35 same on his own account and not as a part, or in furtherance,
36 of any promotion or development to the public.

Sec. 2. Any person or corporation who, with intent to sell
2 or in any wise dispose of merchandise, securities, service or
3 anything offered by such person or corporation, directly or
4 indirectly, to the public for sale or distribution, or with intent
5 to increase the consumption thereof, or to induce the public in
6 any manner to enter into any obligation relating thereto, or
7 to acquire title thereto, or any interest therein, makes, publishes,
8 disseminates, circulates, or places before the public, or causes,
9 directly or indirectly, to be made, published, disseminated, cir-
10 culated, or placed before the public in this state, in a news-
11 paper or other publication, or in the form of a book, notice,
12 handbill, poster, blue print, map, bill, tag, label, circular,
13 pamphlet, or letter, or in any other way, an advertisement of
14 any sort regarding merchandise, securities, service, land, lot,
15 or anything so offered to the public, which advertisement con-
16 tains any promise, assertion, representation or statement of

17 fact which is untrue, deceptive or misleading, shall be guilty of
 18 a misdemeanor, and, upon conviction thereof, be punished by a
 19 fine of not more than two thousand dollars, or confined in jail
 20 for a period of not more than six months, or by both such fine
 21 and imprisonment.

Sec. 3. In any indictment for violation of any provision of
 2 this chapter it shall not be necessary to negative any exception
 3 contained in any proviso or elsewhere, in this chapter. Any
 4 person accused shall be deemed to have had knowledge of any
 5 matter of fact when, by the exercise of reasonable diligence
 6 before the commissioner of the offense with which he is charged,
 7 he could have secured such knowledge.

Sec. 4. If any word, sentence, clause, paragraph, section,
 2 part or provision of this act shall be declared unconstitutional
 3 or invalid or ineffective by any court or other authority of
 4 competent jurisdiction and power, such declaration shall not
 5 affect any other section, part or provision hereof.

CHAPTER 105

(Senate Bill No. 177—By Mr. Smith)

AN ACT to repeal sections one to ten, inclusive, article three, chap-
 ter sixty-one of the code of West Virginia, one thousand nine
 hundred thirty-one, and to enact in lieu thereof sections one
 to six, inclusive, relating to crimes to property and fixing
 penalties for the conviction thereof.

[Passed March 9, 1935; in effect from passage. Became a law without
 the approval of the Governor.]

Sec.		Sec.	
1.	Penalty for wilfully and maliciously burning, etc., of dwelling house, outhouse, etc.; first degree arson.		gree arson.
2.	Penalty for wilfully and maliciously burning, etc., of other building or structure; second degree arson.	4(a)	Penalty for attempts to commit arson in above degrees: fourth degree arson; (b) what constitutes an attempt to burn building or property.
3.	Penalty for wilfully and maliciously burning personal property of another of the value of twenty-five dollars; third de-	5.	Penalty for burning, or attempting to burn, insured property.
		6.	Penalty for wilfully and maliciously setting out fire on lands; liability in civil action to person injured.

Be it enacted by the Legislature of West Virginia:

That sections one to ten, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that sections one to six, inclusive, be enacted in lieu thereof, to read as follows:

Section 1. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson in the first degree, and upon conviction thereof, be sentenced to the penitentiary for not less than two nor more than twenty years.

Sec. 2. Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of any class or character, whether the property of himself or of another, not included or described in the preceding section, shall be guilty of arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

Sec. 3. Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of any class or character, (such property being of the value of not less than twenty-five dollars and the property of another person), shall be guilty of arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

Sec. 4. (a) Any person who wilfully and maliciously attempts to set fire to, or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than two years, or fined not to exceed one thousand dollars.

9 (b) The placing or distributing of any inflammable, ex-
10 plosive or combustible material or substance, or any device in
11 any building or property mentioned in the foregoing sections,
12 in an arrangement or preparation with intent to eventually,
13 wilfully and maliciously set fire to or burn same, or to procure
14 the setting fire to or burning of same shall, for the purposes
15 of this act constitute an attempt to burn such building or
16 property.

Sec. 5. Any person who wilfully and with intent to injure
2 or defraud the insurer sets fire to or burns or attempts so to
3 do or cause to be burned or who aids, counsels or procures the
4 burning of any building, structure or personal property, of
5 any class or character, whether the property of himself or of
6 another, which shall at the time be insured by any person
7 against loss or damage by fire, shall be guilty of a felony and
8 upon conviction thereof, be sentenced to the penitentiary for
9 not less than one nor more than five years.

Sec. 6. If any person unlawfully and maliciously set fire
2 to any woods, fence, grass, straw, or other thing capable of
3 spreading fire on lands, he shall be guilty of a misdemeanor,
4 and, upon conviction, shall be fined not exceeding five hundred
5 dollars and confined in jail not less than two nor more than
6 twelve months. He shall, moreover, be liable to any person
7 injured thereby, or in consequence thereof, for double the
8 amount of damages sustained by such person.

CHAPTER 106

(House Bill No. 131—By Mr. Parrish)

AN ACT to amend and reenact section twenty-one, article five, chap-
ter sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended by chapter ninety-six, acts
of the Legislature, second extraordinary session, one thou-
sand nine hundred thirty-three, relating to certified copies of
birth and death records, by permitting the state registrar
to furnish same to the state welfare department, to county

welfare departments and to organized charities, without charge.

[Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.

21. Certified copies of birth and death records from state registrar; fee: not to state legitimacy or illegitimacy; use as evidence;

Sec.

fee for search of files and records; fees turned into state treasury; when copies furnished without fee.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter ninety-six, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 21. The state registrar shall, upon request, supply 2 to any applicant a certified copy of the record of any birth or 3 death registered under the provisions of this article, for the 4 making and certification of which he shall be entitled to a fee 5 of fifty cents, to be paid by the applicant: *Provided*, That such 6 copy shall not state that any child was either legitimate or 7 illegitimate. Any such copy of the record of a birth or death, 8 when properly certified by the state registrar, shall be prima 9 facie evidence, in all courts and places, of the facts therein 10 stated. For any search of the files and records when no certi- 11 fied copy is made, the state registrar shall be entitled to a fee 12 of fifty cents for each hour or fractional part of an hour of 13 time of search, said fee to be paid by the applicant. The state 14 registrar shall keep a true and correct account of all fees by him 15 received under the provisions of this article and turn the same 16 over to the state treasurer: *Provided*, That the state registrar 17 shall, upon the request of any parent or guardian, supply with- 18 out fee a certificate limited to a statement as to the date of birth, 19 of any child when the same shall be necessary for admission to 20 school, or for the purpose of securing employment: *Provided*, 21 That the United States bureau of census may obtain, without 22 expense to the state, transcripts or certified copies of births and 23 deaths without payment of the fees herein prescribed: *Pro-* 24 *vided further*, That the state registrar may furnish certified 25 copies of birth and death records to the state welfare depart-

26 ment, to county welfare departments and to organized charities,
 27 free of charge, when such certificates are needed in presenting
 28 claims to the federal government, or to the West Virginia relief
 29 compensation department, and an accurate record shall be made
 30 of all such certificates so furnished.

CHAPTER 107

(House Bill No. 140—By Mr. Dickerson)

AN ACT to amend article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to safety measures in coal mines, by adding a section thereto.

[Passed February 23, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.
 83. Mine locomotives to be equipped
 with lifting jack and handle.

Be it enacted by the Legislature of West Virginia:

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

Section 83. Each mine locomotive shall be equipped at all 2 times with a lifting jack and handle.

CHAPTER 108

(Com. Sub. for House Bill No. 168—Originating in the House Committee on the Judiciary)

AN ACT to amend article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, relating to notaries public, by amending and reenacting sections four and five thereof, and by adding thereto a new section

tion designated as section two-(a) providing for the qualifications of notaries public in more than one county.

[Passed February 22, 1935; in effect from passage. Approved by the Governor.]

Sec.

2-(a). Qualification by notary public in county other than that of residence or appointment; certificate of appointment by clerk of county court of residence and appointment; fee.

4. Powers of notary in own county

Sec.

and counties to which commission extended.

5. Signature of notary, without use of seal: when seal affixed, to be for county in which acknowledgment taken or certificate made.

Be it enacted by the Legislature of West Virginia:

That article four, chapter twenty-nine, of the code of West Virginia, one thousand nine hundred thirty-one, be amended, by amending and reenacting sections four and five thereof, and by adding a new section thereto designated as section two-(a), so as to read as follows:

Section 2-(a). A notary public appointed for any of the 2 counties of the state, upon filing in the office of the clerk of the 3 county court in any other county in the state a certificate of the 4 county clerk of the county for which he was appointed, setting 5 forth the fact of his appointment, the date thereof, and qualifi- 6 cations as such notary public and paying to said clerk of the 7 county court, where said certificate is filed, a fee of one dollar, 8 without any further qualification, shall thereupon have the right 9 to exercise all the functions of his office in the county in which 10 such certificate is filed, with the same effect in all respects as if 11 the same were exercised in the county in which he resides and 12 for which he was appointed.

13 The clerk of the county court of the county in which a 14 notary public resides and for which such notary public is 15 appointed, upon request, shall issue to such notary public 16 a certificate setting forth the fact of his appointment, the date 17 thereof, and qualification as such notary public, and that such 18 notary public is a resident of his county, and the clerk of the 19 county court shall insert therein the name of the county in 20 which such certificate is to be filed, for which certificate such 21 notary public shall pay a fee of one dollar to the clerk of the 22 county court for each such certificate so issued.

Sec. 4. A notary, under the regulations prescribed by law, 2 may take, within his county, and the county or counties to

3 which his commission has been extended, acknowledgments of
 4 deeds and other writings. He shall be a conservator of the
 5 peace within the county of his residence, and as such con-
 6 servator shall exercise all the powers conferred by law upon
 7 justices of the peace.

Sec. 5. The certificate of a notary of this state, in cases speci-
 2 fied in the two preceding sections, may be under his signature,
 3 without his notarial seal being affixed thereto: *Provided*,
 4 That a notary public who affixes his seal to any instrument
 5 or other writings shall affix his seal for the county in which the
 6 acknowledgment is taken and the certificate is made.

CHAPTER 109

(House Bill No. 184—By Mr. Thomas)

AN ACT to amend and reenact section twelve, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to appeals from valuations of property by the board of public works, and providing for appeals to the supreme court of appeals in certain cases.

[Passed February 10, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 12. Appeal to circuit court by owner or operator from assessment of property by board of public works; jurisdiction; hearing, after notice to prosecuting attorneys; court may affirm, raise

Sec. or lower assessment; appeal by state, owner or operator to supreme court of appeals when assessment is fifty thousand dollars or more.

Be it enacted by the Legislature of West Virginia:

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

Section 12. Any owner or operator claiming to be aggrieved 2 by any such decision may, within the time aforesaid, apply by 3 petition in writing to the circuit court of the county in which 4 the property so assessed is situated, or if such property be 5 situated in more than one county then in the county in which 6 the largest assessment of such owner or operator was made in

7 the next preceding year, for an appeal from the assessment and
8 valuation so made of all such property; and jurisdiction is here-
9 by conferred upon and declared to exist in the court to which
10 such application is made to grant, docket and hear such appeal:
11 and such appeal, as to all of the property so assessed, as well as
12 that situated in the county of the court so applied to, as that
13 situated in the several other counties, shall forthwith be al-
14 lowed by such court so applied to, and be heard by such court
15 as to all of such property as soon as possible after the appeal
16 is docketed; but notice in writing of such hearing shall be
17 given to the prosecuting attorney of each of the counties in
18 which such property so assessed is situated, and to the state tax
19 commissioner, at least ten days beforehand. Upon such hearing
20 the court shall hear all such legal evidence as shall be offered
21 on behalf of the state or any county, district or municipal cor-
22 poration interested, or on behalf of the appealing owner or op-
23 erator. If the court be satisfied that the value so fixed by the
24 board of public works is correct, it shall confirm the same, but
25 if it be satisfied that the value so fixed by said board is either
26 too high or too low, the court shall correct the valuation so made
27 and ascertained and fix the true and actual value of such prop-
28 erty according to the facts proved, and shall certify such value
29 to the auditor and to the secretary of the board of public works.
30 The state or the owner or operator may appeal to the supreme
31 court of appeals if the assessed value of the property be fifty
32 thousand dollars, or more.

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CHAPTER 110

(House Bill No. 187—By Mr. Brotherton)

AN ACT providing that wages and salaries of all officials, clerks and employees of any city, town or county shall be subject to garnishment or execution upon any judgment rendered against them, unless otherwise exempt.

[Passed March 6, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. Purpose of act to permit garnishment of wages, whether or not debtor in employ of political subdivision of state.

Sec.

2. Wages of official, school teachers, etc., of city, town or county subject to attachment, etc., and execution upon judgment.

Be it enacted by the Legislature of West Virginia:

Section 1. The purpose of this act is to permit any creditor to garnish or attach the wages or salary of any debtor residing within this state, whether or not such debtor is in the employ of any municipality, county, or any other political subdivision of this state; and it is hereby declared to be the intent of the Legislature to declare this act to be in the interest of public policy.

Sec. 2. All officers, clerks, school teachers and employees, of any city, town or county who hold their office by virtue of authority from the Legislature, or by virtue of authority from the governor of the state of West Virginia, or by virtue of authority from any city, town, board of education or county, whether by election or by appointment, and who receive compensation for their services from the moneys of such city, town or county shall, for the purposes of attachment, suggestion, garnishment and execution, be deemed to be, and are officers, clerks or employees of such city, town or county, and their wages or salaries shall be subject to attachment, suggestion, garnishment or execution upon any judgment rendered against them, unless otherwise exempt.

CHAPTER 111

(House Bill No. 193—By Mr. Perry)

AN ACT to prohibit exhibition dances, endurance dances, and dance contests, commonly known and designated as "marathon dance" or "marathon contest", "walking contest", or other endurance contests of like kind, and participating therein, and providing penalties for the violation thereof.

[Passed February 27, 1935: In effect from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <p>1. Definition of "person."</p> <p>2. Unlawful to conduct marathon dances or like endurance tests.</p> <p>3. Penalty for violation of act.</p>	<p>Sec.</p> <p>4. Unlawful to compete as contestant: penalty.</p> <p>5. Act declared necessary for public welfare, etc.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. The word "person", as used, shall mean and be

2 construed to include person, persons, firm, co-partnership, as-
3 sociation, or corporation.

Sec. 2. It shall be unlawful for any person to con-
2 duct, or manage, or operate any exhibition dance, endurance
3 dance, or dance contest, sometimes commonly known and des-
4 igned as "marathon dances" or "marathon contests", or
5 any "walking contest", or endurance test of like kind.

Sec. 3. Any person violating any section of this act shall
2 be fined not less than three hundred dollars, and each day such
3 violation shall continue shall be a separate offense; and upon
4 default of payment of any first or subsequent fine herein pro-
5 vided such person shall be imprisoned in the county jail for a
6 period not exceeding thirty days for each offense.

Sec. 4. It shall be unlawful for any person to compete as a
2 contestant in any public marathon dance, or other form of en-
3 durance dancing or contest at which dancers or contestants,
4 in consideration of money prizes or other considerations, com-
5 pete with each other in their ability to continue over long or
6 indefinite periods of time. Any person violating this section
7 shall be fined not less than one hundred dollars and each day
8 such violation shall continue shall be a separate offense; and
9 upon default in the payment of any first or subsequent fine
10 herein provided such person shall be imprisoned in the county
11 jail for a period not exceeding thirty days for each offense.

Sec. 5. This act is hereby declared to be necessary in the
2 interest of public welfare, morals, health, and safety.

CHAPTER 112

(House Bill No. 196—By Messrs. Bailey and Jones, of McDowell)

AN ACT to amend and reenact section five, article one, chapter
fifteen of the code of West Virginia, one thousand nine hundred
thirty-one, relating to the national guard.

[Passed March 4, 1935; in effect from passage. Approved by the Governor.]

Sec.
5. Governor's authority over the na-
tional guard of state: governor
directed to organize and equip

Sec.
a regiment of infantry com-
posed of negro troops: directed
to organize at least one bat-

Sec.

tallon within one hundred and twenty days after passage of act or as soon thereafter as funds are available; further powers of the governor; con-

Sec.

formity with army of the United States; rank and number of officers; increase in time of war, etc.; when preference given to officers holding commissions.

Be it enacted by the Legislature of West Virginia:

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

Section 5. The national guard of West Virginia shall consist 2 of the commissioned officers, enlisted men, staff, corps and de- 3 partments of West Virginia, regularly organized and maintained 4 pursuant to law. The governor shall have power to alter, divide, 5 annex, consolidate, disband or reorganize the same and create 6 new organizations, and is hereby directed to organize a regi- 7 ment of infantry and equip same composed of negro troops 8 which regiment shall be organized and equipped in accordance 9 with the provisions of the U. S. Army regulations governing 10 same. He is directed to organize at least one battalion within 11 one hundred twenty days after the passage of this bill or as 12 soon thereafter as funds are available. He shall at all times 13 have the power to create new organizations whenever, in his 14 judgment, the efficiency of the state force will thereby be in- 15 creased, except insofar as such action would be contrary to the 16 provisions of the regulations of the war department governing 17 the national guard; and he shall at anytime have power to 18 change the organization of departments, brigades, regiments, 19 battalions and companies so as to conform to any organization, 20 system of drill, or instruction now or hereafter adopted for the 21 army of the United States, and for that purpose the number of 22 officers of the brigades, regiments, battalions and companies may 23 be increased or diminished and their rank increased or reduced 24 to the extent made necessary by such change. The officers of 25 the foregoing departments shall be of like rank as officers of 26 similar departments of the army of the United States and shall 27 perform like duties. The number of such officers shall be deter- 28 mined by the governor, but this number shall be limited to the 29 actual requirements of the different departments, and the gov- 30 ernor may designate one officer as chief of a number of different 31 departments, unless such action would be contrary to the regu- 32 lations provided by the war department for the government of 33 the national guard. The governor shall have the power, in case

34 of war, insurrection, invasion or imminent danger thereof, to
 35 increase the force beyond the maximum now established by law
 36 and to organize the same with the proper officers as the exigencies
 37 of the service may require. In the event of the formation of any
 38 such new organizations, officers holding commissions in the
 39 national guard as organized at such time shall be eligible for
 40 commission in such new organizations with like or higher grade
 41 and rank, if found capable, after examination by a regular
 42 authorized board, and shall be given preference over the one
 43 not holding commission at the time.

CHAPTER 113

(House Bill No. 280—By Mr. Thomas)

AN ACT to promote the objects of the national housing act by authorizing banks, savings banks, trust companies, building and loan associations, industrial loan companies and insurance companies to make loans pursuant to titles one and two of the national housing act, and by authorizing executors, administrators, guardians, trustees, banks, savings banks, trust companies, building and loan associations, industrial loan companies, insurance companies and fraternal benefit societies to invest in mortgages insured and in debentures issued by the federal housing administrator and to invest in securities of national mortgage associations, and to use such securities where collateral or deposits are required by law.

[Passed February 25, 1935; In effect from passage. Approved by the Governor.]

Sec.	Sec.
1. Banking institutions and other associations and companies authorized (a) to make loans for insurance, repairs, etc., pursuant to provisions of title one, section two, national housing act; (b) to make loans for construction or purchase of dwellings and to refinance mortgages as provided in title two of national housing act. 2. (a) Investment of funds of certain fiduciaries, banks, etc., in	bonds insured by federal housing administrator, etc.; (b) Securities accepted as security for depository bond or obligation. 3. Present law prescribing or limiting interest rates on amount or form of security, etc., for investments not to apply to investments under act. 4. Provisions of act severable: if part invalid, remaining parts not affected.

Be it enacted by the Legislature of West Virginia:

Section 1. Banks, savings banks, trust companies, building

2 and loan associations, industrial loan companies and insurance
3 companies are authorized:

4 (a) To make such loans and advances of credit and purchases
5 of obligations representing loans and advances of credit as are
6 eligible for insurance pursuant to title one, section two, of the
7 national housing act, for the purpose of financing alterations,
8 repairs and improvements upon real property made subsequent
9 to June twenty-seventh, one thousand nine hundred thirty-four,
10 and to obtain such insurance.

11 (b) To make such loans secured by real property or leasehold
12 as the federal housing administrator insures or makes a com-
13 mitment to insure pursuant to the provisions for mutual mort-
14 gage insurance in title two of the national housing act, for the
15 purpose of financing the construction or purchase of dwellings
16 and similar residential property and the refinancing of mort-
17 gages, and to obtain such insurance.

Sec. 2. (a) It shall be lawful for executors, administrators,
2 guardians, trustees, banks, savings banks, trust companies, build-
3 ing and loan associations, industrial loan companies, insurance
4 companies and fraternal benefit societies to invest their funds
5 and the moneys in their custody or possession eligible for invest-
6 ment in bonds secured by mortgages insured by the federal hous-
7 ing administrator, and in debentures issued by the federal hous-
8 ing administrator in settlement of claims for insurance pursuant
9 to title two of the national housing act, and in securities of
10 national mortgage associations or similar national mortgage
11 credit institutions now or hereafter organized under title three
12 of the national housing act.

13 (b) The securities herein made eligible for investment may be
14 used and shall be accepted as security for any depository bond or
15 obligation where any kind of bonds or other securities are re-
16 quired or may by law be deposited as security.

Sec. 3. No law of this state requiring security upon which
2 loans or investments may be made or prescribing the nature,
3 amount or form of such security or prescribing or limiting
4 interest rates upon loans or investments or prescribing or
5 limiting the period for which loans or investments may be made
6 shall be deemed to apply to loans or investments made pursuant
7 to the foregoing paragraphs.

Sec. 4. The provisions of this act shall be severable and if any

2 of the provisions shall be held to be unconstitutional such deci-
 3 sion shall not affect the validity of any of the remaining provi-
 4 sions of the act. It is hereby declared as the legislative intent
 5 that this act would have been adopted had such unconstitutional
 6 provisions not been included therein.

CHAPTER 114

(House Bill No. 408—By Mr. LaFon)

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, relating to the appointment of deputy sheriffs, local conservators of the peace, and to provide for their compensation and the appointment of deputy clerks of courts, deputy surveyors of lands, deputy assessors and other deputies to certain officers.

[Passed March 6, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. (a) (1) Appointment of deputies, with consent of court, by clerk of courts.
- (2) Appointment of deputies by sheriffs, surveyors of lands and assessors, with consent of county court.
- (3) Appointment of temporary deputies by sheriff, with consent of court.
- (4) Oath and powers of temporary deputies of sheriff; liability of sheriff for actions.
- (5) Duties and compensation from public funds of sheriffs having more than two deputies; when gifts and donations do not constitute public funds.
- (6) Penalty for appointment of deputy contrary to provisions of act.
- (7) Jurisdiction of proceedings to vacate appointment of deputy.
- (b) (1) Petition for appointment by sheriff of conservator of peace for unincorporated community; qualifications and powers of local conservator; subject to direction of principal only; sheriff to collect fees for services rendered by local conservator; salary paid

Sec.

- from county treasury from fund contributed for the purpose; to receive no compensation except salary; oath of office; responsibility of principal for acts.
- (2) Notice by sheriff to county court of appointment of local conservator; publication of notice by court; action on and costs of publication; what facts must be shown to county court and circuit court judge before assent to appointment.
- (3) Powers (with limitations) and jurisdiction of local conservator of the peace; disposition of persons arrested by.
- (4) Local conservator a public officer and contributor to his compensation not his employer or answerable for his acts.
- (5) Carrying of weapons by local conservator.
- (6) Limitation on number of local conservators.
- (7) Definition of "unincorporated community."
- (8) What order of county court and circuit judge appointing local conservator to show.
- (9) Local conservator not to act

Sec.

as election official, or remain at polls or place of political convention except to vote.

- (10) Penalty for violation by local conservator of clauses (3) and (9); revocation of appointment by sheriff and county court; action to compel.

Sec.

- (11) Local conservator to serve during joint pleasure of sheriff and county court; removal for cause by circuit judge upon petition; what petition to show; hearing, after notice, on petition; if part of act invalid, remainder not affected.

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, be amended and reenacted to read as follows:

Section 1. (a) (1) The clerk of the supreme court of appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record, appoint any person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) No sheriff, in any county in which there are more than two deputies, or deputy sheriff shall perform any service or duties, either private or public, except the duties required by law of such sheriff or deputy, for, or receive any compensation or remuneration, directly or indirectly, from, any person, firm or corporation, for the performance of any private or public services or duties. The sheriff and his deputies shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount

30 and in the manner provided by law. Gifts and donations by
31 any person, firm or corporation to any governmental unit or
32 officer thereof shall not constitute public funds within the
33 meaning of this paragraph.

34 (6) Except as hereinafter expressly provided by paragraph
35 (b) of this section no sheriff shall appoint or continue the
36 appointment of any deputy contrary to the provisions hereof.
37 Any sheriff or deputy sheriff who shall violate any of the
38 provisions of this section shall be guilty of a misdemeanor
39 and upon conviction thereof shall be fined not less than five
40 hundred dollars nor more than five thousand dollars, or con-
41 fined in jail not to exceed one year, or both, in the discretion
42 of the court.

43 (7) Circuit courts shall have jurisdiction in equity and
44 mandamus, and the supreme court of appeals shall have juris-
45 diction in mandamus, upon the filing of a petition by the
45-a prosecuting attorney, the attorney general, or any three or
46 more citizens of the county, to require any sheriff and the
47 county court to vacate the appointment of any deputy, the
48 appointment of which is made or continued in violation of
49 the provisions hereof. Any such proceeding may be instituted
50 and prosecuted by the attorney general either in the circuit
51 court of Kanawha county or in the county for which such
52 appointment was made.

53 (b) (1) Any resident or group of residents of any unin-
54 corporated community, as hereinafter defined, may petition
55 the sheriff for the appointment of a local conservator of the
56 peace and such sheriff, when in his opinion the public interests
57 require it, may with the assent of said county court and the
58 judge of the circuit court duly entered of record, either in term
59 or vacation of any such court, appoint any person or persons a
60 local conservator or conservators of the peace to perform the
61 duties of a conservator of the peace outside of any incorpo-
62 rated city, town or village. No person shall be appointed such
63 local conservator of the peace who has not been a *bona fide*
64 resident and taxpayer of the county for at least one year prior
65 to his appointment. Such local conservator of the peace during
66 his continuance in office, may perform and discharge any of
67 the official duties of the sheriff, subject nevertheless to the
68 provisions of this section. No local conservator so appointed
69 shall be subject to the direction or control of any person other

70 than his principal, and he shall not perform any services or
71 duties, either private or public, except the duties required by
72 law of conservators of the peace pursuant to the provisions
73 hereof, for any person, firm, or corporation. No such local
74 conservator shall be entitled to collect or receive any fees
75 provided by law to be paid to the sheriff or to a deputy sheriff,
76 but all fees provided by law for the sheriff, when such duties
77 and services are rendered by such local conservator, shall be
78 paid to the sheriff as regular collections of the sheriff's office.
79 The local conservator shall be paid for the public services per-
80 formed by him a salary of not less than seventy-five dollars
81 per month out of the county treasury from a fund to be paid
82 into such treasury by a resident or the residents of the com-
83 munity for which he is appointed, for the sole purpose of
84 compensating such local conservator or conservators, and no
85 such local conservator shall receive any other compensation,
86 directly or indirectly, from any person, firm, or corporation,
87 for any private or public service, except the salary payable to
88 him for his public services and duties and from such fund,
89 except that he shall be entitled to witness and mileage fees
90 when a witness in a court of record. Each local conservator so
91 appointed shall take the same oath of office required of his
92 principal and any default or misfeasance in the office of such
93 local conservator shall constitute a breach of the conditions
94 of the official bond of his principal.

95 (2) When the sheriff shall have been petitioned for the
96 appointment of a local conservator and has determined that
97 the appointment is proper, he shall select the person whom he
98 proposes to have appointed such conservator and shall notify
99 the county court of the community for which such conservator
100 is to be appointed and the name of the person proposed for
101 such appointment. The county court shall thereupon cause
102 notice that the sheriff has recommended the appointment of
103 the person named as conservator for the community named to
104 be published one time each week for two successive weeks in
105 a newspaper of general circulation published in the county,
106 and if there be no newspaper published in the county, then in
107 any other newspaper published in the state having a general
108 circulation in the county, and designating a day not less than
109 five days after the last publication when the county court will
110 act upon the petition and recommendation. Neither the

111 county court nor the judge of the circuit court shall assent
112 and approve the appointment of such local conservator until
113 such publication has been made. The costs of the publication
114 shall be paid by the person or persons petitioning for the ap-
115 pointment of the conservator.

116 No local conservator shall be appointed except it be made
117 to appear to the satisfaction of the county court and the judge
118 of the circuit court that because of the lack of sufficient funds,
119 geographical location of the unincorporated community for
120 which such conservator is to be appointed, or other good
121 reason, the sheriff and his regular deputies and the constables
122 of the county are not sufficient to afford proper local policing
123 of such community and that the person or persons moving for
124 the appointment of such local conservator have made satisfac-
125 tory arrangements to compensate him for his services as such
126 local conservator of the peace.

127 (3) Such local conservator of the peace shall have all the
128 powers and duties of a regularly appointed deputy sheriff ex-
129 cept that he shall not execute any civil process except such
130 process as may be necessary to bring parties before the court
131 in any action at law or suit in equity and subpoenas for wit-
132 nesses within the unincorporated community for which he is
133 appointed and within a distance of one mile outside the boun-
134 daries thereof, except as hereinafter expressly provided, but
135 he shall not participate in any strike, unemployment boycott,
136 or other industrial or labor dispute, nor serve any court process
137 of any character relating thereto. He shall act as such local
138 conservator only in the unincorporated community for which
139 he is appointed, and within a distance of one mile from the
140 boundaries thereof as fixed by the county court: *Provided,*
141 *however,* That the authority of one local conservator shall not
142 extend into any other unincorporated community for which
143 another local conservator is appointed and acting, except as
144 otherwise expressly provided by clause (6) of this paragraph,
145 except that in fresh pursuit he may effect arrests anywhere
146 in the county. He may also exercise the powers of a regularly
147 appointed deputy anywhere in the county when required to
148 guard or assist in guarding a payroll, or any other property
149 of value in transit to or from the unincorporated community
150 for which he is appointed. Any person arrested by such local
151 conservator shall, with all convenient speed, be turned over

152 to the sheriff, or one of his regular deputies, or to a regular
153 constable of the county to be dealt with according to law, and
154 his authority for that purpose shall be co-extensive with the
155 county.

156 (4) Any local conservator appointed to perform the duties
157 of conservator of the peace shall be a public officer and the
158 payment, or contribution to the payment or compensation of
159 such local conservator shall not constitute the person, firm or
160 corporation making such payment or contribution the em-
161 ployer of such local conservator and no person, firm or corpo-
162 ration paying, or contributing to the payment of compensation
163 to such local conservator shall be answerable in law or in
164 equity for any damages to person or property resulting from
165 any official act of such local conservator.

166 (5) No person appointed such local conservator shall there-
167 by be entitled to carry weapons, but such local conservator may
168 carry weapons when he shall be duly licensed and shall have
169 given bond as provided by section two, article seven, chapter
170 sixty-one of the code of West Virginia, one thousand nine
171 hundred thirty-one.

172 (6) Not more than one local conservator of the peace shall
173 be appointed, to perform the duties of conservator of the peace,
174 for each two thousand five hundred inhabitants of the county
175 as ascertained by the last regular decennial census after de-
176 ducting the number of inhabitants of the county residing in
177 the incorporated cities, towns and villages in such county. Not
178 more than one local conservator shall be appointed for any
179 unincorporated community unless the population thereof ex-
180 ceed fifteen hundred people and in such case not more than
181 two conservators shall be appointed for such community.

182 (7) The phrase "unincorporated community" within the
183 meaning of this section shall mean any center of population
184 wherein three hundred or more persons reside within an area
185 of not more than one square mile.

186 (8) The county court and the judge of the circuit court
187 in approving the appointment of a local conservator shall
188 enter of record an order making such appointment and shall
189 show therein the necessity for the appointment, the person
190 or persons on whose motion the appointment is made, the ar-
191 rangement for the payment of compensation to such local con-
192 servator, the unincorporated community, or communities, for

193 which the appointment is made, including the general boun-
194 dary of each unincorporated community for which he is
195 appointed.

196 (9) No local conservator shall act as an election official
197 or remain in, about or near any voting place or place of po-
198 litical convention, further than is necessary for him to prompt-
199 ly cast his vote and retire from the voting place.

200 (10) Any local conservator violating any of the provisions
201 of clauses (3) and (9) of this paragraph shall be guilty of a
202 misdemeanor and, upon conviction thereof, shall be fined not
203 less than fifty dollars nor more than three hundred dollars, or
204 be confined in the county jail not more than six months, or
205 both, in the discretion of the court; and it shall be the duty of
206 the sheriff and the county court to forthwith revoke his ap-
207 pointment irrespective of any criminal prosecution. A pro-
208 ceeding in mandamus or injunction shall lie in the circuit court
209 and a proceeding in mandamus shall lie in the supreme court
210 of appeals at the instance of the prosecuting attorney, the at-
211 torney general, or of any three or more citizens of the
212 community for which such conservator is appointed, to require
213 the performance of such duty by the sheriff and the county
214 court.

215 (11) Such local conservator shall serve during the joint
216 will and pleasure of the sheriff and the county court and his
217 appointment may be revoked by order entered of record by
218 the county court either with or without the assignment of
219 cause therefor.

220 A local conservator may be removed by the judge of the
221 circuit court, either in term or vacation, for drunkenness, gross
222 immorality, incompetence, neglect of duty, or other good
223 cause, upon the petition of three or more residents of the com-
224 munity for which he has been appointed. The petition shall
225 set forth the cause or causes for which such removal is asked
226 and shall show that demand for removal has been made of the
227 sheriff and the county court and that the sheriff and the
228 county court have failed to remove the local conservator. At
229 least three copies of the petition shall be filed, and upon the
230 filing of the petition the judge shall fix a time and place for a
231 hearing thereon, which time shall not be less than ten days
232 after the filing of the petition, and shall cause a copy thereof

233 to be served upon the sheriff and such local conservator at least
234 ten days before the hearing thereon.

235 If any part, subsection, clause, sentence, phrase or appli-
236 cation of this act is, for any reason, declared unconstitutional
237 by a court of competent jurisdiction, such decision shall not
238 affect the remaining portions of this act which shall remain
239 in force as if such act had been passed without the unconsti-
240 tutional part, subsection, clause, sentence, phrase or applica-
241 tion having been incorporated herein, it being the legislative
242 intent that this act would have been passed in the language
243 remaining after the elimination of so much thereof as may
244 be declared unconstitutional.

CHAPTER 115

(House Bill No. 473—By Mr. LaFon)

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, by adding to article one thereof a new section to be numbered section eight; by adding to article two thereof two new sections to be numbered eleven and twelve; and by amending and reenacting section two, article two, and section two, article four of said chapter, all relating to the public service commission.

[Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.]

ARTICLE I.

Sec.

8. When an assistant attorney general to represent public service commission; salary, how paid and amount.

ARTICLE II.

Sec.

2. Powers of commission over public utilities subject to provisions of chapter; proceedings by commission to compel obedience to its orders; powers of commission to change intrastate rates or to prohibit discrimination; orders in effect until revoked or modified by commission or court.
11. Application by public utility to commission for certificate of public convenience and neces-

Sec.

- sity; action on, after hearing; burden of proof on applicant.
12. What acts may not be done by a public utility without first obtaining the consent of the public service commission; when commission may give consent in advance or exempt transactions from provisions of section; commission to prescribe rules and regulations to enforce section; order of commission, with or without hearing; when, and to what extent sale, etc., of franchises, mergers, etc., void.

ARTICLE IV.

Sec.

2. Penalty for falsification or mutilation of, or failure to correctly keep accounts, etc., of public utilities.

Be it enacted by the Legislature of West Virginia:

That chapter -twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, be amended as follows: By adding to article one a new section to be numbered section eight; by adding to article two thereof two new sections to be numbered eleven and twelve; and by amending and reenacting section two, article two, and section two, article four of said chapter, all to read as follows:

ARTICLE I

Section 8. The commission may, if it deems the same necessary, in the administration of the public service commission law, request the attorney general to employ or designate an assistant attorney general, under his supervision and direction, to represent the commission in proceedings before it on application, complaint, or otherwise, and proceedings of any nature in any and all courts or before administrative or executive boards and to act as legal adviser to the commission in all matters for which his services, in the opinion of the commission, are required, and may, if it deems the same proper, pay in part or all of the salary, compensation and expenses of said assistant attorney general so designated or employed; but the amount so paid, in no event shall exceed five thousand dollars per annum, which amount shall be payable as other salaries and expenses of the commission are paid.

ARTICLE II

Sec. 2. The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and time-tables in effect and used by such utility or other person, to be filed with the commission, and all other information desired by the commission relating to such investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit

14 court having jurisdiction of the parties or of the subject matter,
15 or the supreme court of appeals direct, and such proceedings
16 shall have priority over all pending cases. The commission may
17 change any intrastate rate, charge or toll which is unjust or
18 unreasonable or any interstate charge with respect to matters
19 of a purely local nature which have not been regulated by or
20 pursuant to act of congress and may prescribe such rate, charge
21 or toll as would be just and reasonable, and change or prohibit
22 any practice, devise or method of service in order to prevent
23 undue discrimination or favoritism between persons and be-
24 tween localities and between commodities for a like and con-
25 temporaneous service. But in no case shall the rate, toll or
26 charge be more than the service is reasonably worth, consider-
27 ing the cost thereof. Every order entered by the commission
28 shall continue in force until the expiration of the time, if any,
29 named by the commission in such order, or until revoked or
30 modified by the commission, unless the same be suspended,
31 modified or revoked by order or decree of a court of competent
32 jurisdiction.

Sec. 11. No public utility, person or corporation shall
2 begin the construction of any plant, equipment, property
3 or facility for furnishing to the public any of the services
4 enumerated in section one, article two of this chapter, nor
5 apply for, nor obtain any franchise, license or permit from
6 any municipality or other governmental agency except ordinary
7 extensions of existing systems in the usual course of business,
8 unless and until it shall obtain from the public service com-
9 mission a certificate of public convenience and necessity
10 requiring such construction, franchise, license or permit. Upon
11 the filing of any application for such certificate, and after hear-
12 ing, the commission may, in its discretion, issue or refuse to
13 issue, or issue in part and refuse in part, such certificate of
14 convenience and necessity. The commission shall prescribe such
15 rules and regulations as it may deem proper for the enforce-
16 ment of the provisions of this section, and in establishing that
17 public convenience and necessity do exist the burden of proof
18 shall be upon the applicant.

Sec. 12. Unless the consent and approval of the public
2 service commission of West Virginia is first obtained: (a) No

3 public utility subject to the provisions of this chapter, except
4 railroads other than street railroads, may enter into any con-
5 tract with any other utility to operate any line or plant of
6 any other utility subject thereto, nor which will enable such
7 public utility to operate their lines or plants in connection with
8 each other, but this shall not be construed to prevent physical
9 connections between utilities supplying the same service or
10 commodity, for temporary purposes only, upon condition, how-
11 ever, that prompt notice thereof be given to the commission
12 for such action, if any, as it may deem necessary, and there-
13 after the commission may require such connection to be re-
14 moved or discontinued; (b) no public utility subject to the
15 provisions of this chapter, except railroads other than street
16 railroads, may purchase, lease, or in any other manner acquire
17 control, direct or indirect, over the franchises, licenses, permits,
18 plants, equipment, business or other property of any other
19 utility; (c) no public utility subject to the provisions of this
20 chapter, except railroads other than street railroads, may
21 assign, transfer, lease, sell, or otherwise dispose of its franchises,
22 licenses, permits, plants, equipment, business or other property
23 or any part thereof; but this shall not be construed to prevent
24 the sale, lease, assignment or transfer by any public utility
25 of any tangible personal property which is not necessary or
26 useful, nor will become necessary or useful in the future, in
27 the performance of its duties to the public; (d) no public
28 utility subject to the provisions of this chapter, except rail-
29 roads other than street railroads, may, by any means, direct
30 or indirect, merge or consolidate its franchises, licenses, permits,
31 plants, equipment, business or other property with that of any
32 other public utility; (e) no public utility subject to the pro-
33 visions of this chapter, except railroads other than street rail-
34 roads, may purchase, acquire, take or receive any stock, stock
35 certificates, bonds, notes, or other evidence of indebtedness of
36 any other public utility; (f) no public utility subject to the pro-
37 visions of this chapter, except railroads other than street rail-
38 roads, may, by any means, direct or indirect, enter into any
39 contract or arrangement for management, construction, en-
40 gineering, supply, or financial services or for the furnishing
41 of any other service, property or thing, with any affiliated
42 corporation, person or interest.

43 The commission may grant its consent in advance or exempt

44 from the requirements of this section all assignments, transfers,
45 leases, sales or other disposition of the whole or any part of
46 the franchises, licenses, permits, plants, equipment, business or
47 other property of any public utility, or any merger or con-
48 solidation thereof and every contract, purchase of stocks,
49 arrangement or other transaction referred to in this section,
50 upon proper showing that the terms and conditions thereof
51 are reasonable and that neither party thereto is given an
52 undue advantage over the other, and do not adversely affect
53 the public in this state.

54 The commission shall prescribe such rules and regulations as,
55 in its opinion, are necessary for the reasonable enforcement
56 and administration of this section, including the procedure to
57 be followed, the notice to be given of any hearing hereunder,
58 if it deems a hearing necessary, and after such hearing or in
59 case no hearing is required, the commission shall, if the public
60 will be inconvenienced thereby, enter such order as it may deem
61 proper and as the circumstances may require, attaching thereto
62 such conditions as it may deem proper, consent to the entering
63 into or doing of the things herein provided, without approving
64 the terms and conditions thereof, and thereupon it shall be
65 lawful to do the things provided for in such order.

66 Every assignment, transfer, lease, sale or other disposition
67 of the whole or any part of the franchises, licenses, permits,
68 plant, equipment, business or other property of any public
69 utility, or any merger or consolidation thereof and every con-
70 tract, purchase of stock, arrangement or other transaction re-
71 ferred to in this section made otherwise than as hereinbefore
72 provided shall be void to the extent that the interests of the
73 public in this state are adversely affected, but this shall not
74 be construed to relieve any utility from any duty required by
75 this section.

ARTICLE IV

Sec. 2. Any person, officer, agent or employee of any public
2 utility subject to this chapter who shall knowingly or wilfully
3 make any false entries in the accounts, account books, records
4 or memoranda kept by any public utility, or who shall know-
5 ingly or wilfully destroy or mutilate any account books, record
6 or memoranda useful for the enforcement or administration

7 of this chapter by the commission, or who shall alter or by
 8 any other means or devise falsify the record of any such
 9 accounts, account books, records or memoranda, or who shall
 10 knowingly or wilfully neglect or fail to make full, true and
 11 correct entries of or in such account, account book, record or
 12 memoranda of all the facts and transactions appertaining to
 13 such public utility, or who shall falsely make any statement
 14 required to be made to the commission, shall be deemed guilty
 15 of a felony, and, upon conviction thereof, shall be confined
 16 in the penitentiary not less than one year nor more than five
 17 years.

CHAPTER 116

(Senate Bill No. 209—By Mr. Rouss)

AN ACT to authorize the county board of education of Berkeley county to make transfer of money and funds from the elementary teachers' and high school teachers' funds to the elementary maintenance and high school maintenance funds for the fiscal year ending June thirtieth, one thousand nine hundred thirty-five.

[Passed February 22, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Berkeley county board of education authorized to transfer not to exceed twelve thousand dol-

Sec.

lars from teachers' funds to maintenance funds.

Be it enacted by the Legislature of West Virginia:

Section 1. The county board of education of Berkeley county
 2 is hereby authorized to transfer from any part of the funds it
 3 may now have or may hereafter accumulate from this year's
 4 levy from the elementary teachers' fund to the elementary
 5 maintenance fund, and from the high school teachers' fund to
 6 the high school maintenance fund of said county such part or
 7 parts thereof, not to exceed in the aggregate twelve thousand
 8 dollars, as may be necessary to meet the requirements of said
 9 maintenance funds up to and including the end of the fiscal
 10 year ending June thirtieth, one thousand nine hundred thirty-
 11 five.

CHAPTER 117

(Senate Bill No. 241—By Mr. Beacom)

AN ACT to authorize the board of education of Cabell county to transfer certain funds now available in the general emergency fund to pay salaries due certain teachers in Guyandotte district for the school year one thousand nine hundred thirty-two—one thousand nine hundred thirty-three.

[Passed February 26, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Cabell county board of education authorized to transfer any funds available in general emergency		Sec. fund to compensate certain teachers in Guyandotte district.
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Be it enacted by the Legislature of West Virginia:

Section 1. That the board of education of Cabell county is authorized to transfer any school fund or funds available in the general emergency fund to compensate certain teachers of Guyandotte district for services rendered during the fiscal year ending June thirty, one thousand nine hundred thirty-three.

CHAPTER 118

(Senate Bill No. 297—By Mr. Belknap)

AN ACT to authorize the board of education of the county of Calhoun to borrow money for the purpose of erecting a gymnasium and auditorium for the Calhoun county high school at Grantsville.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Calhoun county board of education authorized to borrow not to exceed fifty thousand dollars to build gymnasium and audi-		Sec. torium for Calhoun county high school; yearly budget appropriations to pay; location of building.
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Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of the county of Calhoun

2 is authorized to borrow money, in an amount not to exceed fifty
 3 thousand dollars, on a long-term contract, plan or agreement,
 4 from any federal agency authorized to make loans; said loan
 5 to be used for the purpose of erecting a gymnasium and
 6 auditorium to be used in connection with the activities of
 7 the Calhoun county high school located in the town of Grants-
 8 ville, county of Calhoun, state of West Virginia. Said board
 9 is further authorized, for the purpose of securing said loan,
 10 to make budget appropriations from year to year for the
 11 purpose of liquidating said loan according to necessary pro-
 12 visions of said contract and/or to do any and all other things
 13 necessary and required by said federal agency necessary and
 14 proper to obtain said loan, to secure the said federal agency for
 15 the same, and to build, equip and maintain said building and to
 16 carry out the provisions of this act: *Provided*, That said build-
 17 ing is to be erected on the grounds now used for the Calhoun
 18 county high school.

CHAPTER 119

(Senate Bill No. 24—By Mr. Elbin)

AN ACT to authorize and empower the board of education of Marshall county, West Virginia, to convey land and to enter into a contract and/or lease with the United States government or any federal agency authorized to make or enter into such contract and/or lease for the erection, construction, equipment, leasing and renting of school building or buildings, with an option to purchase same, and to provide for the payment of a yearly rental for such by said board.

[Passed February 1, 1935; in effect from passage. Approved by the Governor.]

<p>Sec. 1. Marshall county board of education authorized to convey lots or parcels of land to federal government or agency and to contract for erection and equipment of school buildings thereon by said federal agency; lease or rental of buildings and</p>	<p>Sec. right to purchase; amount of yearly rentals. 2. Annual levy by board to pay rentals. 3. Act to be liberally construed. 4. If any part of act invalid, remainder not affected.</p>
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Be it enacted by the Legislature of West Virginia:

Section 1. That the board of education of Marshall county,

2 West Virginia, be and it is hereby authorized and empowered
3 to convey to the United States government or any federal
4 agency any lot, lots, parcel or parcels of land owned by it
5 which the said board may see fit to convey for the purposes
6 hereinafter expressed; and to contract with the United States
7 government or any federal agency to the end that said govern-
8 ment or agency, its or any of their agencies, or agents, thereunto
9 duly authorized, may build, erect, construct, equip and/or
10 furnish upon said property, any building or buildings to be
11 used for public school purposes; and to contract with said gov-
12 ernment or any federal agency for the yearly lease or rental
13 of said building or buildings, with the privilege of renewing
14 said lease from year to year, for a period of years, not exceed-
15 ing thirty, with the right to purchase said building or buildings
16 and land on which the same is or are situated and to apply
17 toward the purchase price thereof any and all rentals paid to
18 said government or agency under the provisions of this act;
19 and the said board shall pay to the said United States govern-
20 ment or any federal agency said yearly rental or rentals, for
21 the use and occupancy of said building or buildings if and when
22 the same are constructed, which said yearly rental or rentals, in
23 the aggregate, shall not exceed the total amount, and interest
24 thereon, expended by said government or agency on said project
25 or projects, and the said yearly rentals shall not exceed the
26 constitutional debt limitations; and to do any and all other
27 things required by said United States government or any fed-
28 eral agency which are necessary and proper to effectuate the
29 purpose of this act.

Sec. 2. The said board shall levy and collect annually
2 an amount sufficient to pay said rental or rentals for that par-
3 ticular year for the purposes aforesaid in the manner and
4 form as is provided by law.

Sec. 3. This act being necessary for the health, weifare,
2 convenience and education of the school children of Marshall
3 county, it should be liberally construed to effectuate the pur-
4 poses thereof.

Sec. 4. If any clause, sentence, section, provision or part
2 of this act shall be adjudged to be unconstitutional or invalid
3 for any reason by any court of competent jurisdiction, such

4 judgment shall not impair, affect or invalidate the remainder
5 of this act, which shall remain in full force and effect thereafter.
6 All acts and parts of acts inconsistent herewith are hereby
7 repealed insofar, and only so far, as they are inconsistent with
8 this particular act.

CHAPTER 120

(Senate Bill No. 277—By Mr. Curtis, by request)

AN ACT to authorize the board of education of Mason county, West Virginia, to apply and expend for the payment of principal and interest of bonded indebtedness hereafter to be incurred, the proceeds of which are to be used for the purpose of erecting and constructing a high school building in said county, and authorizing the board of education of Mason county, West Virginia, to call an election submitting to the voters of said county, the question of issuing bonds, the proceeds of which are to be used in the construction of a high school building.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. Mason county board of education authorized to use revenues allocated to pay pre-existing indebtedness for erection of a high school building, after bond issue for same approved by

Sec.

voters; no indebtedness to be incurred until existing bonded indebtedness paid; election to be held within nine months from passage of act.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of Mason county, West Virginia, is hereby authorized to apply and expend the revenues heretofore allocated under the provisions of chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, for the purpose of paying and satisfying pre-existing indebtedness to the payment of the principal and interest of certain bonded indebtedness to be incurred by the said board of education of Mason county, and to the holding of an election hereinafter provided for, for the purpose of authorizing the issuance of said bonds, and the raising of revenue therefrom for the

12 erection of a high school building in said Mason county, the
13 principal of which said indebtedness will not exceed one
14 hundred thousand dollars: *Provided, however,* That no such
15 indebtedness shall be incurred by the said board of education
16 of Mason county, unless authorized by the voters of said
17 county, at an election held for that purpose, as authorized by
18 the statutes of this state: *Provided further,* That no indebted-
19 ness shall be incurred by the said board of education of Mason
20 county hereunder, until all bonded indebtedness against the
21 said board of education of Mason county, existing at the date
22 of the enactment of the tax limitation amendment to the con-
23 stitution of this state, which is due and payable, shall have
24 been fully paid and satisfied: *Provided further,* That said
25 election shall be held and said bonds issued within nine months
26 from the date of the passage of this act.

CHAPTER 121

(House Bill No. 101—By Mr. Hiner)

AN ACT to authorize the county board of education of Pendleton county to transfer the sum of one thousand nine hundred thirty-seven dollars and eighty-nine cents to the general fund of said county.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Pendleton county board of education authorized to transfer funds to general county fund.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of Pendleton county is hereby authorized to transfer from its funds to the general county fund of said county, the sum of one thousand nine hundred thirty-seven dollars and eighty-nine cents.

CHAPTER 122

(House Bill No. 418—By Mr. Beard)

AN ACT to permit the county court of Berkeley county to pay out of the county fund, provided for by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-five, for turkeys killed by stray dogs.

[Passed February 22, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Berkeley county court permitted to pay from county fund for turkeys killed by stray dogs.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Berkeley county is hereby permitted to pay out of the county fund, provided for by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-five, for turkeys killed by stray dogs in Berkeley county.

CHAPTER 123

(Sub. for House Bill No. 526—By Mr. Reed)

AN ACT to authorize the county court of Clay county to apply or expend for the payment of principal and interest of bonded indebtedness hereafter to be incurred for the purchase of erecting bridges, jail and library in said county.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Clay county court authorized, from revenues allocated to pay pre-existing indebtedness, to pay principal and interest of bonded indebtedness to be incurred for a public library.

Sec.

county jail and two bridges; costs of projects and location of bridges; total cost; election to authorize expenditures; all existing indebtedness of county to be first paid.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Clay county is hereby au-

2 thORIZED to apply and expend the revenues heretofore allocated
 3 under the provisions of chapter sixty-seven, acts of the Legis-
 4 tature of West Virginia, second extraordinary session, one thou-
 5 sand nine hundred thirty-three, for the purpose of paying and
 6 satisfying pre-existing contractual indebtedness to the pay-
 7 ment of the principal and interest of certain bonded indebted-
 8 ness to be incurred by the said county of Clay for a public li-
 9 brary at a cost not to exceed two thousand dollars, a county
 10 jail not to cost more than eight thousand dollars and two bridges
 11 not to exceed thirty thousand dollars each, and one of said
 12 bridges to be erected at the mouth of Little Sycamore or Big
 13 Sycamore on Elk river; the other to be erected at Paddy or
 14 Groves creek: *Provided, however,* That all of said improve-
 15 ments are to be made, otherwise void.

16 For the purpose of erecting and constructing in said county,
 17 a public library, county jail and two bridges. the principal of
 18 said indebtedness shall not exceed seventy thousand dollars:
 19 *Provided, however,* That no such bonded indebtedness shall be
 20 incurred by the said county court of said county unless author-
 21 ized by the voters of said county at an election duly held for
 22 that purpose as authorized by the statutes of the state of West
 23 Virginia in such cases: *Provided further,* That no funds raised
 24 as aforesaid shall be expended by the county for the purposes
 25 heretofore set out until all of the indebtedness of the county
 26 which is due and payable shall have been fully paid and satis-
 27 fied.

CHAPTER 124

(House Bill No. 223—By Mr. Proctor)

AN ACT to authorize the county court of Fayette County to ex-
 pend funds for the improvement and maintenance of the Four-
 H camp in Fayette County.

[Passed February 8, 1935; in effect from passage. Approved by the Governor.]

Sec.

1. Fayette county court authorized
 to annually expend not to ex-

Sec.

ceed three thousand dollars for
 county Four-H camp.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Fayette county may expend 2 annually from any funds available a sum not to exceed three 3 thousand dollars for the improvement and maintenance of the 4 Fayette county Four-H camp heretofore established.

CHAPTER 125

(House Bill No. 489—By Mr. Van Sickler)

AN ACT to authorize the county court of Greenbrier County, West Virginia, to levy and use, for the payment of principal of bonds and sinking funds requirements thereon, to be issued by the said county of Greenbrier, for the purpose of erecting a county jail, the levies apportioned for county indebtedness, bonded and otherwise, by section ten, chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three.

[Passed March 7, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Greenbrier county court, from revenues allocated to pay county indebtedness, to pay bonds

Sec.

for erecting county jail; amount of bonded indebtedness; bond issue submitted to voters.

WHEREAS, The county jail of Greenbrier County is now in an unsafe, insecure, unsanitary and dilapidated condition and is incapable of adequate repairs; and

WHEREAS, An emergency is declared to exist in said county necessitating the erection of a new county jail therein; therefore

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Greenbrier County be and it 2 is hereby authorized and empowered to levy, use and expend, 3 for the purpose of erecting a county jail, the levies heretofore 4 apportioned to the said county, for county indebtedness bonded 5 and otherwise under the terms of section ten, chapter sixty- 6 seven, acts of the Legislature of West Virginia, second extra- 7 ordinary session, one thousand nine hundred thirty-three, for 8 the purpose of paying the principal and sinking fund require-

9 ments of a certain series of bonds to be issued by said county,
 10 the proceeds of which are to be used in the erection of a county
 11 jail in said county: *Provided, however,* That the principal of
 12 said bonded indebtedness shall not exceed the sum of eighty
 13 thousand dollars: *And provided further,* That no bonded in-
 14 debtedness shall be incurred hereunder unless authorized by the
 15 voters of said county of Greenbrier at an election duly held for
 16 that purpose, as provided for and authorized by the statutes of
 17 this state.

CHAPTER 126

(House Bill No. 513—By Mr. Thomas)

AN ACT to authorize the county court of Kanawha county, West Virginia, to appoint a cadastral engineer for said county; to provide qualifications for appointment of said engineer; to provide certain duties for his office; to provide for assistants; to provide for salaries for said engineer and assistants; and to authorize said county court to expend not to exceed ten thousand dollars per annum for the administration of the duties devolving upon said office.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

- | | |
|--|--|
| <p>Sec.</p> <p>1. Kanawha county court authorized to appoint a cadastral engineer.</p> <p>2. Levy, not to exceed ten thousand dollars, authorized for administration of duties of said engineer.</p> <p>3. Duties of cadastral engineer.</p> | <p>Sec.</p> <p>4. Qualification of cadastral engineer.</p> <p>5. Number of assistants and salaries of engineer and assistants fixed by court.</p> <p>6. Court to furnish office, supplies, etc.</p> <p>7. Engineer may use relief labor.</p> |
|--|--|

Be it enacted by the Legislature of West Virginia:

Section 1. That in order to safeguard private and public property and keep the boundary lines thereof intact, and to assist the county units of government in their authorized functions that the county court of Kanawha county is hereby authorized to appoint a cadastral engineer for said county.

Sec. 2. That said court is hereby authorized to expend not to exceed ten thousand dollars per annum for the administra-

tion of the duties devolving upon said engineer, and that said court is hereby empowered to levy said amount for this purpose.

Sec. 3. The following prescribed duties shall be carried out by said engineer, at the discretion of the county court:

- (1) Survey and map all property owned by the county court and the county board of education.
- (2) Survey and map all public and family burying-grounds outside of municipalities.
- (3) To plan a system of horizontal and vertical control for said county and execute same, and
- (3-a) Reference subdivision and land lines to said control system.
- (4) To keep all maps, plans, records accessible to public.
- (5) To do such engineering work as may be required from time to time by the different departments of county government.
- (6) To make annual progress report to county court.

Sec. 4. The county court shall appoint as cadastral engineer one who is a registered professional engineer under the laws of West Virginia, and classified as a "civil engineer."

Sec. 5. Such assistants as are necessary shall be appointed and the salaries of the engineer and assistants shall be set by said county court.

Sec. 6. Office for the engineer shall be located in court house and such equipments, supplies, transportation and other expenses shall be provided for by the county court from said allotment.

Sec. 7. Said engineer shall have authority to use relief labor.

CHAPTER 127

(House Bill No. 354—By Mr. Morris)

AN ACT authorizing the county court of Monongalia county to pay a fair and reasonable sum in settlement of the claims

for necessary nursing and hospital services provided certain persons while such persons were under arrest charged with committing the crime of arson in said county.

[Passed February 28, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. Monongalia county court authorized to pay hospital and nursing costs for certain prisoners.
3. Medical or surgical services not

Sec.

- included; total of separate items for nursing and hospitalization.
4. Payments to be made from general county fund.

Be it enacted by the Legislature of West Virginia:

Section 1. That the county court of Monongalia county, West Virginia, is hereby authorized to pay to the proper persons such sums as shall represent a fair and equitable settlement of the costs incurred from the necessary hospital and nursing services rendered to and for Ben Legnosky and Joe Vaslovski, while the said Ben Legnosky and Joe Vaslovski were prisoners under arrest and in the custody of the sheriff of Monongalia county, charged with committing the crime of arson within said county.

Sec. 2. Such sums shall not include any fees for medical or surgical services. The total of the separate items of expense which the court is authorized to pay shall not exceed the sum of four hundred sixty-five dollars for nurses' fees, and the sum of one thousand one hundred dollars for hospitalization expenses.

Sec. 3. All such sums hereinbefore authorized to be paid by the county court shall be paid out of the general fund of said county, and charged to the expense of keeping prisoners.

CHAPTER 128

(Senate Bill No. 181—By Messrs. Elbin and Garrett)

AN ACT to authorize the county court of Marshall county to pay the Moundsville Echo and the Moundsville Journal, and the county court of Putnam county to pay the Putnam Democrat

and the Putnam Leader, and the county court of Jackson county to pay the Jackson Herald and the Mountaineer, and the county court of Clay county to pay the Clay Messenger for printing lists of real estate and lists of persons and property other than real estate in said counties, delinquent for the non-payment of the taxes thereon for the year one thousand nine hundred thirty.

[Passed March 4, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. The county courts of Marshall, Putnam, Jackson and Clay counties authorized to pay designated newspapers for print-

Sec.

ing, in 1931, lists of property delinquent for non-payment of taxes.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of the county of Marshall is hereby authorized to pay the Moundsville Echo and The Moundsville Journal, newspapers of opposite politics published in said county, at the rate provided by law for publishing as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate, of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of the county of Putnam is hereby authorized and directed to pay the Putnam Democrat and the Putnam Leader, newspapers of opposite politics published in said county, at the rate provided by law for publishing as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of Jackson county is authorized to pay the Jackson Herald and the Mountaineer, newspapers of opposite politics published in said county, at the rate provided by law for publishing, as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of the county of Clay is hereby authorized

27 and directed to pay the Clay Messenger, a newspaper in said
 28 county, at the rate provided by law for publishing as required
 29 by law, in the month of June, one thousand nine hundred thirty-
 30 one, copies of the list of real estate and copies of the lists of
 31 persons and property, other than real estate of said county
 32 delinquent for the nonpayment of taxes thereon, for the year
 33 one thousand nine hundred thirty.

CHAPTER 129

(House Bill No. 276—By Mr. Gaylord)

AN ACT to amend and reenact section eight, chapter six, acts of the
 Legislature of West Virginia, regular session, one thousand
 nine hundred twenty-one, relating to the city of Clarksburg,
 in the county of Harrison.

[Passed February 18, 1935; in effect from passage. Became a law without the
 approval of the Governor.]

Sec.

8. Municipal candidates to be nomi-
 nated in primaries; registra-
 tion of voters by wards; how
 municipal elections conducted;
 how ballots cast, returned and
 canvassed; voting places and

Sec.

election officers designated by
 council; how cost of registra-
 tion and elections paid; double
 election boards; precincts; qual-
 ification of voters; oath of elec-
 tion officials.

Be it enacted by the Legislature of West Virginia:

That section eight, chapter six, acts of the Legislature regu-
 lar session, one thousand nine hundred twenty-one, and known
 as the charter of the city of Clarksburg, is hereby amended and
 reenacted to read as follows:

Section 8. The candidates to be voted for at all general
 2 municipal elections shall be nominated by primary elections.

3 The candidates to be voted for at the municipal election to be
 4 held on the third Tuesday in April, one thousand nine hundred
 5 thirty-five, shall be nominated at a primary to be held on the
 6 first Tuesday in April, preceding the day fixed for the regular
 7 election.

8 The city council shall cause a registration of the qualified
 9 voters of each ward to be made, as provided by ordinance now
 10 in effect, or hereafter adopted, and such registration shall be

11 made and elections shall be held, conducted and the result there-
12 of ascertained and declared in all respects as is or shall be
13 provided by state laws for the registering of voters and the
14 holding and conducting of primary elections throughout the
15 state for nominating candidates for state and county offices;
16 and the duties by the state laws imposed upon the county court
17 and the clerk thereof, in respect to general primary elections
18 shall be discharged by the city council and the city clerk,
19 respectively.

20 Regular municipal elections shall be held and conducted in
21 all respects as provided by law for conducting general elections
22 in the state of West Virginia; except that the names of candi-
23 dates nominated for office need not be published. The city
24 council shall perform all of the duties in regard to the election
25 which are imposed upon a county court in conducting a general
26 election in the state, and the city clerk shall perform all of the
27 duties which are imposed upon the clerk of the county court;
28 the city executive committee of each political party, and its
29 chairman shall perform all of the duties that the county execu-
30 tive committee and its chairman perform in the county, and the
31 city council in selecting officers to conduct the election and in
32 choosing ballot commissioners shall be bound by all of the laws
33 obligating a county court to select commissioners and clerks
34 which may be designated by a party executive committee or by
35 the chairman thereof.

36 The ballots shall be received, cast, counted, tabulated, and
37 returns made and canvassed in all respects as provided by law
38 for conducting general elections in the state of West Virginia,
39 except that the duties devolving upon the county court and the
40 clerk thereof under the general laws for conducting elections
41 in the state shall be discharged by the city council and the city
42 clerk.

43 The places for holding the elections shall be selected and pro-
44 vided by the city council, and the officers selected to conduct
45 the same shall receive the same compensation that is paid to
46 like officials selected to conduct general elections in the state.
47 The costs and expenses incurred in registering the voters and in
48 conducting and holding the primary and general elections shall
49 be paid one-half part thereof by the city, out of its general fund,
50 and one-half part thereof by the water board, out of its revenues.
51 A receiving board and a returning board of officials to conduct

52 the election may be appointed at any or all voting precincts
53 when in the judgment of the city council a double election board
54 is necessary to facilitate the holding of the election and counting
55 of the ballots. The city council may establish one or more voting
56 precincts in any ward and may fix the boundaries of such pre-
57 cincts.

58 Each resident of the city of Clarksburg, who is a citizen of the
59 United States, and who has resided in the state of West Virginia
60 for at least one year, and in the city of Clarksburg for at least
61 six months, and who is a bona fide resident of the ward and
62 election precinct in which he offers to vote, and who is not other-
63 wise disqualified by law, shall be entitled to vote.

64 All commissioners and clerks selected to conduct elections,
65 and all registrars, and all challengers, shall take the oath pre-
66 scribed by law before entering upon the discharge of their re-
67 spective duties.

68 All other acts or parts of acts, in conflict with the provisions
69 of this act, for the purpose of this act only, are hereby repealed.

CHAPTER 130

(House Bill No. 335—By Mr. Gaylord, by request)

AN ACT to amend and reenact sections seven, eight, nine, eleven, fourteen, eighteen, thirty-eight, thirty-nine, forty, forty-two and forty-seven, chapter six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-one, relating to the city of Clarksburg, in the county of Harrison.

[Passed February 27, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

7. Number and terms of members of council and water board; biennial elections; election of bipartisan water board, nominations and terms; filling vacancies in council and board; submission of act to voters; how referendum conducted; form of ballot; expense of referendum.
8. Nominations by primary elections; primary in April, 1935; registration of voters by wards:

Sec.

- duties of council and city clerk in municipal elections; canvassing returns; voting places and election officers; cost of registration and elections paid equally by council and water board; double election boards; precincts; qualifications of voters; oath of election officials.
9. Corporate powers, except those conferred on water board, vested in council; quorum; city

Sec.	manager as presiding officer; signing, publication and recordation of ordinances.	Sec.	to vote; appointive officers of board, duties, terms and compensation.
11.	Appointive officers; appointment, removal and appointive powers of city manager; removal of appointive officers by city manager; appeal to council; council, by ordinance, to limit number of policemen and firemen.	39.	Meetings of board; quorum.
14.	Offices and powers of city manager.	40.	Compensation of members of board; no additional compensation to city manager.
18.	Qualifications and duties of city attorney; special counsel to assist.	42.	Duties and powers of general manager of water board; when to purchase materials on competitive bids; to keep on file maps, etc., of water works system; duties of secretary of board; duties of treasurer of board; audit of books.
38.	Water board, how composed; bipartisan; city manager to be president of board with right	47.	Board may employ special counsel or an assistant to city attorney.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, nine, eleven, fourteen, eighteen, thirty-eight, thirty-nine, forty, forty-two and forty-seven, chapter six, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and known as the charter of the city of Clarksburg, are hereby amended and reenacted to read as follows:

Section 7. The elective officers of the city of Clarksburg shall consist of a council composed of nine members, one to be elected from, and resident in, each ward of the city; and of a water board composed of four members. The members of the city council shall hold their respective offices for the term of two years, and the members of the water board shall hold their respective offices for the term of four years.

An election for officers under this act shall be held on the third Tuesday in April, in the year one thousand nine hundred thirty-five, and biennially thereafter, on the same day of the same month. The terms of the councilmen shall begin on the first day of May, next following the election, and the terms of the present members of the city council shall expire on the thirtieth day of April, one thousand nine hundred thirty-five.

At the election to be held on the third Tuesday in April, in the year one thousand nine hundred thirty-five, there shall be elected two members of the water board, the one receiving the highest number of votes shall serve for four years, and the one of opposite political faith receiving the next highest number of votes shall serve for two years, beginning on the first day of May, next following. The other members of the water board in office in the city of Clarksburg at the time this act becomes effective shall serve out the remainder of their respective terms, and at

24 each regular biennial election after one thousand nine hundred
25 thirty-five, there shall be elected two members of the water board
26 of opposite political faith to serve for a term of four years, be-
27 ginning on the first day of May, next following the election. At
28 each primary election there shall be nominated by each political
29 party two candidates for the office of member of the water board,
30 and the two candidates of opposite political faith receiving the
31 highest number of votes at the general election shall serve as
32 members of the board.

33 Any vacancy in the office of councilman shall be filled by
34 appointment by the remaining members of the city council, for
35 the unexpired term, and any vacancy on the water board shall be
36 filled by appointment by the remaining members of the water
37 board, for the unexpired term, but the person appointed to fill
38 a vacancy on the water board shall be of the same political faith
39 as his predecessor in said office. All appointive employees of the
40 city, or their successors in employment, shall hold their respective
41 employments until their respective successors shall have been
42 chosen: *Provided, however,* That this act shall not become
43 effective until it shall have been submitted to and shall have
44 obtained the approval of a majority of the votes cast at the
45 referendum herein provided. A referendum to the voters of
46 the city of Clarksburg or a special election therein is hereby
47 called and the same shall be held on the first Tuesday in April,
48 one thousand nine hundred thirty-five, at the same time the
49 primary election is held in said city for the nomination of
50 candidates to be voted for at the regular biennial election fol-
51 lowing, for the purpose of submitting to the voters of the city
52 of Clarksburg the question of the adoption or rejection of this
53 act. At such referendum or special election all persons regis-
54 tered and qualified to vote for candidates at said primary
55 election, shall be entitled to vote for or against this act. The
56 registration books used in said primary election shall be used in
57 said referendum. Said referendum shall be conducted and the
58 results thereof ascertained and certified by the city council, sit-
59 ting as a board of canvassers, and all of the provisions of the law
60 of this state except as otherwise expressly provided in the char-
61 ter of the city of Clarksburg, and except as otherwise incon-
62 sistent with the provisions of this act, are hereby made appli-
63 cable to such referendum. The election officers appointed by the

64 city council to conduct the primary election shall serve as officers
65 for the holding of said referendum.

66 The referendum shall be by ballot and the ballot commis-
67 sioners appointed to prepare the regular primary election bal-
68 lots, shall also prepare the referendum ballots, and shall print
69 thereon the following:

70 'BALLOT ON BI-PARTISAN WATER BOARD

71 FOR ADOPTION OF BI-PARTISAN WATER BOARD

72 AGAINST ADOPTION OF BI-PARTISAN WATER
73 BOARD'

74 The city council of the city of Clarksburg, sitting as a board
75 of canvassers, shall ascertain the result of said referendum, at
76 the same time it canvasses the votes cast at the primary election,
77 and shall certify the result of said referendum to the secretary
78 of state of the state of West Virginia, whereupon, if this act
79 shall have been so adopted, the same shall to all intents and
80 purposes become immediately effective, otherwise null and void
81 and of no effect whatsoever.

82 No proclamation of the city council or the city manager or
83 other official notice of said referendum shall be published or
84 posted except that a copy of the referendum ballot shall be
85 printed in each of the two Clarksburg newspapers of opposite
86 political faith, one time prior to the holding of said referendum.
87 All expenses of holding the referendum under this act shall be
88 paid in the same manner as the costs of holding the primary
89 and general elections are provided to be paid under existing
90 law.

Sec. 8. The candidates to be voted for at all general municipi-
2 pal elections shall be nominated by primary elections: *Pro-*
3 *vided, however,* That all candidates to be voted for at the
4 regular municipal election to be held on the third Tuesday in
5 April, one thousand nine hundred thirty-five, shall be nominated
6 at a primary to be held on the first Tuesday in April preceding
7 the day fixed for holding the regular election, except in the
8 event this act is adopted and approved at the referendum pro-
9 vided for in section seven hereof, then the two candidates of
10 each political party running for members of the water board
11 and receiving the highest number of votes in the primary elec-

12 tion, shall be the candidates of each political party at the general
13 election; if there should be only one candidate of either party
14 at the primary, then the city executive committee of that party
15 shall, within forty-eight hours after the result of said referen-
16 dum shall have been ascertained by the city council, name an
17 additional candidate whose name shall be placed on the ballot
18 as a candidate of the party naming him, to the end that each
19 political party shall have two candidates for member of the
20 water board to be voted on at said general election to be held
21 for the year one thousand nine hundred thirty-five.

22 The council shall cause a registration of the qualified voters
23 of each ward to be made as provided by ordinance now in effect
24 or hereafter adopted, and such registration shall be made and
25 elections shall be held, conducted and the result thereof ascer-
26 tained and declared in all respects as is or shall be provided by
27 state laws for the registering of voters and the holding and
28 conducting of primary elections throughout the state for nomin-
29 ating candidates for office; and the duties by state laws imposed
30 upon the county court and clerk thereof in respect to general
31 primary elections shall be discharged by the city council and the
32 city clerk, respectively.

33 Regular municipal elections shall be held and conducted in
34 all respects as provided by law for conducting general elections
35 in the state of West Virginia; except that the names of the can-
36 didates nominated for office need not be published. The city
37 council shall perform all of the duties in regard to the election
38 which are imposed upon a county court in conducting a general
39 election in the state, and the city clerk shall perform all of the
40 duties which are imposed upon the clerk of the county court; the
41 city executive committee of each political party, and its chair-
42 man shall perform all of the duties that the county executive
43 committee and its chairman perform in the county, and the city
44 council in selecting officers to conduct the election and in choos-
45 ing ballot commissioners shall be bound by all of the laws ob-
46 ligating a county court to select commissioners and clerks which
47 may be designated by a party executive committee or by the
48 chairman thereof.

49 The ballots shall be received, cast, counted, tabulated, and re-
50 turns made and canvassed in all respects as provided by law for
51 conducting general elections in the state of West Virginia, ex-

52 cept that the duties devolving upon the county court and the
53 clerk thereof under the general laws for conducting elections in
54 the state shall be discharged by the city council and the city
55 clerk.

56 The places for holding the elections shall be selected and pro-
57 vided by the city council, and the officers selected to conduct
58 the same shall receive the same compensation that is paid to
59 like officials selected to conduct general elections in the state.
60 The costs and expenses incurred in registering the voters and
61 in conducting and holding the primary and general elections
62 shall be paid one-half part thereof by the city, out of its gen-
63 eral fund, and one-half part thereof by the water board, out of
64 its revenues.

65 A receiving board and a counting board of officials to con-
66 duct the election may be appointed at any or all voting pre-
67 cincts when in the judgment of the city council a double elec-
68 tion board is necessary to facilitate the holding of the elec-
69 tion and counting of the ballots. The city council may es-
70 tablish one or more voting precincts in any ward and may fix
71 the boundaries of such precincts.

72 Each resident of the city of Clarksburg, who is a citizen of
73 the United States, and who has resided in the state of West
74 Virginia for at least one year, and in the city of Clarksburg for
75 at least six months, and who is a bona fide resident of the ward
76 and election precinct in which he offers to vote, and who is not
77 otherwise disqualified by law, shall be entitled to vote.

78 All commissioners and clerks selected to conduct elections,
79 and all registrars and all challengers, shall take the oath pre-
80 scribed by law before entering upon the discharge of their re-
81 spective duties.

Sec. 9. All corporate powers of the city shall be vested in
2 and exercised by the council, except as hereinafter conferred
3 upon the water board. Each councilman shall have a right
4 to vote on all questions coming before the council. Five or
5 more members of the council shall constitute a quorum for the
6 transaction of business, and the affirmative vote of at least a
7 majority of all the members of the council shall be necessary to
8 adopt any motion, resolution or ordinance, or pass any
9 measure.

10 The city manager, hereinafter provided for, shall preside at

11 all meetings of the council when present, and in his absence, the
12 council shall select a presiding officer. The city manager or
13 other presiding officer shall have no power to veto any measure,
14 resolution or ordinance; and the city manager shall have no
15 vote upon the passage of the same. But every resolution, ordi-
16 nance or franchise passed by the city council must be signed by
17 the city manager and the city clerk or recorder, and must be
18 published and recorded before the same shall be effective, unless
19 otherwise provided in this act.

Sec. 11. For the administration of the affairs of the city
2 and of the powers conferred upon the city council, there are
3 created the following municipal offices:

4 City manager, city clerk or recorder, police court judge, city
5 collector and treasurer, city attorney, city engineer, who shall
6 be ex-officio street supervisor, city physician, chief of police, and
7 chief of the fire department.

8 The council shall have power to create additional administra-
9 tive offices and to abolish any of the offices by it created.

10 The city council shall at its first meeting, in the month of May,
11 following a municipal election, or as soon thereafter as practi-
12 cable, appoint by a majority vote, a city manager, and shall by
13 a like vote, at any regular or special meeting of the council, fill
14 any vacancy in said office.

15 The city manager may be removed at any time by the city
16 council, by the affirmative vote of two-thirds of all the members
17 therof, after a public hearing, for any cause, reason or ground,
18 for which a member of the county court or other county officer
19 may be removed.

20 The city manager shall, by and with the advice and consent
21 of the city council, appoint a city clerk or recorder, a police
22 court judge, a city collector and treasurer, a city attorney,
23 a city engineer, who shall be ex-officio street supervisor, a city
24 physician, a chief of police and a chief of the fire department,
25 and officers to fill any other administrative offices which the
26 council shall create.

27 Any vacancy in any of said offices shall be filled by the city
28 manager with the consent of the council, and the assent of the
29 council in all cases shall be entered of record in the book contain-
30 ing the proceedings of the council.

31 The terms of all administrative officers shall be co-extensive
32 with the tenure of the city manager making the appointment,

33 but said administrative officers may be dismissed and removed
34 from office by the city manager at any time for just cause: *Pro-*
35 *vided*, That the person dismissed or removed shall, upon request,
36 be entitled to a hearing before the council, and the city manager
37 shall reduce the charges against the removed officer to writing
38 and shall file the same with the city clerk at least five days
39 before the date set for the hearing before the council; unless
40 the council, by the affirmative vote of a majority of all the
41 members shall sustain the action of the manager, such ad-
42 ministrative officer shall be reinstated.

43 The council shall by ordinance or resolution, prescribe, fix and
44 limit the number of city policemen to be employed by the city,
45 and the number of employees in the fire department.

Sec. 14. The city manager shall occupy an office for the
2 transaction of the public business in the building or buildings
3 occupied by the city government, which office shall be kept open
4 on all secular days except legal holidays, for the transaction
5 of the public business. He shall devote all of his time to
6 the discharge of his official duties, and while holding the office
7 shall not engage in any other business or employment or hold
8 any other office. In addition to all other powers which may
9 be conferred upon the city manager by the city council, or by
10 the laws of the state of West Virginia, he shall exercise the
11 following powers:

12 (a) Supervise, control and direct the affairs and business
13 of all the administrative offices created in section eleven of this
14 act, or which shall hereafter be created by the council under the
15 authority therein contained, except the police department.

16 (b) Appoint and remove in the manner herein provided all
17 administrative officers and employ and discharge at will all other
18 employees of the city, except employees in the police depart-
19 ment and in the water department.

20 (c) Enforce in favor of the inhabitants of the city all terms
21 and conditions in their favor contained in any public utility
22 franchise and require the faithful discharge of obligations of
23 all public utilities.

24 (d) Attend and preside at all meetings of the council and
25 the water board, with the right to take part in the discussion of
26 all measures, and to vote upon all questions coming before the
27 water board, as a member thereof.

28 (e) Recommend to the council for adoption such measures
29 and resolutions as he may deem expedient.

30 (f) Act as budget commissioner and keep the city council
31 fully advised as to the financial condition and needs of the
32 city.

33 (g) Determine and decide on the plan and program for pav-
34 ing, sewerage and otherwise improving the different streets and
35 alleys in the city and fix and determine the order of time in
36 which such streets and alleys shall be paved, sewerage and other-
37 wise improved.

38 (h) Determine and decide upon the kind and character of
39 pavements, sidewalks, curbs, sewers and other improvements
40 which shall be constructed and made upon and in any of the
41 streets and alleys of the city.

42 (i) Employ competent experts to advise with him in planning
43 the improvements of city streets and alleys, in specifying the
44 kind and character of pavements, sidewalks, curbs and sewers,
45 which shall be laid and constructed, and to supervise the per-
46 formance of the work in paving, sewerage and improving any
47 street or streets, and alley or alleys; and by contract to specify
48 and fix the compensation which any expert so employed by the
49 city manager shall receive for his services, which contract shall
50 not become binding or effective until approved by the city
51 council and the fact of such approval entered of record.

52 (j) Authenticate all ordinances and resolutions passed by the
53 council and sign the minutes of all meetings of the council.
54 Immediately upon the meeting of the council the minutes of the
55 preceding meeting shall be read and corrected if they contain
56 any errors, and they shall be signed by the city manager and
57 city clerk before the council proceeds to the transactions of any
58 business.

59 (k) Act as purchasing agent and purchase all supplies and
60 material for all departments of the city government except the
61 water department; and make sale of all property of the city not
62 needed or suitable for the public use in such manner as the
63 council may direct: *Provided, however,* He shall not make any
64 contract or purchase involving an expenditure in excess of
65 \$500 without first obtaining the assent of the council so to do.
66 All supplies to be used by the city and all material purchased
67 by the city for the construction of any public improvement shall
68 be purchased on competitive bids. All proposals for such shall
69 be upon precise specifications, and notice of the requirements of
70 the city shall be given to dealers in supplies and materials of the

71 kind required who by reason of location are best able to furnish
72 the same at the lowest price. All offers to sell supplies and mater-
72-a ials to the city shall be attached to the accepted offer and
73 filed and preserved in the office of the city clerk. All pur-
74 chases shall be audited by the city council and only on approval
75 of the council shall payment be made: *Provided, however,* That
76 limited quantities of supplies and materials may be purchased
77 in cases of emergency without delay necessary to secure com-
78 petitive bids or offers to supply the same.

79 (l) Make and execute on behalf of the city all writings, con-
80 tracts, deeds, and agreements, the making of which shall be au-
81 thorized by the council or by the water board, or by any ordi-
82 nance, resolution or statute.

83 (m) The city manager shall exercise any and all other
84 powers conferred by the present laws of the state of West Vir-
85 ginia upon mayors of cities, towns or villages, or which shall be
86 conferred upon such officers by any law hereafter enacted, not
87 in conflict with the provisions of this act, except the powers
88 herein, or in any such law, contained relating to the preserva-
89 tion of order and the enforcement of penal ordinances and
90 statutes, which powers in this act are vested in the police court
91 judge.

Sec. 18. The city attorney shall be a member of the bar of
2 Harrison county in good standing and shall perform and dis-
3 charge all duties and exercise all powers which shall be con-
4 ferred upon him by any ordinance or resolution of the city
5 council, and, in addition, he shall exercise the following powers:

6 (a) Be the legal adviser of and attorney and counsel for
7 the city and for all of the administrative officers thereof, in-
8 cluding the water board, in respect to their official du-
9 ties.

10 (b) Prosecute and defend all suits for or against the city and
11 prepare all contracts, bonds or other writings in which the city
12 is concerned, and endorse on each his approval of the form and
13 correctness thereof.

14 (c) Be prosecuting attorney of the police court and prosecute
15 all cases brought before such court, and perform the same duties
16 so far as applicable thereto as are required of the prosecuting
17 attorney of the county.

18 (d) The city council and all administrative officers of the city

19 may require the opinion of the city attorney upon any question
20 of law involving their respective powers and the duties and he
21 shall furnish the same in writing.

22 (e) Apply in the name of the city to a court of competent
23 jurisdiction for an order by injunction restraining the misap-
24 plication of funds of the city or the abuse of its corporate powers,
25 or the execution or performance of any contract made on behalf
26 of the city in contravention of law, or which was procured by
26-a fraud or corruption.

27 (f) When an obligation or contract made on behalf of the
28 city granting a right or easement, or creating a public duty,
29 is evaded or violated, the city attorney shall require the specific
30 performance of the duty by any administrative officer by ap-
31 plication for a writ of mandamus to a court of competent juris-
32 diction.

33 The city manager or city council whenever the exigencies of
34 the business of the city require such action shall have the right
35 to employ special counsel to assist the city attorney.

Sec. 38. The members of the water board in office when this
2 act goes into effect shall serve out their original terms; and as
3 provided in section seven of the charter of the city, as herein
4 amended, two additional members shall be elected to serve on
5 the water board, but said members to be hereafter elected shall
6 be of opposite political faith; on and after May first, one thou-
7 sand nine hundred thirty-five, the two members now in office, to-
8 gether with the two members to be elected, and the city manager
9 of the city, shall compose the water board; after May first, one
10 thousand nine hundred thirty-seven, no more than two members
11 of the water board, the city manager excepted, shall be affiliated
12 with any one political party; nor elected on any one political
13 party ticket.

14 The city manager shall be the president of the water board.
15 and shall preside at all meetings when present, and in his ab-
16 sence the board shall select a presiding officer. The city man-
17 ager shall have the right to vote on any measure, motion, or
18 resolution, the same as any other member of the board.

19 At its first regular meeting after each regular election,
20 or as soon thereafter as practicable, the water board shall ap-
21 point a general manager for the water works plant, and a secre-
22 tary and treasurer of the water board, and the board may ap-

23 point the general manager as ex officio secretary and treasurer,
24 or may by a concurrent resolution of the water board and the
25 city council, appoint the city collector and treasurer as secre-
26 tary and treasurer of the board, or said board may appoint any
27 other duly qualified voter to act as its secretary and treasurer.

28 The general manager and the secretary and treasurer of the
29 water board shall devote all of his or their time to the public
30 service of the city of Clarksburg, and while holding such office
31 shall not be engaged in any other business or accept any other
32 employment.

33 The water board may create and discontinue such other ad-
34 ministrative offices and employments as in their judgment the
35 needs of the department shall require, and fill by appointment
36 all such administrative offices.

37 The board shall prescribe and fix by resolution, the com-
38 pensation to be paid to the general manager and to all other
39 administrative officers and employees of the water board and the
40 time and manner of making such payment. The general man-
41 ager and all employees of the water department shall hold
42 their respective offices and employments at and during the
43 pleasure of the board.

Sec. 39. Regular meetings of the board shall be held monthly
2 on a day designated by resolution of the board and special
3 meetings may be called at any time by the city manager, or by
4 any two members of the board. All meetings of the water
5 board shall be open to the public. It shall require at least three
6 members of the board to constitute a quorum for the transac-
7 tion of business, and the affirmative vote of at least three mem-
8 bers shall be necessary to pass any motion, measure or reso-
9 lution.

Sec. 40. Each member of the water board shall receive a fee
2 of five dollars for each regular and special meeting which he
3 shall attend: *Provided, however,* That he shall not receive total
4 compensation of more than one hundred dollars for any year.
5 The city manager as such member of the board shall receive no
6 compensation for his services, in addition to his salary as city
7 manager. No person while a member of the water board shall
8 hold any office or position of employment under the govern-
9 ment of the city of Clarksburg.

Sec. 42. Subject at all times to the control of the water

2 board, the general manager shall have charge of all the water
3 works plant and system, and shall exercise supervision and
4 control over all of the employees of the water board. He shall
5 enforce all ordinances, rules and regulations heretofore adopted,
6 or which may hereafter be adopted by the water board, and all
7 laws of the state of West Virginia, applicable to the water
8 works system or plant, except that any ordinance or laws sub-
9 jecting any person to a fine or imprisonment for the violation
10 thereof shall be enforced by the police court judge. He shall
11 have general supervision of the pumping plants and stations
12 and filtration plant. He shall attend all meetings of the water
13 board; he shall act as purchasing agent for the water depart-
14 ment, and shall purchase all materials for the construction,
15 improvement, or repair of the water system and all supplies
16 needed in the operation of the water plant or system, and ex-
17 cept in cases of emergency, all such purchases shall be upon
18 competitive bids. Dealers in supplies and materials of the kind
19 required shall be notified by him by letter of the requirements
20 of the water department, and asked to submit propositions for
21 furnishing the same, and the offer most advantageous to the
22 city, taking into consideration the quality, time of delivery, and
23 all other conditions, shall be accepted: *Provided, however,*
24 That he shall not make any contract or purchase involving an
25 expenditure in excess of five hundred dollars without first ob-
26 taining the consent of the water board.

27 All offers to furnish material and supplies shall be attached
28 to the accepted offer and shall be filed and preserved with the
29 records of the department.

30 He shall cause to be made and kept on file for public infor-
31 mation at the office of the board, complete maps, plans and
32 details showing the dams, pumping station, reservoirs, tanks,
33 pipes, valves, connections, water lines, fire hydrants, and all
34 other data necessary for a complete exhibition of the physical
35 properties of the water works plant or system, which maps or
36 plats shall be from time to time revised and extended.

37 The general manager shall so recommend to the board from
38 time to time the additions, changes, repairs and improvements
39 to the water works system or plant that he may deem necessary;
40 and he shall keep the board fully advised as to the financial
41 condition and the needs of the department; he shall perform all

42 other duties that may from time to time be required of him by
43 by the board, or by any law of the state of West Virginia.

44 The secretary of the water board shall attend all meetings of
45 the board and shall keep in a well-bound book a complete record
46 of all proceedings of said board, and shall, with the president of
47 the board, authenticate with his signature the record of the
48 proceedings of each meeting. He shall also affix his signature
49 to all other contracts, agreements, documents and papers as
50 may or shall be directed by the board.

51 The treasurer of the water board shall collect and preserve
52 all moneys and other revenues payable to the board, and shall
53 pay the same out only upon the order of the board in such
54 manner as it may by rules and resolutions prescribe. He shall
55 keep, or cause to be kept, full and accurate books of account
56 covering all the business and transactions of the water works
57 department of the city, charging the water board with all
58 moneys received from every source, and crediting the same with
59 all expenditures and disbursements.

60 He shall pay out of the moneys of the board only for the
61 purposes authorized by law, and upon vouchers drawn by him
62 and countersigned by the president of the board.

63 The treasurer of the water board shall, at the close of any
64 fiscal year, cause a complete audit to be made of all the books
65 and records of the department for the preceding year, by the
66 state tax commissioner or supervisor of public accounting for
67 the state of West Virginia, and he shall cause to be published,
68 the report made by the auditor, together with such other re-
69 port and information concerning the operation of the depart-
70 ment as may be deemed necessary for the information of the
71 public. A report of the auditor shall be published once in the
72 two principal newspapers of opposite politics published in the
73 city of Clarksburg, and the same shall constitute the financial
74 statement of the department, the publication of which is re-
75 quired by general law.

Sec. 47. The water board may employ special counsel or an
2 assistant counsel to the city attorney to assist and advise them
3 in the discharge of their duties whenever the occasion may war-
4 rant, and to institute, prosecute and defend for the water board
5 in the name of the city, suits, proceedings and prosecutions to
6 enforce the proper authority and obligations of the water board,

7 and to defend them in their rights, and to enable them to
8 adequately discharge their duties; the cost of any litigation
9 conducted by the water board, as well as all fees and compen-
10 sation for such special or assistant counsel employed by it,
11 shall be paid by the water board out of the revenues of the
12 water department.

13 All other acts and parts of acts in conflict with the provisions
14 of this act, for the purpose of this act only, are hereby repealed.

CHAPTER 131

(Senate Bill No. 39—By Mr. Canterbury)

AN ACT to amend and reenact sections four, six, seven, eight, nine (a), twelve, thirteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, and to repeal section twenty-six, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven (municipal charters), relating to the charter of the city of Hinton, and to repeal all acts and parts of acts inconsistent with the provisions of this act.

[Passed February 1, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.	Sec.
4. Elective municipal officers to constitute city council.	12. Registration of voters; fee of registrars; duties of registrars and council; when registration made by county court may be adopted by city, after correction by council.
6. Council to appoint and fix salaries, powers and duties of subordinate officers; not to appoint member of council.	13. Oath of elective and appointive officers; filing.
7. Terms of elective officers; terms and bonds of appointive officers; present elective officers to continue until end of terms.	16. Salaries of elective and appointive officers.
8. Qualifications of elective officers; removal, after hearing.	18. Council to fill vacancies in office.
9. (a) Form of announcement of candidacy for mayor or council.	19. Removal of elective officers for cause; removal of appointive officers, with or without cause.
(b) Nominations to be made by primary; how primary conducted; declaration of result.	20. Time and place of meeting of council; compelling attendance of members; meetings open to the public.
(c) General city election, how conducted and returned; certificates of election.	21. Mayor and three members constitute quorum of council.
(d) How primary and general elections in 1935 to be conducted.	22. Presiding officer to have one vote; when majority vote of all members elected required.
(f) Registration of voters.	23. Selection of president of council; duties and powers.
(g) Voting precincts; publication of ordinance changing or estab-	

Be it enacted by the Legislature of West Virginia:

That section twenty-six, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven (municipal charters) is hereby repealed and sections four, six, seven, eight, nine-(a), twelve, thirteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three of said chapter are amended and reenacted to read as follows:

Section 4. The municipal authority of the city of Hinton 2 shall consist of and be vested in a mayor and four members 3 of the council, who shall be elected by the voters of the whole 4 city; and the mayor and the four members of the council 5 elected by the voters of the whole city as herein provided, shall 6 constitute and be "the council of the city of Hinton."

Sec. 6. The subordinate officers of said city may consist 2 of such officers as the council from time to time by ordinance 3 may provide, including, at the discretion of the council, a 4 city manager, recorder, chief of police, city attorney and city 5 health officer. The salaries, powers and duties of any such 6 subordinate officers appointed by the council shall be set out 7 and designated in the ordinance providing for their appoint- 8 ment, which appointments shall be made in the manner here- 9 inafter provided, but in no event shall the council appoint any 10 of its members as a clerical assistant, recorder, or for the per- 11 formance of any other duties than those of councilmen.

Sec. 7. The mayor and members of the council of the said 2 city shall enter upon the duties of their respective offices on 3 the first day of July next after their election, and continue for 4 a period of two years, unless they shall sooner be removed from 5 office for cause, by an affirmative vote of a majority of all the 6 members elected to the council, after five days due notice, or 7 shall resign. All subordinate and appointive officers shall 8 enter upon the duties of their respective offices, as soon as they 9 shall have been appointed and qualified, and give bond as 10 required by this act or by ordinance of the city and shall hold 11 and continue in their respective offices during the will and 12 pleasure of the council.

13 All elective officers of the said city, shall continue in their re- 14 spective offices until the end of their present terms of office, 15 and their successors have been duly elected or appointed, 16 qualified, and shall have given bond, as required by this act,

17 for the faithful performance of the duties of their respective
18 offices.

Sec. 8. No person shall be eligible to the office of mayor,
2 recorder, city manager or councilman, unless at the time of
3 his election, he is legally entitled to vote in the city election for
4 member of the common council, and was for the preceding
5 year assessed with taxes upon real or personal property within
6 said city, of the assessed aggregate value of five hundred dollars,
7 and shall have actually paid the taxes regularly assessed
8 against it. He shall be an actual bona fide citizen of the
9 United States of America, and a resident of the city for one
10 year last preceding his election. The mayor or any member
11 of the common council, ceasing to possess any of the qualifica-
12 tions specified in this section, or if convicted of any crime while
13 in office, or found guilty of malfeasance, misfeasance or non-
14 feasance by an affirmative vote of all the members elected
15 to the council, shall immediately forfeit his office, after being
16 first given five days notice in writing of the charges filed
17 against him by the mayor, any member of the council, or any
18 citizen of the city.

Sec. 9 (a). Any person who is eligible to hold the office
2 of mayor or member of the council of the said city, may file
3 with the city manager or recorder of said city, a certificate
4 declaring himself a candidate for the nomination for such
5 office, which certificate shall be in form or effect as follows:
6 I,, do hereby certify that I am a
7 candidate for the nomination for the office of mayor of the
8 city of Hinton, (or for the office of member of the council
9 of the city of Hinton,) to represent the.....
10 political party, and desire my name printed on the official
11 ballot of said party, to be voted at the city primary election to
12 be held in said city on the.....day of....., 19.....
13 I further certify that I am a legally qualified voter of the
14 said city of Hinton, and state of West Virginia; that my
15 residence is No.....,Street, in the said
16 city of Hinton; that I am eligible to hold said office and I am a
17 member of and affiliated with said political party, and that
18 I am a candidate for the said office in good faith.

19
20 (Signature of Candidate).

21 Subscribed, sworn to and acknowledged before me this.....
22 day of....., 19.....

23

24 Notary Public.

25 Such announcement shall be signed and acknowledged by
26 the candidate before some officer qualified to administer oaths,
27 and such certificate shall be filed with the city manager at
28 least ten days before the date of such primary election.

29 (b) All candidates of any political party to be voted for at
30 any municipal election for the office of mayor and member of
31 the council of said city, shall be nominated by a primary
32 election, to be held and conducted in said city. All such
33 primary elections shall be held in said city on the second
34 Tuesday in May, next before the general city election in the
35 year in which the mayor and members of the council of said
36 city are to be elected. Such primary election shall be held in
37 the manner provided for in the nomination of state, county
38 and district officers by the general election laws of this state
39 in force at the time of such primary election, with the excep-
40 tion that the duties provided in the general election law to be
41 performed by the county court, shall be performed by the
42 council of said city, and the duties to be performed under
43 the general election laws by the clerks of the circuit court
44 and county court shall be performed by the city manager or
45 recorder of said city. The general election laws governing
46 primary elections in force at the time of such primary election
47 relating to the nomination of party candidates and officers of
48 elections, shall govern such city primary election, the same as
49 if such primary election laws were reenacted in ex tenso by
50 this act, with the exception that no political party shall nomi-
51 nate more than one candidate for mayor of said city, and four
52 candidates for members of the council of said city, at any
53 primary election.

54 The candidate of each political party for mayor receiving
55 the highest number of votes in the whole city, and the four
56 candidates of each political party for members of the council
57 in said city receiving the highest number of votes in the whole
58 city, shall be declared nominated as such political party's can-
59 didate for mayor and members of the council of said city, and
60 their names shall be placed on the ballot for the general city

61 election, as the candidates of their respective political party
62 for mayor and such members of the council to be voted for at
63 such general city election.

64 (c) The general city election for the election of a mayor and
65 the four members of the council of said city shall be held on
66 the second Tuesday in June in the year one thousand nine
67 hundred thirty-five, and each two years thereafter; said gen-
68 eral city election shall be held and conducted under the pro-
69 visions of the general election laws of this state in force at
70 the date of such election and governed by the said general
71 election laws of this state in every respect, insofar as the
72 same are applicable to city elections, with the exception that
73 the duties to be performed by the county court shall be per-
74 formed by the council of the said city, and the duties to be
75 performed by the clerks of the county court and circuit court
76 shall be performed by the city manager or recorder of the
77 said city, respectively.

78 The returns of the election shall be made by the city officers
79 to the city manager or recorder, and by him submitted to the
80 council on the fifth day after such election, and the same shall
81 be canvassed, and the result thereof declared by the said coun-
82 cil on said day, or as soon as the council can finish and canvass
83 the returns of such election, whereupon the council shall cause
84 certificates of election to be issued and delivered to the per-
85 sons elected as mayor and members of the council of said
86 city.

87 (d) The mayor of the city of Hinton and the four members
88 of the council of said city so nominated and elected by the
89 voters of said city at the primary and city election held in
90 said city, as hereinbefore provided, shall hold and continue
91 in their respective offices as mayor and members of the council
92 of said city until the end of the thirtieth day of June, one
93 thousand nine hundred thirty-seven, when their respective
94 terms of office shall expire: *Provided*, That their successors
95 have been duly nominated and elected as hereinbefore pro-
96 vided: *Provided, however*, That the primary election held
97 under the act as amended for the nomination for mayor and
98 the four members of the council of said city, on the second
99 Tuesday in May, one thousand nine hundred thirty-five and
100 the general election for the election of mayor and the four
101 members of the council of said city, held on the second Tues-

102 day in June, one thousand nine hundred thirty-five, shall be
103 called, conducted and held in each of the eight voting pre-
104 cincts in said city of Hinton, as are now established and by
105 the boundaries of said eight voting precincts in said city of
106 Hinton as are now laid off and established, by the council of
107 the city of Hinton, in office on and before the first day of July,
108 one thousand nine hundred thirty-five.

109 (e) The council of the city of Hinton in office before the first
110 day of July, one thousand nine hundred thirty-five, shall ap-
111 point all election officers necessary to hold and conduct
112 such primary and said general city election, held on the
113 second Tuesday in May and the second Tuesday in June,
114 one thousand nine hundred thirty-five, respectively; they
115 shall furnish all necessary ballots and supplies for such
116 primary and general city election and shall canvass and
117 declare the result thereof, hear and decide all contests over
118 the nomination or election of any officer at such primary
119 or general city election and cause to be executed and
120 delivered certificates of election to the mayor and the four
121 members of the council of said city so elected, and shall do
122 any and all things necessary to hold and ascertain the result
123 of said primary and said city election.

124 (f) The council of the city of Hinton, now in office or in
125 office as soon as this act is amended, and goes into effect, shall
126 provide for the registration of voters in each of the eight
127 voting precincts of said city, as provided by this act as
128 amended, shall furnish all necessary registration books and
129 blanks to make such registration, appoint the registrars, which
130 registration shall be made immediately after the appointment
131 of such registrars, and the said council of the city of Hinton
132 shall hold a regular or special session on the fifth day before
133 the first primary and city election to pass upon such registra-
134 tion and correct the same in the manner provided by this
135 act.

136 (g) Each of the eight voting precincts of the city of Hinton,
137 as now established and the boundaries thereof, as now estab-
138 lished shall constitute, remain and be the eight voting pre-
139 cincts of said city, by the boundaries as now laid off and
140 established until the council of the said city of Hinton, shall
141 by ordinance, entered of record, change or designate. increase
142 or diminish said voting precincts and rearrange the boun-

143 daries of the same: *Provided, however,* That any new voting
144 precinct established or any change made in the voting pre-
145 cincts of the city shall be made by ordinance, regularly passed
146 by the council of the city of Hinton and notice thereof given
147 by publication in one democratic and one republican news-
148 paper of general circulation, published in Summers county,
149 at least thirty days before said change takes effect.

Sec. 12. All qualified voters within the city of Hinton en-
2 titled to vote in the municipal elections held therein, shall be
3 registered in like manner, as are qualified voters of West Vir-
4 ginia registered under general laws in reference to the election
5 of state and county officers, in effect at the time of such regis-
6 tration, and such general laws shall in all things apply thereto,
7 except the fee for such registration shall be five cents for each
8 qualified voter so registered, and the powers conferred upon
9 the county court and the clerk of the county court by the
10 general laws in reference to the registration of voters for gen-
11 eral elections of state and county officers are hereby conferred
12 upon the council of the city of Hinton, city manager, or re-
13 corder, respectively: *Provided further,* That the registrars for
14 each of the respective wards of said city shall be appointed by
15 the present council at a regular or special meeting of said
16 council held on the third Monday in April next preceding any
17 general election in said city, and that the said registrars shall
18 complete such registration of voters on or before the first
19 Tuesday in May following, and shall on the first Tuesday in
20 May sit for one day in their respective voting precincts for
21 the purpose of correcting such registration, and shall thereupon
22 immediately return the registration books of the respective
23 voting precincts to the city manager or recorder of said city.
24 And the council of said city shall hold a regular or special
25 meeting on the fifth day, Sunday excluded, prior to the date
26 for holding of the primary election in said city, for the purpose
27 of correcting such registration, and registering any voters of
28 said city who are qualified, and who shall have been omitted or
29 failed to have been registered by the registrars: *Provided*
30 *further,* That the council of said city shall meet again five days
31 prior to the general city election for the purpose of correcting
32 further the registration of the voters of said city, and shall add
33 to such registration lists the names of any qualified voters of

34 said city who shall appear in person for the purpose of being
35 registered for said city election, and in all other respects the
36 general laws of the state, pertaining to the registration of
37 voters, shall govern the registration of voters for said city
38 primary and general election, insofar as the same may be
39 applicable thereto, unless otherwise provided by ordinance:
40 *Provided*, That in event the county court of Summers county
41 shall change the regular voting precincts embraced in what is
42 included in the territorial limits of the city by this act, for
43 the election of county and district officers, the council may by
44 ordinance provide for the adoption of the last registration of
45 voters made in each of the precincts for the nomination and
46 election of county and district officers, in lieu of the registra-
47 tion herein required to be made for city primaries and general
48 elections. The council shall sit on the fifth day, Sunday ex-
49 cluded, prior to any city primary or election for the purpose
50 of correcting the registration list, and shall correct the same
51 by striking from the registration books so adopted the names
52 of all persons who are not then qualified voters in each of the
53 respective voting precincts, and shall add to such registration
54 the names of all qualified voters who have been omitted from
55 such list or who have become qualified to vote in such voting pre-
56 cinct by reason of their age, residence therein, or any other
57 grounds that would legally qualify them to a vote in such voting
58 precinct; and such registration list when so corrected, may
59 be adopted as the registration for any city primary or city
60 election, under this act.

Sec. 13. The mayor and members of the council of said
2 city, and all other officers provided for in this act, or that may
3 be provided for by ordinances, shall, each, before entering
4 upon the duties of their office, and within fifteen days after
5 receiving their certificate of election, or appointment, take the
6 oath or affirmation prescribed by law for all officers in this
7 state, and make oath or affirmation that they will truly, faith-
8 fully and impartially, to the best of their ability, discharge the
9 duties of their respective offices, so long as they may continue
10 therein; said oath or affirmation may be taken before any person
11 authorized to administer oaths in this state at the time the same
12 is taken, or before the mayor of the said city, but in any event
13 a copy of said oath of said office shall be filed with the city

14 manager or recorder, with the exception that the oath of office
15 of the city manager, as provided herein, shall be filed with
16 the mayor.

Sec. 16. The salary of the mayor shall not exceed three
2 hundred dollars per year, payable monthly out of the city
3 treasury. The salaries of the members of the city council shall
4 not exceed twenty-five dollars per year each, payable semi-
5 annually out of the city treasury. The salary of the city man-
6 ager, if one is appointed by the council, and of clerical assist-
7 ants used in the performance of duties in and for the city of
8 Hinton shall be fixed by the council by ordinance or by reso-
9 lution of the council appointing such city manager or clerks,
10 payable monthly out of the city treasury: *Provided, however,*
11 That the salary of any such clerical assistants and the salary
12 of the recorder shall not exceed the sum of thirty-five
12-a dollars per month for any such appointee. The salary of the
12-b chief of police and all regular police officers, the city attorney,
12-c commissioner of health, and all other regular city officers and
13 employees provided for by ordinance, or by order of the coun-
14 cil, shall be fixed by the council at the time of, and in the order
15 or resolution appointing such officers or employees, and shall be
16 paid monthly out of the city treasury: *Provided,* That there
17 shall be deducted from the salary of each of the councilmen
18 five per cent of the annual salary so designated by the council,
19 for each regular meeting of the council that such member of
20 the council fails to attend. The salary, fees and compensation
21 of all police officers, and any other special officer of the city,
22 appointed by the mayor and the council shall be fixed and de-
23 termined by the council, and any such special officer so ap-
24 pointed, who is not paid a regular salary, shall not be entitled
25 to receive for his services any fees derived under the fee sys-
26 tem, which is provided by statute to be paid to constables for
27 like services, but that any special officer so appointed must be
28 placed on a regular salary so determined by the three-fifths vote
29 of the mayor and council.

Sec. 18. Whenever a vacancy for any cause shall occur in
2 the office of mayor or member of the council of said city,
3 the mayor and remaining members of the council, or in a case
4 of a vacancy in the office of mayor, the members of the council
5 of the said city, shall fill said vacancy by electing a mayor or

6 such member of the council to fill the office or offices for and
7 during the term of such officer.

8 In case of a vacancy in the office of the city manager, re-
9 corder or any other appointive officer of said city, the council
10 shall at its next regular meeting, or at a special meeting called
11 for the purpose, fill such vacancy in the same manner as such
12 officer was originally appointed or elected by the council.

Sec. 19. The mayor or any member of the council may be
2 removed from office by the council for intemperance, gross
3 immorality, gambling, malfeasance, misfeasance or nonfeasance
4 in office, inability to act, refusal or neglect to perform the duties
5 of their respective offices imposed by this act, upon being served
6 with a notice in writing of the charges preferred against such
7 officer at a regular meeting of said council, or a special meeting
8 called for the purpose, followed by a hearing to be had on said
9 charges not earlier than five days after the service of said notice
10 in writing on such officer so sought to be removed, and it shall
11 require an affirmative vote of a majority of all the members
12 elected to the council to remove such officer from the office to
13 which he shall have been elected. Any appointed officer who
14 holds his office at the pleasure of the council may be removed
15 from the office with or without cause, at any time by a like
16 vote of the council.

Sec. 20. The regular meetings of the council shall be publicly
2 held at such times and at such places in the city as it shall
3 from time to time ordain and appoint: *Provided*, That at the
4 first meeting of the council under this act, it shall provide by
5 ordinance or resolution entered of record, the time and place
6 of regular meetings of the council during the term of office,
7 and after each city election the new council elected shall, at
8 its first meeting, by like order or resolution, fix the time and
9 place for the regular meetings of the council during its term:
10 *Provided further*, That at no time shall a place be so designated
11 for a meeting of the council, either regular or special, to be
12 held at a place other than in the property which is owned by
13 the city. It shall be lawful for the council, by ordinance or
14 resolution entered of record, to vest in the mayor, or any
15 member or members of the city council, the authority to
16 call special meetings and to prescribe the mode and manner of
17 the giving of notice to the members of the council of the times

18 and places of such special meetings. If a quorum of the mem-
19 bers of the council fail to attend any regular or special meet-
20 ing, those in attendance shall have authority to compel the
21 attendance of the absent members under such reasonable pen-
22 alty as may be provided by ordinance. The council shall pro-
23 vide for at least one regular meeting of the council in each
24 month, and such other regular meetings as it deems necessary.
25 In no event shall any meeting, either regular, special or execu-
26 tive be closed to the public.

Sec. 21. The presence of the mayor or the president of the
2 council, and three other members of the council shall be neces-
3 sary to constitute a quorum for the transaction of business at
4 all meetings of the council of said city.

Sec. 22. The mayor, or in his absence, the president of the
2 council, shall preside at the meetings of said council, and shall
3 have a vote on all matters before the council for consideration,
4 the same as any member of the council, but in no event shall
5 the said mayor or presiding officer have power and authority to
6 cast the deciding vote on any matter where he has voted as a
7 member of the council: *Provided*, That it shall require the
8 affirmative vote of a majority of all the members elected to the
9 council to appoint or remove any officer and to pass any ordi-
10 nance, franchise, resolution for bond issues or other matters
11 required by this act.

Sec. 23. At the first meeting of the city council provided
2 for by this act, the council shall elect one of its members as
3 president of the council, who shall hold such office during the
4 term of said council, and who shall be ex-officio vice-mayor of
5 the said city. In case of temporary absence of the mayor from
6 the city or his inability to act from any cause, or during any
7 vacancy in the office of mayor, the said president of the council
8 shall preside over the council and perform the duties of the
9 mayor; and, in addition to presiding over said council, he is
10 hereby vested with all the powers necessary for the performance
11 of the duties of the mayor of said city while acting as such
12 mayor, including the authority of the mayor pertaining to
13 civil and criminal jurisdiction, and shall perform such other
14 duties as may be required of him by the council.

15 All acts and parts of acts inconsistent with the provisions of
16 this act are hereby repealed.

CHAPTER 132

(House Bill No. 305—By Mr. Perry)

AN ACT to amend and reenact section fifty-two, chapter one hundred sixty-one, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, relating to civil service under the Huntington charter.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

52. Civil service board created; how appointed; removal and terms of members; duties of board; meetings; city clerk ex officio clerk of board; appointments by board to police and fire departments; appointment of special officers by mayor; removal, for cause, of persons now under civil service; rules and regulations by mayor for oper-

Sec.

ation of departments; suspension, for cause; appeal to board and hearing; dismissal upon charges; appeal to board and hearing; board's rules governing conduct on or off duty; penalty for violation; what board to consider as to applicants; record of examinations kept by board.

Be it enacted by the Legislature of West Virginia:

That section fifty-two, chapter one hundred sixty-one, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 52. The city shall create a board to be styled "the civil service board," consisting of four members and the mayor, or, a member ex-officio. The mayor shall preside at all meetings of the board, but shall have the right to vote only in case of a tie on any question arising before the board. The mayor shall appoint two members of the board from each of the dominant political parties of the city, and they shall be appointed and confirmed. In this manner, the mayor shall transmit to the council the names of the persons whom he appoints to the civil service board; and the council may, at its next regular meeting, or special meeting called for that purpose, or at any adjournment thereof for not more than five days, reject any or all of said appointments so made by the mayor by majority vote of the members of council present at such meeting. If any one of such appointees is rejected by

16 the council, the action thereabout shall be transmitted to the
17 mayor, who shall, without delay, transmit to the council the
18 name of another person or persons, as the case may be, for
19 such office, and action thereon by the council shall be in the
20 same manner as in the first instance, and, if rejected, then the
21 mayor shall transmit another name, or other names, for mem-
22 bers of said board until the council shall not have, in the man-
23 ner herein provided, rejected the person or persons so appoint-
24 ed by the mayor for said board. All such appointments by
25 the mayor shall stand approved and as final, unless rejected by
26 the council at the time and in the manner herein prescribed.

27 A member of the civil service board may be removed from
28 office in the manner and for the causes provided for the re-
29 moval of the mayor by section ten of this act. The term of
30 office of the members of said board shall be the same as that
31 for which the mayor was elected: *Provided*, That the mem-
32 bers of the present civil service board shall hold their positions
33 on said board until their successors shall have been named,
34 in the manner herein provided, by the mayor elected at the
35 general election, one thousand nine hundred thirty-four.

35-a The duties of the civil service board shall be to examine
36 and certify all applications for positions in the police de-
37 partments or fire department, except the chiefs thereof; to
38 hear and determine all appeals made by members of either of
39 those departments, who are under civil service; to hear evi-
40 dence, summon witnesses and render judgments in all cases
41 in which charges have been preferred against any officer of
42 either of those departments; to make promotions of members
43 of either of the departments when it is deemed advisable for
44 increased efficiency; to make rules and regulations governing
45 the actions of the board and to keep the same in the records
46 of its proceedings.

47 The civil service board shall hold meetings for the purpose
48 of examining and certifying the eligibles to the appointment
49 of the police department and fire department, and to that
50 end shall give at least ten days' public notice of the time,
51 place and purpose of such meetings. The board may be called
52 into special session by the mayor or by a majority of its mem-
53 bers for the purpose of disposing of any matters coming with-
54 in its purview. The board shall hold at least two meetings
55 during any calendar year, and as many more meetings as may

56 be necessary to meet the requirements for the efficient man-
57 agement of its affairs.

58 The city clerk shall be ex officio clerk of said board.

59 Appointments to the police department and fire depart-
60 ment shall be made, by the civil service board, from the ap-
61 plicants for said respective positions, which applicants, under
62 civil service examinations, receive any average grade of sixty
63 or more, giving preference to the applicant receiving the
64 highest grade and whose grade certificate is the oldest, and
65 likewise making such appointments so as not to give either of
66 the dominant political parties in the city, as nearly as may be,
67 more than one-half of the total number of men under civil
68 service in either department. The mayor shall appoint special
69 officers, if any, for either or both of said departments, from
70 the approved civil service lists for said departments, respec-
71 tively, keeping political division as hereinbefore set out: *Pro-*
72 *vided*, That no person shall serve, as a special officer, for more
73 than thirty days in any one calendar year. When the list of
74 names of applicants who are eligible as prescribed in this sec-
75 tion shall have been exhausted, or when either dominant po-
76 litical party shall be entitled to appointment and there shall
77 be no member of such party eligible on the list, then such ap-
78 pointment may be made from the list of persons who may
79 apply therefor, disregarding those applicants who stood the
80 civil service examination and received thereon a grade below
81 sixty.

82 All persons now under civil service in either of said de-
83 partments shall have advantage of civil service and shall con-
84 tinue in office unless removed for cause and in the manner
85 provided in this section.

86 Policemen and firemen now in office, and those hereafter
87 appointed, shall obey all the rules and regulations promul-
88 gated by the mayor for the organization and operation of the
89 respective departments which, when posted at the headquar-
90 ters of the respective departments, shall be notice thereof.
91 Any violation of said rules by any member of the department
92 shall be sufficient cause for his suspension or dismissal in the
93 manner provided in this section.

94 The mayor, or chief of either the police department or fire
95 department by and with the mayor's consent, may, as a mat-
96 ter of discipline, suspend, without pay, for a period of not

97 exceeding thirty days, any officer or member of either of those
98 departments, for just cause, by giving such officer or member
99 written notice of such suspension, defining the cause or causes
100 therefor. Such suspended officer or member shall have the
101 right, within ten days, but not later, to appeal to the civil serv-
102 ice board, if he deems such suspension unjust. If such ac-
103 cused officer or member, upon a hearing before the civil service
104 board, is found not guilty, then he shall immediately report
105 for duty, and he shall be paid for the time lost by his suspen-
106 sion. The mayor may, upon evidence of reasonable cause
107 therefor, dismiss any member of the police department or fire
108 department, by giving written notice to such person, clearly
109 defining the charges preferred against him, and fixing a time,
110 not later than ten days from that time, on which such mem-
111 ber may appear for trial before the civil service board; and
112 should the board, upon trial, find him guilty of the charges
113 preferred, the dismissal by the mayor shall stand affirmed,
114 without pay from the time of his dismissal by the mayor. But
115 if such person shall be acquitted of the charges preferred by
116 the mayor, he shall be reinstated to his position and shall be
117 paid for the time lost by him because of his dismissal by the
118 mayor. The action of the civil service board thereabout, in
119 either the event of suspension or dismissal by the mayor or
120 the board as aforesaid, shall be final, and no appeal therefrom
121 shall lie.

122 The civil service board may make reasonable rules govern-
123 ing the conduct of all persons while on duty and off duty,
124 who are under civil service, in addition to the rules promul-
125 gated by the mayor; and the violation of such rules may be
126 cause for suspension or dismissal as provided in this section;
127 but causes for suspension or dismissal, as herein provided, is
128 not limited to the violation of said rules promulgated by the
129 board.

130 In making examinations and determining the fitness and
131 qualifications for positions the civil service board shall take
132 into consideration the size, health, physical appearance, habits
133 and moral surroundings of the applicant; and after such ex-
134 aminations the board shall at once place on record in the
135 minutes of the civil service board the result of such examina-
136 tion, giving the names of the applicants, positions sought by
137 them, and their respective percentages based on one hundred.

138 and stating the political party, if any, to which the applicant
139 holds allegiance.

CHAPTER 133

(House Bill No. 49—By Mr. Anderson)

AN ACT to amend and reenact section nine, chapter five, acts of the Legislature of West Virginia, one thousand nine hundred nine, entitled "An act to incorporate the city of Keystone, McDowell County, West Virginia", relating to the charter of the city of Keystone.

[Passed February 12, 1935; in effect from passage. Approved by the Governor.]

Sec.	Date of municipal election; division of city for election purposes; representation of political parties on double election	Sec.	boards; registration of voters; nominating conventions, filing list of nominees with recorder; how elections conducted.
9.	Date of municipal election; division of city for election purposes; representation of political parties on double election	Sec.	boards; registration of voters; nominating conventions, filing list of nominees with recorder; how elections conducted.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter five, acts of the Legislature, one thousand nine hundred nine, be amended and reenacted to read as follows:

Section 9. The next election for mayor, recorder and five councilmen of the city of Keystone, shall be held on the first Thursday in February, one thousand nine hundred thirty-six, and every two years thereafter there shall be an election held on the first Thursday in February for the purpose of electing a mayor, recorder and five councilmen of said city. They shall be elected by the voters of the whole city. For the purpose of conducting and holding such election, and all subsequent elections, the territory of said city shall be divided into two parts. One part thereof shall be that portion of the territory of said city lying east of the city hall, situate in said county; and the other portion thereof shall be the remainder of the territory of said city, lying west of said city hall. For each of said two portions of said city there shall be appointed by the common council a double election board; that is, a receiving board, consisting of three commissioners and two clerks, and a counting board, consisting of three commissioners and two clerks. Any

18 person residing in said city shall be eligible for appointment
19 and to serve as an election officer, regardless of the portion of
20 the city in which he resides: *Provided, however,* That no per-
21 son who is an employee of said city in the capacity of chief of
22 police, police officer, or otherwise, and/or who has been in the
23 employ of said city during the six months immediately preced-
24 ing any city election, shall be qualified for appointment or shall
25 be eligible for appointment as an election officer. The dominant
26 political party in said city shall be entitled to have appointed as
27 election officers on the receiving board, two commissioners and
28 one clerk; on the counting board, two commissioners and one
29 clerk. The political party in said city for whose candidates the
30 next highest vote was cast at the last city election shall be en-
31 titled to have appointed as election officers on the receiving
32 board, one commissioner and one clerk; and on the counting
33 board, one commissioner and one clerk. The voters of
34 said city shall be registered in accordance with general law of
35 the state of West Virginia relating to registration of voters in
36 general elections, and candidates for each of the two dominant
37 political parties in said city for the officers hereinbefore in
38 this section named shall be nominated by the voters of the two
39 dominant political parties in said city in convention assembled:
40 *Provided further,* That nothing herein contained shall prevent
41 any group of citizens or voters in said city from nominating
42 candidates in accordance with section twenty-nine and section
43 thirty, article four, chapter three of the code of West Virginia,
44 one thousand nine hundred thirty-one. The conventions of the
45 two dominant political parties for the purpose of nominating
46 candidates shall be held at least thirty days before any election
47 at which the offices of mayor, recorder and five councilmen are
48 to be filled; and a list of the candidates so nominated shall be
49 certified to and filed with the recorder of said city at least fifteen
50 days before any such election. In all other respects, all elec-
51 tions, within said city, shall be held, conducted and the results
52 thereof ascertained, certified, returned and determined in ac-
53 cordance with the constitution of the state of West Virginia and
54 the general laws of the state relating to elections.

CHAPTER 134

(House Bill No. 50—By Mr. Anderson)

AN ACT to amend and reenact section seven, chapter seventeen, acts of the Legislature of West Virginia, (Municipal Charters) regular session, one thousand nine hundred twenty-five, entitled "An act to incorporate the city of Kimball, in McDowell county."

[Passed February 12, 1935; in effect from passage. Approved by the Governor.]

Sec. 7.	Qualifications of elective officers; subordinate officers need not, at		Sec. time of appointment, live with-	in corporate limits.
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Be it enacted by the Legislature of West Virginia:

That section seven, chapter seventeen, acts of the Legislature of West Virginia (Municipal Charters), regular session, one thousand nine hundred twenty-five, be amended and reenacted to read as follows:

Section 7. No person shall be eligible to the office of mayor, 2 recorder or councilman unless, at the time of his election, he is 3 legally entitled to vote in the city election for members of the 4 common council, and was the preceding year, assessed with taxes 5 upon property, within the said city, of the assessed valuation of 6 two hundred dollars, and shall have actually paid the taxes so 7 assessed, including his capitation tax. A person in order to be 8 eligible to hold any subordinate office, (such as the office of chief 9 of police, or police officers), in said city need not at the time 10 of his, or their, appointment be actual residents within the cor- 11 porate limits of said city.

CHAPTER 135

(House Bill No. 171—By Messrs. Paul and Winter)

AN ACT to amend and reenact section four, chapter one hundred twenty-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to the

charter of the city of Logan; providing for the nomination by primary election of candidates for mayor and councilmen to be voted upon at municipal elections as provided by the charter of said city, and providing for the election of municipal executive committeemen by the several political parties.

[Passed February 5, 1935; in effect from passage. Approved by the Governor.]

Sec.

4. Municipal candidates to be nominated in primary; date of primary; appointment of judges and poll clerks; challengers; city executive committees to continue in office; compensation of election officials; form of announcement of candidacy; filing; publication of list of candidates; ballots, form; precinct committeemen; certifi-

Sec.

cates of announcement; oath; how primary and general elections conducted and returns canvassed; tie vote; expense paid by city; hours polls open; recounts; election duties and powers of mayor's secretary and of mayor and council; canvassing vote and declaring result.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred twenty-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be and same hereby is amended and re-enacted as follows:

Section 4. Candidates to be voted for at all general municipal elections at which a mayor and councilmen are to be elected under the provisions of this charter shall be nominated at a primary election, and no other names shall be printed on the ballots used at the general election except those selected in the manner prescribed by this amendment to the charter.

The first primary election for mayor and councilmen under this amendment to the charter shall be held on the second Tuesday in March, one thousand nine hundred thirty-five, and every primary election for mayor and councilmen shall be held biennially thereafter on the second Tuesday in March.

At a meeting of the city council to be held on the last Tuesday in February preceding every primary and general election for the offices of mayor and councilmen there shall be appointed three judges and two poll clerks for said primary and general election for each voting precinct in the city in the manner herein provided.

One judge and one poll clerk shall be appointed from each of the two political parties which at the last preceding state and county election cast the highest number of votes in Logan

21 county, and if at any time during said meeting of council the
22 city executive committee of either political party from which
23 said judges and poll clerks are to be selected or appointed shall
24 present to said council a writing signed by them, or by the
25 chairman of said committee in their behalf, requesting the ap-
26 pointment of qualified voters of their political party who are
27 otherwise qualified to act as such officers under the laws of
28 West Virginia, it shall be the duty of said council to appoint
29 the persons named in such writing as such election officers.

30 The remaining judge for each election precinct in the city
31 may be of either of the above named political parties, and shall
32 be appointed by the council.

33 The said city executive committees, or the chairman thereof,
34 may appoint a challenger for each election precinct in the city,
35 subject to the same provisions governing the appointment,
36 qualifications and duties of challengers as set forth in the elec-
37 tion laws of the state of West Virginia.

38 The city executive committees now existing shall continue in
39 office and to function until their successors are elected under
40 this act.

41 Such judges, poll clerks and challengers shall receive for
42 their services the same compensation that is provided by state
43 law for compensation for such similar officers and said election
44 officers shall have the same duties and responsibilities, and shall
45 take and subscribe to the same oaths, and shall conduct the elec-
46 tions in conformity with and be subject to the same regulations
47 and penalties as are provided by the state law governing elec-
48 tions and offenses against the same in so far as the same may be
49 applicable.

50 Any person who is eligible to hold the office of mayor or coun-
51 cilman may file in the mayor's office a certificate declaring
52 himself a candidate for the nomination of such, which certificate
53 shall be in the form and effect as follows:

54 I,, hereby certify that I am a candidate
55 for the nomination for the office of mayor (or councilman), to
56 represent the party, and desire my name printed
57 on the official ballot of said party to be voted at the primary
58 election to be held on the second Tuesday in March, 19.....; that
59 I am a qualified voter of the City of Logan, County of Logan,
60 and State of West Virginia; that my residence is in the City of
61 Logan; that I am eligible to hold the said office; that I am a

62 member of and affiliated with said political party; that I am
63 a candidate for said office in good faith.

64
65 (Signature of Candidate)

66 Subscribed to and acknowledged before me this day
67 of, 19.....

68
69 (Signature of officer taking affidavit)

70 Such certificate shall be filed in the mayor's office at least
71 ten days before the primary election day, and shall be signed
72 and acknowledged by the candidate before some officer quali-
73 fied to administer oaths, who shall certify the same.

74 Immediately upon the expiration of the time for filing the
75 above certificates the mayor shall cause to be published for one
76 week in two newspapers of opposite politics in said city the
77 names of the persons as they are to appear upon the respective
78 primary ballots of each political party, and the said mayor shall
79 thereupon have the primary ballots printed and authenticated
80 with a facsimile of his signature. There shall be a separate
81 primary ballot of candidates for each political party who have
82 filed their petition as required by this act on different color of
83 paper, and the primary ballot of no two political parties shall
84 be of the same color or tint. The same color shall be used for
85 sample primary ballots of each party, but there shall be printed
86 across the face of such sample ballot in large words "sample
87 ballot" but no sample ballot shall be voted or counted. Said
88 official primary ballots shall be printed in accordance with the
89 election laws of West Virginia governing the printing of ballots
90 for state and county elections, and shall be of the form and effect
91 as follows:

92 OFFICIAL BALLOT OF

93 The Party

94 The City of Logan, Primary Election, March, 19.....

95 (To vote for a candidate mark an "X" in the square opposite
96 to the left of his name.)

97 FOR MAYOR.

98 (Vote for One)

- 99 A B
- 100 C D
- 101 E F

102 FOR COUNCILMEN

103 (Vote for Five)

104 A B

105 C D

106 E F

107 Etc.

108 Official ballot, attest:

109 Facsimile of the signature, _____, Mayor.

110 On the back of the ballot there shall be printed in black ink,
111 plain and legible, the name of the political party as contained
112 in the heading followed by the word "ballot." Under this
113 designation shall be printed two blank lines, followed by the
114 words "poll clerks."

115 At said primary election to be held on the second Tuesday in
116 March, one thousand nine hundred thirty-five, and biennially
117 on the second Tuesday in March thereafter, the said political
118 parties of the city shall elect one committeeman from each
119 voting precinct in the city to serve until the next primary
120 election, or until their successors are elected and qualified.

121 Candidates for the office of committeeman shall file in the
122 mayor's office a certificate declaring themselves as in the
123 case of candidates for the nomination of mayor and council-
124 man and their names shall be placed upon separate ballots for
125 each voting precinct as in the primary ballot. Upon the
126 result of the election of committeemen being declared, the
127 successful candidates shall qualify by taking an oath to faith-
128 fully perform the duties of their office to the best of their
129 skill and judgment.

130 Unless otherwise provided in this amendment to the char-
131 ter all primary and general elections held in said city shall
132 be conducted and the results thereof certified and returned,
133 and officially determined in accordance with the provisions of
134 the election laws of the state of West Virginia in force at the
135 time of holding said elections, and the penalties therein pre-
136 scribed for offenses relating to said elections shall be en-
137 forced against the defenders of said municipal election. On
138 the day following a primary election the city council shall
139 canvass the returns received from the polling precincts, and
140 declare the results thereof. The candidate on each ticket re-
141 ceiving the highest number of votes for mayor and the five
142 candidates on each ticket receiving the highest number of votes
143 for councilman shall be the candidates whose names shall be

144 placed upon the ballots at the next ensuing general election,
145 and the committeeman from each voting precinct for each
146 party receiving the highest number of votes shall be declared
147 elected.

148 If two or more persons on the same ticket receive an equal
149 number of votes for the nomination of the same office, or in
150 case of committeemen for the same office, and more than the
151 other candidates, so that there is no choice at the primary, or
152 election of committeemen, the city council shall determine by
153 lot the name out of those voted on at the primary and tied as
154 aforesaid to be placed on the ballots for the next ensuing
155 general election, or as the case may be, the committeeman
156 elected.

157 The necessary and legitimate expenses of the holding of any
158 such primary, as well as of any regular or special municipal
159 election in said city, for ballots, stationary forms, ballot boxes,
160 booths, voting places, registrars, judges, clerks and challengers
161 and notices of the election shall be paid by the city. At every
162 such primary or general election the polls shall open at six-
163 thirty a. m. and close at six-thirty p. m.

164 In the event of a demand by any candidate for a recount of
165 the votes cast at any primary or general election held in said
166 city or in the event of the institution of a proceeding to con-
167 test said election, the council in office at the time of said elec-
168 tion shall pass on and decide such recount or contest of election
169 in like manner as provided for in contests for state, county
170 and district officers and the council by their proceedings in
171 such cases shall as nearly as practicable conform with like pro-
172 ceedings of the county court in such cases. Candidates desiring
173 a recount shall file their application with the council imme-
174 diately upon the completion of the canvassing of the votes and
175 the said council shall continue in session from day to day until
176 such recount is completed, and the result declared, using due
177 diligence to the end that the result of the primary election be
178 declared in due time for the printing and publication of the
179 ballot for the general election as herein provided for.

180 Unless otherwise herein provided in this amendment to the
181 charter, the secretary to the mayor shall be charged with all
182 the duties and responsibilities which under the general elec-
183 tion laws of West Virginia devolve upon the clerks of the
184 county court and the circuit court, and the mayor and council

185 shall be charged with all the duties and responsibilities which
 186 under the general election laws of West Virginia devolve upon
 187 the board of canvassers, and upon the county court, and they
 188 shall be subject to all the penalties therein prescribed for of-
 189 fenses relating to elections.

190 The candidates thus nominated by each of said political
 191 parties for the office of mayor and councilman receiving the
 192 largest vote in the ensuing city election shall be declared elected.
 193 On the Thursday next following any election hereunder the
 194 council shall meet and canvass, ascertain, declare and record
 195 the results of said election. The general election laws gov-
 196 erning the ascertainment and declaration of the results of elec-
 197 tion of county officers and relating to appeals and proceed-
 198 ings for review or reversal of decisions of the board of can-
 199 vassers concerning the same are hereby made applicable to all
 200 elections of officers held under this act.

CHAPTER 136

(House Bill No. 23—By Mr. Simmons)

AN ACT to amend and reenact section six, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven; and section seven, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven, as amended and reenacted by chapter sixteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, and as amended and reenacted by chapter seventy-six, acts of the Legislature of West Virginia, one thousand nine hundred twenty-three, and as amended and reenacted by chapter seventy-nine, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to the charter of the city of Moundsville, in the county of Marshall; changing the time for holding elections in said municipality, and changing the date of the beginning and expiration of the terms of office of all elective city officials.

[Passed February 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.	6. Election date; qualifications of voters; how elections conducted; contests; tie vote.	Sec.	7. Terms of elective and appointive officers; council to fix compensation of members.
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Be it enacted by the Legislature of West Virginia:

That section six, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven; and section seven, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven, as amended and reenacted by chapter sixteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, and as amended and reenacted by chapter seventy-six, acts of the Legislature of West Virginia, one thousand nine hundred twenty-three, and as amended and reenacted by chapter seventy-nine, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to the charter of the city of Moundsville, in the county of Marshall; changing the time for holding elections in said municipality, and changing the date of the beginning and expiration of the terms of office of all elective officials, be amended and reenacted to read as follows:

Section 6. The first election held hereunder shall be on the 2 first Tuesday in June, in the year one thousand nine hundred 3 thirty-five, and biennially thereafter. Every person who has 4 been a bona fide resident of the city for sixty days next pre- 5 ceding any election, and who is otherwise a qualified voter 6 under the constitution and laws of the state, shall be entitled 7 to vote at such election, in the ward in which he resides. The 8 election, including the nominations for office, either by con- 9 vention or primary or otherwise, shall be held, conducted and 10 the results thereof be ascertained, returned and determined 11 under such rules and regulations as may be prescribed by the 12 council, which shall not be inconsistent with the general laws 13 of the state governing municipal elections, and shall conform 14 are nearly as practicable to such laws. Contested elections shall 15 be heard and decided by council, and the proceedings therein 16 shall conform as nearly as may be to similar proceedings in the 17 case of county and district officers. The council shall be the 18 judge of the election, return and qualification of its own mem- 19 bers. In case two or more persons receive an equal number of 20 votes for the same office, if such number be the highest cast for 21 such office, the city council shall decide by vote which of them 22 shall be returned elected, and shall make their return accord- 23 ingly.

Sec. 7. The terms of office of the mayor, city clerk, chief

2 of police and city solicitor shall begin on the first day of July
3 next succeeding their election and shall be for the term of two
4 years, and until their successor shall have been elected and quali-
5 fied. The treasurer, health officer, street commissioner, city
6 engineer and sewer inspector shall be appointed by the coun-
7 cil, and shall hold their offices during the pleasure of the coun-
8 cil. Any former incumbent shall be ineligible for a second ap-
9 pointment unless he shall have fully settled up the business of
10 his former term or terms. At the first election held after this
11 act goes into effect, there shall be elected a mayor, city clerk,
12 chief of police and solicitor, whose terms of office shall begin
13 on the first day of July next succeeding their election and shall
14 be for the term of two years, or until a successor is elected and
15 qualified; and one councilman from each ward, whose term of
16 office shall begin on the first day of July next succeeding said
17 election, and shall be for the term of four years and until his
18 successor is elected and qualified.

19 The council of said city shall have the right to fix a compensa-
20 tion for the members thereof, which compensation, however,
21 shall not exceed one hundred and fifty dollars per year to each
22 member.

CHAPTER 137

(House Bill No. 529—By Mr. Hertnick)

AN ACT to amend and reenact sections three, four, five, eight, nine and ten, acts of the Legislature of West Virginia, one thousand eight hundred ninety-one, relating to the town charter of New Cumberland, and the rescinding of sections one and thirteen, chapter forty-seven, acts of the Legislature, one thousand eight hundred ninety-seven, insofar as sections one and thirteen have been adopted and made a part of the charter of said town of New Cumberland, and the enactment of sections thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, and forty-five.

[Passed March 7, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec. 3. Elective municipal officers; what elective and appointive offices are not incompatible; eligibility of elective officers.</p> <p>4. Election dates; qualification of voters; how elections held; contested elections.</p> <p>5. Terms of elective and appointive officers; when determined by lot.</p> <p>8. Ward boundaries; publication of notices of changes.</p> <p>9. General powers of council.</p> <p>10. Powers of council to adopt ordinances; limitation on penalty of fine and imprisonment.</p>	<p>Sec. 39. Referendum on act; form of ballot.</p> <p>40. How referendum election conducted.</p> <p>41. Duties of council if act adopted by voters.</p> <p>42. Present officers to continue; qualification of newly elected officers.</p> <p>43. Adoption of state municipal code by council.</p> <p>44. What ordinances, etc., to remain in effect.</p> <p>45. Inconsistent acts repealed: if part of act invalid remainder not affected.</p>
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Be it enacted by the Legislature of West Virginia:

Section 3. The officers of said town shall be mayor, recorder, 2 and two councilmen from each ward, a sergeant, and street 3 commissioner. The mayor and recorder shall be elected by the 4 qualified voters of the town, and the councilmen by the quali- 5 fied voters of the respective wards, and together shall consti- 6 tute the common council of said town. The other officers of 7 this section shall be appointed by council, but offices of mayor, 8 sergeant, and street commissioner shall not be incompatible, 9 neither shall the offices of recorder, street commissioner, ser- 10 geant, and policeman be incompatible, and all the appoint- 11 ive offices insofar as is possible may be held in whole or in part 12 by the mayor or the recorder or either by the mayor and the 13 recorder, and such consolidation of offices shall not be deemed 14 incompatible. No person shall be eligible to any elective office 15 unless he is a legal voter and was for the preceding year as- 16 sessed with and paid taxes upon at least one hundred dollars 17 worth of real or personal property therein.

Sec. 4. The first election under this act shall be held on the 2 second Tuesday of June, one thousand nine hundred thirty-five, 3 and there shall be an election held on the second Tuesday of 4 June every two years thereafter. The vote of said election 5 shall be by ballot. All persons who shall have been bona fide 6 residents of the town three months next preceding any elec- 7 tion, and entitled to vote under the constitution and laws of the 8 state, shall be entitled to vote at such election, but only in the 9 ward of their residence. The said election shall be held and 10 conducted at such places and under such rules and regulations

11 not inconsistent with the laws regulating district elections, as
12 may be prescribed by the council. Contested elections shall
13 be heard and decided by the council, and the proceedings shall
14 conform as nearly as may be to similar proceedings in case of
15 county and district officers. The council shall be the judge of
16 the election returns and qualifications of its own members.

Sec. 5. The terms of the office of mayor and recorder shall
2 be two years each, and of councilmen shall be four years, be-
3 ginning the first Tuesday in July next succeeding their elec-
4 tion and continuing until their successors are elected and quali-
5 fied; except that the term of office of one of the councilmen
6 from each of the wards elected at the first election provided
7 shall be determined by lot, one for the two year term and one
8 for the four year term, in the presence of and under the direc-
9 tion of the council. The term of all officers appointed by council
10 shall be as prescribed by council, but shall not exceed two
11 years.

Sec. 8. The territory of said town is hereby divided into
2 three wards as follows:

3 That part lying north of the center of Madison street shall
4 constitute the first ward.

5 That part lying between the center of Madison street and
6 the center of Sedgwick street shall constitute the second ward.

7 That part lying south of the center of Sedgwick street shall
8 constitute the third ward.

9 The lines between the wards are understood to run from the
10 west boundary of the town to the east boundary by lines pro-
11 jected through the center of each of the said streets and ave-
12 nues.

13 The council may, after two years after the passage of this
14 act, by ordinance, change the boundaries of the several wards
15 and may decrease the number of said wards; but no change
16 of boundaries for the decrease of the number of wards shall be
17 made until notice of such change of boundaries has been given
18 by order of council by publication in the newspapers of said
19 town, for two successive weeks prior to meeting of council at
20 which such ordinance is proposed for passage, and said notice
21 shall name the time of such meeting.

Sec. 9. The council of said town shall have the power to lay
2 off, vacate, close, open, alter, grade and keep in good repair and

3 free from obstructions the roads, streets, alleys, pavements,
4 sidewalks, crosswalks, drains, sewers and gutters therein for
5 the use of citizens, or the public; to improve and light the
6 streets, alleys, buildings, and grounds of said town; to regulate
7 the width of pavements and sidewalks on the streets and alleys,
8 and to order the pavement, sidewalk, footways, drains and gut-
9 ters to be kept in order, free and clean by the owners or occu-
10 pants of the property (real) next adjacent thereto; to estab-
11 lish and regulate markets, prescribe the time of holding the
12 same; provide suitable and convenient buildings therefor, and
13 prevent the forestalling and regranting of such markets; to
14 prevent injury or annoyance to the public or individuals from
15 anything dangerous, offensive, or unwholesome; to prohibit or
16 regulate slaughter houses, tan houses, or soap factories within
17 the town limits; or the exercise of any unhealthy or offensive
18 business, trade, or employment; to abate all nuisances within
19 the town limits, or to require or compel the abatement or re-
20 moval thereof, by or at the expense of the person causing the
21 same, or by or at the expense of the owner of the ground on
22 which they are placed or found; to be caused to be filled up,
23 raised, or drained, by or at the expense of the owner any town
24 lot or tract of land covered or subject to be covered by stag-
25 nant water; to prevent horses, hogs, cattle, sheep, or other
26 animals and fowls of all kinds from going or being at large
27 in said town; and as one means of prevention, to provide for
28 impounding and confining such animals and fowls, and for
29 failure to reclaim, for the sale thereof; to protect places of di-
30 vine worship, and to preserve order in and about the premises
31 where and when such worship is held; to regulate the keeping
32 of gun powder and other inflammable and dangerous sub-
33 stances; to provide for the regular building of houses or other
34 structures, and for the making and maintaining of division
35 fences by the owners of adjoining premises, and for the proper
36 drainage of town lots or other parcels of land, by or at the
37 expense of the owner thereof; to provide against danger or
38 damage by fire; to punish for assault and battery; to prevent
39 loitering in or visiting houses of ill-fame, or loitering in sa-
40 loons or on the streets, to prevent lewd or lascivious conduct,
41 the sale or exhibition of indecent pictures, or other repre-
42 sentations; to prevent and punish for gambling, the desecra-

43 tion of the Sabbath Day, profane swearing; to prevent the il-
44 legal sale of intoxicating liquors, drinks, mixtures and prepa-
45 rations, and to provide the penalties for such cases; to protect
46 the persons of those residing within the town; to appoint when
47 necessary or advisable a police force, permanent or temporary,
48 to assist the sergeant in the discharge of his duties; to build
49 or purchase, or lease and use a suitable place of imprisonment
50 within or near the said town, for the safe-keeping or punish-
51 ment of persons charged with or convicted of the violation of
52 ordinances; to erect or authorize, or prohibit the erection of
53 electric, gas, or water works within the town limits; to pre-
54 vent injury to such works or the pollution of any water or gas
55 used, or intended to be used by the public or by individuals; to
56 provide for and regulate the weighing or measuring of hay, coal,
57 and lumber, and other articles sold, or kept for sale within the
58 said town; to establish, construct, alter, remove and repair land-
59 ings, wharves, and docks, and to establish and collect rates and
60 charges for the use thereof; to regulate the running and speed of
61 cars, automobiles, trucks, and other vehicles within the said town;
62 to create by ordinance such committees or boards and delegate such
63 authority thereto as may be deemed necessary or advisable;
64 to provide for the annual assessment of the taxable property
65 therein and for a revenue for the town for municipal purposes,
66 and to appropriate such revenue to its expense; and generally to
67 take such measures as may be advisable or necessary to protect
68 the property, both public and private within the town; to pre-
69 serve and maintain the peace, quiet and good order therein,
70 and preserve the health, safety and comfort and well being
71 of the inhabitants thereof.

Sec. 10. To carry into effect these enumerated powers and
2 all others by this act, or by general laws conferred upon
3 the said town, or its council, or any of its officers, the said
4 council shall have and possess full authority to make, pass,
5 and adopt all needful ordinances, by-laws, and resolutions, not
6 repugnant to the constitution of the United States, or of this
7 state, and to enforce any and all ordinances, by-laws, orders, or
8 resolutions by prescribing for a violation thereof fines and pen-
9 alties and imprisonments, either in the county jail of Hancock
10 county, or in the town prison, if there be one. Such fines and
11 terms of imprisonment shall not exceed the penalties im-

12 posed by the state for like offenses. Such fines and penalties
 13 shall be imposed and recovered, and such imprisonment in-
 14 flicted and enforced, by and under the judgment of the mayor
 15 of said town, or in case of his absence or inability to act, then
 16 the recorder may act in his place, or one of the justices within
 17 the district of Clay.

Sec. 39. This act shall be submitted to the said voters at
 2 the regular town election on March eleventh, one thousand nine
 3 hundred thirty-five, or at a special election to be held in the
 4 said town of New Cumberland on the second Tuesday of the
 5 month next succeeding the calendar month in which this act
 6 is enacted by the Legislature of West Virginia. Notice of such
 7 special election shall be given by publication two weeks prior
 8 to the date of the election.

9 The ballots to be used at such election shall be in the following
 10 form:

11 PROPOSED CHANGES OF TOWN CHARTER OF
 12 NEW CUMBERLAND

13 For Ratification

14 Against Ratification

Sec. 40. It shall be the duty of the mayor, recorder, and
 2 council, in office at the time of the submission of the changes
 3 in the charter to the voters, to perform all the duties in rela-
 4 tion to holding such election as required by the general laws
 5 in holding municipal elections.

Sec. 41. If this act be adopted by the majority of the votes
 2 cast at said election then the mayor, recorder, and councilmen
 3 in office at the time of the adoption shall hold an election as
 4 made and provided in section four of this act, for the purposes
 5 of electing a mayor, recorder, and six councilmen, and the des-
 6 ignation by lot the councilmen selected for the two year and
 7 four year terms as provided in section five, as to the two year
 8 and four year terms of councilmen.

Sec. 42. During the interim between the time when this act
 2 shall take effect and its adoption by the votes cast at a special
 3 election for ratification or rejection, the present officers of the

4 town shall have and exercise the same authority as made and
5 provided in the old charter. On and after the second Tues-
6 day in July, one thousand nine hundred thirty-five, all officers
7 elected on the second Tuesday in June, one thousand nine hun-
8 dred thirty-five, shall take office, after qualifying, and all offi-
9 cers elected March eleven, one thousand nine hundred thirty-
10 five, shall terminate, unless reelected under the provisions of
11 this act.

Sec. 43. The town council may by ordinance or ordinances
2 adopt any sections now in the state municipal code, or that
3 hereafter may be adopted as a part of the said state municipal
4 code.

Sec. 44. All ordinances, by-laws, resolutions, and rules of the
2 town of New Cumberland in force at the time of the passage
3 of this act and the adoption thereof by the votes so cast in its
4 ratification, which are not inconsistent therewith, shall be and
5 remain in full force and effect, until amended or repealed by
6 the council of said town.

Sec. 45. All acts and parts of acts in conflict and inconsis-
2 tent with this act are hereby repealed. If any clause, para-
3 graph, or section of this act should be declared to be unconsti-
4 tutional, all remaining clauses, paragraphs, and sections thereof
5 shall not be affected thereby.

CHAPTER 138

(House Bill No. 446—By Mr. Lantz)

AN ACT to amend and reenact section thirty, chapter nine, acts
of the Legislature of West Virginia, one thousand nine hun-
dred twenty-seven (Municipal Charters), and known as the
"Charter of the Town of New Martinsville," all relating to
and being part of the charter of the town of New Martinsville.

[Passed March 7, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec.

30. General powers of council.

Be it enacted by the Legislature of West Virginia:

That section thirty, chapter nine, acts of the Legislature, one

thousand nine hundred twenty-seven, be amended and reenacted to read as follows:

Section 30. The council of said town shall have the following general powers enumerated in the subdivision of this section, as follows:

(1) To lay off, open, close, vacate or maintain public grounds, parks, and public places, and name and rename the same, to have control and supervision thereover, to protect the same from damages or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said council, and to maintain good order and prevent violation of the ordinances of said city therein or thereon.

(2) To protect divine worship within the limits of said town, and to fix fines and punishment for disturbance of any assemblage of people, then and there met for the worship of God, to prohibit any interference with or disturbance of divine worship or an assemblage of people met together for the worship of God, by any person or persons loitering about the premises or places where such worship is being had or such assemblage is met, or from loitering in the public streets or public places adjacent thereto in such manner as to interrupt such worship.

(3) To acquire, either by purchase, condemnation or other modes provided by general law, ground within said city for such streets and alleys as the council may deem proper; to locate, lay off, vacate, close, alter, grade, straighten, widen, or narrow, pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, and such bridges as may be owned or built by the said city, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind: *Provided*, That the municipality shall not be liable for or responsible in damages for injuries to persons or property caused by or from any defect or obstruction in or on any street or alley within said town that has been or may be taken over by the state road commission, under and by virtue of the laws of the state; nor shall said municipality be liable in damages for injuries to persons or property caused by or from a defect or obstruction in or on the plat of ground between the

40 gutter or curb of any street and the paved or plank sidewalks
41 extending there along or between any such sidewalks and the
42 property lying next adjacent thereto, unless the municipality
43 had actual notice of such defect or obstruction prior to the
44 time of the injury complained of: *And provided further*, That
45 where said town shall be required to respond in damages by
46 reason of injury to persons or property occasioned by the fail-
47 ure of any abutting owner to so provide or keep in repair any
48 sidewalk along such property, after being notified by the coun-
49 cil to do so, that such property owner shall be liable to the
50 town for any sum of money, costs and counsel fees which it
51 has been required to pay by reason thereof.

52 (4) To regulate the width of sidewalks and the streets and
53 the width and the care of the public grounds or grass plots
54 abutting thereon, and to order the sidewalks, footways, cross-
55 ways, drains and gutters to be curbed, paved or repaved and
56 kept in good order, free and clean, and to provide for the re-
57 moval of snow and ice therefrom, and for sprinkling the
58 same by the owners or occupants of the real property next ad-
59 jacent thereto, and to provide and enforce punishments for
60 obstructing, injuring or preventing the free and proper use
61 thereof, and to provide and enforce fines and penalties for
62 throwing therein or thereon any paper, glass, rubbish, decay-
63 ing substances or other things that would make said streets,
64 sidewalks, grass plots, crosswalks, drains or gutters unsightly
65 and unhealthy.

66 (5) To regulate the use of the walks, highways, bridges,
67 streets, alleys and gutters and the rate of speed or travel
68 thereon, and to prevent and punish for fast riding or driving
69 thereon of any horse, bicycle, wheeled vehicle, wagon, steam
70 or electric or traction engine, motor car or automobile, and to
71 prevent injury to such streets, alleys, roads and highways from
72 overloaded or improperly loaded vehicles, and from dragging
73 logs or other matter therein, and to regulate the speed of en-
74 gines or trains or street cars upon or across any of such streets,
75 alleys, highways, bridges, public places or any other place
76 where the council deems the public safety requires such regu-
77 lation; and otherwise regulate the use and manner of operation
78 of said vehicles.

79 (6) To regulate the planting, trimming and preservation of

80 shade trees, by persons and by corporations, in streets, alleys,
81 roads, public grounds and places, and shall require the owner
82 of adjacent property to trim or remove any shade tree or orna-
83 mental shrubbery or other tree that in the opinion of the coun-
84 cil is an obstruction to the streets, alleys, or sidewalks, or a
85 menace to public safety.

86 (7) The council shall have the right to require the owner or
87 occupier of any property in the city to keep his premises clean
88 and free from all matters that would endanger the health of
89 the town, and may require the removal of any waste paper or
90 waste material of any kind or character upon the private prop-
91 erty of any citizen or property owner that would cause the
92 spread of fire or when the council deems the same should be
93 removed; and may require the removal or straightening of any
94 fence, wire, palings, or other material enclosing any lot, when,
95 in the opinion of the council, the same is dangerous or ob-
96 structs or encroaches upon the streets, alleys or sidewalks:
97 *Provided*, That in all such cases, if the owner or occupier of
98 such property fails to do any of the things enumerated in this
99 section required by the council, the council may take such
100 action as may be necessary to perform such acts and the ex-
101 pense thereof shall be charged against the property owner and
102 collected as taxes are collected.

103 (8) To regulate the making of division fences of an un-
104 sightly nature and party walls by the owners of adjoining and
105 adjacent premises and lots, in so far as the same shall not be in
106 conflict with general law.

107 (9) To regulate or require drainage by the owner or occu-
108 pier of any lot or other real estate, by proper drains, ditches,
109 and sewers, and to require the owner or occupier of any lot to
110 fill the same, at his own expense, so that water will not collect
111 in a body thereon, or so that the same will not become a menace
112 to public health.

113 (10) To regulate or prohibit street carnivals, or street fairs
114 or street parades, advertising exhibition, or other exhibitions
115 thereon, or the exhibition of goods, wares, merchandise, ma-
116 terial or artificial curiosities upon any street, sidewalk, alley or
117 public place of said town.

118 (11) To regulate or prohibit the ringing of bells, blowing of
119 steam whistles, or use of hand-organs, or other instruments of
120 an annoying character, or other music of itinerant performers

- 121 in the streets, or public speaking and preaching in the streets,
122 roads, parks or public places of the municipality.
- 123 (12) To license, regulate or prohibit auctioneering.
- 124 (13) To license, regulate or prohibit the sale of goods,
125 wares, merchandise, drugs, or medicine on the streets or other
126 public places.
- 127 (14) To prevent the illegal sale, offering or exposing for
128 sale, or advertising of spirituous liquors, wine, porter, ale, beer,
129 or drinks of a like nature.
- 130 (15) To prevent the illegal sale of tobacco, cigars, snuff, or
131 cigarettes, within said municipality.
- 132 (16) To regulate, control or prohibit runners for hotels,
133 boarding houses and eating houses, and to regulate draymen
134 or persons hauling or transporting for hire at and about the
135 railroad depots and stations and other public places and in an
136 assemblage of people within said city.
- 137 (17) To regulate, assess and collect a license fee for the said
138 town for the doing of anything or the carrying on of any busi-
139 ness for which a state license is required: *Provided, however,*
140 That when anything for which a state license is required is to
141 be done within the limits of said town, the council may decide
142 whether such license may be granted or not, and if granted,
143 it shall be assessed and collected the same as if granted by the
144 county court of Wetzel county.
- 145 (18) To establish, when the council may deem proper, locate
146 and keep in repair, market places, market houses, and regulate
147 markets, prescribe the time for holding the same, to authorize
148 the seizure thereat and destruction of any and all such foods
149 and drink products as shall be found unwholesome, dangerous
150 or offensive, and without recourse against the municipality for
151 its cost or value.
- 152 (19) To regulate the sale of food and drink products, milk,
153 fresh meats, fish and vegetables, and to provide penalties for
154 the sale of any such that are unwholesome or unfit for use.
- 155 (20) To regulate and provide for the weighing of hay, coal
156 and other articles for sale in the markets, or to residents of
157 said town.
- 158 (21) To require merchants and other persons selling
159 goods, foods or materials that must be weighed, to keep correct
160 scales, to seize and destroy such as are found to be incorrect

161 and not corrected after due and proper notice to the owner or
162 person using the same, without damage or expense to the
163 municipality for the value thereof.

164 (22) To prevent injury or annoyance to the public or indi-
165 viduals from anything dangerous, offensive or unwholesome.

166 (23) To regulate the keeping, handling and transportation
167 of explosives and dangerous combustibles within the munici-
168 pality; and to regulate or prohibit the use of fireworks or gun-
169 powder, toy pistols, air rifles, or guns, within the said
170 municipality.

171 (24) To regulate or prohibit the erection or operation or
172 maintenance in what the council deems an improper locality
173 within said city, any blacksmith shop, livery stable, bar, stable,
174 cattle pen, poultry house, pig pen, privy, bill board, sign
175 board, gas or other engine, coal plant, or coal bin, or any other
176 thing that may in the opinion of the council be a menace to
177 persons or property or public safety, or that would injure
178 private property or annoy citizens of said municipality.

179 (25) To regulate or prohibit the placing of signs and the
180 use of walls or walks for signs; to regulate or prevent the dis-
181 tribution or posting of any sign or bill, either on paper or
182 painted, that in the opinion of the council or mayor, is inde-
183 cent, immoral or unsightly.

184 (26) To define by ordinance what shall constitute a nui-
185 sance, and to abate all nuisances whether defined or not, and
186 to require the removal or abatement, at the expense of the
187 owner thereof, of any obnoxious business, building, sign board,
188 signs or other thing, which in the opinion of the council is a
189 nuisance.

190 (27) To regulate or prohibit the distribution of hand bills,
191 circulars and other advertisements of like kind, on the streets,
192 roads, alleys and public places, or the placing of same in pri-
193 vate yards, buildings or other structures, without having first
194 procured the consent of the owner or occupier of such
195 property.

196 (28) To regulate or prohibit within the municipality or
197 within one mile of its corporate limits, the erection or main-
198 tenance of any slaughter house, soap factory, glue factory,
199 lamp black factory, tannery, or other house, shop or factory
200 of like kind or character.

201 (29) To establish within said municipality public drinking
202 fountains and water troughs; and to regulate the time and
203 place and manner of bathing in pools, streams and public
204 waters within the police jurisdiction of said municipal
205 corporation.

206 (30) To prohibit the keeping and/or prevent the running at
207 large in the town of dogs, hogs, cattle, sheep, horses and other
208 animals, and/or fowls and domesticated birds of all kinds; and
209 to establish and maintain places for their detention, make regu-
210 lations respecting the same, to appoint a pound master and de-
211 fine his duties and provide for the sale or disposition of such
212 animals and fowls impounded.

213 (31) To arrest, convict and punish any person for commit-
214 ting adultery or fornication, or for any lewd or lascivious co-
215 habitation or conduct within said town, and for keeping an
216 assignation house, house of ill-fame, or for leasing or letting
217 to any other person any house or other building to be kept or
218 used as such, or for knowingly permitting any house, under
219 the the control of or owned by any person to be used as an
220 assignation house or house of ill-fame; and to convict and
221 punish for frequenting, entering or loitering in any assignation
222 house or house of ill-fame within said municipality.

223 (32) To arrest, convict and punish any person for import-
224 ing, printing, publishing, selling, giving away, exhibiting, or
225 distributing any book, picture or device, or other thing con-
226 taining any obscene picture or language, or making any in-
227 decent representation.

228 (33) To define, restrain, convict and punish loiterers, va-
229 grants, mendicants, beggars, tramps, common prostitutes, and
230 their associates, and drunken or disorderly persons within the
231 municipality, and to provide for their arrest and manner of
232 punishment.

233 (34) To prevent and prohibit the use of indecent or profane
234 language within the corporate limits, and to provide and fix
235 punishment therefor.

236 (35) To prevent and prohibit any tumult, riot, quarrel,
237 angry contention, abusive language, or swearing, and to pre-
238 vent the use of insulting epithets, assaults, assault and battery,
239 and fix the fines and punishment therefor.

240 (36) To prevent and prohibit trespass upon private prop-

241 erty or the doing of anything which would annoy the owner,
242 or occupier of any premises, and to fix and provide fines and
243 punishments therefor.

244 (37) To provide against danger or damages by fire, and to
245 that end, to require, when the council may think necessary, an
246 inspection of all the properties within the said town, and to
247 require the owner or occupier of any property in which a de-
248 fective or dangerous chimney, wires, fire or other dangerous
249 condition is found, to immediately repair the same, and to pre-
250 vent the use thereof until repaired as required.

251 (38) To prohibit and prevent intoxication or drunkenness,
252 and the drinking of intoxicants in any public place, store,
253 street or alley, and to fix fines and penalties therefor.

254 (39) To prohibit and punish for larceny where the amount
255 stolen is less than twenty dollars.

256 (40) To prohibit, prevent and punish for anything that is
257 against the good morals and common decency, or that would
258 tend to corruption, vice or crime.

259 (4) To protect the public schools in said town, and to pro-
260 hibit and prevent any disturbance thereof in and about the
261 buildings or upon the grounds, and to prevent injury, destruc-
262 tion, or defacement of any school property or building.

263 (42) To establish a board of health and vest it with the
264 necessary power to maintain its object, and to fix fines and
265 penalties for any violation of its lawful orders.

266 (43) To establish quarantine, and to erect and maintain
267 pest houses and places of detention, and to make and enforce
268 necessary orders for controlling or preventing the spread of
269 infectious and contagious diseases, and for abating pestilence.

270 (44) To prohibit the bringing into the corporate limits by
271 railroads, carriers, persons or by or in any other manner, per-
272 sons who are paupers or persons who are afflicted with con-
273 tagious diseases; to punish by fine or imprisonment, or both,
274 any person who shall bring into the corporate limits any such
275 pauper or person afflicted with contagious disease, knowing or
276 having reason to believe, at the time, that such person is a
276a pauper or afflicted with such contagious disease, and to col-
276b lect and recover from any such railroad company, carrier, or
276c other person, the expense of keeping and maintaining such
276d pauper or diseased person, until such person can be lawfully

276e removed from the corporate limits.

277 (45) To arrest, convict and punish any person for cruelty,
278 unnecessarily or needlessly beating, torturing, mutilating, kill-
279 ing, or overloading, or overdriving, or wilfully depriving of
280 necessary sustenance, any horse or other domestic animal.

281 (46) To regulate the hitching of horses within the corporate
282 limits, and the driving of cows and cattle through, upon and
283 along the streets and alleys of said town.

284 (47) To prohibit, prevent and punish for the pollution of
285 any stream of water running into or through the said munici-
286 pality; and to prohibit and prevent the throwing into any such
287 stream of any trash, dirt, filth, offal, decayed substances or
288 matters, or anything that would make said water unhealthy or
289 unfit for domestic use.

290 (48) To prohibit, prevent and punish for any desecration of
291 the Sabbath day; prohibit the playing of any game, exhibiting
292 any show, theatre, picture show, and the keeping open of busi-
293 ness places, except hotels, eating houses, boarding houses, res-
294 taurants, and drug stores and other places of necessity or
295 charity.

296 (49) To restrain, prevent and punish fraudulent practices
297 of any kind or character within the municipality.

298 (50) To arrest, convict and punish any person for gambling
299 or keeping any gaming table, commonly called "faro bank,"
300 or table and chips used in playing such game; crap, crap table,
301 chips or dice used in playing such game; or roulette or the
302 wheel, chips or other equipment used in playing such game; or
303 keno table or table of like kind or device used in playing the
304 same; or table of like kind under any denomination, whether
305 the game or games be played with cards, dice, or otherwise on
306 which anything is bet or wagered, whether the same be played
307 in any public or private room or residence; and may convict
308 and punish any person who shall be a partner or concerned in
309 interest in the keeping of any such gambling devices heretofore
310 enumerated, or in any game played, such as hereby prohibited,
311 or in keeping or maintaining any gambling house or place of
312 gambling for money, or anything of value; and shall have the
313 right to destroy such gambling paraphernalia as may be found
314 on any such premises; and any officer armed with a warrant
315 for the arrest of any person engaged in such unlawful game or

316 for the search of any room in which gambling is suspected, or
317 for the seizure of any gambling paraphernalia, shall have the
318 right to break into any building, other than a private dwelling
319 house, without notice or demand, and into a private dwelling
320 or room, after demand and refusal to open same: *Provided*,
321 *however*, That no search or seizure shall be made except in the
322 manner provided by general law.

323 (51) To restrain all felons and persons guilty of offenses
324 against the state or the United States, and deliver them over
325 to the authorities or court having jurisdiction of the offense
326 whereof such persons are accused.

327 (52) To apprehend and punish any person who, without a
328 state license therefor, is guilty of carrying about his person,
329 within the municipality, any revolver or other pistol, dirk,
330 bowie knife, sling shot, razor, billy, metallic or other false
331 knuckle, or any other dangerous or deadly weapons of like
332 kind and character, as provided by the code of West
333 Virginia, or any amendment thereof, and the punishment
334 therefor, whether for the first or other offenses, shall be that
335 prescribed by said code for any person guilty under the mis-
336 demeanor clause provided therein: *Provided*, That the mayor,
337 acting as ex officio justice of the peace, may, after enforce-
238 ing this ordinance, hold the offender to answer to an indict-
339 ment in the circuit court of Wetzel county for such offense,
340 under the state law.

341 (53) To regulate the erection, construction, alteration and
342 repair of dwelling houses, buildings and other structures,
343 within the municipality, to issue permits therefor and to com-
344 pel the numbering of such houses and buildings by the owners
345 and occupiers thereof; and to prescribe by ordinance the dis-
346 tance which dwelling houses, and other structures in resident
347 districts shall be set back from the sidewalk.

348 (54) To regulate the hanging of doors, the construction of
349 stairways and elevators, and require fire escapes in theatres,
350 churches, school buildings, factories and other places deemed
351 necessary by the council.

352 (55) To establish fire limits and to regulate the construction
353 of buildings, and designate materials to be used in the con-
354 struction of buildings within such limits.

355 (56) To regulate the building of fire walls, fire places, chim-

356 neys, boilers, smoke stacks, stove pipes, and the burning of
357 waste paper, trash or other waste matter in the corporate
358 limits.

359 (57) To require any building that, in the opinion of the
360 council is dangerous, to be repaired, altered or removed by the
361 owners thereof or put in a safe condition, such as the council
362 may approve, at the expense of such owner or occupier, and to
363 provide punishments for failure to comply with any order of
364 the council concerning same.

365 (58) To regulate the height, construction and inspection of
366 all new buildings hereafter erected, the alteration and repair
367 of any buildings now or hereafter erected, to require permits
368 to be obtained of the council therefor, and the submission of
369 plans and specifications to the council for its approval; to
370 regulate the limits within which it shall be lawful to erect any
371 steps, porticos, bay windows, awnings, signs, columns, piers, or
372 other projection or structural ornaments of any kind for the
373 houses or buildings on any street or alley.

374 (59) To provide for the prevention and extinguishing of
375 fires, and for this purpose, the council may equip and govern
376 fire companies, prescribe the powers and duties of such com-
377 panies and departments, and of the several officers thereof, or
378 may authorize volunteer fire companies, under such rules and
379 regulations as the council may prescribe and impose on those
380 who fail to obey any lawful command of the officer in charge
381 of any such company, or volunteer company, any penalty
382 which the council is authorized to impose for violation of an
383 ordinance, and to give authority to any such fire officer to
384 direct the pulling down or destruction of any building, fence,
385 wall or other thing, if such officer deem it necessary to prevent
386 the spreading of any fire which is being extinguished under
387 the direction of such officer, and without any liability on the
388 municipality for damages therefor.

389 (60) To protect the persons and property within the cor-
390 porate limits and preserve the peace and good order therein,
391 and for this purpose, to appoint, when necessary, a police force
392 and such other officers as may be deemed necessary; and to
393 provide a lockup, jail or other suitable place to confine per-
394 sons sentenced to imprisonment for violation of the ordinances
395 of said town: *Provided, however,* That the jail of Wetzel

396 county may be used for that purpose, if authorized by the
397 county court of said county.

398 (61) To require any person violating any of the ordinances
399 of said city, or any order from which a fine, imprisonment or
400 both is imposed, to work upon the streets of said town in case
401 of nonpayment of said fine, until the same is paid by such
402 labor, or in case imprisonment is imposed, to work upon the
403 streets of said town during the term of such imprisonment in
404 addition to the payment of such fine, under such regulations
405 as the council may prescribe.

406 (62) To prescribe the powers, define the duties of the officers
407 appointed under the corporate authority, fix their terms of
408 service and compensation, if not otherwise prescribed by this
409 chapter, and to require and take from them bonds, when deemed
410 necessary payable to the state of West Virginia, or the town of
411 New Martinsville with the sureties, and in such penalties as
412 may be prescribed, conditioned for the faithful discharge of
413 their respective duties: *Provided*, That the compensation of
414 any officer, elected or appointed, shall not be increased nor
415 diminished during the time for which he is elected or ap-
416 pointed, unless due notice of such intention is first served on
417-447 the officer interested.

448 (63) To make regulations with respect to, and have super-
449 vision and control over the erection, removal and relocation
450 of all telephone, telegraph, electric light or other poles within
451 said town, and the extension of wires, lines or poles by any
452 individuals or corporations.

453 (64) To acquire, erect, operate and manage or authorize
454 or prohibit the erection of gas works, electric light works or
455 water works within the town limits; to prevent injury to such
456 works or the pollution of any gas or water used or intended to
457 be used by the public or by individuals; and to do all things
458 necessary to adequately supply said city and the inhabitants
459 thereof with pure, healthful and wholesome water; and to re-
460 quire any company furnishing gas or electricity for sale or dis-
461 tribution in said city, to furnish an adequate supply thereof:
462 to require gas fixtures, electric light wires, telephone wires
463 and all apparatus used in connection with any of these, to
464 be kept in repair and suitable for use, and free from danger,
465 so far as practicable; to use, generate, distribute, sell and

466 control electricity, water and gas for heat, light and power and
467 to furnish light for the streets, highways, buildings, stores
468 and other places in and about said town.

469 (65) To acquire, erect, provide, manage and operate an
470 incinerator or incinerators, machinery and equipment for dis-
471 posal of garbage and other waste matter; to provide, furnish
472 maintain and operate and/or contract for a system of garbage
473 removal for the said town, including the power to fully regu-
474 late the service charges and service in connection therewith,
475 and to promulgate such rules and regulations concerning the
476 use thereof as may be necessary for the safe and efficient
477 handling of such business.

478 (66) To require any gas company or person furnishing
479 gas for said town or the inhabitants thereof, to put in stand-
480 ard meters for the measurement thereof, and may appoint a
481 competent person to inspect the meters and remove the same if
482 not standard and in good order; to prevent injury to any gas
483 works, electric light works, water system, sewerage system or
484 garbage system or any gas meter within said municipality.

485 (67) The council shall have the right to own, maintain,
486 operate and control any electric light plant within said town,
487 or to provide for, or purchase electric power and to use, gen-
488 erate, distribute, sell and control electricity and gas for heat,
489 light and power, and to furnish light for the streets, houses,
490 buildings, stores and other places in and about said town, and
491 for such electricity other than that furnished for the munici-
492 pality in lighting its streets, or public places, it may charge
493 reasonable rates, but such rates in all cases shall be uniform;
494 and such electric light plant shall be under the supervision and
495 control of the council, and its wires, poles, distributing system
496 and machinery shall be kept in such repair so that as little
497 danger as possible shall arise therefrom, and so that same
498 will furnish an adequate supply of electricity to all persons
499 in said town desiring to use same.

500 (68) The council shall have the right to provide a sew-
501 erage system for said town, and may require the owner of any
502 property abutting upon any street or alley in which a sewer has
503 been laid or placed, to connect a sewer leading from his or her
504 property or lot into any public sewer which is located in such
505 street or alley adjoining the same, and if the owner or occu-

506 pier of said lot or property fails or refused to do so, after hav-
507 ing been given reasonable notice, the council may enter upon
508 such lot and construct such sewers, and may levy the actual
509 cost thereof against the lot upon which the same is built and
510 collect such costs from the owner of such lot in the same
511 manner as city or state taxes are collected; in addition thereto,
512 the council may punish by fine, or fine and imprisonment, any
513 person who permits any drainage from his residence or lot to
514 enter upon any property after a sewer has been placed in the
515 street or alley adjacent to his property, to which he should
516 connect, after notice has been given to him by the council to
517 make such connection. The council may provide by ordinance
518 for the inspection of all sewer connections by some person ap-
519 pointed by council and provide for the assessment of the cost
520 of such inspection upon the property owner, which cost may be
521 collected the same as taxes or as otherwise provided by coun-
522 cil.

523 (69) The council shall have the right to impose fines and
524 penalties for any interference with or destruction of the sewer
525 system or any part thereof in said town, or for the destruction
526 of or damages to any street, alley or sidewalk in said town, or
527 any improper use thereof; it shall have the right to regulate
528 or prevent the use of the sidewalk for bicycles, push carts,
529 sleds, tricycles, roller skates and other things of like character
530 and to fix fines and penalties for violation of the ordinances
531 respecting same.

532 (70) To grant by ordinance or resolution permits for the
533 temporary use of such parts of its streets, roads, alleys and
534 public places as the council may deem proper and right to be
535 used in construction, alteration or repair of buildings located
536 thereon, or for such other purposes as the council may deem
537 proper and right, and under such regulations and for such
538 time as the council may prescribe.

539 (71) The council may buy, lease and operate either with-
540 in or without the municipality, stone quarries, crushers and
541 land for said purposes or for the purpose of furnishing a sup-
542 ply of stone or other material suitable for macadamizing or
543 paving the streets, sidewalks and alleys, and improving public
544 property.

545 (72) To operate by ordinance such committees or boards,

546 and delegate such authority thereto as may be deemed neces-
547 sary or advisable by the council; and to employ such legal
548 council on behalf of the town, from time to time, as the council
549 may deem necessary to protect the interests of the town.

550 (73) The council may, within any prescribed area, pro-
551 hibit the erection on any street or in any square, of any build-
552 ing, or of any addition to any building more than ten feet
553 high, unless the outer walls thereof be made of brick and
554 mortar or other fire-proof material, and may require the re-
555 moval of any building or addition which shall be hereafter
556 erected contrary to this prohibition, at the expense of the
557 owner or owners thereof.

558 (74) The council shall keep all roads, streets and alleys
559 within its limits passable and in good repair.

560 (75) In the enforcement of the ordinances, orders, rules,
561 regulations and by-laws of the said town, no fine shall be
562 imposed exceeding five hundred dollars, and no person shall
563 be imprisoned or compelled to labor on the streets of said
564 town, as hereinbefore provided, exceeding six months; pro-
565 vided, violations of the road laws or automobile laws, may be
566 punished by fines and penalties prescribed by general law, un-
567 less different fines and penalties are expressly prescribed by
568 the ordinances of said town.

569 (76) It shall be the express duty of the council to present
570 charges against any of its members, or any officer of the town,
571 who fails to perform, or who does not promptly and diligently
572 perform any duty prescribed by this act, or by any ordinance
572-a or resolution of the council, and upon hearing thereof before
572-b the council, after notice to such officer, he shall be removed
572-c from office by the council, if the charges be found correct.

573 (77) To provide for the payment of all appointive officers
574 and employees.

575 (78) To exercise all of the legislative functions of the town
576 government, and shall have the right to demand of any town
577 official, or employee, information, explanation, facts, details,
578 correspondence, or other papers affecting the town's interests;
579 and it shall be deemed misfeasance and neglect of duty for
580 such official or employee to fail or refuse to comply with such
581 demands.

582 The council shall have the power, under this section, to

583 require the acting head official of any municipal gas, water,
584 electric, garbage and/or sewerage department to prepare or
585 cause to be prepared a chart or map of any or all municipal
586 water lines, gas lines, electric lines, sewerage lines and/or
587 garbage routes; and if such be not furnished within a rea-
588 sonable and fixed time after notice thereof, to the council,
589 the defaulting official or officials may be removed or fined
590 in the discretion of the council.

591 (79) The council shall have the power and authority to
592 levy, assess and collect taxes upon the real and personal prop-
593 erty within said town, including the taxation of dogs kept
594 in said town: *Provided*, That such levy and assessment of
595 taxes shall be uniform with respect to persons and property
596 within the jurisdiction of said town: *And provided further*,
597 That such levy, assessment and collection of taxes shall be
598 made in accordance with the acts of the Legislature of West
599 Virginia now existing or hereafter enacted, and in accord-
600 ance with the provisions of the constitution of the state of
601 West Virginia and amendments thereto.

602 To provide a revenue for the town for municipal purposes
603 and to appropriate such revenue to its expenses.

604 But said town shall not hereafter be allowed to become in-
605 debted in any manner for any purpose to an amount including
606 the existing indebtedness, in the aggregate, exceeding five
607 per cent of the value of the taxable property therein, to
608 be ascertained by the last assessment for state and county
609 purposes previous to the incurring of such indebtedness, with-
610 out at the same time providing for the collection of a direct
611 annual tax sufficient to pay annually the interest on such
612 debt and the principal thereon within and not exceeding
613 thirty-four years: *Provided*, That no debt shall be contracted
614 under this charter unless all questions connected with the
615 same shall have been first submitted to a vote of the people
616 and have received three-fifths of all the votes cast for and
617 against the same.

618 The council shall have the power and authority to levy
619 and assess a poll tax of not more than one dollar upon each
620 male resident of said municipal corporation over twenty-one
621 years of age.

622 (80) The council shall have the power to grant franchises,
623 but shall not grant any such franchise to any person, or

624 corporation, within said town limits which shall be either
625 exclusive or perpetual, but all such grants shall have annexed
626 to them the power to rescind, revoke, alter, modify or regulate
627 the exercises of any such franchise; and said council shall
628 have power on ten days notice, and for cause, to revoke, re-
629 scind, alter or modify, the exercise of any such franchise;
630 and no franchise involving the use of any of the public prop-
631 erty, streets, alleys, sidewalks, crosswalks or involving the
632 use or occupancy of the same, shall be granted except by an
633 ordinance to that effect; and no such ordinance shall be passed
634 unless the question of the granting of such franchise shall
635 have been first submitted to a vote of the people, and shall
636 have and receive a majority of all the votes cast upon the
637 question: *Provided*, That such submission shall have been
638 petitioned for by at least one-tenth of the qualified voters of
639 said town, to be ascertained according to the number of votes
640 cast at the last preceding election.

641 (81) The council shall have the right, power and authority
642 to require the owner of any real property abutting upon any
643 sidewalk or footway in the town to curb, recurb, pave, repave,
644 or keep the same clean; and if the occupant and/or owner
645 shall fail or refuse to keep the same clean, or if the owner
646 shall fail or refuse to curb, recurb, pave or repave any such
647 sidewalk or footway in the manner or within the time re-
648 quired by the council, it shall be the right and duty of the
649 council to cause the same to be done at the expense of the
650 municipality and to assess the amount of such expense upon
651 such owner or occupant, as the case may be; and such ex-
652 penses may be collected by the town in the manner herein
653 provided by the collection of municipal taxes.

654 (82) The council shall have the power and authority to
655 regulate the use of and altitude at which airplanes, airships
656 or balloons may be flown or navigated over the municipality
657 as well as the right and power to punish for intoxicated
658 avigation over the municipality: *Provided, however*, That any
659 ordinances enacted under this section shall not be incon-
660 sistent with the general laws of the state in relation to the
661 same.

662 (83) The council shall have the power and authority to
663 restrain, prevent and punish the stealing of any gas, water
664 or electric energy, or the tampering with any mains, pipes,

665 meters, or any other device or appliance used in connection
666 with the aforesaid, conducting, supplying, or being used in
667 somewise in connection therewith, of gas, water or electric
668 energy: *Provided*, That any enactment of this section shall
669 be consistent with the general laws of the state.

670 (84) The council shall have authority and power to pass
671 such ordinances as may be deemed necessary or advisable
672 to carry out the provisions of this charter and to protect all
673 property, public or private, within said town; to preserve
674 and maintain peace, quiet and good order therein; and to
675 preserve and promote the health, safety and wellbeing of
676 the inhabitants of said town.

677 (85) Except as herein otherwise provided, the powers of
678 the council of said town shall also be co-extensive with the
679 powers of town and city councils generally as provided by the
680 general laws and statutes of the state of West Virginia.

681 (86) All acts or parts of acts inconsistent with this act are
682 hereby repealed, but this act shall not be construed to repeal,
683 change or modify any previous act, not inconsistent with this
684 act, authorizing the town of New Martinsville to contract
685 debts or to borrow money, or to take away any of the powers
686 conveyed by general law upon said town, or upon the mayor
687 or council or any officers, except so far as the same may be
688 inconsistent with the powers hereby conferred.

CHAPTER 139

(Senate Bill No. 33—By Mr. Greene)

AN ACT to amend and reenact sections twelve, thirteen, nineteen
and fifty-two, chapter one hundred thirty-six, acts of the
Legislature of West Virginia, regular session, one thousand
nine hundred thirty-three, relating to the charter of the city
of Williamson.

[Passed February 15, 1935; in effect ninety days from passage. Became a law
without the approval of the Governor.]

Sec.

12. City executive committees of political parties chosen at ward conventions; number, qualifications,

Sec.

13. Ward nominating conventions; terms and organization; vacancies.

Sec.

for councilmen; publication of notice; organizing; city convention to nominate mayor; delegates; publication of notice; rules and regulations governing; list of nominees to city clerk; filling vacancies; election dates; election officials; powers of council as to elec-

Sec.

- tions; nominations by petition.
 10. Meetings of council; voting; mayor a members; duties of city clerk as clerk to council; place and time of meetings; order of business.
 52. Maximum salaries; monthly payments; fees, fines, etc., paid into city treasury.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, nineteen and fifty-two, chapter one hundred thirty-six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 12. City executive committees for each of the two
 2 political parties which cast the greatest number of votes in the
 3 last regular election held in said city shall be chosen at the
 4 ward conventions hereinafter mentioned. Said executive com-
 5 mittees shall be composed of one man and one woman from
 6 each of the wards in said city, who shall be residents and
 7 qualified voters of the wards from which they are elected,
 8 respectively, and shall hold office for a period of three years.
 9 They shall meet immediately after the adjournment of the city
 10 conventions of each of said political parties, nominating candi-
 11 dates for mayor of said city, as hereinafter provided, and organ-
 12 ize by electing a chairman, a secretary, and a treasurer, from
 13 the city at large, and the chairman so elected shall be entitled
 14 to cast one vote and that only in the event of a tie vote by the
 15 members of said committee upon any matter before them. The
 16 present members of the executive committees of said parties
 17 shall continue in office until their successors are elected as here-
 18 inafter provided.

19 If a vacancy shall occur in the office of committeeman or
 20 committeewoman, the remaining members of the committee
 21 may elect a successor, who shall fill the unexpired term until
 22 the next regular ward convention.

Sec. 13. Candidates of each political party for councilmen
 2 shall be nominated by mass conventions of the voters of the
 3 several wards of said city. The candidates for mayor shall
 4 be nominated by the delegated representatives of the
 5 political parties, assembled in a city convention for the en-
 6 tire city. On or before the second Tuesday of April, one
 7 thousand nine hundred thirty-seven, and on or before the

8 second Tuesday of April of every third year thereafter, each
9 of said political parties shall hold a mass convention in each
10 of the several wards of said city, for the purpose of nomi-
11 nating a candidate for councilman, selecting committee mem-
12 bers from said wards and selecting delegates to the city
13 convention to nominate a candidate for mayor. Said con-
14 ventions shall be called by the executive committee of the
15 party holding the same, and the date, hour and place of
16 holding such convention shall be published in two separate
17 newspapers, published in said city, once each week for two
18 consecutive weeks prior to the time of holding such con-
19 ventions. Said ward conventions for the several wards shall
20 be called as herein provided and held on the same date and
21 at the same hour. The male member of the executive com-
22 mittee for said ward of the party holding said convention
23 shall attend and preside thereat until a permanent organi-
24 zation shall be perfected: *Provided, however,* That should
25 the male member of said committee be absent or from any
26 cause be unable to attend said convention, then it shall be
27 the duty of the female member thereof to preside thereat
28 until a permanent organization shall be perfected.

29 The wards shall be entitled to one delegate for each fifty
30 votes, or fractional part thereof, cast at the last preceding
31 general election in said city for the office of mayor, and
32 the delegates to the city convention shall be apportioned
33 among the several wards of said city for each of said political
34 parties, accordingly.

35 At least thirty-five days before every regular election in
36 said city, the party executive committee shall designate the
37 place, date and hour of the holding of the city conventions,
38 for the purpose of nominating candidates for mayor, which
39 shall be not less than twenty days before said election.
40 Notice of said convention shall be published in two newspapers
41 published in said city once each week, for two consecutive
42 weeks, prior to the date of the holding of said conventions.
43 The chairman of the executive committee of the party holding
44 said convention shall attend and preside thereat until a per-
45 manent organization shall be perfected.

46 The city executive committee of each party so holding
47 such convention shall have authority to make such rules and
48 regulations governing the holding of such convention as it

49 may deem proper, including all parliamentary rules and
50 regulations governing the deliberation of such convention.

51 And within five days after the holding of such convention,
52 the city executive committee of each party shall cause to be
53 furnished to the city clerk a complete list of the persons
54 nominated by that party for the offices of mayor and council-
55 men, such list so furnished to be duly sworn to and attested
56 by the chairman and the secretary of such city executive com-
57 mittee.

58 And in the event that a vacancy occurs in the list of such
59 nominees, after such convention has been held, then the said
60 city executive committee shall have authority to designate
61 some other qualified citizen of the city as such nominee, the
62 name of such nominee or nominees to be certified in like
63 manner to the said city clerk.

64 The first election in said city, to be held under this
65 amendment of the charter of said city, shall be held on the
66 third Tuesday in May, one thousand nine hundred thirty-
67 seven, and on the third Tuesday in May of every third year
68 thereafter.

69 On the first Tuesday in May, one thousand nine hundred
70 thirty-seven, and on the first Tuesday in May of every third
71 year thereafter, the council shall hold a meeting for the
72 purpose of making arrangements and preparations for the
73 holding of such election. And at such meeting the council
74 of the city shall appoint three qualified voters of the city as
75 commissioners of election for each voting precinct in said
76 city. Said commissioners of election shall be persons of good
77 standing and character, and not addicted to drunkenness, and
78 not more than two of said commissioners of election shall
79 belong to the same political party. If at any time during
80 said meeting, or prior thereto, the city executive committee
81 of the two political parties which cast the greatest number
82 of votes in the last preceding regular city election, shall
83 present to said city council a writing signed by the chairman
84 of such executive committee, giving a list of persons from
85 that political party as such commissioners of election, then,
86 in appointing such commissioners of election the city council
87 shall appoint said commissioners of election from the list or
88 lists so presented to the city council. Every such writing

89 so presented shall be filed, preserved and kept by the clerk
90 of the council in his office.

91 The city council shall have authority to provide all neces-
91-a sary and suitable means, equipment and appliances for the
92 holding of such elections, and may adopt all necessary rules,
93 ordinances, and regulations governing the same as may appear
94 proper.

95 In addition to the methods prescribed for the nomina-
96 tion of candidates, candidates for the offices of mayor and
97 councilmen may be nominated as follows, that is to say: If,
98 not less than fifteen days prior to the date of the election, a
99 petition signed by not less than three hundred of the qualified
100 voters of the city shall be presented and filed with the clerk of
101 the city, asking that the name or names of candidates be placed
102 upon the ballot, then it shall be the duty of the city council to
103 cause such name or names to be so placed upon the official
104 ballot to be used in such election.

· Sec. 19. The council of the city shall hold regular meetings
2 on the second and fourth Fridays of each month, and shall
3 hold such special meetings as may from time to time be called
4 as hereinafter provided for.

5 The mayor shall have authority to call any special meeting
6 of the council; and likewise a special meeting of the council
7 may be called upon a joint notice of not less than three members
8 of the council; but before holding such special meeting, the
9 mayor, or if called as aforesaid by not less than three members
10 of the council, then such three members, shall cause the city
11 clerk to post notice thereof at the front door of the municipal
12 building of the city, at least twenty-four hours prior to such
13 special meeting, and to give personal notice to each member of
14 the council at least twelve hours in advance thereof where
15 possible.

16 All regular and special meetings of the council shall be pre-
17 sided over by the mayor, and in his absence by a mayor pro
18 tem to be chosen from their number by the councilmen present;
19 three members of the council present shall constitute a quorum
20 for the transaction of business.

21 Each member of the council shall be entitled to one vote.
22 But no member of the council, or the mayor, shall vote upon or
23 take part in the consideration of any question, measure, or

24 proposition in which he is or may be interested otherwise than
25 as a resident of the city.

26 The mayor shall be a member of the city council, and shall
27 be entitled to one vote only as a member thereof. The clerk
28 of the city, chosen in the manner hereinafter provided, shall
29 attend upon all meetings of the council, but shall be entitled
30 to no vote, nor shall he take part in any consideration or dis-
31 cussion of the council upon any matter, except when called
32 upon or invited by the council to take part therein. He shall
33 furnish any and all data or information that may be desired
34 by the members of the council relating to the business of the
35 city. The clerk shall have charge of all record books and
36 minute books, of the council and city, and shall also have charge
37 of the council journal. He shall faithfully and accurately
38 record the minutes and proceedings of all meetings of the
39 council, which shall be recorded in the council journal; all
40 such records of the council journal shall be duly authenticated
41 and attested by the mayor and the city clerk; as hereinafter
42 provided. And the said clerk shall in all matters act as the
43 secretary to the council.

44 All meetings of the council shall be held in the council room
45 or council chamber provided therefor in the municipal building
46 of said city, and shall be held at such hour of the day as may
47 be designated by the council. At its first meeting, after the
48 qualification of the first mayor and councilmen holding office
49 hereunder and thence at the first meeting of the mayor and
50 councilmen taking office after each election hereunder, the
51 council of the city shall fix upon and adopt a certain hour or
52 time of the day at which all meetings of the council shall be
53 held. But such hours so adopted shall be subject to change
54 by vote of the members of the council. The following schedule
55 or order of business shall be followed and observed by the coun-
56 cil at their said meetings:

57 *First:* The mayor, or mayor pro tem, shall direct the clerk
58 of the council to call the roll of the members of the council,
59 who shall answer to their respective names as called; in the
60 council journal the clerk shall record the names of the members
61 present and the names of the members absent.

62 *Second:* The mayor, or mayor pro tem, shall call upon the
63 clerk to read aloud from the council journal the minutes of
64 the previous meeting of the council, and in no event shall the

65 full and accurate reading thereof be dispensed with; and after
66 the reading thereof, the minutes of the previous meeting may
67 by vote or action of the council be corrected, if proper so to do,
68 and otherwise the same shall stand approved as read. Imme-
69 diately after which the said minutes shall be thereupon duly
70 attested by the mayor and clerk.

71 *Third:* The council shall thereupon take up for consideration,
72 discussion, and action, if necessary, all uncompleted or un-
73 finished business not previously disposed of or acted upon.

74 *Fourth:* The council shall thereupon take up for consider-
75 ation, discussion, and action, if necessary, such new matters or
76 new business as may come before the council.

77 *Fifth:* The council shall thereupon take up such miscella-
78 neous matters as may come before it, including any matters
79 that may be brought before it by any citizen or resident of the
80 city or other person; and any person desiring to bring any
81 matter to the attention of the council shall in all cases be given
82 a full opportunity to present such matter.

Sec. 52. The annual salaries of the officers of the city, to be
2 appointed or elected hereunder, shall be paid by the council
3 out of the city treasury, and the salaries of certain officers and
4 officials shall not exceed the following respective amounts:
5 Mayor of the city, twenty-four hundred dollars; city clerk,
6 eighteen hundred dollars; each councilman other than the
7 mayor, three hundred dollars; city attorney, one thousand dol-
8 lars; stenographers and bookkeepers, twelve hundred dollars;
9 city health officer, twelve hundred dollars; assistant health offi-
10 cer, six hundred dollars: *Provided, however,* That no member
11 of the council shall either directly or indirectly receive any
12 other compensation or emolument for any service rendered the
13 said city in any capacity save and except as above provided,
14 nor shall any member of said council be either directly or indi-
15 rectly interested in the furnishing of any supplies or in the
16 doing or performance of any contract procured or made for
17 or in behalf of the city.

18 The salaries as above set forth are to be paid out of the city
19 treasury proportionately at the end of each month, but are
20 never to be paid in advance. All fees, fines, commissions, and
21 emoluments, except salaries, shall be taxed and collected, and
22 when so collected shall be paid into the treasury of the city by
23 the officers, respectively, for the absolute use of the city.

CHAPTER 140

(Senate Bill No. 212—By Mr. Spillers)

AN ACT to amend and reenact sections five, six, twelve, thirteen and eighteen of "The Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen, approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia (municipal charters), one thousand nine hundred twenty-nine, relating to the charter of the city of Wheeling.

[Passed March 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

<p>Sec.</p> <p>5. Municipal elections; dates; how conducted; appointment and qualifications of registrars; filling vacancies; oath; registration books; registration of voters; registrars to sit to amend and correct list; compensation of registrars; books sent with ballots to polling place.</p> <p>6. Number, terms and qualifications of councilmen; ineligibility;</p>	<p>Sec.</p> <p>nomination and term of manager-mayor.</p> <p>12. What officers appointed by council; duties and terms; joint county and city health officer.</p> <p>13. Duties and powers of manager-mayor.</p> <p>18. Municipal candidates nominated by primaries; dates of primary; appointment of election officials.</p>
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Be it enacted by the Legislature of West Virginia:

That sections five, six, twelve, thirteen and eighteen of "The Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen, approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia (municipal charters), one thousand nine hundred twenty-nine, be amended and reenacted to read as follows:

Section 5. The first election for manager-mayor and councilmen under this amendment to the charter shall be held on the fourth Thursday in May, one thousand nine hundred

4 thirty-five, and every regular city election for manager-mayor
5 and councilmen shall be held every four years thereafter on
6 the fourth Thursday in May. All elections for manager-mayor
7 and councilmen shall be conducted and the results ascertained
8 and declared in accordance with the election laws of West
9 Virginia in effect at the time of said election so far as the
10 same may be applicable and not inconsistent with any of the
11 provisions of this act, except that all other elections or votes
12 on any question by the qualified voters of said city shall be
13 held or taken at such places under the supervision of such
14 persons and subject to such regulations as are consistent with
15 the said election laws of West Virginia and ordained by
16 council.

17 The city council at its regular meeting held on the first
18 Tuesday in April next before every election for the offices of
19 manager-mayor and councilmen shall appoint for each voting
20 precinct in the city two competent persons as registrars one
21 each from the two political parties which at the last preceding
22 state and county election cast the highest number of votes in
23 the county of Ohio but the city executive committee of such
24 political parties may present to the council a writing signed
25 by the chairman of the committee of each party requesting the
26 appointment of a qualified voter of his political party, as
27 registrar, with his city address, for each precinct in the city
28 and the council shall appoint the person named in such writ-
29 ing as such registrar. No person shall be eligible to appoint-
30 ment as a registrar, or in any way act as such, who has been
31 convicted of a felony, or who holds any elective or appointive
32 office or is an employee under the laws of the city of Wheeling,
33 county of Ohio, state of West Virginia or of the United States
34 or who is not a qualified voter in the precinct for which he is
35 appointed, or who can not read and write the English lan-
36 guage. If such registrar shall fail or refuse to serve, the
37 vacancy shall be filled either by the city council, or the man-
38 ager-mayor of the city in vacation, in the manner hereinbefore
39 provided for the appointment of registrars, and the city clerk
40 shall notify all such persons of their appointment as registrars.
41 Said registrars shall, before entering upon the discharge of
42 their duties, take an oath to support the constitution of the
43 United States, the constitution of West Virginia, and to per-

44 form the duties of their office to the best of their ability and
45 that they are legal members of the party for which they are
46 respectively appointed. The said oath shall be filed in the
47 office of the city clerk. The city clerk shall cause to be pre-
48 pared suitable books and blanks for the registration of the
49 voters and such books shall be so arranged as required by
50 law for the registration of voters for general elections held
51 in the state of West Virginia and all the provisions, duties
52 and obligations as set forth in the election laws of West Vir-
53 ginia shall apply to the registration of voters hereunder, ex-
54 cept as herein otherwise set out, and the city clerk shall
55 perform the duties required of the county clerk.

56 As soon as possible after their appointment the registrars
57 shall proceed to register the names of all the qualified voters
58 in their respective precincts and shall complete said registra-
59 tion on or before the third Thursday in April preceding said
60 election, and, for the purpose of amending, correcting and
61 completing said registration, shall sit together at some con-
62 venient place within the voting precinct for two days, com-
63 mencing the fourth Thursday in April preceding said election,
64 from nine o'clock A. M. to one o'clock P. M. and from two
65 o'clock P. M. to nine o'clock P. M., and shall give notice of the
66 time and place of their sitting for such registration and cor-
67 rection by posting written or printed notices of the time and
68 place of such sitting for five days prior thereto at not less
69 than three of the most conspicuous places in said voting pre-
70 cinct, one of which shall be at the place of voting in said
71 precinct. At the time of said sitting the books of registration
72 shall be open for public inspection, and the said registrars,
73 in the manner hereinbefore provided shall register all qualified
74 voters who have not theretofore been so registered by them
75 and complete and finish their registration of the voters within
76 their said precinct and make out two alphabetical lists of the
77 registered voters within said precinct entitled to vote at the
78 ensuing election as registered by them and shall sign and
79 return the same to the city clerk on or before the first Thurs-
80 day in May preceding said election; each of the said registrars
81 shall receive the same compensation as may be provided by
82 the laws of West Virginia for the performance of similar
83 duties in state and county elections. The registration books

84 shall be sent to the polling place along with the ballots and
85 no person who is not duly registered thereon shall be allowed
86 to vote at said election.

Sec. 6. Said city shall have a city council of not less than
2 twelve members composed of one member from each ward in
3 said city. All councilmen shall take office on the first day of
4 July, following their election, and shall serve for a term of
5 four years and until their successors are elected and have
6 qualified, unless sooner removed from office as hereinafter
7 provided. They shall be residents and qualified voters of their
8 respective wards in said city. No one elected a member of
9 such city council or manager-mayor shall be eligible to hold
10 such office who shall be interested directly or indirectly in
11 the profits or emoluments of any contract, job, work or service
12 for the city, or in any sale to it of any property, real or
13 personal; or be, directly or indirectly, a holder or owner of
14 any bond or stock of any public utility corporation enjoying
15 a franchise privilege or easement in or from such city; or be
16 an officer, agent, trustee, servant or employee of such a cor-
17 poration. If any such person shall serve or attempt or con-
18 tinue to serve as a member of such city council or manager-
19 mayor, who is not eligible for such office, he shall be guilty of
20 a felony, and upon conviction thereof, be confined in the peni-
21 tentiary of this state not less than one nor more than five
22 years. The manager-mayor shall be nominated and elected
23 from the city at large and shall serve for a term of four years
24 and until his successor is elected and has qualified, unless
25 sooner removed from office as hereinafter provided. He shall
26 be the chairman or presiding officer of council and shall be
27 known officially as the manager-mayor of the city and recog-
28 nized as such for ceremonial purposes, and for the purpose
29 of being served with civil process against the city, and for the
30 performance of all duties imposed upon him by this charter.

Sec. 12. The council shall appoint the following named
2 officers of the city, to-wit: A clerk who shall be known as the
3 city clerk and who shall keep all records of the meetings of
4 the city council and perform such other duties as may be re-
5 quired by this charter or the council; an auditor who shall
6 be known as the city auditor and who shall audit the finances

7 of the city of Wheeling and perform such other duties as are
8 prescribed in this charter or as the city council by ordinance
9 or resolution shall prescribe. All appointees of council shall
10 hold office at the pleasure of council and receive such com-
11 pensation therefor as council may determine.

12 Council may, by contract with the board of commissioners
13 of Ohio county, provide that the same person may be ap-
14 pointed to the office of city health officer and act as such
15 city health officer and also be appointed or selected by the
16 board of commissioners of Ohio county as county health offi-
17 cer, during the same period of time, and perform similar duties
18 for the city of Wheeling, and the county of Ohio, and council
19 may contract with said board of commissioners of Ohio county
20 whereby said board and said city of Wheeling shall agree upon
21 the amount of compensation to be paid said joint health officer
22 and the part of the compensation of any such health officer
23 so appointed to fill both offices, to be paid by each the city of
24 Wheeling and the board of commissioners; and council may
25 likewise contract with said board for a division of the expenses
26 of any joint city and county health officer if the same person
27 shall be selected to fill the office of both city health officer and
28 county health officer and a joint health office maintained.

Sec. 13. The duties and powers of the manager-mayor
2 shall be:

3 (a) To see that the laws and ordinances are enforced;

4 (b) To appoint the following officers of the city: A city
5 solicitor who shall perform such duties as are prescribed in
6 this charter or as the city council by ordinance shall prescribe;
7 a judge of police court, a chief of police, a chief of fire de-
8 partment, a city health officer, such commissioners of municipal
9 loans and bond issues as may be required by state law or city
10 ordinances and all other officers and employees of the city
11 except those whom council is authorized to appoint by the
12 preceding section. Said officers and employees so appointed
13 shall continue in their offices and/or employment during the
14 will and pleasure of the manager-mayor. All such appoint-
15 ments and/or employments shall be upon merit and fitness alone.

16 (c) To exercise supervision and control over all departments
17 and divisions created herein or that hereafter may be created

18 by the council, except the council and other officers by it
19 appointed;

20 (d) To attend all meetings of council with the right to take
21 part in discussions, and he shall have the right to cast the
22 deciding vote in case of a tie.

23 (e) To recommend to the council for adoption such measure
24 as he may deem necessary or expedient;

25 (f) To keep the council fully advised as to the financial
26 condition and needs of the city;

27 (g) To supervise the conduct and performance of their
28 duties by other officers and employees of the city, except the
29 members of the city council, reporting to such council any
30 failure of performance of duty by any of the other appointees
31 of such council and enforcing the proper performance of their
32 duties by the officers and employees appointed by him, to the
33 end that the city's business shall be efficiently and economically
34 transacted;

35 (h) To perform such other duties as may be prescribed by
36 this amendment to the charter or be required of him by ordi-
37 nance or resolution of the council. The manager-mayor shall
38 devote his whole working time to the performance of the
39 duties of his office, and while occupying such office he is not
40 to be engaged directly or indirectly or be interested in any
41 other business than the performance of his duties concerning
42 the affairs of the city of Wheeling.

43 Wherever the term councilman at large, mayor, or city
44 manager is used in any of the sections of the charter of the
45 city of Wheeling in effect at the time of the passage of this
46 amendment, or is used in any of the ordinances of said city
47 in effect at the time of the passage of this amendment, it shall
48 mean the manager-mayor, who shall perform all duties and
49 exercise such rights as have heretofore been delegated to the
50 above named officials.

Sec. 18. Candidates to be voted for at all general municipal
2 elections at which a manager-mayor and councilmen are to be
3 elected under the provisions of this charter shall be nominated
4 at a primary election and no other names shall be printed on
5 the ballots used at the general elections except those selected
6 in the manner prescribed by this amendment to the charter.

7 The first primary election for manager-mayor and council-

8 men under this amendment to the charter, shall be held on the
9 second Thursday in May, one thousand nine hundred thirty-
10 five, and every primary election for manager-mayor and
11 councilmen shall be held every four years thereafter on the
12 second Thursday in May.

13 At the regular meeting of the city council held on the first
14 Tuesday in May preceding every primary and general election
15 for the offices of manager-mayor and councilmen there shall
16 be appointed three judges and two poll clerks for said pri-
17 mary and general election for each voting precinct in the city
18 in the manner herein provided. One judge and one poll clerk
19 shall be appointed from each of the two political parties which
20 at the last preceding state and county election cast the highest
21 number of votes in Ohio county, and if at any time during the
22 said meeting of council the city executive committee of either
23 political party from which said judges and poll clerks are to
24 be selected or appointed shall present to said council a writing
25 signed by them or by the chairman of said committee in their
26 behalf requesting the appointment of qualified voters of their
27 political party with their city address and who are otherwise
28 qualified to act as such officials under the laws of West
29 Virginia it shall be the duty of the said council to appoint
30 the persons named in such writing as such election officials.

31 The remaining judge for each election precinct in the city
32 may be a member of either of the above named political parties
33 and shall be appointed by council.

34 All acts and parts of acts in conflict herewith are hereby
35 repealed.

CHAPTER 141

(Senate Bill No. 204—By Mr. Spillers)

AN ACT to provide a new charter for the city of Wheeling; to provide for a special election on the question of ratification or rejection thereof, to amend and reenact, and consolidate into one act, chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen (municipal charters), chapter one hundred seventeen, acts of

one thousand nine hundred seventeen, chapter eleven, acts of one thousand nine hundred nineteen (municipal charters), chapter fourteen, acts of one thousand nine hundred nineteen (municipal charters), chapter thirty-one, acts of one thousand nine hundred twenty-one (municipal charters), chapter seventy-three, acts of one thousand nine hundred twenty-three, chapter seven, acts of one thousand nine hundred twenty-five (municipal charters), chapter five, acts of one thousand nine hundred twenty-seven (municipal charters), chapter six, acts of one thousand nine hundred twenty-nine (municipal charters), chapter eighty-three, acts of one thousand nine hundred thirty-one, regular session, chapter twenty-three, acts of one thousand nine hundred thirty-two, extraordinary session, chapter one hundred thirty-five, acts of one thousand nine hundred thirty-three, regular session, chapter one hundred twenty-one, acts of one thousand nine hundred thirty-three, first extraordinary session, and chapter one hundred sixty-nine, acts of one thousand nine hundred thirty-three, second extraordinary session, and to repeal all acts and parts of acts inconsistent herewith.

[Passed March 5, 1935: in effect from passage. Became a law without the approval of the Governor.]

PART I

Sec.	Sec.
1. City of Wheeling a body corporate; powers; transfer of property.	12. Ordinances submitted by petition, or adopted by voters, repealed; when publication required.
2. Powers of local self-government and home rule.	13. Council may grant franchises.
3. Legislative powers vested in council; limit on penalty of fine and imprisonment.	14. Conditions upon which public utility franchises may be granted; renewal; forfeiture by non-user.
4. Election, terms, qualifications and compensation of councilmen.	15. When cost of public improvements assessed to property owners.
5. Oath of councilmen.	16. When notice to foreign corporations and non-residents of paving or sewerage required.
6. Council quorum; journal; ordinances; meetings.	17. Commissioners of loans and bond issues.
7. Ordinances, readings, adoption and recordation.	18. City licenses, fees, kinds and terms.
8. When councilman personally interested to have no vote, etc.	19. Ordinance for administrative code; how departments, commissions, etc., changed, abolished, etc.
9. What ordinances, in complete form, must remain on file before final passage.	20. Selection of mayor, by council from its membership; compensation, duties and powers of mayor.
10. Effective date of ordinances; reconsideration, upon petition; resubmission to voters by council.	21. Selection of vice-mayor, by council from its membership; duties and powers of vice-mayor.
11. Ordinance submitted to council by petition of voters; action on by council or voters; how or-	

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| <p>Sec.</p> <p>21. Mayor's appointees to be confirmed by, and serve at pleasure of, council.</p> <p>22. Appointment, members, terms and powers of traffic commission.</p> <p>23. Appointment and members of zoning commission; rules and regulation by ordinance of council; enforcement.</p> <p>24. Taking private property for public use; power of condemnation; levy to maintain parks and recreation centers; Wheeling park commission a body corporate; number, term, qualifications and organization; powers; levy by council for Wheeling and Oglebay parks; how disbursed.</p> <p>25. City manager, appointment, qualification, term, suspension or removal and compensation.</p> <p>26. Oath, eligibility and bond of city manager.</p> <p>27. General powers of city manager.</p> <p>28. Contracts by city manager; limitations on powers; when to be ratified by council; when contract not binding on city.</p> <p>29. Bond and qualifications of appointees of city manager; when city manager or city officer not disqualified to hold office; when city manager may fix compensation of officers.</p> <p>30. Seats in council without the right to vote.</p> <p>31. Political activities or contributions prohibited; penalty.</p> <p>32. When council to deal solely through city manager for services for which he is responsible.</p> <p>33. City manager to appoint city solicitor; qualifications, duties and assistants; number of assistants and compensation fixed by council.</p> <p>34. City manager to appoint city treasurer; duties.</p> <p>35. Mayor to appoint city clerk; term and duties.</p> <p>36. City manager to appoint city health officer; city-county health officer.</p> <p>37. City manager to appoint chiefs of police and fire departments.</p> <p>38. Mayor to appoint city auditor, duties.</p> <p>39. City manager may appoint city licensing officer; duties; revocation of licenses.</p> <p>40. City manager to appoint a police court judge.</p> <p>41. Police court judge to appoint a clerk from police force.</p> <p>42. Duties of police court judge; when temporarily absent, city manager to fill vacancy by appointment.</p> | <p>Sec.</p> <p>43. Jurisdiction of police court judge; when jury trial not allowed.</p> <p>44. Proceedings for recovery of fines or penalties imposed by ordinances.</p> <p>45. Commitment by police court judge for grand jury action.</p> <p>46. Sessions of police court fixed by ordinance.</p> <p>47. Enforcement of orders and judgments of police court; fees.</p> <p>48. Authority and duties of clerk of police court; fees to be paid to city treasurer.</p> <p>49. Records and seal of police court; credit to be given to.</p> <p>50. Costs of prosecutions in police court; when assessed against complainant.</p> <p>51. Appeals from police court to criminal court; appeal bond; proceedings on appeal.</p> <p>52. State civil service laws to apply to fire and police departments.</p> <p>53. Council to provide for civil service commission and civil service ordinance; how ordinance amended.</p> <p>54. Yearly audit of city books and accounts.</p> <p>55. First council elected under act may repeal or revise appropriations made for expense of city government.</p> <p>56. Fiscal year fixed by ordinance.</p> <p>57. Assessment of real and personal property.</p> <p>58. Annual capitation tax.</p> <p>59. Transcript of assessment by county assessor furnished council; compensation for.</p> <p>60. Annual tax levy by council.</p> <p>61. Distraint for taxes; sale of property; taxes to be uniform.</p> <p>62. Lien of taxes on real estate; enforcement.</p> <p>63. Distraint for water rents; shutting off supply of water.</p> <p>64. Suit to collect taxes or water rents.</p> <p>65. When disbursing officer may not issue order or check; penalty.</p> <p>66. Limit on amount of city indebtedness.</p> <p>67. Provisions concerning city bond issues; advisory committee.</p> <p>68. Depositories for city funds; competitive bids; bond.</p> <p>69. Annual settlement by collecting officer; procedure; penalty.</p> <p>70. How elections for councilmen conducted; single election boards; election officials.</p> <p>71. Registration of voters; political affiliations not to be shown.</p> <p>72. How elections on questions submitted to voters conducted; when separate ballots and bal-</p> |
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- Sec. lot boxes required; canvass of ballots.
73. Qualifications of voters.
74. Provisions when councilmen nominated by petition.
75. Form of nominating petition.
76. Examination of nominating petition by city clerk; notice by clerk to nominee; acceptance of nomination.
77. Form of ballots for members of council and instructions to voters.
78. Writing in names on ballots; manner of printing ballots.
79. City manager, with consent of council, to designate a central place to publicly count ballots; central counting board.
80. Return of ballots to, and counting by, central counting board.
81. Rules for counting ballots by central counting board; statement of election returns to clerks; recount by central counting board; costs of recount.
82. Right of group of six or more candidates to appoint witnesses, challengers, etc., at election and witnesses to count by central counting board; presence of candidates, press and public at count.
83. Powers of council as to mechanical devices for sorting and tabulating ballots, etc.
84. Removal of councilman from office upon petition of voters; form of recall ballot; when suspended from office upon petition filed.
85. Penalty for bribery of city official.
86. Penalty for attempting to bribe city official.
87. Penalty for demanding or receiving bribe by city official.
88. Compelling testimony of participants in bribery or attempted bribery; immunity of witness.
89. Penalty for violations of act not otherwise fixed.
90. How boundaries of city may be enlarged.
91. Purchase of, or building, bridges over east channel of the Ohio river; contracts with existing bridge companies for free passage of pedestrians.
92. Duty of owner and council as to proposed subdivisions; duties as to unapproved subdivisions.
93. Provisions as to paving streets and alleys; apportionment of cost between property owners and railways; lien of assessments for costs; enforcement of lien; published notice by clerk of assessment of costs;

- Sec. hearing on assessment; appeal to circuit court; assessment paid in ten annual payments; lien of assessment on traction companies; when unrecorded lien void; street paving fund.
94. Paving upon petition of abutting property owners.
95. Provisions concerning grants for switches or tramways, at grade, on streets or alleys.
96. Copies of ordinances, etc., as prima facie evidence.
97. All fees for official services to be paid to city treasurer.
98. Provisions as to petitions provided in charter; as to nominating petitions, section applies only to examination.
99. If any provision invalid, remainder not affected.
100. Inconsistent acts repealed.

PART II

- Sec. 1. The words "this charter" refer to charter provided in Part 1.
2. Referendum on adoption of charter; date of special election.
3. Publication of whole of act before referendum with notice by clerk; form of notice.
4. Form and number of ballots for special election.
5. Appointment, qualifications and compensation of special election officials.
6. Polling places, equipment and supplies for special election.
7. Registration of voters.
8. Recounts; bonds for cost of.
9. Special election day not a legal holiday.

PART III

- Sec. 1. When charter, if ratified, takes effect.
2. If ratified, newly elected councilmen take office July 1, 1935.
3. If ratified when election for councilmen held; commissioners and polling places; central counting place; director of the count and his assistants.
4. Council to furnish supplies and equipment and compensate election officials.
5. How election conducted and result ascertained.
6. Completion of registration lists.
7. Nomination for council by petition; examination of petitions by city clerk; acceptance of candidates.
8. Existing ordinances in effect until amended or repealed.
9. Existing contracts, easements, etc., and existing indebtedness of city to bind city; provision as to void or nonbinding contracts, etc.

Be it enacted by the Legislature of West Virginia:

PART I

Subject to ratification by the electorate of the city of Wheeling, at a special election to be held on April eighteen, one thousand nine hundred thirty-five, chapter twenty-one, acts of one thousand nine hundred fifteen (municipal charters), chapter one hundred seventeen, acts of one thousand nine hundred seventeen, chapter eleven, acts of one thousand nine hundred nineteen (municipal charters), chapter fourteen, acts of one thousand nine hundred nineteen (municipal charters), chapter thirty-one, acts of one thousand nine hundred twenty-one (municipal charters), chapter seventy-three, acts of one thousand nine hundred twenty-three, chapter seven, acts of one thousand nine hundred twenty-five, (municipal charters), chapter five, acts of one thousand nine hundred twenty-seven, (municipal charters), chapter six, acts of one thousand nine hundred twenty-nine (municipal charters), chapter eighty-three, acts of one thousand nine hundred thirty-one, chapter twenty-three, acts of one thousand nine hundred thirty-two, an act of March ten, one thousand nine hundred thirty-three (Senate Bill number one hundred twelve, regular session, one thousand nine hundred thirty-three), chapter one hundred twenty-one, acts of the first extraordinary session one thousand nine hundred thirty-three, and chapter one hundred sixty-nine, acts of the second extraordinary session. one thousand nine hundred thirty-three, are hereby amended and re-enacted, and consolidated into the act to read as follows:

Section 1. The inhabitants of the portion of the county of
2 Ohio, in the state of West Virginia, within the limits of the
3 city of Wheeling as they now are, or as they may hereafter
4 be, shall be and continue a body politic and corporate, by the
5 name and style of "The City of Wheeling," and as such, and
6 by that name, shall have perpetual succession, and may con-
7 tract and be contracted with, sue and be sued, plead or be im-
8 pleaded, answer and be answered unto, and may purchase, ac-
9 quire by condemnation proceedings for public use, take, re-
10 ceive, hold and use goods and chattels, lands and tenements
11 and choses in action, or any interest, right or estate therein,
12 either for the proper use of said city, or in trust for the bene-
13 fit of any person or association therein; and the same may

14 grant, sell, convey, transfer and assign, let, pledge, mortgage,
15 charge and encumber, in any case and in any manner in which
16 it would be lawful for private individuals so to do, except
17 where its powers may be limited by law; and may have and
18 use a common seal, and alter and renew the same at pleasure;
19 and generally shall have all the rights, franchises, capacities
20 and powers appertaining to municipal corporations in this
21 state.

22 All real and personal estate, and all funds, rights, titles,
23 taxes, credits and claims, and rights or action owned by the
24 city of Wheeling immediately before this charter takes effect
25 or which are then held in trust or have been appropriated for
26 the use or benefit of said city or of the inhabitants thereof,
27 shall be and the same are hereby transferred to and vested
28 in the city of Wheeling under this charter.

Sec. 2. The city of Wheeling shall have all powers of local
2 self-government and home rule that are now, or hereafter may
3 be, granted to municipalities under the constitution and laws
4 of the state, as well as all other powers possible for a muni-
5 cipality to have, whether such power or powers be expressly
6 enumerated in this charter or not, and without any further
7 action on the part of the Legislature. All such powers shall
8 be exercised in the manner prescribed in this charter, or if
9 not prescribed herein, in such manner as shall be provided
10 by ordinance of council.

Sec. 3. All legislative powers of the city shall be vested,
2 subject to the terms of this charter and of the constitution of
3 the state, in the council. The council shall have authority to
4 pass all ordinances necessary and proper to carry into full
5 force and effect any power, capacity, authority, or jurisdiction
6 which is or shall be granted to, or fixed in the said city, or in
7 the council or any officer of said city; and to provide for the
8 enforcement of any or all of their ordinances by reasonable
9 fines and penalties, or by imprisoning offenders against such
10 ordinances, and by compelling them to labor, without compen-
11 sation, at any of the public works or improvements under-
12 taken by said city, or by any or all of said modes: *Provided,*
13 *however,* That no person shall be imprisoned or compelled to

14 labor as aforesaid more than one year or fined more than one
15 hundred dollars for any one offense.

Sec. 4. On the fourth Thursday in May in the year nine-
2 teen hundred thirty-nine, and every four years thereafter,
3 a council of nine members shall be elected from the city at
4 large for a term of four years, commencing on the first day of
5 July next after their election, and they shall, unless sooner
6 removed as provided in this charter, serve until their succes-
7 sors are elected and qualified. No one shall be eligible to a
8 seat in council who shall not be, when nominated, a qualified
9 voter in the city of Wheeling. No person shall be eligible
10 to a seat in council who has been convicted of bribery, perjury,
11 felony, or other infamous crime. Such other qualifications as
12 are provided in section twenty-two, article four, chapter eight
13 of the code of West Virginia, one thousand nine hundred thirty-
14 one, shall not be applicable, because section eight of this char-
15 ter makes such qualifications unnecessary. When the office of
16 councilman becomes vacant, the vacancy shall be filled by elec-
17 tion by the council for the unexpired term, or until the next
18 city-wide election, whichever shall come first. Each member
19 of council shall receive as compensation the sum of one thousand
20 two hundred dollars per annum, payable monthly, and no mem-
21 ber of council shall receive any additional emoluments, allow-
22 ances or bonuses on any account.

Sec. 5. Every councilman, before he enters upon the duties
2 of his office, shall make before someone authorized by law to
3 administer oaths, and file with the city clerk, an oath or affirma-
4 tion to support and defend the constitution of the United
5 States and the state of West Virginia and to perform the duties
6 of his office faithfully, honestly and to the best of his skill and
7 judgment.

Sec. 6. A majority of the members elected to the council
2 shall be a quorum to do business, but a less number may ad-
3 journ from time to time. All legislative action shall be by
4 ordinance except where otherwise required by the constitution
5 or the laws of the state. The council shall keep a journal of
6 its proceedings which shall be a public record. At the desire
7 of any member the yeas and nays shall be entered upon the
8 journal, and on the passage of every ordinance, the vote shall

9 be taken by yeas and nays and entered on the journal and
10 no ordinance shall be passed without the concurrence of a
11 majority of the members elected to council. At least one reg-
12 ular meeting shall be held every week as may be provided by
13 ordinance. Special meetings shall be held on the request of
14 any two members upon twelve hours' notice to each member and
15 advertisement once in a newspaper of general circulation in
16 the city. The proceedings of the council shall be public.

Sec. 7. Every ordinance shall be fully and distinctly read
2 on two different meetings unless three-fourths of the members
3 elected to council dispense with this rule. No ordinance shall
4 contain more than one subject, which shall be clearly expressed
5 in its title, and no ordinance shall be revived or amended
6 unless the new ordinance contains the entire ordinance re-
7 vived, or the section or sections amended, and the section or
8 sections so amended shall be repealed. Council may adopt
9 codification ordinances, codifying, revising and rearranging
10 the ordinances of the city or any portion of such ordinances.
11 Every ordinance and resolution of council shall be recorded
12 in the office of the city clerk, and shall be a public record. The
13 clerk shall prepare and keep a full and proper index of all
14 ordinances, as well as separate indices of other proceedings of
15 council.

Sec. 8. Any member of council having any interest, direct
2 or indirect, other than as a citizen of Wheeling, in any matter
3 to be acted upon in any way by council, shall have no vote on
4 such matter, nor shall he be privileged to take part in the
5 discussion thereof except by unanimous consent, and, upon
6 the request of any other member of council he shall retire
7 from the session until such matter has been disposed of.

Sec. 9. Every ordinance, resolution or action changing the
2 precinct boundaries or otherwise redistricting the city, or
3 annexing any municipality or territory, or appropriating
4 money in excess of one hundred dollars, or ordering any street
5 improvements or sewer, or granting any franchise, or any right
6 to occupy or use the streets, highways, bridges, or public places
7 in the city, or any part thereof, for any purpose, shall be com-
8 plete in the form in which it is finally passed, and remain on file

9 with the city clerk for public inspection at least one week before
10 the final passage or adoption thereof. No franchise, or right to
11 occupy or to use the streets, highways, bridges, or public
12 places in the city, or any part thereof, shall be granted, re-
13 newed, altered, amended, repealed or extended except by
14 ordinance: *Provided, however,* That nothing contained herein
15 shall prohibit council from empowering the city licensing
16 officer from granting permits to churches, community associa-
17 tions and the like, for the use of portions of city streets for
18 street fairs and fetes of similar character.

Sec. 10. No ordinance, resolution or action of the council
2 changing the precinct boundaries or otherwise redistricting
3 the city, or annexing any municipality or territory, or grant-
4 ing to any corporation, firm, person, or association, or com-
5 bination of persons any privilege, right, license, easement, or
6 franchise, to establish, maintain or conduct in the city any
7 public utility, except when otherwise required by the general
8 laws of this state, shall go into effect before thirty days from
9 the time of its final passage, and not then unless within two
10 days after passage, Sundays and holidays excepted, the same
11 shall have been published in two newspapers, published and
12 generally circulated in said city. And if during said thirty
13 days, a petition signed by one thousand electors of the city
14 protesting against the passage of such ordinance, resolution or
15 action, be presented to council, the said ordinance, resolution
16 or action shall thereupon, be suspended from going into oper-
17 ation, and it shall be the duty of council to reconsider the
18 same, and if the same is not entirely repealed, the council
19 shall submit the ordinance, resolution or action as is provided
20 in relation to referendum of ordinances, to the vote of the
21 electors of the city either at the next general municipal elec-
22 tion or at a special municipal election to be called for that pur-
23 pose, and such ordinance, resolution or action shall not go into
24 effect or become operative unless a majority of the qualified
25 electors voting on the same, shall vote in favor thereof. Such
26 petition shall conform to the provisions of section ninety-eight
27 of this charter and shall be submitted, examined and certified
28 in the manner provided in said section ninety-eight.

Sec. 11. Any proposed ordinance may be submitted to the

2 council by petition, signed by one thousand electors of the
3 city. Such petition shall be conformed as provided by section
4 ninety-eight of this charter, and shall be submitted, examined
5 and certified in the manner provided in said section ninety-
6 eight. If the petition be certified to council as provided in
7 section ninety-eight of this charter, and contains a request
8 that the said ordinance be submitted to a vote of the people,
9 if not passed by the council, the council shall either (a) pass
10 such ordinance without alteration within twenty days after
11 attachment of the clerk's certificate of sufficiency to the said
12 petition, or (b) forthwith after the clerk shall attach to the
13 said petition his certificate of sufficiency, the council shall call
14 a special election, unless a general municipal election is to be
15 held within ninety days thereafter, and at such special or
16 general municipal election, such ordinance shall be submitted
17 without alteration to the vote of the electors of said city. If
18 a majority of the votes cast be in favor thereof, such ordi-
19 nance shall thereupon become a valid and binding ordinance
20 of the city, and any ordinance proposed by petition, or which
21 has been adopted by a vote of the people, shall not be re-
22 pealed or amended except by a majority vote of the people.
23 Any number of proposed ordinances may be voted upon at
24 the same election in accordance with the provisions of this
25 section, but there shall not be more than one special election
26 in any period of six months for such purpose. Whenever any
27 ordinance or proposition is required by this charter to be
28 submitted to the voters of the city at any election, the city
29 clerk shall cause such ordinance or proposition to be published
30 once in two daily newspapers, published in said city, such
31 publication to be not more than twenty days or less than
32 fifteen days before such election.

Sec. 12. Council shall have authority to grant franchises,
2 subject to the provisions of this charter.

Sec. 13. Franchises, rights or privileges may be granted
2 by the council, allowing to persons, firms or corporations
3 for a limited time, such occupancy of portions of the streets,
4 alleys or public grounds of the city, as may be deemed by
5 it necessary for works of public utility and service, such
6 as steam railroad tracks, street railway tracks, poles and
7 trolley wires, telephone and telegraph poles, electric light and

8 other electric poles, wires and conduits, and subways, and
9 gas, steam and heating pipe lines. But no such franchise,
10 right or privilege shall hereafter be granted by the council,
11 except under the following restrictions and conditions:

12 *First*, No ordinance granting any franchise, right or privi-
13 lege, for the use of streets, alleys or public grounds of the
14 city, for any of the purposes of public utility above named,
15 or for any other purpose of like nature shall be passed unless
16 it shall have been first offered at a regular meeting of the
17 council, and notice of the object, nature and full extent of
18 such franchise, right or privilege shall have been published
19 daily for at least thirty days (Sundays excepted) by the
20 applicant, in some daily newspaper published in the city of
21 Wheeling before being acted upon. The vote thereon shall
22 be taken by yeas and nays and the same entered upon the
23 journal of the proceedings of the meetings of the council;

24 *Second*, If no time be expressly provided in the grant, the
25 franchise, right or privilege shall be granted for one year
26 only, and in no case shall the same extend for a period ex-
27 ceeding thirty years. Nor shall any grant of a franchise,
28 right or privilege be made without the reservation on the
29 part of the city of the right to alter, amend or repeal the
30 same at any time during its term, should the grantee fail
31 to do those things which the said grant of franchise, right
32 or privilege stipulates that the grantee shall do, or, should
33 the grantee do such things as by the said grant of franchise,
34 right or privilege the grantee is prohibited from doing: *Pro-*
35 *vided*, That after notice by the city to the grantee, specifying
36 wherein the grantee has failed to comply with the terms of
37 the grant, the grantee shall not within three months from
38 the service of such notice comply with such terms;

39 *Third*, No grant of any franchise shall be made without,
40 at the time of making it, providing that the grantee shall
41 indemnify the city against all damages caused by the con-
42 struction, operation or maintenance of any works, under the
43 grant. All reasonable additional provisions and conditions
44 may be made for the protection of the public from unneces-
45 sary damages or inconveniences by reason of such works and
46 the maintenance or operation thereof;

47 *Fourth*, No grant of any franchise, right, or privilege shall

48 be made without, at the time of making it, providing that the
49 city shall receive in consideration therefor, a compensation,
50 to be paid annually during the whole period: *Provided, how-*
51 *ever,* That the principle of competition shall be employed by
52 the council where the same is offered, so that the franchise,
53 right or privilege with prescribed terms and conditions as
54 to its extent and as to the rates to be charged the public by
55 it for its services will be given to the person, firm or corpor-
56 ation bidding or agreeing to pay therefor to the city the
57 highest compensation, or so that the franchise, right or privi-
58 lege with prescribed conditions as to its extent and the
59 compensation that must be paid therefor, will be given to
60 the person, firm or corporation that will agree to render
61 service to the public at the lowest rates. But where revenue
62 or tolls to be charged the public and revenue to the city are
63 joint points of deliberation, the council may take both points
64 into consideration with probable good or ill service of com-
65 peting applicants, and grant any such franchise to the appli-
66 cant, the grant to whom will result in the greatest benefit to
67 the largest number of citizens of the city, in the council's
68 judgment;

69 *Fifth,* The council shall, in suitable terms, make it an ex-
70 press condition of the grant of any such franchise, right or
71 privilege, where it is for a work that is useful chiefly to
72 the local public, that at the expiration of such franchise,
73 grant, right or privilege, the grantee shall, if required by
74 the council, sell to the city the physical plant in the city,
75 at what it is then worth, independent of any value based
76 upon the earning power thereof, and may also provide a
77 means of arbitration or otherwise for determining what such
78 value may be;

79 *Sixth,* In case a petition for stay of ordinance is presented,
80 in accordance with section ten, and a special election is called
81 for the purpose of accepting or rejecting the application for
82 a franchise, right or privilege, the applicant for same shall
83 deposit with the city, the amount of expenses of said elec-
84 tion, which shall be applied to the payment of such expenses,
85 if the franchise is granted, otherwise to be returned to the
86 applicant;

87 *Seventh,* No franchise, right or privilege referred to in

88 this section can be granted unless on the affirmative vote of
89 at least two-thirds of the membership of council;
90 *Eighth*, The provisions of this section, however, shall
91 not apply to grants made under section ninety-five of this
92 charter. No renewal of any franchise, right or privilege
93 for any such work or public utility or service as is mentioned
94 herein, granted for a period of more than three years, shall
95 in any manner be granted until within three years of the
96 time of its expiration. The non-user of a franchise, right
97 or privilege in or upon any street or alley, or public ground,
98 for a period continuously of one year, shall vacate and
99 annul the same as to the portion so allowed to go into
100 disuse.

Sec. 14. No public improvement, the cost or the part of
2 the cost of which is to be specially assessed on the owners of
3 property, shall be made without the concurrence of two-thirds
4 of the members elected to the council, unless the owners of a
5 majority of the foot frontage to be assessed, petition in writing
6 therefor, in which case the council shall be authorized (a ma-
7 jority of the members elected thereto concurring) to ordain such
8 improvement.

Sec. 15. If the council proposes to order and cause the
2 grading, paving, curbing or other improving of any street
3 or alley or the construction of any sewer or other drainage,
4 to be paid in whole or in part by any foreign corporation as
5 owner of any property abutting or bounding on such street,
6 alley, sewer or other improvement, or whose property abutting
7 or abounding thereon may be assessed with such improvement,
8 in whole or in part, such foreign corporation shall be given
9 notice of such proposal by service upon or acceptance by the
10 state auditor, at least thirty days before the enactment or
11 adoption of any ordinance or resolution relating to such work
12 or improvement or declaring the necessity or purpose thereof;
13 which said notice shall set forth substantially the nature of
14 the work to be proposed, the extent thereof; its location and
15 the manner of paying for the same; and no ordinance or reso-
16 lution shall be binding upon any such foreign corporation unless
17 such notice shall have been so given. Non-residents of the
18 state, other than foreign corporations, who shall be affected
19 by such ordinances or resolutions, shall be notified thereof by
20 the city clerk by registered mail, if the address of such non-

21 resident be known to him, and if such notice be practicable.

Sec. 16. Council shall appoint such commissioners of
2 municipal loans and bond issues as may be required by laws
3 of the state.

Sec. 17. Council shall provide by ordinance for the issuing
2 of all city licenses, the license fees, and the various kinds of
3 licenses, and the terms, requirements and conditions upon
4 which licenses shall be issued.

Sec. 18. The existing departments, commissions, boards and
2 other branches of the city government are continued, unless
3 changed by the provisions of this charter or by ordinance of
4 the council. Within six months after this charter becomes
5 effective, the council shall by ordinance adopt an administrative
6 code providing for a complete plan of administrative organiza-
7 tion of the city government. Thereafter, except as established
8 by the provisions of this charter, the council may change,
9 abolish, combine and rearrange the departments, commissions,
10 boards and other branches of the city government provided for
11 in said administrative code, but an ordinance creating, com-
12 bining, abolishing or decreasing the powers of any department,
13 commission, board or other branch, shall require a vote of
14 three-fourths of the members elected to the council, except the
15 ordinance adopting an administrative code.

Sec. 19. At its first meeting in July following the regular
2 municipal election, the council shall choose one of its members
3 as presiding officer, who shall have the title of mayor. The
4 mayor shall preside at the meetings of the council and perform
5 such other duties as may be prescribed by this charter or as
6 may be imposed by the council, consistent with his office. He
7 shall have no power of veto. He shall be recognized as the
8 official head of the city for all ceremonial purposes, by the
9 courts for the purpose of serving civil process, and by the
10 governor for military purposes. In time of public danger or
11 emergency, he may, with the consent of the council, take com-
12 mand of the police, maintain order and enforce the law. The
13 council may by ordinance provide for a salary to be paid the
14 mayor in addition to his salary as councilman.

Sec. 20. The council shall also at its first meeting in July
2 following the regular municipal election, choose one of its mem-

3 bers as vice-mayor. The vice-mayor shall perform the duties
4 of the mayor during his absence or disability. In the event
5 of the death, removal or resignation of the mayor, the council
6 shall choose one of its members as mayor for the unexpired
7 term. No additional compensation shall attach to the office of
8 vice-mayor.

Sec. 21. The appointments to be made by the mayor shall
2 be made with the advice and consent of the council, and such
3 appointees shall serve at the pleasure of council.

Sec. 22. There is hereby created a commission to be known
2 as the traffic commission, whose duty it shall be to pass rules
3 and regulations concerning the parking of automobiles and
4 other vehicles, and regulating the same on the public thorough-
5 fares in the city of Wheeling. Such rules and regulations,
6 when passed and promulgated by said commission, shall have
7 the same force and effect as ordinances passed by the council
8 of the city of Wheeling until altered, repealed, revoked or
9 amended by said council. Said commission shall be composed
10 of five citizens of Wheeling, none of whom shall be state,
11 county or city officials, and said commissioners shall be ap-
12 pointed by the mayor and serve at the pleasure of council.

Sec. 23. For the purpose of promoting the health, safety,
2 morals or the general welfare of the community, the council
3 may pass and cause to be enforced such ordinances as it shall
4 deem necessary or proper to regulate and restrict the height,
5 number of stories, size of buildings and other structures, per-
6 centage of lot that may be occupied, the size of yards, courts, and
7 other open spaces, the density of population and the location and
8 use of buildings, structures and land for trade, industry, resi-
9 dence or other purposes. For any or all of said purposes,
10 council may divide the city and the districts into such number,
11 shape, and area as may be deemed best suited to carry out the
12 purposes of this act, and within such districts it may regulate
13 and restrict the erection, construction, reconstruction, alter-
14 ation, repair or use of buildings, structures, or land; all such
15 regulations shall be uniform for each class or kind of build-
16 ings throughout each district but the regulation in one dis-
17 trict may differ from those in other districts. Such regulations
18 shall be made in accordance with a comprehensive plan and

19 design to lessen the congestion ; to secure safety from fire, panic,
20 or other danger ; to promote health and general welfare ; to
21 provide adequate light and air ; to prevent the crowding of
22 land ; to avoid undue concentration of population ; to facili-
23 tate the adequate provision for transportation, water, sewer-
24 age, schools, parks, and other requirements. Such regulations
25 shall be made with reasonable consideration being given to
26 the character of the district and its peculiar suitability for
27 particular uses, and with the view to conserve the value of
28 buildings and encourage the most appropriate use of land
29 throughout the city of Wheeling. Council shall provide for
30 the manner in which such regulations and restrictions and the
31 boundaries of such districts shall be determined, established
32 and enforced, and from time to time may amend, supplement,
33 or change: *Provided, however,* That no such regulations, re-
34 strictions or boundaries shall become effective until after public
35 hearing in relation thereto, at which parties interested and citi-
36 zens shall have an opportunity to be heard. At least fifteen
37 days' notice of the time such regulations are to be presented
38 shall be published in at least two newspapers published and
39 circulated in the city of Wheeling.

40 Council may appoint a commission to be known as the "zon-
41 ing commission" consisting of five members, who shall be citi-
42 zens of the city of Wheeling, to recommend the determination
43 of the various districts and appropriate regulations to be en-
44 forced therein.

45 Council may provide by ordinance for the enforcement of this
46 section or of any ordinance or regulations made thereunder.
47 The violation of this section or of any such ordinances or regula-
48 tions adopted or made is hereby declared to be a misdemeanor
49 and council may provide for the punishment and fine or im-
50 prisonment or both of any violation thereof.

51 In case any building or structure is erected or constructed,
52 altered, repaired, converted, or maintained, or any building,
53 structure or land is used in violation of this section or of any
54 ordinance or any other regulation made under authority con-
55 ferred hereby, said council in addition to other remedies may
56 in the name of the city, bring an appropriate action or pro-
57 ceeding to prevent such unlawful erection, construction, alter-
58 ations, repair, conversion, maintenance or use, and to restrain,
59 correct or abate such violations, to prevent the occupancy of

60 said building, structure, or land or to prevent any illegal act,
61 conduct, business, or use in or about such premises.

Sec. 24. The council may cause to be taken or damaged for
2 the use of the city, for streets, alleys, markets, bridges, public
3 squares, parks, play-grounds, and other municipal purposes,
4 including occupation by sewer, water pipes, gas pipes, heating
5 pipes, compressed air pipes and electric or other subways, any
6 private property within the city, (but where such use is to
7 secure or improve the water supply, or for park, play-grounds
8 sanitary or cemetery purposes, outside the limits of the city)
9 but no such property shall be taken or damaged without just
10 compensation. The compensation, if it cannot be determined
11 by agreement with the owner of the property so taken or dam-
12 aged, shall be ascertained in such manner as is or may be pre-
13 scribed by general law for the condemnation of land for pub-
14 lic purposes. In addition to all other levies provided by law,
15 the council of the city of Wheeling shall have the right to
16 levy annually not to exceed five cents on each one hundred
17 dollars of the assessed valuation of the property within the
18 limits of the city according to the last assessment thereof for
19 state and county purposes, for the purpose of obtaining and
20 maintaining parks, play-grounds and recreation centers.

21 For the management of that plat of ground heretofore known
22 as Wheeling Park, and donated to the city of Wheeling on the
23 eighteenth day of December, one thousand nine hundred twen-
24 ty-four, for use as a municipal park, and for the management
25 of the other parks of Wheeling there shall be, and there is
26 hereby created a commission to be known as "Wheeling Park
27 Commission," and the same is hereby made a body corporate,
28 and by that name the commission may sue and be sued; plead
29 and be impleaded; and contract and be contracted with. The
30 said commission shall consist of five citizens of the city of
31 Wheeling, who shall be appointed in the manner hereinafter set
32 out, and who shall serve without compensation and shall hold no
33 remunerative political office, either state, county or municipal;
34 and no member of the commission shall be eligible to appoint-
35 ment to any remunerative office or position under the juris-
36 diction of the commission. The commissioners in office at the
37 time this charter becomes effective shall continue in office for
38 the duration of the terms for which they were appointed, and
39 thereafter their successors shall be appointed either by the

40 board of directors of the Wheeling chamber of commerce or
41 by the city manager, as the case may be, which appointed the
42 commissioner whose place is being filled. The respective
43 successors shall be appointed for the term of five years each,
44 excepting that any person appointed to fill a vacancy occurring,
45 before the expiration of a term, shall serve only for the un-
46 expired term; any commissioner shall be eligible for reappoint-
47 ment: *Provided further*, That any vacancy created either
48 by the expiration of a term, or otherwise, shall be filled by the
49 appointing body, either the board of directors of the Wheel-
50 ing chamber of commerce, or the city manager, as the case
51 may be, which appointed the commissioner whose place on the
52 commission is being filled. Upon the appointment of said
53 commission the members thereof shall elect from among their
54 number a chairman and a secretary-treasurer who shall hold
55 office for one year and be eligible for re-election. Annually
56 thereafter the commission shall organize by the election of a
57 secretary-treasurer and such other officers from its own num-
58 ber as it may deem advisable. Members of the commission may
59 be removed from office in the same manner as provided for
60 the removal of county officers under section seven, article
61 six, chapter six of the code of West Virginia, one thousand
62 nine hundred thirty-one. The commission shall have all
63 and sole power necessary, convenient and advisable for the
64 proper care, equipment and management of the said Wheeling
65 park and other parks heretofore and hereafter acquired by the
66 city of Wheeling, either by gift or purchase, and shall make
67 such rules and regulations as it shall deem expedient for the
68 care and management thereof.

69 In order to provide for the purchase of the equipment for
70 use in Wheeling park and Oglebay park (Waddington) and for
71 the maintenance and upkeep of said Wheeling park and Ogle-
72 bay park, the city council of Wheeling shall levy annually ten
73 cents, or lesser amount, if requested by the commission, on each
74 one hundred dollars of the assessed valuation of the property
75 within the limits of the city, according to the last assessment
76 thereof for state and county purposes. The proceeds of this
77 ten cent levy shall be for the exclusive use of said Wheeling
78 park, Oglebay park and any other parks heretofore or hereafter
79 acquired as aforesaid by the city of Wheeling, and shall be dis-
80 bursed only upon the order of the commission evidenced by

81 warrants drawn on the city treasurer, and signed by the chair-
82 man and the secretary-treasurer of the commission.

Sec. 25. The council shall appoint a city manager who shall
2 be the chief executive and administrative officer of the city,
3 and except as provided in section twenty-six of this charter,
4 he shall be appointed solely on the basis of his executive and
5 administrative qualifications and need not, when elected, be a
6 resident of the city or state, unless the constitution of the
7 state shall provide otherwise. No member of the council shall
8 be chosen as city manager. The city manager shall be ap-
9 pointed for an indefinite term as hereinafter provided. He
10 shall be removable at any time at the pleasure of the council.
11 If removed at any time after he has served six months, he may
12 demand written charges and the right to be heard thereon at
13 a public meeting of the council prior to the date on which his
14 final removal shall take effect, but pending and during such
15 hearing the council may suspend him from office. The action
16 of the council in suspending or removing the city manager shall
17 be final, it being the intention of this charter to vest all author-
18 ity and fix all responsibility for such suspension or removal
19 in the council. The council may designate some other officer of
20 the city to perform the duties of the city manager during his
21 absence or disability. The city manager shall receive such
22 compensation as may be fixed by the council.

Sec. 26. Before entering upon the duties of city manager,
2 he shall make, before some one authorized by law to admin-
3 ister oaths, and file with the city clerk an oath or affirmation
4 to support and defend the constitution of the United States
5 and of this state and to perform the duties of his office faith-
6 fully, honestly and to the best of his skill and judgment. No
7 person shall be eligible to the office of city manager who has
8 been convicted of bribery, perjury, felony or other infamous
9 crime. Before entering unto the discharge of his duties, the
10 city manager shall give a good and sufficient bond, payable to
11 the city in such amount as may be prescribed by council but
12 not less than ten thousand dollars, conditioned upon the faith-
13 ful performance of his duties, and with a corporate surety
14 authorized to do business within the state; and such bond shall
15 be filed with the city clerk after being approved as to form

16 and surety by a judge of the circuit court of Ohio county.
17 The premium on such bond shall be payable by the city.

Sec. 27. It shall be the duty of the city manager to act as
2 chief conservator of the peace within the city; to supervise the
3 administration of the affairs of the city, except as otherwise
4 specifically provided in this charter; to see that the ordinances
5 of the city and the laws of the state are enforced; to make all
6 appointments and removals in the administrative and execu-
7 tive services except as otherwise provided in this charter; to
8 make such recommendations to the council concerning the
9 affairs of the city, as may to him seem desirable; to keep the
10 council advised of the financial condition and future needs of
11 the city; to prepare and submit to the council the annual bud-
12 get estimate; to prepare and submit to the council such reports
13 as may be required by that body, and to perform such other
14 duties as may be prescribed by this charter or required of him
15 by ordinance or resolution of the council. Except as other-
16 wise provided in this charter, all other executive and admin-
17 istrative powers conferred by the laws of the state upon any
18 municipal official shall be exercised by the city manager or
19 persons designated by him.

Sec. 28. The city manager shall negotiate and enter into all
2 contracts upon behalf of the city, except those of the park
3 commission, and as otherwise provided in this charter. Such
4 contracts to be negotiated and entered into by the city manager
5 shall be within the limits of the budget and within the limits
6 and purposes of the allocations of the budget, as determined
7 by the purposes and subject matters of the contracts. If any
8 such contract involves the expenditure of more than five hun-
9 dred dollars, or the performance thereof extends beyond the
10 budget year, or involves the expenditure of money not within
11 the budget, such contract must be ratified by council, in the
12 form of an ordinance, and the fact of ratification attested
13 thereon by the city clerk before execution by the city manager.
14 The city manager shall report in writing to council his nego-
15 tiations and the terms of the contracts requiring their ratifica-
16 tion, and the council may in such cases alter, amend, ratify
17 or reject any such contract. Any contract executed by the

18 city manager on behalf of the city in violation of the terms
19 of this section shall not be binding upon the city.

Sec. 29. In all cases required by ordinance or in which he
2 may deem it advisable, the city manager shall take of any
3 person appointed by him a bond, payable to the city of Wheel-
4 ing conditioned on the faithful performance of his duties, and
5 in such amount as may be required by council, or if there be
6 no requirement of council, in such amount as the city manager
7 shall deem requisite. Such bonds shall be filed with the city
8 clerk. No person shall be appointed in the executive or ad-
9 ministrative services of the city who has been convicted of
10 bribery, perjury, felony or other infamous crime. But resi-
11 dence within the city at the time of such appointment shall
12 not be a necessary qualification for appointment unless the
13 constitution of the state shall provide otherwise. If the city
14 manager or any other officer of the city shall be a member,
15 manager, officer or stockholder of any partnership, business,
16 firm or corporation, which by contract furnishes material and
17 supplies to the city or to any workmen or contractor for the
18 city, that shall not of itself constitute a disqualification for
19 office under this charter. Unless otherwise provided by this
20 charter or by ordinance, the city manager shall fix the com-
21 pensation for all persons in the executive and administrative
22 services of the city, within the limits and terms of the budget.

Sec. 30. The city manager and such other officers of the city
2 as may be designated by vote of the council, shall be entitled
3 to seats in the council. None of said officials shall have a vote
4 in the council, but the city manager shall have the right to
5 discuss any matter coming before the council, and the other
6 officers shall be entitled to discuss any matter before the council,
7 relating to their respective departments and offices.

Sec. 31. No person in the executive or administrative services
2 shall directly or indirectly give, solicit or receive, or in any
3 manner be concerned in giving, soliciting or receiving any as-
4 signment, subscription, or contribution for any political party
5 or for any candidate. No person in the executive or admini-
6 strative services of the city shall be an officer or member of
7 any political committee, nor shall such person take an active
8 part in any political campaign. Any violation of this section

9 shall operate to forfeit the office or position held by the person
10 violating the same and shall render any such person ineligible
11 to any municipal office or position for a period of one year.

Sec. 32. Neither the council nor any of its committees or
2 members shall interfere in any way with the appointment or
3 removal of any of the officers or employees in the executive
4 or administrative services. Except for the purpose of inquiry,
5 the council and its members shall deal with that part of the
6 executive and administrative services for which the city man-
7 ager is responsible, solely through the city manager.

Sec. 33. The city manager shall appoint a city solicitor. No
2 person shall be eligible to the office who is not an attorney at
3 law, duly admitted to practice in this state. He shall serve
4 the council, officers, commissioners, and boards of the city as
5 legal counsel and attorney, and shall represent the city in all
6 proceedings in court. He shall act as prosecuting attorney in
7 the municipal court. He shall perform all other duties which
8 the council may impose upon him consistent with his office.
9 The solicitor shall appoint his assistants and fix their salaries,
10 but the maximum number of assistants and the total amounts
11 of the assistants' salaries shall be fixed by council. The assist-
12 ants shall hold their offices at the pleasure of the solicitor.

Sec. 34. The city manager shall appoint a city treasurer,
2 who shall perform the duties as may be prescribed by ordinance
3 and consistent with the office. He shall have the custody of all
4 city funds, and shall disburse same only by proper authority.

Sec. 35. The mayor shall appoint a city clerk, to serve at
2 the pleasure of council. The city clerk shall keep the minutes
3 and other proceedings of council and shall perform such other
4 duties as may be imposed by this charter or by ordinance.

Sec. 36. The city health officer incumbent at the time this
2 charter becomes effective shall continue in office until the ex-
3 piration of the term for which he was appointed. Thereafter,
4 the city manager shall appoint the city health officer, and the
5 city manager may by contract with the board of commis-
6 sioners of Ohio county, provide that the same person may be
7 appointed to the office of city health officer and also be selected
8 by the board of commissioners as county health officer, during

9 the same period of time, and perform similar duties for the
10 city of Wheeling and county of Ohio. Such contract shall pro-
11 vide for the city and county to share all expenses including
12 compensation of such city-county health officer on a basis to be
13 stated in the contract. Such contract, on the part of the city,
14 must be ratified by council before it shall become effective.

Sec. 37. The city manager shall appoint, among other heads
2 of departments, the chief of police, and the chief of the fire
3 department.

Sec. 38. The mayor shall appoint a city auditor, who shall
2 be the chief fiscal officer of the city. He shall exercise super-
3 vision over all accounts, and accounts shall be kept showing
4 the financial transactions of all departments of the city upon
5 forms prescribed by him and approved by the city manager
6 and the council. He shall submit to the city manager and to
7 the council at its second meeting in each month a summary
8 statement of revenues and expenses for the preceding month,
9 detailed as to appropriations and funds in such manner as to
10 show the exact financial condition of the city and of each de-
11 partment, office and branch thereof. He shall perform such
12 other duties as may be imposed upon him by ordinance of the
13 council. He shall prepare and submit to the city manager
14 such information as shall be required by the city manager
15 for the preparation of an annual budget. He shall appoint his
16 subordinates, if subordinates be provided by ordinance. The
17 city accountant incumbent at the time this charter becomes
18 effective shall continue in office as city auditor unless and until
19 a successor is appointed and qualifies.

Sec. 39. The city manager shall appoint a city licensing
2 officer, or if he sees fit, may require some other city officer to as-
3 sume the duties of city licensing officer. The city licensing officer
4 shall issue all city licenses and he shall be governed by the
5 provisions of the ordinances relating to licenses and the ap-
6 plicable laws of the state: *Provided, however,* That he may,
7 before issuing any license, require the affidavit of any appli-
8 cant, setting forth that such applicant is a proper party for
9 such license, and that all terms, requirements and conditions
10 of the licensing laws pertaining to the license applied for have
11 been met: *Provided further,* That he may, before issuing any

12 license, make an investigation to determine whether such terms,
13 requirements and conditions have in fact been met: *And pro-*
14 *vided further*, That all applications for beer and/or liquor
15 licenses shall be thoroughly investigated by him before any such
16 license shall be issued. The city licensing officer and/or council
17 may revoke any license issued by the city licensing officer for
18 any violation of law pertaining to such license.

Sec. 40. The city manager shall appoint a judge of the
2 police court, from among the members of the Ohio county bar.

Sec. 41. The judge of the police court shall appoint a clerk
2 of the police court from among the members of the police force
3 of the city.

Sec. 42. The judge of the police court shall preside over
2 said court and try and determine all cases over which said
3 court has jurisdiction. In the event of his temporary absence
4 or disability, the city manager shall appoint a member of the
5 Ohio county bar to preside over said court, and perform the
6 duties of the judge thereof, during the absence or disability
7 of the regular judge, and the judge's salary shall be trans-
8 ferred to and paid such temporary judge for the time he serves
9 as such judge.

Sec. 43. The judge of the police court shall have jurisdiction
2 over all offenses against, or violation of, the ordinances of said
3 city, and full authority to punish in any manner lawfully
4 prescribed by such ordinances, the offenders against or violators
5 of the same: *Provided, however*, That no jury shall be allowed
6 in any trial and said court for the violation of any ordinance
7 of said city.

8 The said judge of the police court shall have the same
9 criminal and civil jurisdiction and powers within the county
10 of Ohio as is now provided by law for justices of the peace
11 elected in said county.

Sec. 44. The proceedings for the recovery of the fines or for
2 the enforcement of the penalty prescribed by any ordinance
3 shall conform to the regulations so far as they are applicable,
4 prescribed in the code of West Virginia for civil proceedings
5 before justices of the peace; but the judge or the clerk of said
6 court may, for good cause, shown by affidavit, by an endorse-
7 ment upon the summons, order the defendant or defendants

8 to be arrested and brought before the said court to be dealt
9 with according to law.

Sec. 45. In cases where evidence discloses such a violation
2 within the city, of a law of the state, that, in the opinion of
3 the judge of the police court, the person accused should be
4 committed to await the action of the grand jury upon an
5 accusation made, the judge of the police court shall have the
6 same jurisdiction and power as a justice of the peace in the
7 county of Ohio, in regard to the apprehension, commitment
8 and admission to bail of the person so accused; and, in the
9 exercise of such jurisdiction and powers, shall be governed
10 by the same regulations.

Sec. 46. The sessions of said court shall be at such time
2 and places as the council of said city shall by ordinance direct.

Sec. 47. The said court shall have full power and authority
2 to enforce its orders and judgments, by any process of law
3 which may be necessary and proper for the purpose, and all
4 processes, executions and orders of said court shall be signed
5 by the judge or clerk thereof. Such process and executions
6 shall be directed to the chief of police of said city, and be
7 executed by him or one of his deputies. In the execution of
8 any process or order of said court, the chief of police or deputy
9 shall have the same powers, be governed in his proceedings by
10 the same rules of law, and be subject to the same liabilities as
11 the sheriff of Ohio county, West Virginia, in the performance
12 of like services. There may be charged for the services of such
13 officer the same fees as the sheriff is entitled to charge for like
14 services, but all such fees, as well as all fines imposed by said
15 court, shall be collected by the chief of police, and accounted
16 for and paid by him to the treasurer of the city. The city
17 shall in no event be liable for any such fees.

Sec. 48. The clerk of said court shall have authority to
2 administer oaths within said city, and shall perform such
3 duties as may be required by the judge of said court, or be
4 prescribed by rule or order of the council. Such clerk may
5 charge the same fees for his services as are now allowed to be
6 charged by justices of the peace for like services, and such
7 fees shall be collected by him in like manner as fees of the clerk
8 of the circuit court are collected; but all such fees shall be

9 accounted for by him to the city and paid over to its treasurer.

Sec. 49. A docket and other books required for the records
2 and a seal shall be provided for the said court by the council,
3 and the seal may be altered or renewed as the said court may
4 direct. Full faith and credit shall be given to the records of
5 said court, and the certificates of its judge or clerk whether
6 the seal of said court be affixed thereto or not, in like manner
7 and with the same effect as if the same were records of the
8 circuit court or certificates of the judge of a circuit court
9 similarly authenticated.

Sec. 50. The said police court shall have power, upon ren-
2 dering judgment against a defendant charged with the viola-
3 tion of an ordinance of the city, to render judgment against
4 him also for the costs of prosecution. In every suit or prose-
5 cution for the violation of an ordinance the said court shall
6 cause the person or persons at whose instance it was instituted
7 to be designated upon the warrant or writ issued to arrest or
8 summon the person charged, and if the person or persons
9 charged shall not be convicted in such court, and such court
10 shall be of the opinion that no sufficient or probable cause
11 existed for the institution of the said suit or prosecution, then
12 judgment for the costs of the city, and of the defendant, or
13 of either of them, as the court shall deem just, shall be ren-
14 dered against the person or persons at whose instance such
15 suit or prosecution was instituted.

Sec. 51. From the judgment of the police court in any case
2 in which there is unpaid a fine of ten dollars or more, or im-
3 prisonment, or both, or in any case involving the validity of
4 an ordinance of the said city, an appeal shall lie as a matter
5 of right, to the criminal court of said Ohio county, either on
6 behalf of the defendant or the city, and in any case where a
7 fine is imposed, on demand of the defendant, such fine must
8 be fixed at not less than ten dollars, so that such appeal may be
9 taken; but no defendant shall be entitled to such appeal until
10 and unless he execute before the said police court, or its clerk,
11 bond in such penalty, not exceeding two hundred dollars, as
12 the said police court may prescribe, conditioned for the per-
13 formance of the judgment or order of the criminal court of
14 said county made or rendered upon such appeal. Every such

15 bond shall be with security approved by the said police court
16 or its clerk; but in any case in which an appeal is taken or
17 granted on behalf of the city, no bond or security shall be re-
18 quired. Every such appeal shall be proceeded within the
19 criminal court in the same manner as is provided by law for
20 the proceedings in such criminal court, in cases appealed from
21 justices of the peace. If on such appeal judgment be against
22 the appellant it shall also be against the sureties on his appeal
23 bond for costs, and for any fine or pecuniary penalty adjudged
24 against him. No such appeal shall be allowed after ten days
25 from the date of any final order or judgment desired to be
26 appealed from.

Sec. 52. The provisions of the general laws of West Vir-
2 ginia which require and provide civil service in and for muni-
3 cipal fire and police departments in this state, and which do
4 not exclude Wheeling from the operation thereof, shall apply
5 to the fire and police departments of Wheeling.

Sec. 53. The council shall prepare a civil service ordinance
2 which shall be applicable to the fire and police departments
3 and to all employees in the administrative services of the city,
4 and which shall provide for one civil service commission for the
5 city. Such ordinance shall be adopted within one year after
6 this charter becomes effective; and after its adoption it shall
7 not be altered or amended in any material respect except by
8 three-fourths vote of all members elected to council, after notice
9 of such proposed amendment has been published in two Wheel-
10 ing newspapers of general circulation in the city not later than
11 three days before such proposed amendment is to be acted upon;
12 nor shall such ordinance be repealed except by majority vote
13 of the electorate of the city. Until the general civil service
14 ordinance provided herein shall have been adopted, the civil
15 service laws applicable to the Wheeling police department and
16 the Wheeling fire department at the time this charter be-
17 comes effective shall have the force and effect of provisions
18 of the charter of the city.

Sec. 54. At the end of each year the city council shall
2 cause a full and complete examination of all the books and
3 accounts of the city to be made by the city auditor or by other

4 competent accountants and shall publish the result of such
5 examination in connection with the annual city financial state-
6 ment required by law.

Sec. 55. If, at the beginning of the term of office of the first
2 council elected in said city under the provisions of this charter,
3 the appropriations for the expenditures of the city government
4 for the current fiscal year have been made, said council shall
5 have power, by ordinance, to revise, to repeal or change said
6 appropriations, and to make additional appropriations.

Sec. 56. The fiscal year of the city of Wheeling shall be fixed
2 by ordinance.

Sec. 57. All property, real and personal, within the city
2 which is subject to taxation under the constitution and laws
3 of the state of West Virginia, shall be assessed for and subject
4 to taxation for the benefit of said city.

Sec. 58. The council may, by ordinance, levy an annual
2 capitation tax of not exceeding one dollar upon each inhab-
3 itant or tithable of city, who, under the constitution of this
4 state, is subject to a capitation tax.

Sec. 59. The county assessor or other officer assessing prop-
2 erty in Ohio county, for taxation for state and county pur-
3 poses, shall furnish to the council of the city of Wheeling, a
4 transcript of the assessment of real and personal property
5 within said city liable to taxation by the state, on or before the
6 first day of August of each year, and he shall receive such
7 compensation therefor as may be fixed by said council.

Sec. 60. Subject to the limitations of the state laws pre-
2 scribing the aggregate of all levies for city purposes, the coun-
3 cil shall annually cause to be levied and raised by a general
4 tax upon all taxable property in the city:

5 (1) An amount sufficient to pay the interest and any install-
6 ment of principal falling due within the year upon all bonds
7 of the public debt of the city, which shall be kept in a sep-
8 arate fund, to be called the public debt fund.

9 (2) An amount which, with the revenue from the water
10 works, and any other revenue-producing works or property
11 owned by or in charge of the city, will be sufficient to defray
12 the expenses for the next fiscal year of all of the works and

13 property, and an amount sufficient to pay the salaries of all
14 officers of the city, and the wages of all employees of the city,
15 and all necessary ordinary and contingent expenses of the
16 city, not otherwise provided for, which, with all other moneys
17 received by the city, not belonging to any other fund speci-
18 fied by this charter, shall be kept as a separate fund, to be called
19 the general city fund.

Sec. 61. If any person against whom or upon whose prop-
2 erty any tax shall be lawfully assessed for the benefit of said
3 city shall not wholly pay such tax on or before the first day
4 of July after the same shall become due, it shall be lawful for
5 the officer authorized to collect such tax to take reasonable dis-
6 tress of any personal property in said city, belonging to said
7 delinquent, or in which he or she shall have any right or in-
8 terest, and sell such property, right or interest at public auction
9 in said city, having given ten days' notice of the time and
10 place of sale by advertisement posted in some public place
11 in the city, and published or posted in such other manner as
12 may be prescribed by ordinance of said city, if the council shall
13 by ordinance require any other or more ample advertisement,
14 and, out of the proceeds of such sale, after defraying all proper
15 expenses, to pay to the said city the said tax or so much thereof
16 as shall be delinquent, and return the remainder, if any, to the
17 owner of the property so levied on and sold. All taxes on real
18 and personal property therein assessed and collected by said
19 city for its corporate purposes, must be uniform with respect to
20 persons and property within the jurisdiction of the city.

Sec. 62. All taxes assessed upon real estate, for the benefit
2 of said city, shall remain a lien thereon, bearing interest at
3 the rate of six per cent per annum until the same be fully
4 paid. Such lien may be enforced by suit in equity in the
5 circuit court of Ohio county, West Virginia, by the leasing or
6 sale of such real estate, under the decree of such court, where
7 the amount involved, exclusive of interest and costs, exceeds
8 fifty dollars. If the amount involved is fifty dollars or less,
9 exclusive of interest and costs, suit may be brought before any
10 justice of the peace of said Ohio county, and the judgment
11 obtained enforced by execution or suit in equity in said cir-
12 cuit court. The officer charged with the duty of collecting any

13 municipal taxes of any kind of said city, shall have all the
14 powers now or hereafter given by law to the sheriff of said
15 county for collection of state or county taxes therein.

Sec. 63. Water rents shall be distrained for and collected
2 in the same manner as taxes owing to the city may be enforced.
3 The collection of water rents shall also be enforced by shut-
4 ting off the supply of water from delinquents, and the refusal
5 thereafter to furnish water to delinquents until all arrearages
6 are paid.

Sec. 64. In addition to all other means for the collection
2 thereof, all taxes and water rents, as well as all other demands
3 due to the city, may be recovered by an appropriate suit or
4 proceeding, in the name of the city, before any justice of Ohio
5 county, if the amount be within his jurisdiction, or in the
6 circuit court of said county, if within the jurisdiction of said
7 circuit court.

Sec. 65. No disbursing officer of the city shall issue any
2 order or check for the payment of money for any work, mat-
3 ter or thing contracted for or ordered by the council or any
4 officer or employee of the city, which shall have been so con-
5 tracted for or ordered wholly or in part in excess of the
6 amount which shall have been previously set by ordinance or
7 resolution as the limit of expenses of the department to which
8 such work, matter or thing belongs, or in excess of the amount
9 previously appropriated for the payment thereof, or in the
10 city treasury available for such payment. The foregoing pro-
11 vision of this section is intended as a restraining provision,
12 and it is further declared that no act of such disbursing offi-
13 cer shall be in any-wise held to render valid any debt contracted
14 by or on behalf of the city in violation of the constitution and
15 laws of the state. If any such officer of the city, as is men-
16 tioned in the first sentence of this section, shall violate the
17 provisions thereof, he shall be disqualified from holding his
18 office, and shall forfeit and pay for such violation to the city
19 a fine of not less than twenty dollars, nor more than one hun-
20 dred dollars, or be imprisoned for a term not exceeding one
21 year, or both.

Sec. 66. No debt shall be incurred by said city even with

2 the consent of the voters, to an amount, including existing
3 indebtedness, in the aggregate exceeding the amount fixed
4 by law of the state of West Virginia.

Sec. 67. The city of Wheeling is hereby authorized to issue
2 and sell its bonds: *Provided*, That the said city shall not by
3 such issue and sale of bonds cause the aggregate of its debts
4 of every kind whatsoever to exceed five per cent of the
5 valuation of the taxable property therein, which value shall be
6 ascertained by the last assessment for state and county taxes
7 previous to the issue of said bonds, nor shall said city make
8 such issue and sale without at the same time providing for the
9 collection of a direct annual tax of an amount sufficient to pay
10 the annual interest of such debt and the principal thereof
11 within and not exceeding thirty-four years.

12 No bonds shall be issued by said city unless all questions
13 connected with the same shall have been first submitted to the
14 qualified voters of said city and have received three-fifths of
15 all the votes cast for and against the same.

16 When the council shall deem it expedient to issue bonds,
17 an ordinance specifying the purpose and amount for which
18 such bonds are to be issued, shall be adopted by them at a
19 regular meeting and it shall then be the duty of the mayor
20 of the city to issue a proclamation reciting said ordinance and
21 appointing a day at which an election shall be held by the
22 qualified voters of the city to decide whether they will ratify
23 or reject said ordinance. Any bond ordinance may be voted
24 on at the time of holding any general municipal election or a
25 special election may be held for the purpose of submitting said
26 ordinance to a vote of the people. If a bond ordinance is
27 submitted to a vote at the time of a general municipal election,
28 separate ballots shall be provided therefor. Such proclama-
29 tion shall be published in two morning newspapers published
30 in the city, once a week for two successive weeks previous to
31 the day of the election.

32 More than one ordinance may be submitted at any election,
33 but each ordinance shall be separately voted upon; any ordi-
34 nance may specify more than one purpose for which said bonds
35 are to be issued: *Provided, however*, That the amount to be
36 appropriated for each purpose is also specified therein. The
37 proclamation issued by the mayor, as hereinbefore provided,

38 shall specify the aggregate amount of indebtedness, outstand-
39 ing and authorized, of the city existing at the date of the
40 proclamation.

41 Bonds issued by the city shall be of the denomination of
42 one hundred dollars or multiples thereof, not exceeding one
43 thousand dollars. They shall be payable not less than one nor
44 more than thirty-four years after date. They shall bear not
45 more than six per cent interest and the interest shall be pay-
46 able annually or semi-annually. No debt shall be created by
47 the city as a bonded debt except when issued under the pro-
48 visions of this charter.

49 It shall be unlawful for the officers of the city to privately
50 issue or sell directly or indirectly any bond or bonds to be
51 used in payment for work or material to be furnished, but all
52 such bonds shall be publicly sold to the highest bidder in
53 writing to be approved by the officers conducting the sale, for
54 cash; or its equivalent in bonds previously issued by the city,
55 and the money arising therefrom shall be used for the purpose
56 specified in the ordinance providing for the issuing of same;
57 before any sale of such bonds, said sale shall be advertised in
58 some newspapers, not exceeding four, in or out of said city,
59 once a week for four weeks previous to said sale.

60 The treasurer of the city of Wheeling and his sureties shall
61 be liable for the sinking fund and the amount levied for may
62 be levied for a sinking fund and to pay interest on the bonded
63 debt, and it shall be applied to the purposes for which it was
64 levied or for investment in United States bonds or bonds of
65 the city, as the council may direct, to be used for the payment
66 of principal and interest of any bonded debt of the city.

67 Bonds of the city shall not be sold at less than their par
68 value. The council shall provide in its ordinance that bonds
69 of the city be signed by the mayor and city clerk and sealed
70 with the seal of the city.

71 Should any of the fund derived from the issuance and sale
72 of bonds of the city be diverted by the council or any officer
73 or officers of the city from the purpose for which said bonds
74 were issued and sold, such councilman or city officer using
75 same or consenting to or aiding in the use thereof for such
76 other purpose, shall be guilty of a misdemeanor and punished
77 by a fine of not less than one hundred dollars nor more than
78 five hundred dollars, or by imprisonment for not less

79 than thirty days nor more than one year, or both fine and
80 imprisonment.

81 The city may issue and sell its bonds for any purpose for
82 which a municipality may issue bonds. After the council shall
83 have passed an ordinance providing for the submission of a
84 bond issue to the voters of the city, the mayor, with the con-
85 sent and approval of council, shall appoint a committee con-
86 sisting of not less than five residents and citizens of the city
87 of Wheeling, which committee shall act in an advisory
88 capacity, with the city council in all matters relating to the
89 issuance and sale of such bonds, and with the city manager in
90 the awarding of contracts and expenditures of the funds de-
91 rived from a sale of such bonds. The names of the members
92 of such committee shall be published in the proclamation issued
93 by the mayor prior to the holding of the election on any such
94 bond issue.

Sec. 68. The council shall provide by ordinance for the
2 deposit of all public moneys of the city, in such bank or banks,
3 situated within the city, as offer, at competitive bidding, the
4 highest rate of interest and give a good and sufficient bond to
5 the city, to secure the accounting for and due payment over
6 of such public money, with security approved by the council.
7 The security shall always be in a sum not less than ten per
8 cent in excess of the maximum amount at any time deposited,
9 but there shall not be deposited in any one bank an amount
10 in excess of the paid-in capital stock and surplus of such
11 bank, and not in any event to exceed one million dollars. In such
12 ordinance the council may determine the method by which
13 such bids shall be received, the authority which shall receive
14 them, the duration of the contracts respecting deposits of
15 public money, and all details for carrying this section into
16 effect. Proceedings in connection with such competitive bid-
17 ding and the deposit of money shall be conducted in such
18 manner as to insure full publicity, and shall be open at all
19 times to the inspection of any citizen. As to any deposits made
20 under authority of an ordinance of the council, passed pur-
21 suant to this section, neither the depositing officer, nor other
22 persons so depositing, nor such officers, sureties shall be liable
23 for any loss occasioned by the deposit, or in any wise growing
24 out of it.

Sec. 69. All officers of the city of Wheeling, who shall collect

2 or receive, or whose official duty it is, or shall be, to collect,
3 receive, hold or pay out any money belonging to, or which is
4 or shall be, for the use of said city, shall make annual account
5 and settlement therefor. Such settlement, when made, shall
6 be subject to exceptions, and take such direction, and have
7 only such force and effect as may be provided by law; but in
8 all cases, such settlements shall be recorded and be open to
9 examination of the people, at such convenient place or places
10 as may be appointed by ordinance of the city.

11 Any person violating any of the provisions of this section
12 shall be guilty of a misdemeanor, and fined not less than fifty
13 dollars nor more than one hundred dollars, or imprisoned not
14 less than two nor more than twelve months, or punished by
15 both such fine and imprisonment.

Sec. 70. All elections for councilmen shall be conducted by
2 the election authorities prescribed by the general election laws
3 of the state, and the provisions of the general election laws,
4 insofar as they are not inconsistent with the provisions of
5 this charter, shall apply to all such elections except as to the
6 counting of the ballots, and the canvassing of the votes cast,
7 and except as otherwise provided in this charter or by ordi-
8 nance. The duties imposed by the general laws upon county
9 clerks and circuit clerks shall devolve upon the city clerk, and
10 the duties imposed by the general laws upon the county courts
11 shall devolve upon the mayor and council. Each precinct shall
12 have a single election board, regardless of the number of voters
13 therein, and commissioners of election and poll clerks shall be
14 appointed without regard to political party affiliation.

Sec. 71. The registration of voters for all city elections shall
2 be done in the manner provided by the general laws of the
3 state appertaining to the registration of voters for municipal
4 elections; that is to say, chapter fifty of the acts of the second
5 extraordinary session of one thousand nine hundred thirty-
6 three: *Provided, however,* That the political party affiliations
7 of the persons registered shall not be designated on the registra-
8 tion list prepared by the city clerk for any municipal election.

Sec. 72. All elections on questions submitted to the voters
2 of the city shall be conducted by the election authorities pre-

3 scribed by the general election laws of the state, and the pro-
4 visions of the general election laws of the state, in so far as
5 they are not inconsistent with this charter, shall apply to all
6 such elections, except as otherwise provided by this charter or
7 by ordinance. The duties imposed by the general election laws
8 of the state upon circuit clerks and county clerks shall devolve
9 upon the city clerk, and the duties imposed by said laws upon
10 county courts shall devolve upon the mayor and council. Each
11 precinct shall have a single election board, regardless of the
12 number of voters therein, and commissioners of election and
13 poll clerks shall be appointed without regard for political party
14 affiliation. When an election on a question or questions sub-
15 mitted to the voters is held concurrently with an election for
16 councilmen, the ballots for councilmen shall be cast in boxes
17 other than those in which the ballots on such question or ques-
18 tions are cast. On the closing of the polls, the commissioners
19 of election and poll clerks in each precinct shall proceed to
20 count the votes cast on such question or questions in accord
21 with the provisions of the general election laws of the state,
22 and if one of the commissioners of election is absent from such
23 count by reason of having taken the precincts ballot box con-
24 taining the ballots cast for councilmen to the central counting
25 place, the count shall not be invalidated by reason thereof.
26 The votes cast on questions submitted to voters shall be can-
27 vassed by council in the manner prescribed by the general
28 election laws of the state.

Sec. 73. Every person qualified by law to vote for members
2 of the legislature of the state, who shall have been a resident
3 of the city for at least one year preceding the election, shall
4 be entitled to vote at elections for councilmen and on questions
5 authorized by law to be determined by popular vote.

Sec. 74. Any person eligible to the council may be placed
2 in nomination therefor only by a petition filed in his behalf
3 with the city clerk and signed by not less than three hundred
4 nor more than five hundred electors. The signatures to nomi-
5 nating petitions need not be appended to one paper, but to
6 each separate paper there shall be attached the affidavit of the
7 circulator thereof, stating that each signature thereto was made
8 in his presence and is the genuine signature of the person

9 whose name it purports to be and that, to the best of his
 10 knowledge and belief, such persons are qualified voters of the
 11 city. Each signer of a petition shall sign his name in ink or
 12 indelible pencil and, after his name shall designate his residence
 13 by street and number, or other description sufficient to identify
 14 the place, and give the date when his signature was made. If
 15 any elector signs petitions for more than two candidates, his
 16 signature shall be invalid except as to the first two petitions
 17 signed by him.

Sec. 75. The form of nominating petition papers shall be
 2 substantially as follows:

3 We, the undersigned, here present.....whose
 4 residence is....., Wheeling, West Virginia,
 5 as a candidate for the council, to be voted for at the election
 6 to be held on the day of May, 19.....; and we in-
 7 dividually certify that we are qualified to vote for candidates
 8 for the council; that we have not signed more than one petition
 9 nominating any other person for the council to be voted for
 10 at such election, and we believe that the person whose name
 11 we are hereby presenting is qualified to serve as a member
 12 of council.

13	Name	Street and Number	Date
14
15
16

17 State of West Virginia,
 18 Ohio county, ss,:

19 being duly sworn, deposes and says
 20 that he is the circulator of this petition paper and that the
 21 signatures appended thereto were made in his presence, and
 22 are the genuine signatures of the persons they purport to be; and
 23 that, to the best of his knowledge and belief they are qualified
 24 voters of Wheeling.

25
 26 Taken and sworn to before me this.....day of
 27, 19.....
 28

Sec. 76. All separate papers comprising a nominating
 2 petition shall be assembled and filed with the city clerk as one

3 instrument at least forty-five days prior to the election. Within
4 eight days after the filing of a nominating petition the city
5 clerk shall notify the person named therein as a candidate
6 whether the petition is found to satisfy all the prescribed con-
7 ditions. Any eligible person placed in nomination as herein-
8 before provided, shall have his name printed on the ballots if
9 within seven days after such notification, he shall have filed with
10 the city clerk a written acceptance of the nomination. All nom-
11 inating petitions shall be examined by the city clerk in the man-
12 ner provided in this charter for the examination of petitions. If
13 a nominating petition is insufficient or invalid for any reason,
14 the city clerk shall notify the person named therein as a can-
15 didate, and such person shall then have three days in which
16 to cause to be filed a valid petition and if such valid petition
17 then be filed along with the candidate's acceptance of nomina-
18 tion, such person if eligible, shall have his name printed on the
19 ballots.

Sec. 77. Ballots used in electing members of the city council
2 shall be without party mark or designation, and shall be marked
3 by the electors according to the instructions printed thereon
4 under the heading "Directions to Voters," as specified in this
5 section. The ballots shall be in form substantially as follows:

6 REGULAR CITY ELECTION

7 May, 19.....

8 Direction to Voters

9 Put the figure 1 in the square opposite name of your first
10 choice. Express your second, third, and other choices by
11 putting the figure 2 opposite the name of your second choice,
12 the figure 3 opposite the name of your third choice, and so on.
13 You may express thus as many choices as you please without
14 any regard to the number being elected.

15 Your ballot will be counted for your first choice if it can
16 be used to help elect him. If it cannot help elect him, it will
17 be transferred to the highest of your other choices whom it
18 can help.

19 You cannot hurt any of those you prefer by marking lower
20 choice for others. The more choices you express, the surer
21 you are to make your ballot count for one of them. But do not
22 feel obliged to express choices which you do not really have.

23 Do not put the same figure opposite more than one name.

24 If you spoil this ballot, tear it across once, return it to the
 25 election officer in charge of the ballots and get another from
 26 him.

27 CANDIDATES FOR THE COUNCIL

28 A. B.....

29 C. D.....

Sec. 78. A blank space shall be left on the ballots below
 2 the printed names of the candidates. In any such space an
 3 elector may write the name of any person eligible to the coun-
 4 cil, and votes cast for such person shall be counted as though
 5 for candidates whose names are printed on the ballot.

6 The names of candidates for the council shall be printed on
 7 the ballots in rotation as follows:

8 The ballots shall be printed in as many series as there are
 9 candidates for the council. The whole number of ballots to
 10 be printed shall be divided by the number of series and the
 11 quotient so obtained shall be the number of ballots printed
 12 in each series. In printing the first series of ballots the names
 13 of candidates shall be arranged in the alphabetical order of
 14 their surnames. After printing the first series the first name
 15 shall be placed last and the next series printed, and this pro-
 16 cess shall be repeated until each name shall have been printed
 17 first in one series. The ballots so printed shall be combined in
 18 tablets to be supplied to the various voting places. Each
 19 tablet shall contain substantially the same number of ballots
 20 from each series, and so far as practicable, the ballots shall
 21 be combined in such manner that two or more from the same
 22 series shall not be together in a tablet.

Sec. 79. Previous to every election of the council the city
 2 manager, with the advice and consent of the council, shall
 3 designate a central counting place, where the ballots shall
 4 be brought together and counted publicly, appoint a compe-
 5 tent person to act as director of the count; employ a suffi-
 6 cient staff of assistants, and make suitable arrangements for
 7 the counting of the ballots, subject only to the provisions of
 8 this charter. Such director and his assistants shall constitute
 9 the central counting board.

Sec. 80. As soon as the polls have closed, the election
 2 officials at each polling place shall seal the ballot box used for

3 ballots for the council without opening it, and shall send it at
4 once by the commissioner of election designated for such pur-
5 pose, to the central counting place with a record of the number
6 of ballots for the council which they have given out to be voted,
7 less those returned to them as spoiled and unused. At the
8 central counting place the ballot boxes shall be opened by the
9 central counting board and the numbers of ballots found therein
10 recorded and compared with the record sent from the voting
11 places. Any discrepancies discovered shall be recorded and
12 dealt with according to the principles laid down by the general
13 election laws of the state as far as such principles may be appli-
14 cable.

Sec. 81. Ballots cast for the election of members of the
2 council shall be counted and the results determined by the
3 central counting board according to the following rules:

4 (a) On all ballots a cross without other mark shall be con-
5 sidered equivalent to the figure 1. So far as may be consistent
6 with the general election laws, every ballot from which the first
7 choice of the voters can be clearly ascertained shall be con-
8 sidered valid.

9 (b) The ballots shall first be sorted and counted according
10 to the first choices of the voters. The ballots from each
11 precinct cast for each candidate as first choice shall be put up
12 in a separate package, which shall be properly marked on the
13 outside to show the number of ballots therein, the precinct
14 from which they were received and the name of the candidate
15 for whom they were cast. The ballots declared invalid shall
16 also be put up in a separate package, properly marked on the
17 outside.

18 (c) The central counting board shall first determine which
19 ballots are invalid. A ballot shall be set aside as invalid if it
20 does not show clearly which candidate the voter prefers to all
21 others, or if it contains words or marks apparently intended
22 to identify the voter. All ballots, including those found invalid
23 by the central counting board, shall be set aside and preserved
24 until thirty days after the count is finished, and thereafter,
25 upon request of any candidate, until controversy arising there-
26 on shall have been terminated.

27 (d) The central counting board shall thereupon place to-
28 gether all the precinct packages of first choice ballots cast for

29 each candidate and shall then, in the case of each candidate.
30 number the said first choice ballots, as they come, consecutively
31 (1, 2, 3, 4, etc.). Council may, by ordinance establish the
32 order in which the precinct packages shall be taken for this
33 purpose. In default of such provision, the central counting
34 board may adopt any convenient order, but the same order
35 shall be followed as to all the candidates. All ballots received
36 by each candidate during the entire course of the counts, shall
37 be consecutively numbered, so that the last number at all times
38 shall correspond to the total vote of the candidate.

39 (e) The whole number of valid ballots cast shall then be
40 divided by a number greater by one than the number of seats
41 to be filled. The next whole number larger than the resulting
42 quotient is the quota or constituency that suffices to elect a
43 member.

44 (f) All candidates the number of whose ballots on the first
45 count equals or exceeds the quota shall then be declared elected.

46 (g) All votes obtained by any candidate in excess of the
47 quota shall be termed his surplus.

48 (h) Any surpluses there may be shall next be transferred,
49 the largest surplus first, then the next largest, and so on, ac-
50 cording to the following rules:

51 (i) In the transfer of the surplus, transferable ballots up to
52 the number of votes in the surplus shall be transferred to the
53 continuing candidates marked on them as the next choice, in
54 accordance with the rule (m). The omission of any con-
55 secutive figure in the designation of choices shall not invalidate
56 the ballot as to subsequent choices; the choices shall be taken
57 in the order of the figures used. The particular ballots to be
58 taken for transfer as the surplus of a candidate shall be ob-
59 tained according to the following rule:

60 The ballot marked by the central counting board with the
61 figure corresponding to the integer nearest that fraction of
62 which the numerator is the total vote of the candidate, and the
63 denominator the surplus of said candidate, as, for example, 5
64 or 6, shall be first taken if transferable. Then each next
65 higher multiple of said figure such as 10, 15, 20, etc., or 12,
66 18, 24, etc., until the entire surplus is taken. If the multiples
67 do not produce sufficient transferable ballots, the ballots with
68 the figures next succeeding the multiples shall be taken, as 6,
69 11, 16, etc., or 7, 13, 19, etc., as the case may be. This shall be

70 done until the entire surplus is taken. Any ballot so selected
71 that is not a "transferable ballot" shall be left to the credit
72 of the candidate whose surplus is being transferred.

73 (j) "Transferable ballots" means ballots from which the
74 next choice of the voter for some continuing candidate can be
75 clearly ascertained. A "continuing candidate" is a candidate
76 as yet neither elected nor defeated.

77 (k) The votes standing to the credit of each candidate shall
78 be added and a tabulation of results made whenever a com-
79 parison of the votes of the several candidates is necessary to de-
80 termine the next step in the procedure.

81 (l) After the transfer of all surpluses (or after the first
82 count if no candidate received a surplus) every candidate who
83 has no votes to his credit shall be declared defeated. There-
84 upon the candidate lowest on the poll as it stands shall be de-
85 clared defeated and all his transferable ballots transferred to
86 continuing candidate, each ballot being transferred to the
87 credit of that continuing candidate next preferred by the voter
88 in accordance with rule (m). Thereupon the candidate then
89 lowest shall be declared defeated and all his transferable ballots
90 transferred in the same way. Thus the lowest candidate shall
91 be declared defeated one after another and their transferable
92 ballots transferred to continuing candidates.

93 (m) Whenever in the transfer of a surplus or of the ballots
94 of a defeated candidate the vote of any candidate becomes
95 equal to the quota he shall immediately be declared elected and
96 no further transfer to him shall be made.

97 (n) When candidates to the number of seats to be filled have
98-99 received a quota and have therefore been declared elected,
100 all other candidates shall be declared defeated and the election
101 shall be at an end; or when the number of continuing candi-
102 dates is reduced to the number of seats still to be filled, those
103 candidates shall be declared elected whether they have received
104 the full quota or not, and the election shall be at an end; but
105 in such event, the ballots of the candidate last declared de-
106 feated shall be distributed among the candidates last declared
107 elected up to the amount of their quotas, according to the rules
108 herein set forth.

109 (o) If, when a candidate is to be declared defeated, two or
110 more candidates at the bottom of the poll have the same num-
111 ber of votes, that one of the tied candidates shall first be de-

112 clared defeated who was credited with the fewest votes at the
113 end of the count next preceding, and any further tie shall be
114 decided on the same principle. Any tie not otherwise pro-
115 vided for shall be decided by lot.

116 (p) When the election is at an end, the central counting
117 board shall prepare a statement of election returns, certify to
118 the correctness thereof, and file same with the city clerk, as a
119 public record, within three days after the count is concluded.

120 (q) Any recount of the ballots shall be made by the central
121 counting board in accordance with this section except that the
122 reference to voting precincts may be disregarded. In any re-
123 count every ballot shall be made to take the same course it took
124 in the original counting, unless there is discovered a mistake
125 that requires its taking a different course. In such case any
126 required changes shall be made in the course taken by the
127 ballot. These principles shall apply also to the correction of
128 any error that may be discovered during the original counting.
129 Any defeated candidate may demand a recount within five
130 days after the filing of the election returns with the city clerk,
131 but if such recount does not result in the election of such de-
132 feated candidate, he shall pay the costs of such recount.

Sec. 82. At each municipal election any six or more can-
2 didates for council who shall file a written application with
3 the city clerk at least ten days before said election, shall be
4 entitled to exercise all the rights granted by the election laws
5 of the state to a political party in regard to the appointment
6 of witnesses, challengers and inspectors of election at the poll-
7 ing booths. In addition to such rights, said group of candi-
8 dates shall be entitled to appoint two witnesses to the count
9 in the central counting board. Application for the appoint-
10 ment of such witnesses to the count must be in writing to the
11 city clerk at least ten days before the election. Credentials
12 shall be issued by the city clerk, to such witnesses to the count
13 which shall grant such witnesses full power and authority to
14 move anywhere within the central counting quarter, to in-
15 spect all activities of the count and to exercise all rights and
16 powers, which may be conferred on witnesses and inspectors
17 of election under the election laws. The candidates or their
18 agents, and representatives of the press, shall be afforded
19 every facility for being present and witnessing these opera-

20 tions; also the public so far as may be consistent with good
21 order and with convenience in counting and transferring of
22 the ballots.

Sec. 83. The council shall have power to provide for the
2 the use of mechanical or other devices for making and sort-
3 ing the ballots and tabulating the results, and to modify the
4 form of the ballot, the directions to voters, and the details in
5 respect to the method of counting and transferring ballots
6 accordingly: *Provided, however,* That no change shall be made
7 which will alter the principles of the voting or of the counting.

Sec. 84. Any city councilman may be removed from office
2 by the following procedure: A petition signed by at least two
3 thousand qualified voters of Wheeling shall be filed with the
4 city clerk, which petition shall contain a general statement
5 of the grounds for which the removal is sought. Such peti-
6 tion shall be submitted, examined and certified in a manner
7 provided in this charter, and if such petition be deemed suffi-
8 cient by the city clerk, he shall certify the same to the city
9 council without delay. Upon receipt of such petition, the
10 council shall order and fix a date for holding a special recall
11 election, not less than thirty days nor more than fifty days from
12 the date of the clerk's certificate. The council shall publish
13 notice of said election once a week for three successive weeks
14 in two newspapers of general circulation in the city; all ar-
15 rangements for holding such election shall be made and the
16 same shall be made and the same shall be conducted, and the
17 results ascertained, as is provided in section seventy-two of this
18 charter. The ballot for such recall election shall be substan-
19 tially of the following form and effect:

20 OFFICIAL BALLOT

21day of....., 19.....

22 Special recall election for the removal of A. B.....

23 For the recall of A. B.

24 Against the recall of A. B.....

25 Should a majority of the votes cast be in favor of recalling
26 the councilman, subject to this provision, such councilman
27 shall forthwith forfeit his seat and the council shall, at its next

28 meeting following said recall election, appoint a successor
29 to such office for the unexpired term of same. If a recall
30 petition bears the signatures of five thousand qualified voters
31 of the city, when certified to council, the councilman named
32 therein shall be suspended from office pending the result of
33 the recall election.

34 The said method of removal shall be cumulative and in ad-
35 dition to any other methods of removal provided by law. No
36 recall petition shall be filed within ninety days succeeding or
37 preceding any regular council election.

Sec. 85. Any person who shall bribe, by directly or indi-
2 rectly giving to or bestowing upon a member of the council
3 of the city, or other officer thereof, any money, testimonial or
4 other valuable thing, or do any act beneficial to such officer,
5 in order to influence him in the performance of any of his
6 official or public duties, shall be deemed guilty of a felony,
7 and, upon conviction thereof, shall be imprisoned in the peni-
8 tentiary of the state of West Virginia, for a term of not less
9 than two years nor more than five years, and shall, moreover,
10 be forever disqualified from holding any office or position of
11 honor, trust or profit in said city.

Sec. 86. Any person attempting to bribe, by offering or
2 proposing to give any officer or member of council of the
3 said city of Wheeling money, testimonial, or other valuable
4 thing, or to do any act beneficial to such officer or member of
5 council in the performance of his official or public duties,
6 shall be deemed guilty of a felony, and, upon conviction
7 thereof, shall be imprisoned in the penitentiary of the state
8 of West Virginia, for not less than one year, nor more than
9 three years, and shall, moreover, be forever disqualified from
10 holding any office of honor, trust or profit in said city.

Sec. 87. If any member of the council of the city of Wheel-
2 ing, or other officer of the said city shall demand or receive
3 from any corporation, company, firm or person, any money,
4 testimonial or other valuable thing, for the performance of any
5 of his official or public duties, or for refusal or failure to per-
6 form the same, or for any vote or influence he may give or
7 withhold as such member of council or other officer, or for
8 making any particular nomination or appointment, he shall

9 be deemed guilty of felony, and, upon conviction thereof, shall
10 be imprisoned in the penitentiary of the state of West Vir-
11 ginia, for not less than five years, nor more than ten years;
12 and shall, moreover, be forever disqualified from holding any
13 office or position of honor, trust or profit in said city.

Sec. 88. Any person bribing or attempting to bribe, or
2 demanding or receiving a bribe, fee, reward or testimonial,
3 as set forth in any of the three next preceding sections, shall
4 be compelled to testify against any person or persons who have
5 committed any of the offenses in said sections mentioned:
6 *Provided*, That any persons so compelled to testify shall be
7 exempted from trial and punishment for the offense of which
8 he may have been guilty, and concerning which he is com-
9 pelled to testify.

Sec. 89. Any person who shall violate any of the provisions
2 of this charter, for the violation of which no punishment has
3 been provided herein, shall be deemed guilty of a misdemeanor,
4 and upon conviction thereof, shall be punished by a fine not
5 exceeding one hundred (\$100) dollars, or by imprisonment in
6 the county jail not exceeding one year, or by both such fine
7 and imprisonment.

Sec. 90. The city of Wheeling may from time to time
2 hereafter enlarge the boundaries of the city only by and with
3 the consent of a majority of the inhabitants of the territory
4 proposed to be annexed, who are qualified voters of the state
5 of West Virginia, voting upon the subject at a general election
6 held in Ohio county, West Virginia, for state, county, judicial
7 or district officer, the votes upon the question of annexation
8 to be by ballots for the purpose of voting on such question
9 only, to be deposited in a ballot box or boxes separate and
10 distinct from the others used at such election, and the election
11 to be held after a notice thereof published in two newspapers
12 published in said city of Wheeling, once a week for four
13 successive weeks, and to be conducted, and the result thereof
14 duly ascertained, declared, certified and made a matter of
15 record, by the same officers who perform the like duties in
16 relation to the votes upon other matters at such general election,
17 and the ballots shall be prepared for voting upon such question
18 by the same officers as the other ballots for use at such election

19 and so far as applicable all the provisions of chapter three of
20 the code of West Virginia shall apply to the election upon
21 such annexation question.

22 *Provided, however,* That all expenses of holding such
23 elections, in so far as pertaining to such annexation, the pay-
24 ment whereof is not now provided for by law, shall be paid
25 by the city of Wheeling: *Provided further,* That, if the
26 territory proposed to be annexed is part or all of the land
27 embraced within the boundaries of any other municipal corpo-
28 ration, before the election on such annexation question is held
29 the council of the city of Wheeling and such other municipal
30 corporation must agree upon the terms upon which the annexa-
31 tion is to be made and such terms shall be inserted in the
32 published notice of election, the vote taken on such question of
33 annexation in a municipal corporation in which part or all
34 of the territory, proposed to be annexed, is located, and the
35 vote on annexation in territory not within a municipal corpo-
36 ration, must be taken separately and not together.

37 A majority of the votes cast upon the question of annexation
38 in any municipal corporation must be in the affirmative to
39 authorize the annexation of any of the territory thereof, and
40 a majority of the votes cast upon such question in territory
41 not in such corporation must be in the affirmative to authorize
42 the annexation of any of the last mentioned territory.

43 In the event that a majority of the votes upon the question
44 of annexation shall be in the affirmative, the council of the
45 said city of Wheeling shall by ordinance carry out the terms
46 of agreement upon which the annexation is to be made.

47 Any territory annexed must be contiguous to a boundary
48 or boundaries of the city of Wheeling existing at the time of
49 the annexation.

Sec. 91. The council may by ordinance purchase both toll
2 bridges now existing (but not one thereof only), or build a
3 bridge, over the east channel of the Ohio river, connecting
4 Wheeling island with the other portions of the city; but no
5 debt shall be created in the making of such purchase, except
6 upon full compliance with the provisions of this charter, and
7 of the constitution of this state. Upon acquiring such bridges,
8 or building such bridge, the city may maintain the same and

9 make all needful and reasonable regulations in regard to the
10 care thereof, and may, if it desires so to do, charge and collect
11 reasonable tolls for the use thereof. The city shall have the
12 right to enter into contracts with the two bridge companies
13 owning such existing bridges, charging toll for passage over
14 same, for free passage of pedestrians over such bridges (but
15 not over one only); but such contract shall be entered into
16 only when petitioned for, as provided in the initiative and
17 referendum section of this charter, and after ratification by
18 the voters of said city.

Sec. 92. It shall be the duty of any owner or owners of
2 any land in the city desiring to lay out or divide such land
3 into lots, with streets, alleys, ways or lanes, to first submit to
4 the council a plat showing the proposed lots, streets, alleys,
5 ways, or lanes, and the proposed grades, sewers and drainage
6 thereof, as well as the municipal improvements which may be
7 required thereto, for its approval before filing the same for
8 record, or selling any of such lots. Before the council shall
9 approve the same, the owner or owners of such land shall
10 dedicate the proposed streets, alleys, ways or lanes on such
11 plat to public use; and the clerk of the county court shall
12 not record such plat, nor shall any of the lots be sold or con-
13 veyed until the council shall have caused an endorsement of
14 its approval to be placed thereon. If any land in said city
15 shall have been heretofore laid out or divided and a plat there-
16 of recorded, or lots sold therefrom, before the approval of
17 the council, it shall be the duty of the council and other officers
18 of the city, before making any improvements on or in the
19 streets, alleys, ways or lanes laid out on such land, to require
20 from the owner or owners of the land, or from purchasers
21 of lots therein, the payment of such sum or sums as will in
22 the opinion of the council, compensate the city for the increased
23 cost or decreased value, or both, of the municipal improvements
24 the city may desire to make on such land, occasioned by the
25 imperfect or improper plan of such laying out, or division,
26 before any such improvements are made by the city.

Sec. 93. The council may cause any street or alley to be
2 paved between the sidewalks, with cobble, asphalt, stone,
3 brick, or other suitable materials, under such regulations as

4 shall be fixed by ordinance upon the lowest and best terms to be
5 obtained by advertisement for bids or proposals therefor by
6 the council as herein provided; or the council may provide
7 that such work be done without the intervention of con-
8 tractors or middlemen; and two-thirds of the cost of such
9 paving, shall be assessed against the owners of the lots or
10 fractional parts of lots abutting or bounding on that part of the
11 street or alley so paved in proportion to the distance of the
12 frontage owned by each, except in the case of a street where-
13 on a railway of any kind is being operated, the railway com-
14 pany, or owner of such railway shall upon thirty days' notice
15 in writing from the city, pave with like material and in a
16 like manner as the city paves the residue of the streets, or pay
17 for the new paving if done by the city, between the rails and
18 a foot outside of the rails, and the residue of the space be-
19 tween the tracks where more than one are on the street, and
20 the remaining two-thirds by the owners of the abutting prop-
21 erty on both sides of said street or alley on which said railway
22 is being operated, the intersections of two streets, or of a street
23 and alley, or of two alleys, to be paved at the expense of the
24 city. But where the intersection is crossed by a railway track
25 or tracks of any kind, the railway company or owner of such
26 tracks shall pay for the paving of so much of such intersection
27 as is between its rails and one foot outside of such rails, as
28 well as the residue of the space between double tracks.

29 In case two street railway tracks belonging to different
30 owners are on a street, the cost of paving between such tracks
31 on such street shall be paid one-half by the owner or owners
32 of each of such tracks.

33 The sum or sums of money thus assessed for paving shall
34 be a lien on the lots or fractional parts of lots upon which
35 they are assessed, which lien may be enforced by a suit in
36 equity in the name of the city, in the circuit court of Ohio
37 county, West Virginia, or the same, or any installment there-
38 of, may be collected by a suit at law before such court, or
39 before any justice of the peace of said county if the amount
40 involved does not exceed three hundred dollars exclusive of
41 interest and costs.

42 Immediately upon the completion and acceptance of any

43 such paving, the council shall direct the city clerk to cause
44 to be published a notice, which shall name and describe the
45 location of the portion of the street or alley upon which said
46 paving shall have been constructed; give the name or names
47 of the owners of each lot abutting or bounding upon such
48 portion of the street or alley, if known, and if the name or
49 names of the owners of any lot or fractional part of a lot
50 are unknown, such lot shall be described with reasonable
51 certainty in order that the same may be identified; and the
52 number of feet that each lot or fractional part of a lot abuts
53 upon such paved portion, as well as the amount assessed
54 against each lot or fractional part of a lot, for the cost of
55 paving. Said notice shall cite all owners of lots or fractional
56 parts of lots, abutting upon the portion of the street or alley
57 which has been paved, to appear before the council at a reg-
58 ular meeting thereof, within thirty days from the first pub-
59 lication of the notice, and show cause, if they can, why the
60 assessment aforesaid should not become final, which notice
61 shall be published once a week for two successive weeks in
62 one or more newspapers of general circulation published in
63 said city. The council shall, upon the request of any one or
64 more of the owners of said lots or fractional parts of lots,
65 appoint a day to hear the grievances of said owner or owners,
66 and may alter or amend any assessment made against any one
67 or more of said owners for good cause shown. The city clerk
68 shall give notice to all persons claiming to be injured by said
69 assessment, of the time and place of holding the meeting of
70 the council to hear such grievances, which meeting shall be
71 held within ten days after the clerk shall have given the last
72 mentioned notice. The council may adjourn the hearing from
73 time to time. In case any owner or owners of abutting
74 property fail within such thirty days to complain to the
75 council of any grievance or injury they may have suffered,
76 by reason of the assessment aforesaid or to appear before the
77 council for the purpose of having the same corrected on the
78 day appointed by the council for the hearing of such griev-
79 ances as have been complained of, the assessment as laid shall
80 be final. The findings of said council shall be subject to
81 correction by said circuit court, upon appeal, which must be
82 taken and perfected within thirty days from the finding and

83 be heard and determined by such court without delay, having
84 precedence of other cases on the court's docket. The rights
85 conferred by this section are cumulative and shall not be
86 exhausted as to any particular street or alley by reason of
87 having been once exercised.

88 One-tenth of the amount assessed against the property
89 owner of the cost of the paving shall be paid within one year
90 after the completion and acceptance of the work, and the re-
91 maining nine-tenths thereof shall be paid in nine equal an-
92 nual installments, with interest, payable annually, payable at
93 such times as the city shall collect taxes for other purposes.

94 Where the city does the paving which is required to be
95 done by the traction companies under their franchise rights
96 of this charter one-tenth of the costs thereof shall be due and
97 payable within one year after the completion and acceptance
98 of the work, and the remaining nine-tenths thereof shall be
99 paid in nine equal installments, with interest payable an-
100 nually, payable at such times as the city shall collect taxes
101 for other purposes.

102 The cost of such work shall constitute a lien on all of the
103 property of the traction companies, which lien may be en-
104 forced by a suit in equity in the name of the city in the cir-
105 cuit court of Ohio county, West Virginia, or the same or any
106 installments thereof may be collected by a suit at law before
107 such court.

108 But a lien upon any real estate created by virtue of this
109 section shall be void as to any purchasers of any such real
110 estate unless the city shall, within sixty days after the com-
111 pletion and acceptance of the paving by the city, cause to
112 be recorded in the office of the clerk of the county court an
113 abstract of such assessment, giving the location of the real
114 estate affected, the name of the owner and the date and
115 amount of the assessment, which recordation shall be in a
116 well bound book to be furnished by the city and be preserved
117 in said clerk's office.

118 And it is hereby made the duty of said county clerk to
119 record said abstracts; for the recordation of each of which
120 said clerk shall receive a fee of twenty-five cents to be paid
121 by the city.

122 All moneys appropriated for the paving, repaving or re-

123 pairing of streets or alleys shall be used for that purpose
124 only, and the revenue received by the city from assessments
125 against any and all property or property owners shall be
126 placed in a "street paving" fund and shall be considered and
127 treated the same as moneys appropriated for that purpose.

Sec. 94. If two-thirds, or more, of the owners of the property
2 abutting on any street or alley, or any section thereof which
3 shall lie between intersecting streets or alleys shall desire same
4 to be paved or repaved between the curbs, and shall present a
5 petition to the council, setting forth their desire and describing
6 the street or alley, or the section thereof desired to be paved or
7 repaved, the council shall, within a reasonable time cause the
8 said work to be done, after the method set forth in the next
9 preceding section, the provisions of which section shall apply
10 to the last named paving or repaving.

Sec. 95. Permission may be given to a person, firm or private
2 corporation, not engaged in conducting a public utility business,
3 to place a switch or tramway on a part of a public street or
4 alley, at grade, for his own or its own use, but the grant shall be
5 so limited as not to exceed ten years, and a charge, in the nature
6 of an annual rental or license charge for the same, payable to
7 the city, may be fixed by the council.

8 All grants under this section shall be subject to the following
9 restrictions and conditions:

10 If no time is expressly provided in the grant, it shall be for
11 one year only.

12 It shall provide that the grantee shall indemnify and save
13 harmless the city against all suits, loss or damage, by reason of
14 the construction or maintenance of such switch or tramway, and
15 that said grant may be altered, amended or repealed upon satis-
16 factory evidence that the grantee has failed to comply with its
17 provisions. Reasonable provisions must be made to protect the
18 public from unnecessary damage or inconvenience by reason of
19 such switch or tramway and the operation or maintenance
20 thereof.

Sec. 96. All copies purporting to be copies of the ordinances
2 of said city or extracts from the journal or minutes of the
3 council, which shall be printed by the authority of the council,
4 or which shall be certified to be correct by the mayor of said
5 city under the seal thereof, shall be received by all courts and

6 magistrates of this state as prima facie evidence of the tenor of
7 such ordinances, and of the acts and proceedings of the council
8 therein set forth.

Sec. 97. All fees and money paid to an officer of the city, for
2 an official service, shall belong to the city and be paid at once
3 into the city treasury by such officer, the salary or compensa-
4 tion given by the city to its officers respectively, being all the
5 compensation they shall be entitled to for any official service.

Sec. 98. Signatures to petitions provided in this charter need
2 not be appended to one paper, but each paper bearing signatures
3 shall state, at the top thereof, the purpose of the petition, and
4 there shall be attached thereto the affidavit of the circulator
5 thereof stating that each signature was made in his presence
6 on the date specified, and is the genuine signature of the per-
7 son whose name it purports to be, and, in cases required signa-
8 tures of qualified voters, that such person is to the best of his
9 knowledge and belief a qualified voter of the city of Wheeling.
10 Opposite each signature is to be given the place of residence in
11 Wheeling of each signer, by street and number where possible,
12 and the date such person signed the petition. All separate
13 papers comprising a petition shall be assembled and filed with
14 the city clerk as one instrument. Upon receiving any petition,
15 the city clerk shall immediately examine the same, and if found
16 to contain the number of valid signatures requisite for the pur-
17 pose specified therein and that it complies with the require-
18 ments hereof, he shall certify such petition to be in good form
19 and shall forthwith transmit such petition to the council. If
20 such petition does not contain the requisite number of valid
21 signatures or fails to comply with the requirements hereof in
22 any other respect, the city clerk shall state in writing the de-
23 fect or defects therein and shall return it to the party who
24 filed it. If the petition is returned to the city clerk within ten
25 days thereafter, and then is found to meet the requirements
26 hereof, the city clerk shall certify same to be in good form, and
27 shall transmit same to the council forthwith. The council may
28 allow the city clerk such reasonable sum as may be necessary
29 to secure any additional help required to assist him in the ex-
30 amination of any petition or petitions, or the city manager may
31 be directed to assign to the city clerk competent city employ-

32 es for such purpose. This section shall not apply to nomi-
33 nating petitions except as to the examination thereof.

Sec. 99. If any provision of this charter be held to be un-
2 constitutional, this shall not affect the validity, force or effect
3 of any other provision.

Sec. 100. All acts and parts of acts inconsistent herewith are
2 hereby repealed.

PART II

Section 1. When the words "this charter" are used anywhere
2 in this act, they shall be construed to mean the charter pro-
3 vided in Part I of this act.

Sec. 2. The question of ratification or rejection of this
2 charter shall be submitted to the electorate of the city of
3 Wheeling at a special election which shall be held within the city
4 on the third Thursday in April of 1935. The general election
5 laws of the state shall be applicable to the said special election,
6 as to the preparation therefor, the conduct thereof and the de-
7 termination and declaration of the result, and also as to offenses
8 and penalties; except where otherwise provided in this act or
9 where by the nature of the provisions of this act, the general
10 election laws could not consistently be applicable. The city
11 clerk shall be charged with all duties and responsibilities which
12 under the general election laws of the state devolve upon ballot
13 commissioners and upon the clerks of the county courts and the
14 circuit courts, and the manager-mayor and council shall be
15 charged with all the duties and responsibilities which under the
16 general election laws of the state devolve upon the board of
17 canvassers and upon the county courts, and they shall be subject
18 to all the penalties and offenses relating to elections.

Sec. 3. On or before the first day of April, 1935, the clerk
2 of the city of Wheeling shall cause the whole of this act to be
3 published in two daily newspapers of general circulation within
4 the city together with the following notice: "Notice to the
5 Citizens of Wheeling. Printed herewith is a copy of an act
6 of the legislature of....., 1935, being Senate
7 Bill Number 204, which proposes a new charter for the city
8 of Wheeling. Part I of the following act constitutes the pro-
9 posed charter. All qualified voters of Wheeling will be afforded

10 the opportunity of voting on the question of ratification of this
 11 proposed charter at a special election to be held within the
 12 city on April 18. A majority vote shall be necessary for
 13 ratification. Part II of the said act provides for the special
 14 election, and part III of the said act provides when and how
 15 the new charter shall become effective in the event that it is
 16 ratified by the electors of Wheeling at the said special election.”
 17 Said notice shall be signed by the city clerk and shall be followed
 18 by a full copy of this act. No further publication shall be
 19 required.

Sec. 4. The ballots to be used at the said special election
 2 shall be in form and effect as follows:

3 OFFICIAL BALLOT

4 On the question of ratification of the proposed charter for
 5 the City of Wheeling contained in the act of the legislature of
 6, 1935, Senate Bill No. 204:

7 For ratification of the proposed charter.

8 Against ratification of the proposed charter.

9 On the reverse side thereof shall be printed two blank lines
 10 with the words “poll clerks” printed underneath. Ballots
 11 shall be printed only in the amount of 1 1/8 times the number
 12 of registered voters.

Sec. 5. The council of the city of Wheeling, at its regular
 2 meeting on the second Tuesday in April, 1935, shall appoint
 3 two commissioners of election and two poll clerks for each
 4 election precinct within the city, and such appointments shall
 5 be made without respect for the political party affiliation of
 6 the appointees; but the appointment shall be made in so far as
 7 possible so that to have in each precinct, one commissioner of
 8 election and one poll clerk known to be in favor of ratification
 9 of this charter, and one commissioner of election and one poll
 10 clerk known to be against ratification of this charter, and for
 11 that purpose, council may require that prospective commis-
 12 sioners of election and poll clerks shall submit their affidavits
 13 setting forth whether they are in favor of, or against ratifica-
 14 tion of this charter. The commissioners of election and poll
 15 clerks so appointed shall constitute the election boards of the
 16 several precincts and no precinct shall have more than one

17 election board, regardless of the number of registered voters
18 therein. The commissioners of election and poll clerks so ap-
19 pointed shall conduct the election within their respective pre-
20 cincts and shall be vested with such authority as is prescribed
21 in the general election laws of the state. Each commissioner
22 of election and poll clerk shall receive \$4.00 as compensation
23 for his services and no more.

Sec. 6. On or before the second Tuesday in April, 1935, the
2 council of the city of Wheeling shall, in open session, designate
3 the polling places in each precinct for the special election
4 herein provided. The regular polling places as heretofore es-
5 tablished by custom shall be designated in every case in which
6 this direction shall be practicable. The council shall provide
7 all equipment and supplies necessary to hold the election and
8 to ascertain the results thereof, and shall compensate all
9 election officials as herein provided.

Sec. 7. Chapter 50 of the acts of the second extraordinary
2 session, 1933, shall apply as to the registration of voters for
3 the election herein provided, and council shall, before the first
4 day of April, 1935, provide for two sessions of council one
5 week apart, between the dates of April first and April fifteenth,
6 1935, for the purpose of registration of voters as provided in
7 said act of the legislature. Notice of such sessions, and the
8 purpose, time and place thereof shall be published at least once
9 in two newspapers of general circulation in Wheeling on April
10 1, 1935.

Sec. 8. Any twenty qualified voters of the city of Wheeling
2 shall have all the rights granted by general election laws of the
3 state to a candidate, in regard to recounts: *Provided, however,*
4 That each of such twenty voters shall post a bond with the city
5 clerk in the amount of two hundred dollars, payable to the city
6 of Wheeling, and conditioned upon the payment of costs of such
7 recount if the result of said election is not changed thereby.
8 Each bond shall have corporate surety and shall be approved
9 as to form and sufficiency by one of the judges of the circuit
10 court of Ohio county.

Sec. 9. The third Thursday of April, 1935, shall not be a
2 legal holiday in the city of Wheeling, and offices and places of

3 business of all city of Wheeling and Ohio county officials and
4 employees shall be open for business as usual, and such officials
5 and employees shall perform their usual duties throughout said
6 day: *Provided, however,* That every city and county official
7 and employee who is qualified to vote at the said election, shall
8 be given a reasonable opportunity to do so.

PART III

Section 1. If a majority of the ballots legally cast at the
2 special election provided in Part II of this act shall be marked
3 "for ratification of the proposed charter" this charter shall be
4 declared to have been ratified, and Part I of this act shall be-
5 come effective on the first day of July, 1935, and shall then and
6 thereafter constitute the charter of the city of Wheeling. But
7 if a majority of the ballots legally cast at said election shall be
8 marked "against ratification of the proposed charter" this char-
9 ter shall be declared to have been rejected, and it shall have
10 no force and effect whatsoever, and the provisions of the present
11 charter shall continue in full force and effect.

Sec. 2. If this charter be ratified as aforesaid, nine council-
2 men shall be elected from the city at large, for a term of four
3 years and until their successors are elected and qualified, in the
4 manner provided hereinafter in this act. Said nine councilmen
5 shall take office on the first day of July, 1935, and shall then
6 constitute the first council under this charter; and the primary
7 and general elections required by the present charter shall be
8 dispensed with.

Sec. 3. If this charter be ratified, a general election for the
2 election of nine councilmen shall be held on the first Tuesday in
3 June, 1935. At their regular meeting on the third Tuesday in
4 May, 1935, the council shall appoint three commissioners of elec-
5 tion and two poll clerks for each voting precinct, without regard
6 to political party affiliations. Council shall, at the same meeting,
7 designate a polling place for each precinct, and the regular
8 polling places as established by custom shall be designated in all
9 cases where it is practicable to follow this direction. The com-
10 missioners of election and poll clerks so appointed shall con-
11 stitute the election boards for the several precincts, and they
12 shall have all powers and authority conferred on election boards

13 by general laws; but no precinct shall have more than one elec-
14 tion board. At the same council meeting aforesaid, the council
15 shall designate a large hall, centrally located within the city, as
16 the central counting place; and the manager-mayor shall desig-
17 nate a qualified person as director of the count, and a sufficient
18 number of qualified persons as assistants to the director of the
19 count, and said director of the count and his assistants shall
20 constitute the central counting board, and shall have all the
21 powers and authority vested by law in commissioners of election,
22 poll clerks, and boards of canvassers. In selecting the director
23 of the count and his assistants, the manager-mayor may choose
24 qualified persons who may be non-residents of the city or the
25 state.

Sec. 4. Council shall provide all supplies and equipment
2 necessary to hold the said election on the first Tuesday in June,
3 1935, and to ascertain the result thereof; and shall compensate
4 all election and counting board officials in such amounts as may
5 be provided by law, or if no provision be made, in such amounts
6 as shall be just and reasonable, as shall be provided by ordi-
7 nance, after consideration of recommendations of the manager-
8 mayor.

Sec. 5. In conducting the said election and in ascertaining
2 the result thereof, the provisions of this charter and of the gen-
3 eral laws of the state shall be applicable insofar as they are con-
4 sistent with the provisions of Part III of this act, and in cases
5 of conflict between the general law and this charter, the pro-
6 visions of this charter shall prevail and control. The powers
7 and duties prescribed by law for clerks of county court and
8 clerks of circuit courts, and for ballot commissioners, shall de-
9 volve upon the city clerk, and the powers and duties prescribed
10 by law for county courts shall devolve upon the manager-mayor
11 and council; except that the central counting board shall count
12 and canvass all votes cast.

Sec. 6. The registration lists used in the special election of
2 April 18, 1935, shall be used in the election herein provided,
3 but council shall sit as a board of registrars during the after-
4 noon of May 28, 1935, and at least once prior thereto, for the
5 purpose of completing the registration.

Sec. 7. Candidates for the new council shall be nominated by

2 petition, as provided in this charter, except that nominating
3 petitions shall be filed with the city clerk before noon of the 4th
4 of May, 1935, and the city clerk shall have until noon May 11th
5 to examine such petitions and to notify the persons named there-
6 in as candidates. Acceptances of candidacies, (and amended
7 petitions, accompanied by acceptances of candidacies, in cases
8 requiring such action) must be filed with the city clerk before
9 noon on the 16th day of May, 1935. The names of all persons
10 duly nominated shall be printed on the ballots, which shall be
11 prepared by the city clerk, in accord with the provisions of
12 this charter.

Sec. 8. All ordinances and resolutions of council in force
2 immediately prior to the time this charter takes effect, and not
3 inconsistent with its provisions or with the laws of the state,
4 shall continue in force until amended or repealed by council.

Sec. 9. All contracts, grants, easements, rights, privileges or
2 consents on, in or relative to any street, alley or public ground
3 or property of said city made by the council of said city or by
4 any board or officer thereof immediately prior to this charter
5 taking effect (in the event of the ratification of this charter) and
6 all other contracts, grants, easements, rights, privileges or con-
7 sents entered into or granted by the said city or its council, at
8 any time prior to this charter taking effect, and which are in
9 effect immediately prior thereto shall continue in full force
10 and effect and be respected and complied with by the city of
11 Wheeling; and all indebtedness incurred by the said city prior
12 to this charter going into effect shall be binding upon the city
13 of Wheeling under this charter and be paid by it out of its
14 revenues: *Provided, however,* That nothing in this section shall
15 be construed to give effect to any obligation, contract, grant,
16 easement, right, privilege or consent which shall be void or not
17 binding upon the city of Wheeling immediately prior to the
18 time this charter takes effect.

CHAPTER 142

(House Bill No. 319—By Mr. Roberts, by request)

AN ACT to amend and reenact section twenty-four, chapter one
hundred sixty-seven, acts of the Legislature of West Virginia,

one thousand nine hundred twenty-one, and as the same was amended by chapter one hundred one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one; section three, chapter twenty-eight, acts of the Legislature of West Virginia, one thousand eight hundred ninety-three, as the same relates to the term of office of the judge, the jurisdiction and the salary of the judge of the common pleas court of Cabell County.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

Sec.	3. Judge of common pleas court, election, qualifications and term; removal; filling vacancy in office of.	Sec.	24. Jurisdiction: original and concurrent with circuit court; appellate; salary; paid by county.
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Be it enacted by the Legislature of West Virginia:

That section three, chapter twenty-eight, acts of the Legislature of West Virginia, one thousand eight hundred ninety-three; and section twenty-four, chapter one hundred sixty-seven, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, as amended by chapter one hundred one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 3. There shall, at the general election to be held 2 in this state on the Tuesday after the first Monday of Novem- 3 ber, one thousand nine hundred thirty-six, and every eight 4 years thereafter, be elected by the legal voters of said county, a 5 judge of the common pleas court of Cabell County, who shall 6 be a resident member of the bar of said county and shall be 7 disqualified from practicing law in all the courts of this state 8 during his continuance in office, who shall preside over said 9 court for the term of eight years from the first day of January, 10 succeeding his election, and shall be, except as to his term of 11 office and jurisdiction, subject to the laws in force governing 12 circuit judges. The judge of said court may be removed from 13 office for the same reasons and in the same manner as judges 14 of circuit courts. And if from any cause the office shall be- 15 come vacant, the vacancy shall be filled in the same manner as 16 in the case of a vacancy in the office of the judge of the cir- 17 cuit court.

Sec. 24. The said court shall also have common and con-

2 current with the circuit court of Cabell County, supervision
3 and control of all proceedings before justices and other inferior
4 tribunals by mandamus, prohibition and certiorari; original
5 and general jurisdiction of all cases of habeas corpus, manda-
6 mus, quo warranto and prohibition; of all cases in equity in-
7 cluding jurisdiction in equity to remove any cloud on the title
8 to real property, or any part thereof, or any estate, right or
9 interest therein, and to determine questions of title with re-
10 spect thereto, without requiring allegations or proof of actual
11 possession of the same; of all crimes and misdemeanors; and
12 shall have appellate jurisdiction in all cases, civil and criminal,
13 where an appeal, writ of error or supersedeas may be allowed
14 to the judgment or proceedings of any inferior tribunal, and all
15 such other authority and jurisdiction within the said Cabell
16 County as is now or may hereafter be given or granted to the
17 circuit court of Cabell County, except original jurisdiction in
18 matters of law where the amount in controversy, exclusive of
19 interest and costs, exceeds fifty dollars.

20 The judge of the common pleas court shall receive for his
21 services six thousand dollars annually, payable in monthly in-
22 stallments, beginning on the first day of January, one thousand
23 nine hundred thirty-seven, which amount shall be provided for
24 and paid by the county court out of the treasury of said Cabell
25 County, and which provision as to salary shall not repeal the
26 existing provisions until the said first day of January, one
27 thousand nine hundred thirty-seven.

28 All acts or parts of acts inconsistent or in conflict with this
29 act are hereby repealed.

CHAPTER 143

(House Bill No. 365—By Mr. Wolfe)

AN ACT to authorize and empower the city of Grafton, a municip-
al corporation in Taylor County, West Virginia, to set aside
annually from the general revenues of said city a sum not
exceeding five thousand dollars annually to be used in main-
taining, equipping and operating a municipally-owned hospi-
tal and for the hospitalization of the poor of said city, the
sum so set aside to constitute a part of the income and reve-

nues of said hospital and authorizing the use thereof for any purpose connected with the hospital including liquidation of any debts which may constitute or be a lien or charge upon the income of said hospital.

[Passed March 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.

1. City of Grafton authorized to use general city funds to operate a municipally owned hospital;

Sec.

amount not to exceed five thousand dollars annually; purposes for which used.

Be it enacted by the Legislature of West Virginia:

Section 1. The city of Grafton, a municipal corporation in 2 Taylor County, West Virginia, is authorized and empowered 3 to annually set aside from the general revenues of the city of 4 Grafton a sum not to exceed five thousand dollars annually, to 5 be used for the purpose of maintaining, equipping and oper- 6 ating a municipally-owned hospital and for the relief, accom- 7 modation and hospitalization of the poor and indigent of the 8 city of Grafton who are admitted to said hospital for treatment 9 and hospital care, and which said sum, upon being allocated 10 and set apart, as herein provided, shall constitute a part of 11 the revenues and income of said hospital and may be used for 12 any purpose in connection with said hospital, the maintenance, 13 operation or equipping thereof, the hospitalization of the poor 14 and indigent of the city and for the liquidation and payment 15 of any debts which may by virtue of any contract or by oper- 16 ation of law be a lien or charge upon the revenues and income 17 of said hospital, and the said city and the commission thereof 18 are authorized to enact and put in force proper ordinances or 19 resolutions to fully carry out the provisions of this act.

CHAPTER 144

(Senate Bill No. 124—By Mr. Fleming)

AN ACT to vest in the state road commission of West Virginia the control, management and upkeep of the bridge over the Cheat river, near Erwin in Preston county, known as the "Old Covered Bridge."

[Passed March 2, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.	1. Management, upkeep, etc., of "Old Covered Bridge" near Erwin, Preston county, vested	Sec.	in state road commission: appropriation for restoration and upkeep.
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WHEREAS, The bridge over the Cheat river, near Erwin, in Preston county known as "The Old Covered Bridge" is now one hundred years old, and

WHEREAS, By reason of its unique architectural features, said bridge is of historical value and an object of interest to the thousands of tourists who travel United States route fifty on which it is located, and

WHEREAS, A new and modern bridge to accommodate present day highway traffic has been built in the immediate vicinity of said covered bridge and it is desired to preserve said covered bridge as a historical and interesting object; therefore,

Be it enacted by the Legislature of West Virginia:

Section 1. For the purpose of preserving as a historical object, the bridge over Cheat river, on United States route fifty, near Erwin, in Preston county, known as the "Old Covered Bridge," the management, control and upkeep of said bridge, which is no longer used for traffic, is vested in and delegated to the state road commission of West Virginia. Said commission from such funds as it may have, is authorized and directed to expend such amount as may be necessary, not to exceed fifteen hundred dollars to restore said bridge and its approaches and to beautify its surroundings, and thereafter such sum annually, not to exceed one hundred dollars, for the upkeep of said bridge and its surroundings.

CHAPTER 145

(House Bill No. 398—By Mr. Underwood)

AN ACT to amend and reenact chapter twenty-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred seven, as amended and reenacted by chapter one hundred forty-three, acts of the Legislature of West Virginia.

regular session, one thousand nine hundred fifteen; and creating the board of trustees of county school and public library.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec.	Sec.
1. Board of trustees of county school and public library created (Tyler county); Powers.	ment of librarian and assistants.
2. How board constituted; appointment; ex-officio members; quorum; organization; sheriff ex-officio treasurer; accounting for funds by sheriff.	5. Who may have free use of books in library; charges for use of books placed in library fund.
3. All books, supplies, etc., in library transferred to board; board may maintain suit to recover.	6. Disbursements from library fund.
4. Board to maintain and continue library in Sistersville; purchase of books, etc., and employ-	7. Council to house library and furnish light, etc., without charge.
	8. County board of education to pay not to exceed twelve hundred dollars per annum into library fund.
	9. Inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred seven, as amended and reenacted by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred fifteen, be amended and reenacted to read as follows:

Section 1. There is hereby created the board of trustees of county school and public library, hereinafter called the board, which shall have power to acquire, hold and dispose of books and library supplies, materials and equipment, and maintain and manage the library hereinafter mentioned; and the board shall have all other powers necessary, incident or proper thereto.

Sec. 2. The board shall be composed of six members, two of whom shall be appointed by the board of education of Tyler county, and two by the council of the city of Sistersville. The first four members so appointed shall serve until the first day of the following August; and annually four members shall be so appointed to serve for the term of one year from the first day of August, and thereafter until their successors are appointed. Vacancies in the appointive membership shall be filled by like appointment for the unexpired terms. The president of the said board of education and the mayor of the said city shall be ex officio members of the board. The members

11 of the board shall receive no compensation for their services.
12 The board shall hold such meetings and make such by-laws, not
13 inconsistent with the laws of this state, as it shall determine.
14 Three members of the board shall constitute a quorum. An-
15 nually, at the first meeting of the board following the first day
16 of August, it shall choose a president and a secretary from
17 among its own members, who shall serve until their successors
18 are chosen; vacancies shall be filled by the board. The sheriff
19 of Tyler county shall be ex-officio treasurer of the board; he
20 shall keep all moneys received for its use in a separate fund
21 to be known as the "library fund"; he shall be liable on his
22 official bond to the board for such moneys, and shall annually
23 account therefor to it in like manner as he accounts for other
24 public moneys.

Sec. 3. All books and library supplies, materials and equip-
2 ment contained in the library hereinafter mentioned or be-
3 longing thereto are hereby transferred to and vested in said
4 board. All persons having custody or control of any moneys
5 belonging to or held for the use or benefit of said library or the
6 agency created by the acts of the Legislature mentioned in the
7 title of this act shall forthwith pay the same over to the sheriff
8 of Tyler county who shall place the same in said library fund:
9 and the board may maintain in its own name all remedies pro-
10 vided by law or equity for the recovery of said books, library
11 supplies, materials and equipment, and moneys.

Sec. 4. The board shall maintain and continue, as a public
2 institution, the library now located in the municipal building
3 of the city of Sistersville; shall purchase such additional books
4 and library supplies, materials and equipment and make such
5 repairs to those on hand as may be proper; shall employ and
6 compensate a librarian and assistants; and shall make such
7 rules and regulations for the conduct and maintenance of such
8 library as to it may seem proper, except as may be herein
9 otherwise provided.

Sec. 5. No charge shall be made for the use, for reasonable
2 time, of the books in said library to any pupil or teacher of
3 the public schools of Tyler county; charges may be made for
4 such use to others as in the discretion of the board may be

5 proper. All charges received for such use shall be paid by
6 those receiving the same to the sheriff of Tyler county, who shall
7 place the same in said library fund.

Sec. 6. Disbursements shall be made from said library fund
2 by said sheriff only upon order of the board, signed by its presi-
3 dent and counter-signed by its secretary.

Sec. 7. The council of the city of Sistersville shall provide
2 adequate housing facilities for the maintenance and continuance
3 of said library and shall furnish necessary light, heat and jani-
4 tor service for the same, free of charge.

Sec. 8. The board of education of Tyler county shall from
2 time to time pay into said library fund sufficient additional
3 amounts as may be necessary to pay the cost and expense of
4 maintaining and continuing said library, but not to exceed
5 twelve hundred dollars per annum.

Sec. 9. All acts and parts of acts inconsistent herewith are
2 hereby repealed.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 1

(BY MR. THOMAS)

[Adopted January 9, 1935.]

Raising a joint committee to inform the Governor that the Legislature is organized.

Resolved by the House of Delegates, the Senate concurring therein:

That a joint committee be appointed, three by the Speaker of the House of Delegates and three by the President of the Senate, to wait upon the Governor and to inform him that the Legislature is organized with a quorum of each house present, and is prepared to receive any message or communication he is pleased to make, and is ready to proceed with the business of the session.

HOUSE CONCURRENT RESOLUTION NO. 2

(BY MR. ADKINS)

[Adopted January 9, 1935.]

Providing for a joint assembly.

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature meet in joint assembly in the chamber of the House of Delegates at 1:00 o'clock, P. M., this day, to hear the biennial message of His Excellency, Governor H. G. Kump.

HOUSE CONCURRENT RESOLUTION NO. 3

(BY MR. THOMAS)

[Adopted January 23, 1935.]

Raising a Joint Committee on Alcoholic Beverage Control.

Resolved by the House of Delegates, the Senate concurring therein:

That a Joint Committee to be known as the "Committee on Alcoholic Beverage Control," to consist of the President of the Senate, the Speaker of the House of Delegates, the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on Taxation and Finance, the Chairman and Members of the House Committee on the Judiciary, the Chairman and Members of the Senate Committee on the Judiciary, be and is hereby raised to hold public hearing upon legislation to carry out the provisions of the "Prohibition Repeal Amendment" to section forty-six, article six of the state constitution; and, be it

Resolved further, That all bills introduced in the two houses relating to this subject and to regulating and licensing the sale of beer, wine and other alcoholic beverages, shall be referred to this committee for hearing thereon only; and, be it

Resolved further, That said committee shall incur no expenses to the state in its work, unless it shall receive specific authorization from the Legislature therefor.

HOUSE CONCURRENT RESOLUTION NO. 4

(BY MR. JAMES)

[Adopted January 15, 1935.]

Raising a Joint Committee on Joint Rules.

Resolved by the House of Delegates, the Senate concurring therein:

That a Joint Committee on Joint Rules is hereby raised to consist of the President of the Senate and the Speaker of the House of Delegates, two members of the Senate, to be appointed by the President, and two members of the House of Delegates, to be appointed by the Speaker, to consider and report on Joint Rules for the Senate and House of Delegates.

HOUSE CONCURRENT RESOLUTION NO. 5

(BY MR. GENTRY)

[Adopted January 15, 1935.]

Relating to the payment by the Auditor of mileage and contingent and other expenses of the one thousand nine hundred thirty-five session of the Legislature.

Resolved by the House of Delegates, the Senate concurring therein:

That the Auditor, in advance of the appropriation for the purpose, is hereby authorized, upon proper warrants of the Clerk of the Senate and the Clerk of the House of Delegates, to pay the mileage of the members of the Senate and the House of Delegates; bills incurred and services furnished to the Legislature for this session, including contingent expenses; the per diem of the officers and attaches of the Senate and House of Delegates and for legislative printing of this session, as the accounts for same may come due.

HOUSE CONCURRENT RESOLUTION NO. 7

(BY MR. PELTER)

[Adopted January 17, 1935.]

Extending the time allowed the Board of Public Works for submitting the budget for the ensuing fiscal years.

WHEREAS, Under sub-section B, section fifty-one, article six of the state constitution, the Board of Public Works shall submit to the Legislature within ten days after the convening thereof, unless such time shall be extended by the Legislature for the sessions at which the budget is to be submitted, two budgets, one for each of the ensuing fiscal years; and

WHEREAS, The Governor and the Board of Public Works have requested the President of the Senate and the Speaker of the House of Delegates, to request their respective bodies for an extension of the time within which the biennial budget bill shall be submitted to the Legislature; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature hereby extends the time in which the Board of Public Works shall submit the budget until February 4, 1935.

HOUSE CONCURRENT RESOLUTION NO. 10

(BY MR. ERHARD)

[Adopted February 4, 1935.]

Raising a special committee to investigate and report to the Legislature concerning establishing a state park at Black Water Falls in Tucker county and at Blennerhassett Island in Wood county.

Resolved by the House of Delegates, the Senate concurring therein:

That the Speaker of the House of Delegates and the President of the Senate are hereby directed to appoint a special committee of three from the membership of each house to investigate and report to the Legislature upon the advisability of establishing a state park at Black Water Falls in Tucker County and at Blennerhassett Island in Wood County, West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 14

(BY MR. MCCOY)

[Adopted January 30, 1935.]

Extending birthday greetings to President Roosevelt.

WHEREAS, Today is the birthday of President Franklin D. Roosevelt; and

WHEREAS, Presidential birthday balls are appropriately being held throughout the nation tonight for the benefit of the Warm Springs Foundation in Georgia, which was founded by the President for the treatment of infantile paralysis; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature of West Virginia hereby extends its greetings and best wishes to President Roosevelt, and expresses the hope that he may enjoy many happy returns of this day; and, be it

Further Resolved, That the clerks of the two houses transmit a copy of this resolution to the President.

HOUSE CONCURRENT RESOLUTION NO. 15

(BY MR. LAFON)

[Adopted February 4, 1935.]

Raising a Joint Assembly to receive a special message on the Budget, from His Excellency, the Governor.

Resolved by the House of Delegates, the Senate concurring therein:

That upon the introduction of the Budget Bill into the House of Delegates and the Senate, the two houses shall thereafter, at the convenience of His Excellency, the Governor, meet in joint assembly in the chamber of the House of Delegates to receive his special message thereon.

HOUSE CONCURRENT RESOLUTION NO. 17

(BY MR. ERHARD)

[Adopted February 18, 1935.]

Authorizing payment of expenses of the special committee raised under House Concurrent Resolution No. 10, to investigate and report to the Legislature concerning establishment of a state park at Blackwater Falls, in Tucker County, and Blennerhassett Island in Wood county.

WHEREAS, Under authority of House Concurrent Resolution No. 10, the special committee to investigate and report to the Legislature on the advisability of establishing a state park at Blackwater Falls in Tucker county and Blennerhassett Island in Wood county, will necessarily incur certain expenses in visiting these places; and

WHEREAS, Since the adoption of House Concurrent Resolution No. 10, the committee has been instructed to also report upon the advisability of establishing a state park at the falls in the Tygarts Valley River, at Valley Falls, in Marion and Taylor counties, and also to report upon the advisability of establishing a state park at

the battleground of Philippi, Barbour county, by Senate Concurrent Resolution No. 5, and Senate Concurrent Resolution No. 6, respectively; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That upon the requisition of the Chairman of said special committee, the Clerk of the Senate and the Clerk of the House of Delegates are hereby authorized and directed to draw their warrants upon the Auditor in an amount not to exceed one hundred fifty dollars from each house, payable out of the contingent funds of the respective houses.

HOUSE CONCURRENT RESOLUTION NO. 18

(BY MR. BUTLER)

[Adopted February 18, 1835.]

Raising a special committee to confer with federal officials.

WHEREAS, It is a known and established fact that a great portion of the land in West Virginia used for agricultural purposes, due to long and continued wear, is vitally in need of lime; and

WHEREAS, The commercial price of lime makes it prohibitive for the farmers of West Virginia to purchase same; and

WHEREAS, the federal government has worked out a program whereby crushed lime has been made available at a reduced price to farmers in the state of Wisconsin and elsewhere, through the use of E. R. A. labor and in connection with the soil erosion projects; and

WHEREAS, The farmers of West Virginia have for over a year been endeavoring to secure such a project in this state and at the present time are insistent that some action be started along this line; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That a special committee of six is hereby raised, three from the Senate, to be appointed by the President, and three from the House of Delegates, to be appointed by the Speaker, to confer with the

Honorable William N. Beehler and other federal officials in regard to this matter and to report back to the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 19

(BY MR. ADAMS)

[Adopted February 20, 1935.]

Requesting the postoffice department to establish a North-South air mail line from Pittsburgh to Greensboro.

WHEREAS, Congressman John Kee has requested the post office department to establish a North-South Air Mail Line from Pittsburgh, Pa., to Greensboro, N. C., which line would intersect the mail air line from New York to all southern points; and

WHEREAS, This proposed line would traverse West Virginia and furnish air mail service to the most populous sections of the state and that Charleston would intersect the east-west line; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature of West Virginia hereby requests the post-office department to establish said line from Pittsburgh to Greensboro; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the Postmaster General and a copy to Congressman Kee.

HOUSE CONCURRENT RESOLUTION NO. 20

(BY MR. LANTZ)

[Adopted February 21, 1935.]

Concerning allotment of PWA funds in West Virginia for road building.

WHEREAS, West Virginia was allotted only twenty-one million dollars of the sixty-two million dollars that would have been due the state on an equitable distribution of PWA funds distributed in the past; and

WHEREAS, A fair allotment to West Virginia of the proposed appropriation for PWA service in the future will be approximately fifty-eight million dollars; and

WHEREAS, Ernest L. Bailey, State Road Commissioner of West Virginia, has asked for an allotment of twenty million dollars to be used for construction and improvement of non-federal roads in this state; and

WHEREAS, The allotment of twenty million dollars added to such amounts as the state can provide, will provide local employment for rural residents; provide farm to market roads; provide for rural mail delivery; permit consolidation of rural schools; and permit rural home owners to seek employment in nearby industrial centers while enjoying country life and the products of their farms and gardens; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That we approve and earnestly join in the request of Ernest L. Bailey, State Road Commissioner, that the amount of twenty million dollars be allotted to West Virginia from PWA funds, when made available by action of the Congress, to be used under the direction of the state road commissioner for the construction and improvement of non-federal roads in this state; and, be it

Further Resolved, That the clerks of the Senate and House of Delegates have copies of this resolution sent to the President of the United States and to each of the United States Senators and members of the House of Representatives from West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 23

(BY MR. BUTCHER)

[Adopted February 23, 1935.]

Providing for the negotiation of federal funds for the purchase of Blennerhassett Island, the construction of a bridge thereto and the restoration of Blennerhassett Castle and other buildings.

WHEREAS, Blennerhassett Island is located in West Virginia on the Ohio river near Parkersburg, which island, because of its unique

historic association is renowned throughout the world, and is not now accessible to tourists and travelers; and

WHEREAS, If the buildings were restored to their original condition and a bridge to the island constructed it would be a magnet which would draw to West Virginia innumerable tourists and travelers; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the State Road Commissioner and the State Director of Conservation of West Virginia be authorized and empowered to negotiate and secure federal funds in the form of loan or grant, or both, in the amount found to be necessary for the purchase of the land, the restoration of the castle and buildings, the construction of a bridge or other means of access to Blennerhassett Island from the main land, and for other necessary improvements and the maintenance thereof; and for said purposes the said State Road Commissioner and State Director of Conservation are authorized, empowered and directed to ask the Federal authorities charged with appropriating moneys for such purposes for the allocation of such a sum of money as they find to be necessary.

When and if said funds are secured, the said commissioner and director are authorized and empowered, by and through their engineers, agents and employees, to purchase the land, restore the former buildings, construct a bridge and other means of access to said Blennerhassett Island and make such other improvements as appear to be necessary to place the island and its buildings in good condition and attractive to tourists visiting our state, as well as to our citizens; all of which will provide employment for the unemployed.

HOUSE CONCURRENT RESOLUTION NO. 24

(BY MR. SIMMONS)

[Adopted February 28, 1935.]

Relating to the Grave Creek Mound, providing for the negotiation of federal funds for the purchase of adjoining lands, the

improvement of same lands, the construction of appropriate structures, the restoration of the Mound, and the transfer of the Mound to the Federal Government if deemed expedient.

WHEREAS, The Grave Creek Mound, located in the city of Moundsville is of interest, historically, to the people of the nation as well as of our state; and

WHEREAS, The Mound is hedged in by buildings and streets; and

WHEREAS, The state and Federal Governments are active in their efforts to preserve, mark and develop sites of historic interest as parks for the benefit of people of this and future generations; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the State Director of Conservation of West Virginia is authorized and empowered to negotiate and secure Federal Funds in the form of loan or grant, or both, in the amount found to be necessary for the purchase and improvement of lands adjoining the Mound and for the construction of appropriate structures, and the State Director of Conservation is hereby authorized, empowered and directed to request the Federal authorities charged with the allocation of such moneys to allocate a sufficient amount to create a park adjoining the Mound; and, be it

Further Resolved, That when such funds are secured the State Director of Conservation is authorized and empowered by and through his engineers, agents and employees, to purchase the necessary lands, to improve same and to construct such structures as may be deemed necessary and appropriate and the said Conservation Commissioner shall also use his good offices to enlist the interest and cooperation of the Federal Government in this enterprise, in an effort to induce the Federal Government to take over said Grave Creek Mound as a National monument. In the event such can be consummated, then the state of West Virginia shall, through the proper officials, convey to the Federal Government all of its rights, title and interests in said Mound with all the appurtenances thereto belonging.

HOUSE CONCURRENT RESOLUTION NO. 25

(By MR. DAVIS)

[Adopted March 5, 1935.]

Granting permission to introduce a bill relating to the board of the school fund.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

“A Bill to amend and reenact section five, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the board of the school fund.”

HOUSE CONCURRENT RESOLUTION NO. 27

(By MESSRS. SHAHAN AND OLDFHAM)

[Adopted March 9, 1935.]

Commending members of the press who have reported the proceedings of this session of the Legislature.

WHEREAS, The West Virginia Legislature, in regular session, has enacted numerous laws of great moment and importance to the citizens of this state; and

WHEREAS, It is necessary that the citizenry receive accurate and comprehensive information of the acts of the Legislature; and

WHEREAS, The members of the press galleries of both houses have been in constant attendance at all sessions, preparing information on the acts of the Legislature for the benefit of the people of West Virginia; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature commends the members of the press for their untiring efforts to disseminate all proceedings of this body, their courteous and wholehearted cooperation with officers and members of the Legislature and the fair and comprehensive manner in which said proceedings have been presented to the public.

HOUSE CONCURRENT RESOLUTION NO. 28

(BY MR. THOMAS)

[Adopted March 9, 1935.]

Granting permission to introduce two bills appropriating money to the general school fund.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby granted to introduce two bills with the following titles:

“A Bill to appropriate moneys from the treasury to further supplement the general school fund for the fiscal year, one thousand nine hundred thirty-four—one thousand nine hundred thirty-five,”

And,

“A Bill to make a supplementary appropriation from the general revenue to the general school fund.”

HOUSE CONCURRENT RESOLUTION NO. 29

(BY MR. HINER)

[Adopted March 9, 1935.]

Granting permission to introduce a bill appropriating money out of the Workmen's Compensation Fund to provide for the salaries, personnel and expenses of House Bill No. 160, passed at this session.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

“A Bill to appropriate funds out of the Workmen's Compensation Fund in order that the provisions of house bill number one hundred sixty, passed at this session of the Legislature, may be put into effect.”

HOUSE CONCURRENT RESOLUTION NO. 30

(BY MR. STROUSS)

[Adopted March 11, 1935.]

Authorizing the payment of expenses for services and supplies after the closing of this session of the Legislature.

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature of West Virginia hereby authorizes the payment of expenses for services and supplies incurred after the close of the extension of this session of the Legislature, in completing the work of this session of the Legislature and that the Auditor is hereby authorized and directed to honor and pay the warrants of the Clerk of the Senate and the Clerk of the House of Delegates, drawn in favor of persons for services performed or supplies furnished, as authorized by either separate or concurrent actions of the two houses; and, be it

Further resolved, That all extensions of per diems authorized by House Resolution No. 55 and House Resolution No. 56, and by Senate Resolutions for similar purposes are hereby declared to be authorized by the Legislature, and shall have the same force and effect as if they were incorporated herein.

HOUSE JOINT RESOLUTION NO. 3

(BY MR. BROTHERTON)

[Adopted March 8, 1935.]

Proposing an amendment to the state constitution, amending section thirty-five of article six thereof.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the constitution of West Virginia, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred thirty-six, which proposed amendment is as follows:

That section thirty-five of article six of the constitution of the

state, be and the same is hereby repealed and the following inserted in lieu thereof:

Section 35. The state of West Virginia shall never be made defendant in any court of law or equity, except the state of West Virginia, including any subdivision thereof or any municipality therein, or any officer, agent or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.

HOUSE RESOLUTION NO. 1

(BY MR. VAN SICKLER)

[Adopted January 9, 1935]

Adopting rules for the House of Delegates.

Resolved by the House of Delegates:

That the rules of the House of Delegates for the second extraordinary session, one thousand nine hundred thirty-three, shall govern the proceedings of this House, pending the action of the Committee on Rules, hereafter to be appointed.

HOUSE RESOLUTION NO. 2

(BY MR. LAFON)

[Adopted January 9, 1935]

Raising a committee to inform the Senate that the House of Delegates is organized.

Resolved by the House of Delegates:

That the Speaker appoint a committee of three to inform the Senate that the House of Delegates is organized by the election of Honorable John J. Pelter as Speaker and Honorable John S. Hall as Clerk, and is ready to proceed with the business of the session.

HOUSE RESOLUTION NO. 3

(BY MR. ROBERTS)

[Adopted January 9, 1935]

Raising a committee to arrange for the seating of members.

Resolved by the House of Delegates:

That the Speaker is hereby authorized to appoint a committee of three to arrange with the Sergeant-at-Arms for the proper seating of the members of this body in order that the different delegations may be seated together, and that individual members and delegations may be given every possible convenience and accommodation in seating arrangements.

HOUSE RESOLUTION NO. 4

(BY MR. STROUSS)

[Adopted January 10, 1935.]

Granting time to J. A. Harmon for taking depositions in contest case.

WHEREAS, J. A. Harmon, of Putnam county, West Virginia, did on the 24th day of November, 1934, serve notice upon H. W. Bayer, of Putnam county, West Virginia that he would contest his election to the House of Delegates from said county, and did, in said notice, set forth the grounds upon which he, the said J. A. Harmon, would contest certain enumerated precincts in said Putnam county; and

WHEREAS, The said J. A. Harmon has filed with the Clerk of the House of Delegates an attested copy of the proceedings taken and had before the county court of Putnam county, in which said proceedings it appears that the said J. A. Harmon alleges the irregularities in the quoting and accounting of votes in precincts therein enumerated and set forth; and

WHEREAS, It appears that the said J. A. Harmon failed to take the depositions of witnesses in support of the grounds upon which he relies to contest the right of said H. W. Bayer to retain his seat in said House of Delegates; and

WHEREAS, The said J. A. Harmon desires additional time in which to take the said depositions; therefore, be it

Resolved by the House of Delegates:

That ten days from the adoption of this resolution, is hereby granted unto the said J. A. Harmon, in which to take the depositions of witnesses in support of the allegations and grounds upon which the said J. A. Harmon seeks to contest the said election.

HOUSE RESOLUTION NO. 5

(BY MR. LAFON)

(Originating in the Committee on Rules.)

[Adopted January 10, 1935.]

Authorizing the appointment of attaches for this session of the Legislature.

Resolved by the House of Delegates:

That the Speaker of the House of Delegates be, and he is hereby authorized to appoint for the House of Delegates, the following attaches and other employees to receive the per diems as herein provided, during this session:

(1) For the Clerk's office the following:

Two record clerks at seven dollars per day;
Two roll call clerks at six dollars per day;
Ten proofreaders at seven dollars per day;
Six copyholders at six dollars per day;
One clerk to the Committee on Enrolled bills at seven dollars per day;
One messenger at four dollars per day;
Two stenographers at seven dollars per day;
One Journal clerk at ten dollars per day;
One Journal stenographer at ten dollars per day.

(2) For other offices and positions the following:

One Chaplain at six dollars per day;
One clerk and two stenographers to the Committee on Taxa-

tion and Finance at ten and eight dollars per day, respectively;

One clerk and two stenographers to the Committee on the Judiciary at ten and eight dollars per day, respectively;

One clerk and one stenographer to the Committee on Roads at eight dollars per day each;

One clerk and one stenographer to the Committee on Education at eight and seven dollars per day, respectively;

Eight committee clerks to be assigned by the Speaker at six dollars per day each;

One supervisor of stenographers at ten dollar per day;

Twenty-eight stenographers at seven dollars per day;

One chief Journal Room clerk at seven dollars per day;

Twelve assistant Journal Room clerks at six dollars per day;

One mailing clerk at seven dollars per day;

One assistant mailing clerk at six dollars per day;

Ten pages at four dollars per day;

Six assistants to the Sergeant-at-Arms at six dollars per day;

Eight assistant doorkeepers at five dollars per day;

One clerk to the Sergeant-at-Arms at ten dollars per day;

One stenographer to the Sergeant-at-Arms at five dollars per day;

One ladies' cloak room attendant at five dollars per day;

Four men's cloak room attendants at five dollars per day;

Ten janitors at four dollars per day;

One night watchman at six dollars per day; and, be it

Further Resolved, That the secretary and stenographer to the Speaker, as provided for by the rules of the House, shall receive ten and eight dollars per day, respectively; and that the secretary and stenographer to the Clerk as provided for by the rules, shall receive seven and ten dollars per day, respectively; and, be it

Further Resolved, That the Clerk of the House shall receive twenty dollars per day; that the Sergeant-at-Arms and Doorkeeper shall each receive ten dollars per day; and that the three assistant clerks provided for by section nine, article one, chapter four of the code, shall each receive ten dollars per day; and, be it

Further Resolved, That all of the appointments made under authority of this resolution shall be certified to the Auditor and Treasurer by the Clerk, and the Clerk is hereby authorized to draw

his warrants or requisitions upon the Auditor in favor of the persons so appointed and the Auditor shall honor and pay such warrants when presented and charge same to the "per diem of officers and attaches" fund of the House of Delegates. The clerk shall draw his warrants in favor of officers, attaches and other employees, for consecutive days from the date of the opening of this session, at the per diems herein set out, until such time as their services shall cease. The Speaker shall require each of said employees to perform such duties as shall be assigned him and is hereby given authority to dispense with the service of any attache or attaches for any such time or number of days as their services shall not be needed during the session and they shall not be paid for such time, nor shall other persons be appointed in their places for any such time as they may be suspended when not needed.

HOUSE RESOLUTION NO. 6

(BY MR. CALVERT)

[Adopted January 10, 1935.]

Relating to the death of M. R. Brannen.

WHEREAS, Mr. M. R. Brannen, a useful and public spirited citizen of Cabin Creek, Kanawha county, departed this life on January 10, 1935; therefore, be it

Resolved by the House of Delegates:

That this body regrets the passing of this valuable citizen, and hereby extends its sympathy to the bereaved family and friends; and, be it

Further Resolved, That the Clerk of this House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 7

(BY MR. HINER)

[Adopted January 14, 1935.]

Authorizing the Clerk to draw his warrants upon the Auditor for postage.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized to draw his warrants upon the Auditor for postage to be used for mailing Journals to persons on the member's mailing list and in mailing out bills and Journals to persons requesting same and for mailing such documents as may be authorized. The same shall be paid out of the contingent fund of the House of Delegates in advance of the appropriation for the purpose. Said warrants shall be drawn as needed for these purposes.

HOUSE RESOLUTION NO. 8

(BY MR. PROCTOR)

[Adopted January 14, 1935.]

Providing for a mailing list for Journals of this session.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized to arrange for mailing out the daily Journals of this session. Each member shall be permitted to furnish a list of ten names to the Clerk to be placed upon said mailing list, and the Clerk shall see that the mailing clerks mail the Journals to such persons as are placed upon said list, and the Clerk is also authorized to mail Journals and bills to such persons as may request same.

HOUSE RESOLUTION NO. 9

(BY MR. LANTZ)

[Adopted January 16, 1935.]

Directing the Clerk to have additional copies of the Governor's biennial message to the Legislature printed.

WHEREAS, The biennial message of His Excellency, Governor Kump, delivered to the joint session of the Legislature on the ninth day of January, 1935, was one of the best documents in the history of West Virginia; and

WHEREAS, The address has been highly praised by the leading newspapers of all political faiths throughout the state; and

WHEREAS, There is urgent demand for copies of the address by the citizens of the state; therefore, be it

Resolved by the House of Delegates:

That the Clerk of the House is hereby authorized to have printed fifteen hundred additional copies of the Governor's address for distribution by the members of the House of Delegates.

HOUSE RESOLUTION NO. 10

(BY MR. NEAL)

[Adopted January 17, 1935.]

Authorizing the Sergeant-at-Arms to purchase codes for the House of Delegates.

Resolved by the House of Delegates:

That the Sergeant-at-Arms is hereby authorized and directed to purchase six copies of Michie's Annotated Code, edition, one thousand nine hundred thirty-two, with supplement thereto, for the use of the House of Delegates, to be distributed as the Speaker may direct, and said codes shall be purchased from a West Virginia firm.

HOUSE RESOLUTION NO. 11

(BY MR. HAYTHE)

[Adopted January 16, 1935.]

Authorizing the Clerk to mail copies of the Governor's address to the Legislature.

WHEREAS, The Governor's message delivered to the joint assembly of the House and Senate in the House Chamber, January 11, 1935, is regarded as one of the ablest and most enlightening of any address delivered to a Legislature for many years, containing information valuable to the public as well as to the members of the Senate and House; and

WHEREAS, By House Resolution No. 8, adopted January 15, 1935, each delegate is permitted to furnish the Clerk a mailing list

of ten names selected from his constituents, to whom the Clerk shall mail the Journal and copies of bills; therefore, be it

Resolved by the House of Delegates:

That the Clerk is hereby authorized and directed to secure and mail to each of the parties placed on said mailing list a copy of the Governor's message.

HOUSE RESOLUTION NO. 12

(BY MR. BAYER)

[Adopted January 17, 1935.]

To promote and expedite the work of the Legislature.

Resolved by the House of Delegates:

That the several committees of the House of Delegates do proceed with due diligence and dispatch in considering and reporting the various bills referred to them to the end that this Legislature may be able to adjourn *sine die* within the constitutional limits of sixty days.

HOUSE RESOLUTION NO. 13

(BY MR. GENTRY)

[Adopted January 16, 1935.]

Commending the publication known as West Virginia Highways, a good roads and scenic magazine.

Resolved by the House of Delegates:

That this House congratulates the publishers of West Virginia Highways, in giving to the state a magazine devoted to advertising our unsurpassed scenery and splendid highways. The enthusiasm and interest of every West Virginian should be aroused and gratified by the purposes outlined for the future in the issue now upon our desks.

HOUSE RESOLUTION NO. 14

(BY MR. MCCOY)

[Adopted January 16, 1935.]

Concerning the illness of Delegate Doringer.

Resolved by the House of Delegates:

That the sympathy of this body is hereby extended to the Honorable Fred L. Doringer, a Delegate from the county of Marion, on account of his illness; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to send a copy of this resolution to Delegate Doringer with the hope that he may speedily recover and be able to take part in the business of this session.

HOUSE RESOLUTION NO. 15

(BY MR. OLDHAM)

[Adopted January 17, 1935.]

Authorizing the payment of the salary of the Honorable Carl B. Galbraith.

WHEREAS, The Honorable Carl B. Galbraith has been appointed by the Governor of this state, as a member of the House of Delegates from Ohio county, to fill the vacancy caused by the resignation of the Honorable J. J. P. O'Brien; therefore, be it

Resolved by the House of Delegates:

That the Auditor and Treasurer are hereby authorized and directed to pay five hundred dollars to Mr. Galbraith, as salary for the year one thousand nine hundred thirty-five, in advance of the appropriation for the purpose.

HOUSE RESOLUTION NO. 16

(BY MR. RUSSEK)

[Adopted January 17, 1935.]

Concerning the death of John V. Reister.

WHEREAS, The members of this House have been saddened by

the tragic death of Hon. John V. Reister, assistant mayor-manager of the city of Wheeling, while he was enroute to Charleston for the purpose of joining with officials of other municipalities in promoting a program designed in the interest of the state of West Virginia; and

WHEREAS, Mr. Reister was one of the outstanding public officials and citizens of Wheeling and of the northern panhandle of West Virginia, and had contributed much to the development of that section of the state; therefore, be it

Resolved by the House of Delegates:

That this body express its sense of the loss that has been suffered by the state in the passing of Mr. Reister, and extend its sincere sympathy to the bereaved family; and be it

Further Resolved: That the Clerk of the House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 17

(BY MR. OLDHAM)

[Adopted January 21, 1935.]

Requesting the Auditor to report to the House of Delegates such information as he may have, relative to shortages and irregularities in the accounts of Justices of the Peace, and as to vicious practices by said officers.

WHEREAS, It has been brought to the attention of the members of this body, through press reports and otherwise, that there exists in the offices of the justices of the peace throughout the state flagrant abuses growing out of the fee system and delinquencies in the settlement of accounts on moneys due the state; and

WHEREAS, It has been specifically called to the attention of this body that the audit of accounts of various justices and ex-justices of the peace reveal large shortages for which no settlement has been made; and

WHEREAS, It appearing that the Auditor after diligent inquiry and investigation is in possession of facts relating to these short-

ages, abuses, practices and usurpation of power in these courts; therefore, be it

Resolved by the House of Delegates:

That the Honorable Edgar B. Sims, Auditor of the state of West Virginia, be and he is hereby requested to make report and file before this body any and all shortages, irregularities and vicious practices which upon investigation he has found to exist in these said justice of the peace courts.

HOUSE RESOLUTION NO. 18

(BY MR. LAFON)

(Originating in the Committee on Rules)

[Adopted January 21, 1935.]

Relating to appointment of attaches.

WHEREAS, Under House Resolution No. 5, adopted January 10, 1935, the Speaker was authorized to appoint ten pages and ten janitors; and

WHEREAS, The Speaker has determined that the House will not need this number of pages and janitors, but that it will need more clerks for proofreading and other purposes than has been provided for; therefore, be it

Resolved by the House of Delegates:

That the number of janitors is hereby reduced to four and the number of pages to five and that the Speaker is hereby authorized to appoint not to exceed eleven clerks, to be assigned by him, said clerks to receive the same per diem as that of the committee clerks to be assigned by the Speaker, provided for in House Resolution No. 5. This change shall not increase the total number of attaches heretofore authorized.

HOUSE RESOLUTION NO. 19

(BY MR. SHAHAN)

[Adopted January 22, 1935.]

Raising a committee to investigate the Relief Administration and Welfare Department in Randolph county.

WHEREAS, There have been hundreds of complaints of mismanagement, charges of nepotism, favoritism, political preference and gross inefficiency in the handling of administration affairs of relief and relief activities in Randolph County; and

WHEREAS, On the 30th day of November, 1934, gross irregularities in the management and administration of relief funds had become so noticeable that those in charge were asked to furnish certain information relative to the expenditures and administrative operation of relief in that county; and

WHEREAS, This request was refused and another request for the same information was made December 27, and the desired information as requested has never been furnished; and

WHEREAS, The requests made were fair and pertaining to such information as this Legislature should know, and that such requests also provided that if for any reason whatsoever the relief officials were unable to furnish the desired information that statistical help would be furnished for the purpose of taking such data from the records; and

WHEREAS, This Legislature, before making any appropriations for relief purposes, should know whether such funds are being mismanaged, stolen or misused, to the end that relief may be administered impartially, unselfishly and honestly to all who need such relief; therefore, be it

Resolved by the House of Delegates:

That the Speaker is authorized to appoint five members of the House of Delegates who shall serve as a committee to investigate thoroughly the entire Relief Administration and Welfare Department in Randolph County and their activities.

The committee shall have the power to summons and compel the attendance of witnesses and shall have power to administer oaths. It may also compel the officials and those in charge to produce any records or papers which the committee deems necessary to the conduct of the investigation.

The committee shall report its findings to the Legislature. The Clerk is authorized to draw his warrant for the expense of this investigation in advance of the appropriation therefor: *Provided, however,* That the expense of such investigation shall not exceed five hundred dollars.

HOUSE RESOLUTION NO. 20

(BY MR. BIBB)

[Adopted January 21, 1935.]

Concerning the death of the Honorable George T. Watson.

WHEREAS, The late George T. Watson, State Compensation Commissioner, has departed this life; and

WHEREAS, He was one of West Virginia's leading citizens and business men, having been connected with the mining industry all of his life; and to know him personally was to love him; and

WHEREAS, Mr. Watson served his state well and faithfully during his tenure of office; therefore, be it

Resolved by the House of Delegates:

That we deplore the loss of this state official and extend to his family our heartfelt sympathy; and, be it

Further Resolved, That a copy of this resolution be transmitted by the Clerk to the family of the deceased.

HOUSE RESOLUTION NO. 21

(BY MR. LAFON)

[Adopted January 23, 1935.]

Authorizing payment for services rendered preliminary to opening of this session.

Resolved by the House of Delegates:

That the Clerk is hereby directed to draw his warrants upon the Auditor in favor of the following persons in the amounts herein set out, for services rendered the Legislature, preliminary to the opening of the House of Delegates:

John S. Hall, Clerk	\$180.00
O. C. Parsons.....	100.00
W. W. Martin, Sergeant-at-Arms, six trips to Charleston, including mileage and one day's per diem at \$26.60 per trip after close of last session, and fifteen days services at \$10.00 per day preliminary to opening of this session.....	309.60

Fred H. Goff, nine days at six dollars.....	54.00
Ernest Crawford, Clerk to Sergeant-at-Arms.....	100.00
Elizabeth Cottrill, 19 days at \$6.00.....	114.00
Bill Arnold, 7 days at \$4.00.....	28.00
C. R. Banta, 2 days at \$4.00.....	8.00
Steve Callas, 8 days at \$4.00.....	32.00
Frank Curry, 23 days at \$6.00.....	138.00
Boisy Green, 22 days at \$4.00.....	88.00
Othello Green, 7 days at \$4.00.....	28.00
Oscar Howard, 25 days at \$4.00.....	100.00
Clarence Pryor, 4 days at \$4.00.....	16.00
Bill Quarrels, 19 days at \$4.00.....	76.00
Bob Ross, 14 days at \$6.00.....	84.00
Samuel Spots, 4 days at \$4.00.....	16.00
Neal Thompson, 3 days at \$4.00.....	12.00
Sam White, 8 days at \$4.00.....	32.00
W. A. Walker, 7 days at \$4.00.....	28.00
Scott Warrington, 13 days at \$4.00.....	52.00
L. L. Berry, 13 days at \$4.00.....	52.00
F. J. Randolph, 3 days at \$4.00.....	12.00
Bill Miller, 3 days at \$4.00.....	12.00
Ed Tilman, 4 days at \$4.00.....	16.00
Raymond Bush, 16 days at \$4.00.....	64.00
E. G. Thorne, 19 days at \$6.00.....	114.00
Henry Randolph, 19 days at \$4.00.....	76.00
Walter Pettigrew, 20 days at \$4.00.....	80.00
Clyde Echols, 19 days at \$4.00.....	76.00
Don Sampson, 17 days at \$4.00.....	68.00
F. J. Craig, 8 days at \$4.00.....	32.00

All of said amounts to be paid out of "the per diem officers and attaches fund."

HOUSE RESOLUTION NO. 22

(BY MESSRS. WOLFE AND BISHOFF)

[Adopted January 24, 1935.]

Concerning the death of John Barton Payne.

WHEREAS, The state and nation has been saddened by the notice

of the death of the Honorable John Barton Payne, Chairman of the American Red Cross; and

WHEREAS, The death of this great man, a native son of West Virginia, whose life has been an inspiration to all with whom he came in contact, whose work as head of the great humanitarian organization, the American Red Cross, has been of untold benefit to humanity all over the world; and

WHEREAS, The said John Barton Payne started his great career in this, his native state, being born at Pruntytown, Taylor county, later moving to Kingwood, Preston County, where he was admitted to the practice of law, and became mayor of that town; and

WHEREAS, The state and nation has been saddened by the death of this eminent son of West Virginia; therefore, be it

Resolved by the House of Delegates:

That we deplore the loss of this great humanitarian, and that this body express its sense of the loss that has been suffered by the state and nation in the passing of John Barton Payne, and extend its sincere sympathy to the bereaved family; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the family of the deceased.

HOUSE RESOLUTION NO. 23

(BY MR. GAYLORD)

[Adopted January 28, 1935.]

Concerning the death of the Honorable Ernest D. Lewis.

WHEREAS, The Honorable Ernest Daniel Lewis, a former member of the House of Delegates from Harrison County has departed this life; and

WHEREAS, He was one of Harrison County's leading citizens, a prominent lawyer, a former member of the Public Service Commission and a devoted servant of the people; and

WHEREAS, Mr. Lewis served his county well and faithfully in the Legislature; therefore, be it

Resolved by the House of Delegates:

That we deplore the loss of this former member and extend to his family our heartfelt sympathy; and, be it

Further Resolved, That a copy of this resolution be transmitted, by the Clerk, to the family of the deceased.

HOUSE RESOLUTION NO. 24

(BY MR. THOMAS, by request)

[Adopted February 11, 1935.]

Authorizing payment to James M. Mason for services as clerk to a special committee during the 1933 session of the Legislature.

WHEREAS, House Concurrent Resolution No. 15 was adopted by the Legislature of West Virginia, February 9, 1933; and

WHEREAS, Pursuant to said resolution, a joint committee of the House of Delegates and Senate was appointed to investigate the matters pertaining thereto; and

WHEREAS, Said committee found it necessary to employ aid in investigating the matters relating to said inquiry; and

WHEREAS, Said committee employed James M. Mason to assist it as a clerk and investigator; and

WHEREAS, Under the terms of the resolution, the House and Senate were jointly liable for the expense of said investigation; and

WHEREAS, The Senate has paid its share of the liability of the expense of said investigation, but the House has omitted to pay said Mason for his services; and

WHEREAS, Said committee owes Mason for his services the sum of \$350.00, which amount was recommended by the Chairman of the committee as a reasonable compensation for his services; therefore, be it

Resolved by the House of Delegates:

That the Clerk of the House of Delegates be and he is hereby authorized to draw his warrant upon the auditor in favor of James M. Mason, in the sum of \$350.00 in payment of his services as clerk to said investigating committee, payable out of the contingent fund of the House of Delegates; in advance of the appropriation for the purpose.

HOUSE RESOLUTION NO. 25

(BY MR. GENTRY)

[Adopted January 30, 1935.]

Requesting the state and all subdivisions thereof to discontinue the use of printing, multigraphing, folding and binding equipment now operated by various departments of the state, and to let this work in the regular manner as provided for by statute.

WHEREAS, There has been a growing tendency in recent years for various departments of our state government, schools and institutions to install expensive printing, multigraphing, folding and binding equipment with which to print and otherwise manufacture the various work used by these departments; and

WHEREAS, These governmental agencies are supported in whole or in part by the taxes paid by the printers and other private business enterprises; and

WHEREAS, The saving achieved by such practices are inconsequential when compared with the harm done to the business concerned; and

WHEREAS, The installation of these printing facilities in various state departments, schools and institutions is generally made the excuse for creation of additional political patronage with the ultimate result that the saving which might be effected in the cost of government is eliminated; and

WHEREAS, The state thus comes in direct competition with the private business in the state, and formal protest of this practice has been made by the commercial relief printing industry of West Virginia through its organization, the Appalachian-Ohio Valley Printers, Incorporated; therefore, be it

Resolved by the House of Delegates:

That the state of West Virginia and all of its departments and institutions be and the same are hereby urged and implored to discontinue the use of printing equipment now operated by various departments, except as a disciplinary measure in penal institutions, and let this work in the regular manner as provided for by statute.

HOUSE RESOLUTION NO. 28

(BY MR. THOMAS)

[Adopted February 8, 1935.]

Instructing Sergeant-at-Arms to enforce certain rules.

WHEREAS, Rule 136, sets forth the only persons to be admitted upon the floor of the House, except by permission of the Speaker; and

WHEREAS, Since the beginning of this session numerous persons have been admitted upon the floor that were not entitled to this privilege; and

WHEREAS, Contrary to the rules of this House, attaches have been admitted to the floor when they were not engaged in work for the House; and

WHEREAS, Under paragraph (f) of Rule 138, no person is entitled to admission to the press tables who does not hold a correspondent's card, and attaches and other persons have been occupying the seats at these table and thereby interfering with the work of the newspaper correspondents; therefore, be it

Resolved by the House of Delegates:

That the Sergeant-at-Arms is hereby instructed to keep all attaches and other persons not entitled to the privilege of the floor, off the floor during the sessions of the House, to keep all persons not accredited as newspaper correspondents away from the press tables and to keep the hall at the main entrance to the chamber clear; and, be it

Further Resolved, That the Speaker and Clerk furnish the Sergeant-at-Arms with a list of the persons and attaches needed at the Clerk's desk and that the Sergeant-at-Arms shall see that no other person or attache be permitted thereat.

HOUSE RESOLUTION NO. 29

(BY MR. PAUL)

[Adopted February 11, 1935.]

Concerning the death of Major Tom B. Davis.

WHEREAS, The members of this House have been saddened by the passing of a valuable and beloved member of the administration, in the death of Major Tom B. Davis, superintendent of capitol building and grounds; and

WHEREAS, Major Davis was widely known throughout the state, and was one of its most public-spirited and loyal citizens; therefore, be it

Resolved by the House of Delegates:

That this body express its realization of deep loss suffered by the state in the passing of Major Davis, and extend its sincere sympathy to the bereaved family; and be it

Further Resolved: That the Clerk of the House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 31

(BY MR. HINER)

[Adopted February 12, 1935.]

Concerning the illness of Delegate Welton.

WHEREAS, The Honorable Arch J. Welton, the Delegate from the County of Grant is seriously ill in the Cumberland Memorial hospital at Cumberland, Md.; therefore, be it

Resolved by the House of Delegates:

That the sympathy of this body is hereby extended to Mr. Welton, together with the wish that he may have a speedy recovery; and, be it

Further Resolved, That the Sergeant-at-Arms is hereby directed to send flowers to Mr. Welton, as a token of the high regard which the members of this body have for him and that the Clerk shall send a copy of this resolution to Mr. Welton.

HOUSE RESOLUTION NO. 32

(BY MR. UNDERWOOD)

[Adopted February 12, 1935.]

Concerning the birthday of Abraham Lincoln.

WHEREAS, This is the birthday of the immortal Abraham Lincoln, the great President of the United States, who liberated from the bondage of slavery an entire race of people; saved the union from dismemberment and is the founder of the great Republican party; and,

WHEREAS, He is recognized throughout the civilized world as one of the few great leaders of men, and the memory of this great man shall always live so long as people believe in mercy, charity and freedom of the human races, therefore, be it

Resolved by the House of Delegates:

That this memorial be printed in the Journal.

HOUSE RESOLUTION NO. 34

(BY MR. GAYLORD)

[Adopted February 15, 1935.]

Providing for the appointment of a delegation to attend the Second Interstate Assembly at Washington, D. C.

WHEREAS, The Second Interstate Assembly has been called by the Council of State Governments and the American Legislators' Association, to be held on Thursday, Friday, and Saturday, February 28, and March 1-2, 1935, at the Mayflower Hotel, Washington, D. C., to consider federal and state tax policies on the basis of the recommendations submitted by the Interstate Commission on Conflicting Taxation, which was established two years ago by the First Assembly; and

WHEREAS, It is apparent that substantial benefits would result from closer contacts between the legislative and administrative divisions of the various state governments, and that many governmental difficulties are aggravated by the absence of adequate facilities for conference between these bodies; and

WHEREAS, The present economic emergency creates an imperative necessity now emphasized by the President's program of economic security for joint council and concerted action; and,

WHEREAS, It is believed that the moment has now arrived for establishing adequate means for communication and conference between the states and the federal government; and

WHEREAS, The House of Delegates of this state is invited to send its delegates to this conference, to be chosen in such manner as this body may determine; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of the state of West Virginia hereby authorizes the Speaker of the House of Delegates to appoint three members as a delegation to the Interstate Assembly, which convenes in Washington, D. C., on February 28, 1935. Such delegation shall be without power to commit the House of Delegates to action. The Clerk of the House of Delegates upon certification to him by said delegation, or its chairman, shall draw his warrant upon the Auditor, payable out of the contingent fund of the House of Delegates, in an amount not to exceed the sum of one hundred and fifty dollars, for the attendance of said delegation on said assembly.

The Clerk of the House of Delegates is directed to advise the corresponding secretary of the conference in care of the American Legislators' Association, Drexel avenue and Fifty-eighth street, Chicago, Illinois, of the appointment of such delegation.

HOUSE RESOLUTION NO. 35

(BY MR. BREEDLOVE)

[Adopted February 18, 1935.]

Requesting the removal of William N. Beehler, Administrator of the West Virginia Relief Administration.

WHEREAS, Ever since the appointment of William N. Beehler as relief administrator for West Virginia there has been serious and widespread complaint emanating from various counties within the state concerning the method of administration of relief; and

WHEREAS, Apparently very little effort has been made on the part of the administrator to correct the mistakes that have been made; and

WHEREAS, Honorable H. G. Kump, Governor, and Honorable M. M. Neely, United States Senator, and the six incumbent congressmen from West Virginia, have protested in vain the retention of the said Beehler in office and have requested his removal; and

WHEREAS, Inasmuch as the state of West Virginia furnishes part of the funds that are used for relief purposes within the state and it is felt that a West Virginian should be appointed to the responsible office of relief administrator, or at least that the wishes of state and federal officials should be respected in the appointment of such officials; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of West Virginia go on record as being opposed to the continuance in office of William N. Beehler as relief administrator, and that Honorable Harry L. Hopkins, administrator of the federal emergency relief administration, be requested to remove the said Beehler from office and to appoint in his stead, another person, preferably a West Virginian, for this important office.

The Clerk of the House of Delegates is directed to furnish copies of this resolution to the President of the United States, Honorable H. G. Kump, Governor of West Virginia, Honorable M. M. Neely, United States Senator, the six congressmen from West Virginia and Honorable Harry L. Hopkins, federal emergency relief administrator.

HOUSE RESOLUTION NO. 37

(BY MR. PROCTOR)

[Adopted February 18, 1935.]

Inviting "AMOS 'N ANDY" to address the House of Delegates.

WHEREAS, It appears from public announcements that Freeman J. Gosden and Charles Correll, familiarly known to the American public as "AMOS 'N ANDY", will be in Charleston on Wednesday the twentieth instant; and

WHEREAS, The said gentlemen are generally recognized as two of the great American radio entertainers; therefore, be it

Resolved by the House of Delegates:

That the said Freeman J. Gosden and Charles Correll be and they are hereby invited to address the House of Delegates at its session Wednesday afternoon, February 20, 1935, the said invitation being extended also to the Kingfish, Brother Crawford, Lightnin', Madame Queen, Ruby Taylor and Henry Van Porter; and, be it

Further Resolved, That a committee of three to be appointed by the Speaker, be and is hereby directed to present a copy of this resolution to the said Freeman J. Gosden and Charles Correll, and extend in person the invitation herein provided for.

HOUSE RESOLUTION NO. 38

(BY MR. VANDALL)

[Adopted March 1, 1935.]

Authorizing the payment of a sum of money to Roberts brothers for damages to their real estate caused by agents of the state road commission while constructing state highway number thirty-five through their lands in Wirt county.

WHEREAS, L. R. Roberts and J. A. Roberts, partners doing business in the firm name of Roberts Brothers, at Burning Springs in Wirt county, have heretofore filed a claim with the state road commission for damages, in the sum of forty-five hundred dollars, caused to their real estate in Wirt county while constructing state highway route number thirty-five through their land in which the surface of their said land was under-cut to such an extent as to take away the support of the hillside land above said highway or road on which were located three producing oil wells and a dwelling house, by means of which said land was caused to break, slip and slide in such manner as to destroy said three producing oil wells and later involving a fourth well and the tubing and casing contained in such well; also to break up, injure and destroy the surface of a plot of ground on which a valuable dwelling house is located; and

WHEREAS, Said claimants caused the matter to be presented to the West Virginia Legislature at its one thousand nine hundred thirty-one session and the sum of twenty-five hundred dollars was found in their favor by the Committee on Claims and Grievances and was included in the budget bill as passed by the House in that session, but afterwards eliminated in a conference between committees of the House and Senate and the claim as recommended by the Committee on Claims and Grievances was not paid; and

WHEREAS, Said claim was again presented to said Legislature at its regular session of one thousand nine hundred thirty-three and referred to the House Committee on Claims and Grievances and said committee heard the evidence of Joseph M. McKinney a road district engineer then in charge of state route number thirty-five and Colonel C. P. Fortney who conceded that said claimants had been damaged and as a result of said hearing said committee recommended the payment to claimants the sum of twenty-five hundred dollars; and

WHEREAS, Said claim is found to be just and a proper charge against the state road fund allocated to Wirt County and is yet unpaid; therefore, be it

Resolved by the House of Delegates:

That the sum of forty-five hundred dollars be allowed and the budget commission be and it is hereby requested to include the said sum of forty-five hundred dollars in a supplementary budget bill as provided by subsection-(c), section fifty-one, article six of the constitution of the state, to be paid to said Roberts Brothers for damages to their real estate caused by the building of state highway number thirty-five through said real estate; which sum should be paid to Roberts Brothers and charged to the state road fund allocated to Wirt county.

HOUSE RESOLUTION NO. 39

(BY MR. VAN SICKLER)

[Adopted March 4, 1935.]

Raising a special committee to investigate the cost and advisability of installing a voting machine in the House of Delegates.

Resolved by the House of Delegates:

That the Speaker be and is hereby authorized to appoint a special committee of three to investigate the cost and advisability of installing an automatic voting machine for the House of Delegates. Said committee shall make its investigation and report to this body as soon as practicable.

HOUSE RESOLUTION NO. 40

(BY MR. BEELER)

[Adopted February 21, 1935.]

Providing for a Washington's birthday observance program.

WHEREAS, Tomorrow, February 22, is the anniversary of the birth of George Washington; and

WHEREAS, A program has been arranged by the George Washington Foundation Association for 1:00 o'clock P. M. tomorrow at the state capitol; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby extends an invitation to the persons sponsoring this program to hold their services in this hall tomorrow at 1:00 o'clock P. M.; and, be it

Further Resolved, That an invitation be extended to the Senate to attend this service in observance of the birthday of George Washington.

HOUSE RESOLUTION NO. 41

(BY MR. LINGER)

[Adopted March 7, 1935.]

Relating to purchases by state schools, institutions, schools, departments, etc.

Resolved by the House of Delegates:

That it is the sense of this body that no state school, school, institution, department, purchasing department or other agency of the state purchase any article or commodity whatsoever from any merchant, firm, individual or corporation not registered with the

secretary of state to do business in the state of West Virginia, unless such merchant, firm, individual or corporation shall have first satisfied the state agency as above set out that said merchant, firm, individual or corporation has satisfied every judgment issued in this state against any such merchant, firm, individual or corporation: *Provided*, That the purchasing agency as above set out, has been notified of a judgment existing and on record in the courts of this state.

HOUSE RESOLUTION NO. 43

(BY MR. LAFON)

[Adopted February 27, 1935.]

Authorizing the Committee on Rules to arrange a special calendar.

Resolved by the House of Delegates:

That after Wednesday, February 27, 1935, the Committee on Rules shall arrange a special daily calendar, to be known as the special calendar and until the calendar so arranged is disposed of, nothing on the regular House Calendar shall be considered or take precedence over said Special Calendar: *Provided*, That the Special Calendar shall not interfere with the Local Calendar on Friday of each week.

HOUSE RESOLUTION NO. 45

(BY MR. DORINGER)

[Adopted March 11, 1935.]

Creating a Committee on Interstate Cooperation.

WHEREAS, There are several conflicting regulatory laws among our neighboring states; and

WHEREAS, These conflicts cause many unsatisfactory situations to many citizens of our state; and

WHEREAS, Many of these situations can be eliminated by the proper cooperation of the states; therefore, be it

Resolved by the House of Delegates:

That there is hereby created a special committee of the House of Delegates to be known as the Committee on Interstate Cooperation, said committee to be composed of five members to be appointed by the Speaker ; and, be it

Further Resolved, That the members of said committee for the present session shall be forthwith appointed by the Speaker of the House of Delegates. This Committee shall devote its attention primarily to the improvement of relationships of the government of this state with the government of the forty-seven other states, and more especially with the governments of neighboring states. This committee shall also give attention to the more effective cooperation of the government of this state with the federal government ; and, be it

Further Resolved, That this committee shall also constitute the Council of the American Legislators' Association for the House of Delegates.

HOUSE RESOLUTION NO. 46

(By MR. RUSSEK)

[Adopted February 28, 1935.]

Concerning organization of third house by attaches.

WHEREAS, The socalled third house of the Legislature formed of the attaches of the House of Delegates, has already organized ; and

WHEREAS, The aim of the third house will be to mimic the members of the Legislature and provide fun for the galleries ; and

WHEREAS, Harry Burke has been elected Speaker ; Randolph Ruddle, Clerk ; Barney Saville, Sergeant-at-arms ; and W. D. Miller, Doorkeeper ; therefore, be it

Resolved by the House of Delegates:

That this body go on record favoring the third house and that this body congratulate the successful candidates for office in this organization ; and, be it

Further Resolved, That a copy of this resolution be placed in the hands of the successful candidates for offices of the third house.

HOUSE RESOLUTION NO. 47

(BY MR. BISHOFF)

[Adopted March 1, 1935.]

Concerning fire at Terra Alta.

WHEREAS, It has just come to the attention of the members of this House, that the town of Terra Alta, in Preston County, has within the past few hours suffered a disastrous fire, this being the second fire which has visited said town within the past year and has resulted in great loss to the citizens of said town and caused them to suffer many inconveniences ; therefore, be it

Resolved by the House of Delegates:

That the sympathy of this body be and is hereby extended to citizens of said town; and, be it

Further Resolved, That the Clerk be and is hereby instructed to communicate this resolution to the mayor of Terra Alta; and, be it

Further Resolved, That the Clerk be instructed to wire the Relief Administrator in Preston County to give such aid as is possible for such administration to render to the people of said town.

HOUSE RESOLUTION NO. 48

(BY MR. BROTHERTON)

[Adopted March 5, 1935.]

Concerning a banquet in honor of the Speaker of the House of Delegates.

WHEREAS, This House has an able, fair and courteous presiding officer ; and

WHEREAS, During this session of the Legislature, he has been accommodating and has extended to the members of this body every consideration and favor within his power ; and

WHEREAS, As an indication of the high regard the members of the House have for the Speaker and as a token of their appreciation of his many acts of kindness, the members of this body have arranged a banquet in honor of the distinguished and capable Speaker,

which banquet will be held at the Kanawha hotel at 6:30 o'clock P M. this evening; therefore, be it

Resolved by the House of Delegates:

That the Honorable Speaker is hereby notified of this event in his honor and is respectfully invited to attend the banquet.

HOUSE RESOLUTION NO. 49

(BY MR. MORRIS)

[Adopted March 5, 1935.]

Relating to payment of adjusted service certificates issued to Veterans of the World War.

Resolved by the House of Delegates:

That it is the opinion of this body that the Congress of the United States should authorize the immediate payment of the balance of the Adjusted Service Certificates which were issued to veterans of the World War; and, be it

Further Resolved, That a copy of this resolution be sent to Hon. M. M. Neely and Hon. Rush D. Holt, Senators from West Virginia, and to Honorables Robert L. Ramsey, Jennings Randolph, Andrew Edmiston, George W. Johnson, John Kee and Joe L. Smith, members from West Virginia of the House of Representatives.

HOUSE RESOLUTION NO. 51

(BY MR. PELTER)

[Adopted March 7, 1935.]

Names of participants in battle of Point Pleasant to be inscribed on tablet to be placed on the monument there.

Resolved by the House of Delegates:

That the Point Pleasant Battle Monument Commission be and it is hereby authorized and requested to cause to be inscribed on bronze tablets to be attached to the base of the Point Pleasant Battle Monument, when such base shall have been provided for, the names of all of the officers and men who participated in the battle of the

Revolution fought on October tenth, one thousand seven hundred and seventy-four, at Point Pleasant, now in West Virginia as ascertained and listed by the Point Pleasant Battle Monument Commission, under the provisions of chapter forty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, and reported to the Governor, and to provide space in such tablets for inscription of the names of such other officers and men who participated in said battle, as shall hereafter be ascertained and listed under the provisions of said chapter forty-three.

HOUSE RESOLUTION NO. 53

(BY MR. VAN SICKLER)

[Adopted March 8, 1935.]

Authorizing the purchase and installation of an Electrical Roll Call System in the House Chamber of the Capitol of the state of West Virginia.

WHEREAS, A special committee has heretofore been appointed to investigate the desirability and practicability of the installation of an electrical roll call system in the House Chamber of the Capitol of the state of West Virginia; and

WHEREAS, Said committee has reported favorably upon the installation of such system; and

WHEREAS, It appears that the installation of said system would not only result in a great saving of time in the conduct of the business of the House of Delegates of West Virginia, but would likewise result in a substantial saving of money to the taxpayers of said state, and that in the construction of the Capitol of the state of West Virginia, the architect with commendable foresight, has already provided for the installation of such electrical roll call system and installed the proper conduits and other equipment preparatory to the installation of such system, which constitutes a substantial investment by the state of West Virginia, from which no benefit can be derived until such electrical roll call system has been installed in connection therewith; therefore, be it

Resolved by the House of Delegates:

That such electrical roll call system be installed in the chamber

of the House of Delegates of the state of West Virginia at the earliest date possible, such system to be substantially of the same kind and character as that which has heretofore been installed in the capitols of Virginia, Wisconsin, Louisiana, Nebraska, Iowa, Texas and California, which have adopted and installed an electrical roll call system; and, be it

Further Resolved, That the Speaker of the House of Delegates, the Chairman of the Committee on Taxation and Finance, the Chairman of the Committee on the Judiciary, and the Chairman of the committee heretofore appointed to investigate the feasibility and practicability of the installation of an electrical roll call system in the House Chamber, are hereby designated as a committee to procure the installation of such electrical roll call system and prescribe the terms of a contract to be entered into with some responsible person, firm, or corporation for the installation of such system, and said committee is authorized and directed to prepare and procure the execution and delivery of said contract to be executed by the Clerk of the House of Delegates on behalf of the House of Delegates of the state of West Virginia, with the person, firm or corporation so selected to install such system, at a cost of not to exceed the sum of thirty-five thousand (\$35,000.00) dollars, to be paid as follows, to-wit: One-third of the cost of the installation of said system to be paid in cash upon the execution and delivery of a contract for the installation thereof, one-third to be paid when the wires and indicator boards are installed, and the balance when the installation of said system has been completed and is ready for operation and approved by the said Clerk of the House.

The Clerk of the House is hereby authorized and directed to draw his warrants upon the Auditor of the state of West Virginia in favor of the person, firm or corporation installing said system, pursuant to the terms of the contract relative thereto, and the Auditor shall honor and pay such warrants when presented and charge the same to the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 54

(BY MR. GAYLORD)

[Adopted March 9, 1935.]

Authorizing payment of the expenses of the special committee

raised under House Resolution No. 34, to attend the Second Interstate Assembly at Washington.

WHEREAS, Under the authority of House Resolution No. 34, adopted February 13, 1935, a special committee was raised to attend the second interstate assembly at Washington, D. C., on February 28, 1935, and March 1-2, 1935; and

WHEREAS, Said committee has filed its report of the proceedings of said assembly; and

WHEREAS, Said House Resolution No. 34 provided for the payment of the expenses of the committee, in a sum not to exceed one hundred and fifty dollars; and

WHEREAS, Said sum of one hundred and fifty dollars was not sufficient to meet the necessary, actual and legitimate expenses of said committee; therefore, be it

Resolved by the House of Delegates:

That the Clerk of the House of Delegates upon certification to him by the chairman of said delegation, shall draw his warrant upon the Auditor, payable out of the contingent fund of the House of Delegates for an additional amount, not to exceed the sum of seventy-five dollars, for the expenses of said delegation.

HOUSE RESOLUTION NO. 55

(BY MR. JAMES)

(Originating in the Committee on Rules)

[Adopted March 9, 1935.]

Providing for the printing of corrected Journals and Bills of the House of Delegates for this session of the Legislature and for the completion of the work of the session.

Resolved by the House of Delegates:

That for the purpose of completing the work of this session in arranging and filing of all bills, resolutions and other official papers in the Clerk's office, and for indexing and proofreading of the corrected Journals and Bills of the House of Delegates and printing thereof, the time of the Clerk, Secretary to the Clerk, Journal Clerk,

Journal Stenographer, three assistant Clerks and three proofreaders is extended for ninety days; the time of six stenographers is extended for ten days; the time of four janitors is extended for five days, and the time of one janitor is extended for thirty days; the time of two Mailing Clerks for the central postoffice is extended for ten days; the time of the Clerk to the Committee on Enrolled Bills is extended for ten days; the time of the Chief Journal Room Clerk is extended for twenty days, and six Assistant Journal Room Clerks is extended for ten days; the time of one Mailing Clerk is extended for ten days; the time of the Supervisor of Stenographers is extended for ten days; the time of the Secretary and Stenographer to the Speaker is extended for thirty days; and, be it

Further Resolved, That for the purpose of arranging the offices and committee rooms and performing the other duties of his office, the time of the Sergeant-at-Arms is extended for sixty days, four Assistant Sergeant-at-Arms is extended seven days, and the time of one assistant Sergeant-at-Arms is extended for ten days; and, be it

Resolved Further, That the per diem of the persons given extensions in this resolution, shall be the same as that paid for the same positions during this regular session of the Legislature.

The Clerk shall draw his warrants upon the Auditor in favor of the persons entitled to per diems under this resolution for consecutive days until such time as their services cease, and the Auditor shall honor and pay such warrants when presented and charge same to the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 56

(BY MR. JAMES)

(Originating in the Committee on Rules)

[Adopted March 9, 1935.]

Authorizing the printing and distribution of the acts of the Legislature, regular session, one thousand nine hundred thirty-five.

Resolved by the House of Delegates:

That under authority of section thirteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, the Clerk of the House of Delegates is hereby directed to have

printed by the public printer three thousand advanced copies of the acts of this session of the Legislature, properly headnoted, and with a full table of contents, and in paper binding, for distribution among the members of the Legislature, judges of the Supreme Court of Appeals, circuit, criminal and intermediate courts, and the county officials.

The public printer shall print and deliver said advance copies as soon as possible after the adjournment of this session. The Clerk of the Senate shall be furnished sufficient copies to forward by mail or express ten of said copies to each member of the State Senate, and the Clerk of the House of Delegates shall forward by mail or express ten copies of said acts to each member of the House of Delegates as soon as the same are printed and available for distribution. The Clerk of the House of Delegates shall also furnish one copy to each of the state officials, judges of the Supreme Court of Appeals, circuit, criminal, common pleas and intermediate courts of this state, and shall forward to the county clerk of each county sufficient copies to furnish one copy to each county office, the remainder, if any, shall be delivered to the superintendent of public printing for distribution by him. The Clerk of the House of Delegates is also authorized and directed to have printed in signature form for advance sheets, any general law which he may deem to be of sufficient importance to be issued and distributed in this form.

To pay postage or expressage on said advance copies, the sum of two hundred dollars is hereby directed to be paid by the Auditor from the Contingent Fund of the House of Delegates upon proper warrants of the Clerk.

For the work required in printing and distributing advanced copies of the acts and for the proofreading, indexing and printing the bound volumes of the acts of this session of the Legislature, the time of the Clerk of the House of Delegates and the following assistants is extended for the time herein set-out, at the same per diem as paid during this session of the Legislature; to-wit:

The Clerk, Secretary to Clerk, two Assistant Clerks, the Journal Clerk, the Journal Stenographer, seven clerks, and three proof-readers is extended for sixty days.

The Clerk shall draw his warrants upon the Auditor in favor of the persons entitled to per diems under this resolution for con-

secutive days until such time as their services cease, and the Auditor shall honor and pay such warrants when presented and charge same to the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 57

(BY MR. SHAHAN)

[Adopted March 11, 1935.]

Authorizing the payment of attaches for the extension of this regular session.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized to draw his warrants in favor of each attache of the House of Delegates for the two days of the extension of this session of the Legislature at the same per diem as paid during the sixty days of the session. Said per diems shall be paid from the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 58

(BY MR. UNDERWOOD)

[Adopted March 11, 1935.]

Requesting the Charleston Interurban Railway Company to put signs on buses.

WHEREAS, The Charleston Interurban Railway Company has several buses leaving from the same place on Capitol street; and

WHEREAS, These buses do not have signs on the rear of same, designating the routes they travel, thereby causing much inconvenience to members of the Legislature and other persons desiring to ride the bus to the state capitol; therefore, be it

Resolved by the House of Delegates:

That the Charleston Interurban Railway Company is hereby requested to place proper signs on these buses designating the routes they travel.

HOUSE RESOLUTION NO. 60

(BY MR. VICKERS)

[Adopted March 11, 1935.]

Directing the Clerk to mail members Journals, Bills and Acts of this session.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized and directed to mail to each member of this body a copy of the corrected Journal of the House, a copy of the Printed Bills and ten copies of the bound volumes of the acts of this session of the Legislature, when the same are printed and bound.

HOUSE RESOLUTION NO. 61

(BY MR. AMOS)

[Adopted March 11, 1935.]

Notifying the Senate that the House of Delegates is ready to adjourn *sine die*.

Resolved by the House of Delegates:

That a committee of three be appointed by the Speaker to notify the Senate that the House of Delegates has completed its labors and is ready to adjourn *sine die*.

SENATE CONCURRENT RESOLUTION NO. 3

(By MR. HELMICK)

[Adopted January 30, 1935.]

Raising a commission to erect suitable markers or monuments on the battlefield at Carrick's Ford, on Cheat river, in Tucker county.

Resolved by the Senate, the House of Delegates concurring therein:

That a commission of six, consisting of three members of the Senate to be appointed by the President of the Senate, and three members of the House of Delegates to be appointed by the Speaker of the House, is hereby raised to erect suitable markers or monuments on the battlefield at Carrick's Ford, on Cheat river, in Tucker county, to commemorate the memories of Brigadier General Robert Selden Garnett, commanding the Confederate forces, and of those of the Union and Confederate forces who lost their lives in this battle.

The members of said commission shall receive only their actual, necessary expenses incurred in carrying out the provisions of this resolution. The commission is authorized to expend not more than three thousand dollars in the erection of suitable markers or monuments on said battlefield. The expense of the members of the commission and the cost of said markers or monuments, not to exceed the sum of thirty-five hundred dollars, is hereby appropriated out of the treasury, out of any moneys not otherwise appropriated, and shall be paid by the Auditor upon the requisition of the chairman of said commission.

SENATE CONCURRENT RESOLUTION NO. 5

(By MR. SMITH)

[Adopted February 13, 1935.]

Concerning the establishment of a state park at the Falls of the Tygarts Valley river, in Marion and Taylor counties.

Resolved by the Senate, the House of Delegates concurring therein:

That the President of the Senate and the Speaker of the House

of Delegates are hereby directed to instruct the special committee appointed by them to investigate and report upon the advisability of establishing state parks at Black Water Falls, in Tucker county, and at Blennerhassett Island, in Wood county, to include in said investigation and report information as to the advisability of establishing a state park at the Falls of the Tygart Valley river, at Valley Falls, in Marion and Taylor counties.

SENATE CONCURRENT RESOLUTION NO. 6

(BY MR. SANDRIDGE)

[Adopted February 14, 1935.]

Concerning the establishment of a state park at the battleground of Philippi, Barbour county, to commemorate the first land battle of the Civil War.

Resolved by the Senate, the House of Delegates concurring therein:

That the special committee appointed to investigate and report upon the advisability of establishing state parks at Black Water Falls, in Tucker county and at Blennerhassett Island, in Wood county, is directed to include in said investigation and report information as to the advisability of establishing a state park at the battle ground of Philippi, Barbour county.

SENATE CONCURRENT RESOLUTION NO. 9

(BY MR. PAULL)

[Adopted February 26, 1935.]

Providing for a joint assembly.

Resolved by the Senate, the House of Delegates concurring therein:

That a joint session of the Legislature of West Virginia be held in the chamber of the House of Delegates on Wednesday, February 27th, 1935, at 2:15 P. M., to hear a message from his Excellency, the Honorable H. G. Kump, Governor of the State of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 10

(BY MR. PAULL)

[Adopted March 1, 1935.]

Raising a joint committee to study and report to the Governor and to the Legislature, concerning legislation on problems of social security and other subjects appurtenant thereto.

WHEREAS, The Governor has requested that the Legislature appoint a committee for the purpose of making a study of certain federal legislation dealing with social security and other subjects, with particular reference to the coordination of prospective enactments by the Legislature of this state therewith; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That a committee of twelve be appointed by the Legislature, five by the President of the Senate and five by the Speaker of the House, the President of the Senate and Speaker of the House to be ex officio member of said committee, to study the subjects of such federal legislation and the problem of coordinating state legislation therewith, and make its report to the Governor of West Virginia and to the Legislature at the earliest opportunity.

Said committee is hereby authorized to meet in the city of Charleston or elsewhere, as it may determine, the expenses of the members of said committee to be paid equally from the contingent funds of the Senate and House of Delegates upon certificate of the chairman of said committee. Said committee is further authorized, should it deem it advisable, to employ such legal counsel and assistants as it may deem necessary.

SENATE CONCURRENT RESOLUTION NO. 11

(BY MR. SMITH)

[Adopted March 9, 1935.]

Raising a special committee to study and report upon the needs and conditions of the teaching profession of the state.

WHEREAS, Existing provisions of law relating to teachers' retire-

ment fund and permanent tenure are considered inadequate to meet the present needs of the profession ; and,

WHEREAS, It is the recommendation of teachers throughout the state as expressed through their professional organizations and education departments that proper steps be taken for the enactment of an adequate and well-considered teachers' retirement and permanent tenure law ; and,

WHEREAS, It is recognized that a careful study and survey should be made to ascertain and make available pertinent and reliable data relating to such proposed legislation, best adapted to the needs peculiar to our state, as prerequisites to the enactment of such a law ; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Governor, on or before the first day of May, one thousand nine hundred thirty-five, shall appoint a committee of five to make a general study, without cost to the state, of the subject as herein proposed and, particularly in its relation to the needs and conditions peculiar to the teaching profession of this state. Said committee shall consist of one member from the state congress of parents and teachers, one from each of the committees on insurance of the Senate and House, respectively, one from the state education association, and one from the state department of education ; and, be it

Further resolved, That said committee report to the next regular session of the Legislature the result of its study, together with such conclusions and recommendations as shall, in the judgment of the committee, be most desirable for consideration by the Legislature as features of proposed laws relating to teachers' retirement and permanent tenure, and shall report to said Legislature, a bill or bills embodying its recommendations and conclusions.

SENATE CONCURRENT RESOLUTION NO. 12

(BY MR. BELKNAP)

[Adopted March 7, 1935.]

Granting permission to introduce a bill authorizing the county board of education of Calhoun county to borrow money.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House, present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

“A Bill to authorize the board of education of the county of Calhoun to borrow money for the purpose of erecting a gymnasium and auditorium for the Calhoun county high school at Grantsville.”

SENATE CONCURRENT RESOLUTION NO. 13

(By MR. HELSLEY, by request)

[Adopted March 7, 1935.]

Approving an official colonial inaugural celebration, annually, by the state of West Virginia for the purpose of financing the proposed George Washington Foundation as a national shrine in West Virginia at the historic town of Bath, Berkeley Springs, for the benefit to mankind.

WHEREAS, On March 16, 1934, the Senate of West Virginia and the House of Delegates concurring therein, unanimously approved the organization of “The George Washington Foundation Association” for the purpose of carrying on the great humanitarian project begun by the Founder of our Nation nearly two centuries ago; and

WHEREAS, On March 18, 1934, the George Washington Foundation Association was organized in the Senate chamber of the capitol of West Virginia on the anniversary of Washington’s pioneer visit to “Y. Fam’d Warm Spring”; and

WHEREAS, On April 30, 1934, in the Womans’ Clubhouse Charleston, the first election of officers of the association was held on the anniversary of the first inauguration of the first President of the United States, (this day being known as “President’s Day”); and

WHEREAS, In observance of the Founder’s birthday, February 22, 1935, a charter was granted to the George Washington Foundation Association for the perpetuation of the medicinal springs as a health center; and

WHEREAS, The proposed Washington Foundation Shrine, for the perpetuation of the historic springs made famous by the prestige of the "Father of His Country" throughout his lifetime, will be nation wide in interest; and

WHEREAS, The plan proposed in the Washington Bicentennial Year 1932, to finance the foundation by the continuance of the national celebration of the Founder's birthday, annually, to aid in the national health program was not unlike the recent celebrations of the President's birthdays which have proved the merit of such a plan; and

WHEREAS, Historic "Bath" is the first and only health resort in America that was sponsored and promoted by the great Washington who took his family there for many weeks at a time "to try y. effects and y. water;" therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That colonial celebrations to finance the George Washington Foundation as a national shrine within our sovereign state for the welfare of suffering humanity, be officially opened in the capitol of West Virginia on the anniversary of the first inauguration of the first President of the United States, April 30, 1935; and similar celebrations be held throughout West Virginia at this time; and that a copy of this resolution be sent to the Congress of the United States for the approval of a national colonial celebration, annually, in observance of the Founder's birthday or of the anniversary of the first inauguration, so that each state in the Union may have a permanent active interest in the foundation and thus establish a friendly and humanitarian relationship that cannot otherwise be achieved, be and the same is hereby approved.

SENATE CONCURRENT RESOLUTION NO. 14

(BY MR. BARNHART)

[Adopted March 9, 1935.]

Providing for the introduction of a bill submitting a constitutional amendment to the voters of the state.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House, present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

“A Bill to provide for the submission to the voters of the state of an amendment to the constitution as follows: Amending section thirty-five of article six thereof, permitting the state and subdivisions thereof to be made suggestee or garnishee.”

SENATE CONCURRENT RESOLUTION NO. 15

(BY MR. JONES)

[Adopted March 11, 1935.]

Authorizing the withdrawal of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill,” from the conference committee.

Resolved by the Senate, the House of Delegates concurring therein:

That Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill,” is hereby withdrawn from the conference committee, for the purpose of considering an amendment thereto, submitted this day by the Board of Public Works.

SENATE CONCURRENT RESOLUTION NO. 16

(BY MR. PAULL)

[Adopted March 11, 1935.]

Authorizing the return of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill” to the conference committee thereon.

Resolved by the Senate, the House of Delegates concurring therein:

That upon the passage by each House of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill”, as this day amended by the Board of Public Works and which amendment was received by the Senate and the House of Delegates, said bill shall be returned to the conference committee.

SENATE CONCURRENT RESOLUTION NO. 17

(BY MR. PAULL)

[Adopted March 11, 1935.]

Raising a joint committee to wait upon the Governor.

Resolved by the Senate, the House of Delegates concurring therein:

That a joint committee of six, consisting of three on the part of the Senate, to be appointed by the President thereof, and three on the part of the House of Delegates, to be appointed by the Speaker thereof, be appointed to notify the Governor that the Legislature is ready, under the constitution, to adjourn *sine die*, and ask him if he has any further communications to make.

SENATE JOINT RESOLUTION NO. 3

(BY MR. FLEMING)

[Adopted March 9, 1935.]

Proposing an amendment to the constitution of the state, amending article six by adding section thirty-nine-(a) thereto.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the constitution of West Virginia shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred thirty-six, which proposed amendment is as follows:

That article six of the constitution of West Virginia be amended by adding section thirty-nine-(a) thereto, which is as follows:

Sec. 39-(a). No local or special law shall hereafter be passed incorporating cities, towns or villages, or amending their charters. The Legislature shall provide by general laws for the incorporation and government of cities, towns and villages and shall classify such municipal corporations, upon the basis of population, into not less than two nor more than five classes. Such general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal

purposes, in accordance with section one, article ten of the Constitution of the State of West Virginia. Under such general laws, the electors of each municipal corporation, wherein the population exceeds two thousand, shall have power and authority to frame, adopt and amend the charter of such corporation, or to amend an existing charter thereof, and through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: *Provided*, That any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this constitution or the general laws of the state then in effect, or thereafter from time to time enacted.

SENATE RESOLUTION NO. 1

(BY MR. JONES)

[Adopted January 9, 1935.]

Appointment of committee to notify House that Senate is organized.

Resolved by the Senate:

That the President of the Senate be and he is hereby authorized to appoint a committee of three to inform the House of Delegates that the Senate is organized by the election of Honorable Charles E. Hodges as President and Mr. Charles Lively as Clerk, and is ready to proceed with the business of the session.

SENATE RESOLUTION NO. 2

(BY MR. ROUSS)

[Adopted January 9, 1935.]

Concerning the death of Senator Helsley's mother.

WHEREAS, The Senate has learned with deep regret of the death of the mother of Senator Helsley, of the Fifteenth district; therefore, be it

Resolved by the Senate:

That the sympathy of the Senate is extended to Senator Helsley and his family in their bereavement.

SENATE RESOLUTION NO. 3

(BY MR. MITCHELL)

[Adopted January 10, 1935.]

Adopting rules of the Senate.

Resolved by the Senate:

That the rules of the Senate, second extraordinary session, one thousand nine hundred thirty-three, be adopted as the rules of the Senate for this session pending a report from the Committee on Rules.

SENATE RESOLUTION NO. 4

(BY MR. CANTERBURY)

[Adopted January 10, 1935.]

Relating to the mailing of journals and bills.

Resolved by the Senate:

That the Clerk of the Senate is authorized to have mailed from the Senate document room copies of the bills and daily journals of the Senate to addresses to be furnished to the Clerk by the members of the Senate, twenty of which such addresses may be submitted by each member of the Senate, and that the expense of such mailing, including postage, be paid out of the contingent fund of the Senate by the Auditor, in advance of the appropriation therefor, upon proper requisition drawn by the Clerk of the Senate.

SENATE RESOLUTION NO. 5

(BY MR. HODGES)

(Originating in the Committee on Rules)

[Adopted January 14, 1935.]

Authorizing the appointment of attaches.

Resolved by the Senate:

That the President of the Senate its authorized to make the following appointments, viz:

Nine floor stenographers at \$7.00 per day each;
Three committee stenographers at \$7.00 per day each;
Two clerks at \$7.00 per day each;
Two committee clerks-at-large at \$10.00 per day each;
One clerk to Committee on Finance at \$10.00 per day;
One clerk to Committee on the Judiciary at \$10.00 per day;
One clerk to the Sergeant-at-Arms at \$7.00 per day;
One secretary to the Minority at \$12.00 per day;
One clerk to the Minority Leader at \$9.00 per day;
One secretary to the President at \$12.00 per day;
One messenger to the President at \$4.00 per day;
One Chaplain at \$5.00 per day;
Four assistant doorkeepers at \$7.00 per day each;
One night watchman at \$6.00 per day;
Five pages at \$4.00 per day each;
Two cloakroom attendants at \$4.00 per day each;

Resolved further, That the Clerk of the Senate is authorized to make the following appointments of assistant clerks, viz:

Two at \$12.00 per day each;
Five at \$9.00 per day each;
Seven at \$8.00 per day each;
Two at \$7.00 per day each;
Seven at \$6.00 per day. each

Resolved further, That the Sergeant-at-Arms shall receive \$10.00 per day; the Doorkeeper \$10.00 per day; and the Clerk \$20.00 per day.

The Clerk shall draw his warrants upon the Auditor in favor of the officers and attaches herein appointed for consecutive days from the date of the opening of this session at the per diems herein set out, and the Auditor shall honor and pay such warrants in advance of the appropriation for the purpose, when presented, and charge same to the "per diem of officers and attaches" fund of the Senate.

The President and the Clerk shall require said employees to perform the duties assigned to them and they are authorized and directed to remove any of such employees whose work is not satisfactory and to appoint another in his place.

SENATE RESOLUTION NO. 6

(BY MR. ROUSS)

[Adopted January 16, 1935]

Appointment of assistant janitors.

WHEREAS, Thomas B. Davis, Superintendent of Capitol buildings and grounds, under authority of section twenty-two, article one, chapter five of the code, has designated six assistants for the janitor work of the Senate for this session; therefore, be it

Resolved by the Senate:

That the per diem of said assistant janitors is fixed at four dollars, and that of the said Thomas B. Davis, is fixed at two dollars, as the Senate's one-half of his per diem.

SENATE RESOLUTION NO. 7

(BY MR. SANDRIDGE)

[Adopted January 23, 1935]

Authorizing payment to W. B. Baker for services to the Senate, regular session, one thousand nine hundred thirty-three.

Resolved by the Senate:

That the Clerk of the Senate is directed to draw his warrant upon the Auditor, payable out of the contingent fund of the Senate, in favor of W. B. Baker for eight days' services as assistant door-keeper to the Senate, regular session, one thousand nine hundred thirty-three, at a per diem of eight dollars.

SENATE RESOLUTION NO. 8

(BY MR. MILLENDER)

[Adopted January 23, 1935]

Providing for an investigation of the Purchasing Department of the State of West Virginia.

WHEREAS, It has been brought to the attention of many members of the Senate and to a great portion of the public at large, that charges are prevalent that certain abuses and irregularities of the

privileges have occurred in the purchasing department under the supervision of James A. Tierney, state director of purchases, and his assistants; and

WHEREAS, It is the opinion of the Senate of West Virginia that such charges should be investigated in order to learn if such abuses and irregularities have occurred and are still occurring, and if not, that the public may know that such charges and accusations are false; and

WHEREAS, The consolidation of all purchases under one purchasing head may have led to a preconceived idea of irregularity; therefore, be it

Resolved by the Senate:

That a select committee of five members with minority representation, be appointed by the President of the Senate, with authority and direction to make inquiry into the administration of the purchasing department of the state of West Virginia. Said committee shall have access to any and all records in said purchasing department for the purpose of this investigation. Said committee shall have power and authority to administer oaths, subpoena witnesses, compel attendance and compel the production of documents of all kinds, and shall have the right to call upon the state director of purchases and any of his subordinates and employees for such assistance and information as they may be able to furnish. Said committee shall have access to all books and records in said department, and may call upon and require the attaches of the Senate to render such service and assistance as may be necessary for the committee to properly perform its duties. Said committee shall be limited to the sum of three hundred dollars for the expenses of its investigations but no part of said amount shall be used to employ legal aid.

Said committee is hereby empowered with all necessary authority to investigate any and all purchases made by the state director of purchases or any of his subordinates, either regular or emergency. Said committee shall report to the Senate at this session of the Legislature, its findings in connection with this investigation of said department, together with its conclusions and such recommendations as said committee may deem proper, and if irregularities are found, a copy of said report shall be forthwith filed

with the Governor of this state, together with the recommendations of said committee, in order that he may take whatever action he may deem expedient, according to the findings of this committee.

The expense of said investigation by said committee shall be paid out of the contingent fund of the Senate.

SENATE RESOLUTION NO. 9

(BY MR. HODGES)

(Originating in the Committee on Rules)

[Adopted January 23, 1935]

Payment for services preliminary to the organization of the Senate.

Resolved by the Senate:

That the following amounts be allowed, payable out of the contingent fund of the Senate, for work of the Sergeant-at-Arms and the others named herein for services preliminary to the organization of the Senate in this session.

C. D. Elliott.....	\$150.00
John Holsclaw.....	4.00
C. W. Bell.....	15.00
Lewis G. Dinkle.....	50.00
Herbert Eccles.....	25.00
Raymond Bush.....	15.00

SENATE RESOLUTION NO. 10

(BY MR. ELBIN)

[Adopted January 23, 1935]

Memorial services for the late Senator John C. Myers.

WHEREAS, Honorable John C. Myers, a Senator from the Second Senatorial district, has, since the last session of this body, departed this life; therefore, be it

Resolved by the Senate:

That as a fitting tribute to the memory of this distinguished

Senator and citizen, memorial services be held in the Chamber of the Senate at two thirty o'clock, P. M., Thursday, February seventh, one thousand nine hundred thirty-five; and, be it

Resolved further, That the Clerk of the Senate transmit a copy of this resolution to the family of the deceased and to the House of Delegates, with an invitation to them from the Senate to attend the memorial services.

SENATE RESOLUTION NO. 12

(BY MR. PAULL)

(Originating in the Committee on Rules)

[Adopted January 30, 1935]

Authorizing payment of expenses of a member of the committee to attend the inter-state truck and bus conference, held in Harrisburg, Pennsylvania.

WHEREAS, The inter-state truck and bus conference was held in Harrisburg, Pennsylvania, October 20 and 21, 1933; and

WHEREAS, The President appointed a committee to attend this meeting; and

WHEREAS, A. L. Helmick, one of the members of such committee, attended the conference and incurred a total expense of thirty-six dollars and fifty cents; therefore, be it

Resolved by the Senate:

That the Clerk is hereby directed to draw his warrant upon the Auditor in favor of the said A. L. Helmick for the sum of thirty-six dollars and fifty cents, payable out of the contingent fund of the Senate.

SENATE RESOLUTION NO. 13

(BY MR. HODGES)

(Originating in the Committee on Rules)

[Adopted January 31, 1935]

Authorizing the Committee on Rules to purchase furniture.

Resolved by the Senate:

That the Committee on Rules is authorized to purchase furniture for four committee rooms and furniture and furnishings for the Senate reception room. The expenditures incurred in the purchase of such furniture and furnishings shall be paid by the Auditor out of the contingent fund of the Senate upon the requisition of the Clerk of the Senate for the same.

SENATE RESOLUTION NO. 14

(BY MR. MATHEWS)

[Adopted February 12, 1935.]

Providing for the appointment of a delegation to attend the Second Interstate Assembly at Washington, D. C.

WHEREAS, The Second Interstate Assembly has been called by the Council of State Governments and the American Legislators' Association, to be held on Thursday, Friday, and Saturday, February 28, and March 1-2, 1935, at the Mayflower Hotel, Washington, D. C., to consider federal and state tax policies on the basis of the recommendations submitted by the Interstate Commission on Conflicting Taxation, which was established two years ago by the First Assembly; and

WHEREAS, It is apparent that substantial benefits would result from closer contacts between the legislative and administrative divisions of the various state governments, and that many governmental difficulties are aggravated by the absence of adequate facilities for conference between these bodies; and

WHEREAS, The present economic emergency creates an imperative necessity now emphasized by the President's program of economic security for joint council and concerted action; and

WHEREAS, It is believed that the moment has now arrived for establishing adequate means for communication and conference between the states and the federal government; and

WHEREAS, The Senate of this state is invited to send its delegates to this conference, to be chosen in such manner as this body may determine; therefore, be it

Resolved by the Senate:

That the Senate of the state of West Virginia hereby authorizes the President of the Senate to appoint three senators, of whom the President shall be one, as a delegation to the Interstate Assembly, which convenes in Washington, D. C., on February 28, 1935. Such delegation shall be without power to commit the Senate to action. The Clerk of the Senate upon certification to him by said delegation, or its chairman, shall draw his warrant upon the Auditor, payable out of the contingent fund of the Senate, in an amount not to exceed the sum of one hundred and fifty dollars, for the attendance of said delegation on said assembly.

The Clerk of the Senate is directed to advise the corresponding secretary of the conference in care of the American Legislators' Association, Drexel avenue and Fifty-eighth street, Chicago, Illinois, of the appointment of such delegation.

SENATE RESOLUTION NO. 16

(BY MR. PAULL)

[Adopted February 28, 1935.]

Authorizing the Committee on Rules to arrange a special calendar.

Resolved by the Senate:

That the Committee on Rules is hereby authorized to arrange a calendar for each day to be known as "special calendar" and until the calendar so arranged by the committee is disposed of no matter on the regular calendar shall be considered or take precedence over said special calendar, subject to the provisions of Senate rule No. 68.

SENATE RESOLUTION NO. 17

(BY MR. SANDRIDGE)

[Adopted March 1, 1935.]

Names of participants in battle of Point Pleasant to be inscribed on tablet to be placed on the monument there.

Resolved by the Senate:

That the Point Pleasant Battle Monument Commission be and it is hereby authorized and requested to cause to be inscribed on bronze tablets to be attached to the base of the Point Pleasant Battle Monument, when such base shall have been provided for, the names of all of the officers and men who participated in the battle of the Revolution fought on October tenth, one thousand seven hundred and seventy-four, at Point Pleasant, now in West Virginia, as ascertained and listed by the Point Pleasant Battle Monument Commission, under the provisions of chapter forty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, and reported to the Governor, and to provide space in such tablets for inscription of the names of such other officers and men who participated in said battle, shall hereafter be ascertained and listed under the provisions of said chapter forty-three.

SENATE RESOLUTION NO. 18

(BY MR. SMITH)

[Adopted March 4, 1935.]

Raising a committee to study the problems of water power development in the state.

Resolved by the Senate:

That the Chairman of the Senate Committee on the Judiciary is requested to appoint a sub-committee of three members of the committee for the purpose of studying the water power bills now before the Senate and the water power development situation in West Virginia. Said sub-committee shall report its findings to the next regular session of the West Virginia State Senate, or to any special session held between this date and said next regular session.

The members of the sub-committee shall be reimbursed for their actual expenses incurred in carrying out the provisions of the resolution in an amount not to exceed one hundred dollars per member to be paid from the contingent fund of the Senate on the warrant of the Clerk drawn upon the Auditor.

SENATE RESOLUTION NO. 19

(Originating in the Committee on the Judiciary)

[Adopted March 6, 1935.]

Raising a special committee to study the Workmen's Compensation Law.

WHEREAS, Bills have been introduced during the present regular session of the Legislature, proposing legislation that might prove detrimental to the workmen's compensation fund, and add heavy burdens to the subscribers to the fund; and

WHEREAS, These proposals are of such tremendous importance to thousands of workmen who are beneficiaries under the humane and beneficent statute and to the subscribers to the fund; and

WHEREAS, This fund for more than twenty years has been administered by a branch of the executive department of the state government; therefore, be it

Resolved by the Senate:

That the Governor appoint a special committee of three members, one to represent employers, one to represent employees and one having actuarial knowledge, the last of whom shall not be connected with the West Virginia Compensation Department, to make a comprehensive survey of the workmen's compensation law of this state, its administration by the compensation department, and a study of like statutes in surrounding states, particularly with reference to a study of appeals from findings of fact to the court. Said committee shall report its findings to the next regular session of the Legislature, or at any prior session of the Legislature at which the said committee may be ready to report.

The expenses of said committee shall be paid from the Senate contingent fund in an amount not to exceed three thousand dollars, upon the warrant of the Clerk of the Senate drawn upon the Auditor upon certification of the amount of said expenses to the Clerk by said committee. An accounting of said expenses shall be made to the Clerk for certification to the Auditor and shall be included in the report of the committee.

SENATE RESOLUTION NO. 21

(BY MR. MITCHELL)

[Adopted March 8, 1935.]

Concerning the illness of Honorable M. Z. White.

WHEREAS, The Senate has just learned of the serious illness of the Honorable M. Z. White, a former member of this body for many terms and its presiding officer from 1923 to 1933; therefore, be it

Resolved by the Senate:

That the Senate express its deepest regret over this sudden illness to which Senator White has been subjected, its sympathy to him and his family and its sincere hope that the illness may be of short duration and the recovery speedy and complete. The Clerk of the Senate is directed to send flowers to Senator White for the Senate.

SENATE RESOLUTION NO. 22

(BY MR. PAULL)

(Originating in the Committee on Rules)

[Adopted March 9, 1935.]

Concerning the privileges of the floor.

Resolved by the Senate:

That for the remainder of this legislative day, no person shall be allowed upon the floor of the Senate, while the Senate is in session, other than members of the Legislature, attaches on official business, persons bearing official messages from the Governor, and working members of the press.

SENATE RESOLUTION NO. 23

(BY MR. RANDOLPH)

[Adopted March 9, 1935.]

Authorizing payment of the expenses of the special committee raised under Senate Resolution No. 14 to attend the Second Interstate Assembly at Washington, D. C.

WHEREAS, Under the authority of Senate Resolution No. 14, adopted February 12, 1935, a special committee was raised to attend the Second Interstate Assembly at Washington, D. C., on February 28, 1935, and March 1-2, 1935; and

WHEREAS, Said committee has filed its report of the proceedings of said assembly; and

WHEREAS, Said Senate Resolution No. 14 provided for the payment of the expenses of the committee, in a sum not to exceed one hundred fifty dollars; and

WHEREAS, Said sum of one hundred and fifty dollars was not sufficient to meet the necessary, actual and legitimate expenses of said committee; therefore, be it

Resolved by the Senate:

That the Clerk of the Senate upon certification to him by the chairman of said delegation, shall draw his warrant upon the Auditor, payable out of the contingent fund of the Senate for an additional amount, not to exceed the sum of seventy-five dollars, for the expenses of said delegation.

SENATE RESOLUTION NO. 24

(By MR. HELMICK)

(Originating in the Committee on Rules)

[Adopted March 11, 1935.]

Janitor service after adjournment.

Resolved by the Senate:

That, in order that the work incident to the proper cleaning of the Senate part of the capitol preparatory to closing between sessions may be taken care of, the time of the assistant superintendent of capitol building and grounds, at a per diem of two dollars, and five assistant janitors heretofore appointed at a per diem of four dollars, is hereby extended for five days each.

SENATE RESOLUTION NO. 25

(BY MR. FLEMING)

(Originating in the Committee on Rules)

[Adopted March 11, 1935.]

Printing of the Journal and advance and bound copies of the Acts.

Resolved by the Senate:

That in order to complete the work of the session in arranging and filing of all bills, resolutions, petitions and other official papers in the Clerk's office and document room, and to allow time for proofreading, printing and indexing the corrected Journal and arranging and printing its several appendices, and in printing and indexing the volume of Senate Bills, and in completing the work in the mailing and document rooms and in performing other services incident to the closing of this session of the Legislature, the per diem of the Clerk at \$20.00 and of two assistant clerks at \$12.00 each and of one assistant clerk at \$9.00 is extended for one hundred and twenty days; one assistant clerk at \$12.00 for sixty days; one assistant clerk at \$9.00 for ninety days; one assistant clerk at \$9.00 for thirty days; one assistant clerk at \$9.00 for ten days; one assistant clerk at \$6.00 for thirty days; one assistant clerk at \$5.00 for ninety days; thirteen stenographers at \$7.00 for five days each; six journal and mailing room clerks at \$6.00 for five days each; one journal and mailing room clerk for three days and one for two days at \$6.00 per day each; one enrolled bill clerk at \$9.00 for ten days; secretary to the President at \$12.00 for forty-five days; clerk to the Minority Leader at \$9.00 for thirty days; clerk to the Sergeant-at-Arms at \$7.00 for fifteen days; six printing clerks at \$8.00 for seventy-five days each; one printing clerk at \$8.00 for one hundred and twenty days; messenger to the President at \$4.00 for five days; the Sergeant-at-Arms at \$10.00 for forty-five days, and woman's cloakroom attendant at \$4.00 for five days.

The Clerk, together with the Clerk of the House of Delegates, is hereby directed to have printed by the public printer three thousand advance copies of the Acts of this session, exclusive of municipal charters, properly headnoted, and with a full table of contents, and in paper binding, for distribution among the

members of the Legislature, judges of the Supreme Court of Appeals, and of the circuit, criminal and intermediate courts, circuit and county clerks, sheriffs and prosecuting attorneys.

Said public printer shall print and deliver said advance copies to the clerks of the two houses as soon as possible after the adjournment of this session. Upon receipt of the same, the clerks shall, without delay, forward by mail or express to each member of the Senate and House of Delegates at least ten of said advance copies, and one copy to each of the state officials, and the remainder, if any, they shall deliver to the superintendent of printing and stationery for distribution.

The said clerks are also authorized and directed to have printed in signature form for advance sheets any general law which they may deem of sufficient importance to be issued and distributed in that form. The sum of one hundred dollars out of the contingent fund of the Senate is hereby directed to be paid by the Auditor, upon proper warrant to pay the postage or expressage on said advance copies.

For the extra work provided for in this resolution, the time of the Clerk of the Senate at \$20.00 and two assistant clerks at \$12.00 and one assistant clerk at \$8.00 per diem each, respectively, is extended for thirty days.

All extensions provided for herein shall begin at the end of the extension of this session of the Legislature.

The compensation of those designated hereunder shall be paid out of the contingent fund of the Senate for consecutive days upon proper requisition drawn by the Clerk of the Senate upon the Auditor.

SENATE RESOLUTION NO. 26

(BY MR. HOWARD)

[Adopted March 11, 1935.]

Committee to notify House of Delegates.

Resolved by the Senate:

That a committee of two be appointed by the President to notify the House of Delegates that the Senate is ready to adjourn *sine die*.

* CHAPTER 58

(House Bill No. 190—By Mr. Norton)

AN ACT to amend and reenact section eleven, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, relating to the refiling of conditional sales contracts.

[Passed February 22, 1933; in effect ninety days from passage. Approved by the Governor.]

Sec.		Sec.
11. Time for which conditional sales contracts are made valid by		filing; extension of time of validity by refiling or re-recording.

Be it enacted by the Legislature of West Virginia:

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

Section 11. The filing of any conditional sale contract, here-
 2 tofore or hereafter filed, pursuant to the provisions of sections
 3 five, six and seven of this article, shall be valid for a period
 4 of five years only from the date of such filing. The recording
 5 of the contracts provided for by section eight of this article shall
 6 be valid for a period of fifteen years only. The validity of the
 7 filing or recording may in each case be extended for successive
 8 additional periods of two years from the date of refiling or re-
 9 recording by filing or recording in the proper filing district a
 10 copy of the original contract within thirty days next preceding
 11 the expiration of each period, with a statement attached, signed
 12 by the seller, showing that the contract is in force and the
 13 amount remaining to be paid thereon. Such copy, with state-
 14 ment attached, shall be filed or recorded in the same manner as
 15 a contract or copy for the first time, and the filing or recording
 16 officer shall be entitled to a like fee as upon the original filing
 17 or recording.

* An act of the Legislature, regular session, 1933. Due to an error in make-up in printing the acts of that session line 5 was omitted, and for that reason the act is reprinted correctly in this volume.

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